

HOUSE BILL No. 2411

By Committee on Taxation

2-24

AN ACT concerning taxation; relating to state agencies; collection and remittance of sales tax by state contractors; amending K.S.A. 75-3740a and K.S.A. 2002 Supp. 75-3739 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2002 Supp. 75-3739 is hereby amended to read as follows: 75-3739. In the manner as provided in this act and rules and regulations established thereunder:

(a) All contracts for construction and repairs, and all purchases of and contracts for supplies, materials, equipment and contractual services to be acquired for state agencies shall be based on competitive bids, except that competitive bids need not be required in the following instances:

(1) For contractual services, supplies, materials, or equipment when, in the judgment of the director of purchases, no competition exists;

(2) when, in the judgment of the director of purchases, chemicals and other material or equipment for use in laboratories or experimental studies by state agencies are best purchased without competition, or where rates are fixed by law or ordinance;

(3) when, in the judgment of the director of purchases, an agency emergency requires immediate delivery of supplies, materials or equipment, or immediate performance of services;

(4) when any statute authorizes another procedure or provides an exemption from the provisions of this section;

(5) when compatibility with existing contractual services, supplies, materials or equipment is the overriding consideration;

(6) when a used item becomes available and is subject to immediate sale; or

(7) when, in the judgment of the director of purchases and the head of the acquiring state agency, not seeking competitive bids is in the best interest of the state.

When the director of purchases approves a purchase of or contract for supplies, materials, equipment, or contractual services in any instance specified in this subsection, the director may delegate authority to make the purchase or enter the contract under conditions and procedures prescribed by the director.

1 The director of purchases shall prepare a detailed report at least once
2 in each calendar quarter of all contracts over \$5,000 entered into without
3 competitive bids under subsection (a)(1), (2), (3), (5), (6) or (7). The
4 director shall submit the report to the legislative coordinating council, the
5 chairperson of the committee on ways and means of the senate, the chair-
6 person of the committee on appropriations of the house of representatives
7 and the chairperson of the Kansas performance review board.

8 (b) (1) If the amount of the purchase is estimated to exceed \$50,000,
9 sealed bids shall be solicited by notice published once in the Kansas reg-
10 ister not less than 10 days before the date stated in the notice for the
11 opening of the bids. The director of purchases may waive this publication
12 of notice requirement when the director determines that a more timely
13 procurement is in the best interest of the state. The director of purchases
14 also may designate a trade journal for the publication. The director of
15 purchases also shall solicit such bids by sending notices by mail to pro-
16 spective bidders and by posting the notice on a public bulletin board for
17 at least 10 business days before the date stated in the notice for the
18 opening of the bids unless otherwise provided by law. All bids shall be
19 sealed when received and shall be opened in public at the hour stated in
20 the notice.

21 (2) The director of purchases shall prepare a detailed report at least
22 once in each calendar quarter of all instances in which the director waived
23 publication of the notice of bid solicitations in the Kansas register as
24 provided in this subsection. The director shall submit the report to the
25 legislative coordinating council, the chairperson of the committee on ways
26 and means of the senate, the chairperson of the committee on appropri-
27 ations of the house of representatives and the chairperson of the Kansas
28 performance review board.

29 (c) All purchases estimated to exceed approximately \$25,000 but not
30 more than \$50,000, shall be made after receipt of sealed bids following
31 at least three days' notice posted on a public bulletin board.

32 (d) All purchases estimated to be more than \$5,000, but less than
33 \$25,000, may be made after the receipt of three or more bid solicitations
34 by telephone, telephone facsimile or sealed bid, following at least three
35 days' notice posted on a public bulletin board. Such bids shall be recorded
36 as provided in subsection (e) of K.S.A. 75-3740 and amendments thereto.
37 Any purchase that is estimated to be less than \$5,000 may be purchased
38 under conditions and procedures prescribed by the director of purchases.
39 Purchases made in compliance with such conditions and procedures shall
40 be exempt from other provisions of this section.

41 (e) With the approval of the secretary of administration, the director
42 of purchases may delegate authority to any state agency to make pur-
43 chases of less than \$25,000 under certain prescribed conditions and pro-

1 cedures. The director of purchases shall prepare a report at least once in
2 each calendar quarter of all current and existing delegations of authority
3 to state agencies as provided in this subsection. The director shall submit
4 the report to the legislative coordinating council, the chairperson of the
5 committee on ways and means of the senate, the chairperson of the com-
6 mittee on appropriations of the house of representatives and the chair-
7 person of the Kansas performance review board.

8 (f) Subject to the provisions of subsection (e), contracts and purchases
9 shall be based on specifications approved by the director of purchases.
10 When deemed applicable and feasible by the director of purchases, such
11 specifications shall include either energy efficiency standards or appro-
12 priate life cycle cost formulas, or both, for all supplies, materials, equip-
13 ment and contractual services to be purchased by the state. The director
14 of purchases may reject a contract or purchase on the basis that a product
15 is manufactured or assembled outside the United States. No such speci-
16 fications shall be fixed in a manner to effectively exclude any responsible
17 bidder offering comparable supplies, materials, equipment or contractual
18 services.

19 (g) Notwithstanding anything herein to the contrary, all contracts
20 with independent construction concerns for the construction, improve-
21 ment, reconstruction and maintenance of the state highway system and
22 the acquisition of rights-of-way for state highway purposes shall be ad-
23 vertised and let as now or hereafter provided by law.

24 (h) The director of purchases may authorize state agencies to contract
25 for services and materials with other state agencies, or with federal agen-
26 cies, political subdivisions of Kansas, agencies of other states or subdivi-
27 sions thereof, or private nonprofit educational institutions, without com-
28 petitive bids.

29 (i) The director of purchases may participate in, sponsor, conduct, or
30 administer a cooperative purchasing agreement or consortium for pur-
31 chases of supplies, materials, equipment, and contractual services with
32 federal agencies or agencies of other states or local units of government.
33 Cooperative purchasing agreements entered into under this subsection
34 shall not be subject to K.S.A. 75-3739 through 75-3740a, and amend-
35 ments thereto. ~~Nothing in this subsection shall allow federal grant moneys
36 to be handled differently from any other moneys of the state unless the
37 requirements of the applicable federal grant specifically require such fed-
38 eral moneys to be handled differently.~~

39 (j) The director of purchases may delegate authority to any state
40 agency to make purchases under certain prescribed conditions and pro-
41 cedures when the acquisition is funded, in whole or in part, from a grant.
42 Purchases made in compliance with such conditions and procedures shall
43 be exempt from other provisions of this section. As used in this subsection

1 the term “grant” means a disbursement made from federal or private
2 funds, or a combination of these sources, to a state agency. *Nothing in*
3 *this subsection shall allow federal grant moneys to be handled differently*
4 *from any other moneys of the state unless the requirements of the appli-*
5 *cable federal grant specifically require such federal moneys to be handled*
6 *differently.*

7 (k) The director of purchases shall prepare a detailed report at least
8 once each calendar quarter of all contracts for services, supplies, materials
9 or equipment entered into pursuant to subsection (h), (i) or (j) and submit
10 it to the legislative coordinating council, the chairperson of the committee
11 on ways and means of the senate, the chairperson of the committee on
12 appropriations of the house of representatives and the chairperson of the
13 Kansas performance review board.

14 (l) Except as otherwise specifically provided by law, no state agency
15 shall enter into any lease of real property without the prior approval of
16 the secretary of administration. A state agency shall submit to the sec-
17 retary of administration such information relating to any proposed lease
18 of real property as the secretary may require. The secretary of adminis-
19 tration shall either approve, modify and approve or reject any such pro-
20 posed lease.

21 (m) The director of purchases shall require all bidders on state con-
22 tracts to disclose all substantial interests held by the bidder in the state.

23 (n) *The director of purchases shall require each bidder on a state*
24 *contract for supplies, materials and equipment to disclose whether such*
25 *bidder makes sales at retail of tangible personal property or services as*
26 *defined in K.S.A. 79-3602, and amendments thereto, in this state, or makes*
27 *sales at retail of tangible personal property as defined in K.S.A. 79-3602,*
28 *and amendments thereto, for use or storage within this state, as defined*
29 *in K.S.A. 79-3702, and amendments thereto, and if so, such bidder must*
30 *agree that if successful, such bidder, as of the date of such award, shall*
31 *register with the department of revenue and collect, report and remit to*
32 *the department pursuant to K.S.A. 79-3607 or 79-3706, and amendments*
33 *thereto, all applicable Kansas retailer’s sales tax or compensating use tax*
34 *on sales at retail of tangible personal property or services in Kansas or*
35 *sales of tangible personal property shipped or delivered to customers lo-*
36 *cated in Kansas. Absent such agreement, the bid shall not be considered.*

37 Sec. 2. K.S.A. 75-3740a is hereby amended to read as follows: 75-
38 3740a. (a) To the extent permitted by federal law and regulations when-
39 ever the state of Kansas or any agency, department, bureau or division
40 thereof or any municipality of the state including, but not limited to,
41 county, school district, improvement district or other public body lets bids
42 for contracts for the erection, construction, alteration or repair of any
43 public building or structure or any addition thereto or for any public work

1 or improvement or for any purchases of any goods, merchandise, mate-
2 rials, supplies or equipment of any kind, the contractor domiciled outside
3 the state of Kansas, to be successful, shall submit a bid the same percent
4 less than the lowest bid submitted by a responsible Kansas contractor as
5 would be required of such Kansas domiciled contractor to succeed over
6 the bidding contractor domiciled outside Kansas on a like contract let in
7 such contractor's domiciliary state.

8 *(b) Whenever the state of Kansas or any agency, department, bureau*
9 *or division thereof or any municipality of the state including, but not*
10 *limited to, county, school district, improvement district or other public*
11 *body lets bids for any purchases of any goods, merchandise, materials,*
12 *supplies or equipment of any kind, the bidder domiciled outside of the*
13 *state of Kansas, to be successful, shall agree that if awarded such contract,*
14 *such bidder, as of the date of such award, shall register with the depart-*
15 *ment of revenue and collect, report and remit to the department pursuant*
16 *to K.S.A. 79-3607 or 79-3706, and amendments thereto, all applicable*
17 *Kansas retailer's sales tax or compensating use tax on sales at retail of*
18 *tangible personal property or services in Kansas or sales at retail of tan-*
19 *gible personal property shipped or delivered to customers located in*
20 *Kansas.*

21 Sec. 3. K.S.A. 75-3740a and K.S.A. 2002 Supp. 75-3739 are hereby
22 repealed.

23 Sec. 4. This act shall take effect and be in force from and after its
24 publication in the statute book.

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