

SENATE BILL No. 223

AN ACT concerning state agency purchasing procedures; relating to the reverse auctioning electronic procurement process; repealing the Kansas performance review act; amending K.S.A. 75-3711a, 75-3711b, 75-3738, 75-3740 and 76-721 and K.S.A. 2002 Supp. 75-3739 and 75-3739a and repealing the existing sections; also repealing K.S.A. 75-3711d, 75-7101, 75-7102, 75-7103, 75-7104, 75-7105 and 75-7107.

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

Section 1. K.S.A. 75-3711a is hereby amended to read as follows: 75-3711a. (a) Any state agency not otherwise specifically authorized by law may, with the approval of the state finance council, receive grants of money and funds appropriated under any federal act or from any other source.

(b) Subject to the provisions of K.S.A. 75-3711b ~~and 75-3711d, and amendments thereto~~, any state agency not otherwise specifically authorized by law may contract with and (1) receive or spend or transfer or (2) receive and spend or transfer moneys from other state or federal agencies, with the approval of the state finance council.

(c) In addition to the findings required by subsection (c) of K.S.A. 75-3711c, ~~and amendments thereto~~, functions under *subsections* (a) and (b) of this section shall be exercised only after a finding by the governor and a majority vote of the legislative members of the state finance council that the program proposed will benefit the health or welfare of the people of this state.

(d) No authorization under this section shall undertake to give any vested commitment that a future legislative enactment will provide any additional state funds to the purpose of the proposed program.

Sec. 2. K.S.A. 75-3711b is hereby amended to read as follows: 75-3711b. (a) Nothing in K.S.A. 75-3711a, ~~and amendments thereto~~, shall be construed to require approval of the state finance council to allow any state agency specifically authorized by any other statute to do so, to receive grants of money and funds appropriated under any federal act or from any other source, or to contract with and (1) receive or spend or transfer or (2) receive and spend or transfer moneys from any other state or federal agencies.

(b) Nothing in K.S.A. 75-3711a ~~or in 75-3711d, and amendments thereto~~, shall require approval of the state finance council for any contract requiring expenditures or transfers of an amount equal to ~~two hundred fifty thousand dollars (\$250,000)~~ \$250,000 or less between any state educational institution, as defined in subsection (a) of K.S.A. 76-711, ~~and amendments thereto~~, and any other state agency, including another state educational institution. Within ~~thirty (30)~~ 30 days after entering into each such contract, the state agency required to expend or transfer funds under the contract shall file a copy of the contract with the legislative research department.

Sec. 3. K.S.A. 75-3738 is hereby amended to read as follows: 75-3738. The director of purchases shall:

(a) Purchase, rent or otherwise provide for the furnishing of supplies, materials, equipment or contractual services for all state agencies.

(b) Have power to authorize any state agency to purchase directly certain specified supplies, materials, equipment or contractual services under prescribed conditions and procedures.

(c) Prescribe the manner in which supplies, materials and equipment shall be purchased, delivered and distributed.

(d) Prescribe the time, manner and authentication of making requisitions for supplies, materials, equipment and contractual services.

(e) Establish standards of quality and quantity and develop standard specifications in consultation with the several state agencies.

(f) Prescribe the manner of making chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications and the manner in which state agencies shall inspect all deliveries of supplies, materials and equipment.

(g) Prescribe the amounts and form of, accounting for and disposition of any deposit or bond required to be submitted with a bid or a contract and the amount of any such deposit or bond to be given for the faithful performance of a contract.

~~(h) Require reports by state agencies of stocks of supplies, materials and equipment on hand and prescribe the form of such reports and deliver copies of such reports to the director of purchases and the director of accounts and reports.~~

Sec. 4. K.S.A. 75-3740 is hereby amended to read as follows: 75-3740. (a) Except as provided by K.S.A. 75-3740b, all contracts and purchases made by or under the supervision of the director of purchases or any state agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids.

(b) The director of purchases shall have power to decide as to the lowest responsible bidder for all purchases, but if:

(1) The dollar amount of the bid received from the lowest responsible bidder from within the state is identical to the dollar amount of the bid received from the lowest responsible bidder from without the state, the contract shall be awarded to the bidder from within the state; *and*

~~(2) in the case of bids for paper products specified in K.S.A. 75-3740b, the dollar amounts of the bids received from two or more lowest responsible bidders are identical, the contract shall be awarded to the bidder whose bid is for those paper products containing the highest percentage of recyclable materials; and~~

~~—(3) in the case of bids for paper products specified in K.S.A. 75-3740b, the dollar amounts of the bids received from two or more lowest responsible bidders are identical, the contract shall be awarded to the bidder whose bid is for those paper products containing the highest percentage of recycled materials.~~

(c) Any or all bids may be rejected, and a bid shall be rejected if it contains any material alteration or erasure *made after the bid is opened*. The director of purchases may reject the bid of any bidder who is in arrears on taxes due the state, who is not properly registered to collect and remit taxes due the state or who has failed to perform satisfactorily on a previous contract with the state. The secretary of revenue is hereby authorized to exchange such information with the director of purchases as is necessary to effectuate the preceding sentence notwithstanding any other provision of law prohibiting disclosure of the contents of taxpayer records or information. Prior to determining the lowest responsible bidder on contracts for construction of buildings or for major repairs or improvements to buildings for state agencies, the director of purchases shall consider: (1) The criteria and information developed by the secretary of administration, with the advice of the state building advisory commission to rate contractors on the basis of their performance under similar contracts with the state, local governmental entities and private entities, in addition to other criteria and information available, and (2) the recommendations of the project architect, or, if there is no project architect, the recommendations of the secretary of administration or the agency architect for the project as provided in K.S.A. 75-1254, and amendments thereto. In any case where competitive bids are required and where all bids are rejected, new bids shall be called for as in the first instance, unless otherwise expressly provided by law *or the state agency elects not to proceed with the procurement*.

(d) Before the awarding of any contract for construction of a building or the making of repairs or improvements upon any building for a state agency, the director of purchases shall receive written approval from the state agency for which the building construction project has been approved, that the bids generally conform with the plans and specifications prepared by the project architect, by the secretary of administration or by the agency architect for the project, as the case may be, so as to avoid error and mistake on the part of the contractors. In all cases where material described in a contract can be obtained from any state institution, the director of purchases shall exclude the same from the contract.

(e) All bids with the names of the bidders and the amounts thereof, together with all documents pertaining to the award of a contract, shall be made a part of a file or record and retained by the director of purchases for five years, unless reproduced as provided in K.S.A. 75-3737, and amendments thereto, and shall be open to public inspection at all reasonable times.

(f) As used in this section and in K.S.A. 75-3741, and amendments thereto, “project architect” shall have the meaning ascribed thereto in K.S.A. 75-1251, and amendments thereto.

Sec. 5. K.S.A. 76-721 is hereby amended to read as follows: 76-721.

The board of regents, or any state educational institution with the approval of the board of regents, may enter into contracts with any party or parties including any agency of the United States or any state or any subdivision of any state or with any person, partnership or corporation if the purpose of such contract is related to the operation or function of such board or institution. If such contract is with a corporation whose operations are substantially controlled by the board or any state educational institution, such contract shall provide that the books and records of such corporation shall be public records and shall require an annual audit by an independent certified public accountant to be furnished to the board of regents and filed with the state agency in charge of post auditing state expenditures. All contracts of state educational institutions shall be subject to the provisions of K.S.A. 75-3711b ~~and 75-3711d~~, *and amendments thereto*.

Sec. 6. 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. *Except for purchases or contracts entered into without a competitive bid under subsection (a)(3), (a)(4), (a)(6) or subsection (h), no purchase or contract entered into without a competitive bid for an amount in excess of \$100,000 shall be entered into by the head of any state agency or approved by the director of purchases unless the director of purchases first posts an on-line notice of the proposed purchase or contract at least seven days before the purchase or contract is awarded. The director of purchases shall provide notice thereof to members of the legislature at the beginning of each calendar year that such information will be posted and the director of the division of purchases shall provide the uniform resource locator (URL) and the number of times such information shall be available. In the event a written protest of the awarding of such a contract occurs during the seven-day notice period, the director of purchases shall request from the protestor the contact information, including name and mailing address, of the person or entity that has expressed an interest in supplying the goods or services and provide a copy of the specification to the person or entity that has expressed an interest in supplying the goods or services and verify that such person or entity is interested and capable of supplying such goods or services.*

Upon satisfaction of the director of purchases regarding the validity of the protest and the existence of competition, the director of purchases shall proceed with a competitive procurement. A competitive procurement shall not be required when, in the judgment of the director of purchases,

the validity of the protest cannot be determined or competition for such goods or services cannot be verified by the director of purchases.

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

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

(2) The director of purchases shall prepare a detailed report at least once in each calendar quarter of all instances in which the director waived publication of the notice of bid solicitations in the Kansas register as provided in this subsection. The director shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate; *and* the chairperson of the committee on appropriations of the house of representatives ~~and the chairperson of the Kansas performance review board.~~

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

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

(e) With the approval of the secretary of administration, the director of purchases may delegate authority to any state agency to make purchases of less than \$25,000 under certain prescribed conditions and procedures. The director of purchases shall prepare a report at least once in each calendar quarter of all current and existing delegations of authority to state agencies as provided in this subsection. The director shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate; *and* the chairperson of the committee on appropriations of the house of representatives ~~and the chairperson of the Kansas performance review board.~~

(f) Subject to the provisions of subsection (e), contracts and purchases shall be based on specifications approved by the director of purchases. When deemed applicable and feasible by the director of purchases, such specifications shall include either energy efficiency standards or appropriate life cycle cost formulas, or both, for all supplies, materials, equipment and contractual services to be purchased by the state. The director of purchases may reject a contract or purchase on the basis that a product is manufactured or assembled outside the United States. No such specifications shall be fixed in a manner to effectively exclude any responsible bidder offering comparable supplies, materials, equipment or contractual services.

(g) Notwithstanding anything herein to the contrary, all contracts with independent construction concerns for the construction, improvement, reconstruction and maintenance of the state highway system and the acquisition of rights-of-way for state highway purposes shall be advertised and let as now or hereafter provided by law.

(h) The director of purchases may authorize state agencies to contract for services and materials with other state agencies, or with federal agencies, political subdivisions of Kansas, agencies of other states or subdivisions thereof, or private nonprofit educational institutions, without competitive bids.

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

(j) The director of purchases may delegate authority to any state agency to make purchases under certain prescribed conditions and procedures when the acquisition is funded, in whole or in part, from a grant. *Except as otherwise provided in subsection (k) of this section*, purchases made in compliance with such conditions and procedures shall be exempt from other provisions of this section. As used in this subsection the term “grant” means a disbursement made from federal or private funds, or a combination of these sources, to a state agency. *Nothing in this subsection shall allow federal grant moneys to be handled differently from any other moneys of the state unless the requirements of the applicable federal grant specifically require such federal moneys to be handled differently.*

(k) The director of purchases shall prepare a detailed report at least once each calendar quarter of all contracts *over \$5,000* for services, supplies, materials or equipment entered into pursuant to subsection (h), (i) or (j) and submit it to the legislative coordinating council, the chairperson of the committee on ways and means of the senate, *and* the chairperson of the committee on appropriations of the house of representatives ~~and the chairperson of the Kansas performance review board.~~

(l) Except as otherwise specifically provided by law, no state agency shall enter into any lease of real property without the prior approval of the secretary of administration. A state agency shall submit to the secretary of administration such information relating to any proposed lease of real property as the secretary may require. The secretary of administration shall either approve, modify and approve or reject any such proposed lease.

(m) The director of purchases shall require all bidders on state contracts to disclose all substantial interests held by the bidder in the state.

(n) *As used in article 37 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto, and other statutory provisions concerning state procurement, “sealed bids,” “bulletin boards” and “mail” shall include electronic bids, electronic bulletin boards and electronic mail when such items are utilized in accordance with procedures prescribed by the director of purchases.*

Sec. 7. K.S.A. 2002 Supp. 75-3739a is hereby amended to read as follows: 75-3739a. (a) ~~Subject to the provisions of K.S.A. 75-3317 through 75-3322, and amendments thereto~~ the director of purchases shall ~~conduct a pilot study utilizing~~ *have power to utilize* the reverse auctioning electronic procurement process for the purchase of selected goods or materials for one or more state agencies in accordance with this section. The director of purchases shall adopt policies and procedures for such ~~pilot project reverse auctioning electronic procurements process~~ in accordance with and subject to the provisions of this section.

(b) The provisions of K.S.A. 75-430, and amendments thereto, relating to advertisements in the Kansas register and the provisions of K.S.A. 75-3739 *et seq.*, and amendments thereto, regarding procedures for sealed bidding and the opening of bids shall not apply to bids or purchases conducted under ~~the pilot project utilizing~~ the reverse auctioning electronic procurement process in accordance with this section. All bids submitted under ~~the pilot project utilizing~~ the reverse auctioning electronic procurement process in accordance with this section shall be subject to the open records act.

(c) Reverse auctioning shall not be used for the acquisition of any

services for construction projects or for the acquisition of any other services.

~~(d) On or before January 15, 2003, and on or before January 15, 2004, the director of purchases shall submit a written report to the secretary of the standing committee on commerce of the senate and the standing committee on e-government of the house of representatives on the activities and results of the pilot project utilizing the reverse auctioning electronic procurement process under this section and make recommendations whether or not the authority to use such procurement process should be continued beyond June 30, 2004. The director of purchases also shall notify each remaining member of the legislature of the availability of copies of such report. The report shall be made by the director by publishing such report on the internet and by notifying each member that the report is available and providing, as part of such notice, the uniform resource locator (URL) at which such report is available.~~

~~—(e) As used in this section, “reverse auctioning” means a procurement process following procedures approved by the director of purchases where bidders are invited to bid on specific goods through real-time electronic bidding, with the award being made to the lowest responsible and responsive bidder; during the bidding process, bidders’ prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for the bid opening.~~

~~(f) The provisions of this section shall expire June 30, 2004.~~

Sec. 8. K.S.A. 75-3711a, 75-3711b, 75-3711d, 75-3738, 75-3740, 75-7101, 75-7102, 75-7103, 75-7104, 75-7105, 75-7107 and 76-721 and K.S.A. 2002 Supp. 75-3739 and 75-3739a are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.