

Approved March 31, 1986
Date

MINUTES OF THE HOUSE COMMITTEE ON COMMUNICATIONS, COMPUTERS AND TECHNOLOGY

The meeting was called to order by Representative Jayne Aylward at
Chairperson

3:30 a.m./~~p.m.~~ on March 4, 1986 in room 522-S of the Capitol.

All members were present except:

Representatives Chronister and Helgerson were excused.

Committee staff present:

Ramon Powers, Legislative Research Department

Conferees appearing before the committee: None

The Committee took action on HB 3019, HB 3034, and HB 3035.

HB 3019 - Establishing the Kansas technology institute at Kansas State University.

Representative Aylward said the bill had also been referred to the House Ways and Means Committee in order for funding for the measure to be considered should it pass out of this committee. Representative Friedeman moved to report the bill favorably, seconded by Representative Green. There was discussion regarding the fiscal impact of the bill. It was noted the Governor had recommended that \$60,000 be budgeted for the proposal under the name of "Kansas Industrial Extension Council". The name was changed when the bill was introduced as being more applicable. The vote on the motion carried. Representative Erne voted against the motion.

HB 3034 - Concerning research, innovation and development at educational institutions.

Representative Aylward said the bill creates centers of excellence at Kansas State University, Wichita State University, and the University of Kansas and centers for industrial innovation and technology at Pittsburg State University. Representative Dean moved to report the bill favorably, seconded by Representative Roper. Motion carried.

HB 3035 - Authorizing guidelines and procedures for acquisition of goods and services for research, innovation and development activities.

Representative Aylward said previous testimony indicated the effective date of the bill should be changed to allow purchases to be made at an earlier date. Representative Roper moved to amend the bill's effective date to publication in the Kansas Registry, seconded by Representative Brown. Motion carried. Representative Friedeman then moved to report HB 3035, as amended, favorably, seconded by Representative Green. Motion carried.

An opportunity was given members for consideration before the deadline of any bills left in Committee. It was the consensus of opinion that all necessary action on House bills had been taken.

The meeting was adjourned at 3:45 p.m.

STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION
Division of Purchases

JOHN CARLIN,
Governor
NICHOLAS B. ROACH,
Director of Purchases

Room 165-173 N.
State Office Building
Topeka, Kansas 66612-1573
(913) 296-2376

March 5, 1986

Representative Jayne Aylward, Chairperson
Communication, Computers and Technology Committee
Room 425-S
State Capitol Building
Topeka, Kansas 66612

RE: House Bill 3035

Dear Representative Aylward:

Thank you for the opportunity to present information to you and the committee, with regard to the above-captioned proposed legislation.

I would like to begin by explaining to you my decision not to testify during the hearing conducted yesterday. Prior to the hearing I was not aware of the misconceptions which obviously exist in the minds of those who testified, and my primary interest was to allow them to say their piece, uninhibited by knowing of my presence. I had to bite my tongue, and sit on my hands, but getting into their problems was worth the effort.

K.S.A. 75-3739, although cited as the culprit, does not really need to be amended, to accomplish the needs of the centers of excellence, researchers, or any other user of supplies, materials, equipment, and services. K.S.A. 75-3738 (2) provides the Director of Purchases with the power to authorize any state agency to purchase directly certain specified supplies, materials, equipment or contractual service under prescribed conditions and procedures. K.S.A. 75-3738 (3) provides the authority to prescribe the manner in which they shall be purchased. The limiting factor in K.S.A. 75-3739 (b) is publication in the Kansas Register on items in excess of \$5,000.

I am taking the liberty of attaching a copy of a letter I received last September, which I believe identifies a satisfied customer, the needs of whom were met in a timely, appropriate, and legal

3/4/86 Hs. CCT

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manner. Most of the concerns expressed by the agencies can be handled in a similar manner with communication of any specific problems which, although Dean Benningfield thought otherwise, I would perceive as our job.

The example cited by Professor Kuwana, an addition of a \$500 part to piece of equipment in the process of being acquired, could be accomplished routinely by a Change Order. Equipment which is spelled out in a Grant may be required to be compatible with that of the Grantor, or other pre-existing Grantees, is absolutely not a problem. Other cited problems are, I believe, examples of a communication gap between what the purchasing personnel at the specific agency ask for, and what my staff will accept as specifications.

Division of Purchases Memorandum 51, originally issued April 2, 1979, stated that agency purchase requests must list specifications, as opposed to brand names, or manufacturers' names, and was issued in response to a 1978 amendment to K.S.A. 75-3739 (5), and a Legislative Post-Audit report. On March 4, 1981, Division of Purchases Memorandum 55 was issued, and specifically stated that when brand-name specifications were being utilized, two or more acceptable brands must be indicated. On April 4, 1984, this office modified Memorandum 55, with Memorandum 55-A, which states in principal part (Section II, A) "whenever possible . . . indicate two or more acceptable brands". For your convenience, I am attaching copies of all three memos, so that you may see the evolution to our present position, which provides that if no one else makes it, you cannot name two vendors, and the Division of Purchases does not expect the requestor to do so. I am also enclosing a copy of our "annual" year end close memo (Department of Purchases Memorandum 65, which was cited by the researchers for its time constraints. The pertinent parts, as cited by the researchers are II (C) and III (C). However, I would also call your attention to I (C) and II (E), as solution points for any problem.

I don't want to attempt to address every comment made to you, by the researchers, however, I would point to concerns expressed by members of the committee:

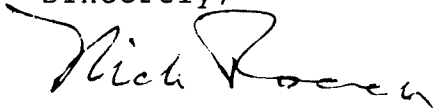
1. Who would actually do the purchasing?
Probably the researcher will order (per Kuwana), or the agency purchasing people will order, as opposed to bid.

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2. Will the researcher patronize a friend?
Probably, but to the extent that the equipment meets his needs, but if he receives "free" equipment and/or supplies, are those costs built into the non-competitive acquisition.
3. Would an exemption from the purchasing statutes allow the latitude to excuse researchers from the utilization of existing state contracts for equipment and supplies?
Probably, and undoubtedly not a cost-effective position.

Thank you for the opportunity to present this to the committee. I apologize for the length of my response. In conclusion, I am not supportive of the bill, and truly believe that the "problems" are workable - with communication.

Sincerely,


NICHOLAS B. ROACH
Director of Purchases

NBR:cl
Enclosures



WICHITA STATE UNIVERSITY

107 JARDINE HALL
WICHITA, KANSAS 67208

GRADUATE SCHOOL

OFFICE OF THE DEAN

(316. 689.3095

September 26, 1985


Mr. Nicholas B. Roach, Director
Division of Purchases
State Office Building
Topeka, KS 66612

Dear Mr. Roach:

Occasionally I am involved in University and/or State activities in which special efforts and services are provided by persons with whom I deal. Such was the case with your prompt, cordial, cooperative and expert assistance in our recent efforts to purchase a High Resolution Superconducting Fourier Transform NMR System. The assistance which you provided was clearly above and beyond the call of duty and deserves special recognition.

Please accept my expression of appreciation and my saying - thank you!

Sincerely,


Lloyd M. Benningfield
Dean of Graduate Studies and Research

cc: Mr. Marvin Harder

April 2, 1979

DIVISION OF PURCHASES MEMORANDUM 51

TO: All State Agencies

SUBJECT: Preparation of Specifications and Awarding of Bids

K.S.A. 75-3738(5) requires that the Director of Purchases "establish standards of quality and quantity and develop standard specifications in consultation with the several state agencies."

K.S.A. 75-3739(5) has always provided that "contracts and purchases shall in all cases be based on specifications fixed by the director of purchases."

By policy, use of brand names or manufacturer's names and stock numbers followed by the words "or approved equal", or similar language has been acceptable as a specification. Also, agencies often have obtained and submitted detailed descriptive or performance specifications for a particular product without naming a brand or manufacturer, and these have been used.

Use of these types of specifications created no unusual problems as long as our bids clearly invited competition. However, severe criticism has been leveled at the Division of Purchases for awarding a large majority of such bids only on the products specified or specifically described.

This criticism resulted in a 1978 Legislative amendment to K.S.A. 75-3739(5) which provides that "No such specifications shall be fixed in a manner to effectively exclude any responsible bidder offering comparable supplies, materials, equipment or contractual services."

Such statutory language strongly supports our basic policy with regard to seeking competitive bids; and, recognizing that no two competitive products will be identical, it logically follows that no responsible low bidder offering reasonably comparable supplies, materials, equipment or services should be excluded from receiving an award.

K.S.A. 75-3740(a) provides that competitive bids shall be awarded to the lowest responsible bidder conforming with specifications, terms of delivery, and other conditions imposed in the call for bids. Part (b) of this same section places the power for deciding the lowest responsible bidder with the Director of Purchases.

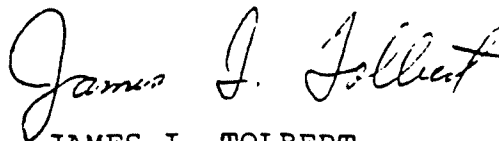
Legal counsel has advised that the "responsibility" for determining the lowest responsible bidder may not be delegated to an agency, and an agency's recommendation is but a factor in the decision process.

Historically, many agencies have requested and received an opportunity to review bid results and make award recommendations; but personnel performing this task have not been fully aware of all statutory or policy requirements relating to the purchasing function. Specifically, the foremost consideration in determining the lowest responsible bidder is whether or not the bidder is in substantial compliance with specifications and conditions called for in the bid document.

This memorandum is to advise all agencies of the statutory mandate for specifications which will not exclude competition, and that this office will be unable to comply with agency recommendations for awards based on restrictive analyses, insignificant technicalities, personal preference, or factors not included in the bid specifications.

In submitting future requests for products or services, agencies are urged to review their specifications very carefully for completeness as well as for deletion of all language which may impose unrealistic conditions or restrict competitive bidding.

All future agency recommendations for awards must be justified on the basis of substantial or reasonable compliance with specifications and conditions of the bid rather than on other factors which the Division of Purchases is unable to consider.



JAMES I. TOLBERT
Director of Purchases



DEPARTMENT OF ADMINISTRATION
Division of Purchases

JOHN CARLIN,
Governor
JAMES I. TOLBERT
Director of Purchases

Room 165-173 N.
State Office Building
Topeka, Kansas 66612
(913) 296-2378

March 4, 1981

DIVISION OF PURCHASES MEMORANDUM 55

TO: All State Agencies

SUBJECT: Use of Brand Names in Product Specifications

I. GENERAL INFORMATION


1. K.S.A. 75-3738(5) requires the Director of Purchases "Establish standards of quality and quantity and develop standard specifications in consultation with the several state agencies."
2. K.S.A. 75-3739(5) provides that "Contracts and purchases shall in all cases be based on specifications fixed by the Director of Purchases..." and "...No such specifications shall be fixed in such a manner as to effectively exclude any responsible bidder from offering comparable supplies, materials, equipment or contractual services."
3. Historically, the Director of Purchases has approved use of brand-name specifications to establish level of quality and indicate type and style of products required. It is generally recognized, however, that use of a single brand-name specification tends to limit competition. Bid records confirm that on many transactions only the specified product is offered for bid.
4. A recent Legislative Post Audit report strongly recommended the Director of Purchases should require state agencies to include two or more brand names when using brand-name specifications on their purchase requisitions.
 - (a) The report suggests this procedure would help ensure competition is not effectively excluded, increase competition in bidding, and possibly result in lower prices due to increased competition.

II. STATEMENT OF POLICY AND PROCEDURE

1. Effective immediately the policy is hereby established whereby the Division of Purchases will require all agencies to indicate two or more acceptable brands when brand-name specifications are used on purchase requisitions.
 - (a) The brands must be reasonably comparable or equivalent.
 - (b) All purchase requisitions should clearly indicate features or characteristics considered essential to the function or intended use of the product.
 - (c) Specifications should be edited for deletion of nonessential proprietary features or characteristics of the named brands which tend to effectively exclude competition in bidding.
2. Provisions of this memorandum also apply to agency purchasing transactions under authority delegated in Division of Purchases' Memorandum 29-E, dated March 2, 1981.
3. Any exception to the foregoing policy must be justified in writing by a responsible agency official, and such justification submitted with the agency purchase requisition for review and approval by the Division of Purchases.



JAMES I. TOLBERT
Director of Purchases



Approved: PATRICK J. HURLEY
Secretary of Administration

STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION
Division of Purchases

JOHN CARLIN,
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Room 165-173 N.
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(913) 296-2376

April 4, 1984

DIVISION OF PURCHASES MEMORANDUM 55-A

TO: All State Agencies

SUBJECT: Use of Brand Names in Product Specifications

This memorandum replaces and supersedes Memorandum 55, originally issued March 4, 1981.

I. GENERAL INFORMATION

- A. K.S.A. 75-3738 (5) requires the Director of Purchases "Establish standards of quality and quantity and develop standard specifications in consultation with the several state agencies."
- B. K.S.A. 75-3739 (5) provides that "Contracts and purchases shall in all cases be based on specifications fixed by the Director of Purchases..." and "...No such specifications shall be fixed in such a manner as to effectively exclude any responsible bidder from offering comparable supplies, materials, equipment or contractual services."
- C. Historically, the Director of Purchases has approved use of brand-name specifications to establish level of quality and indicate type and style of products required. It is generally recognized, however, that use of a single brand-name specification tends to limit competition. Bid records confirm that on many transactions only the specified product is offered for bid.
- D. A recent Legislative Post Audit report strongly recommended the Director of Purchases should require state agencies to include two or more brand names when using brand-name specifications on their purchase requisitions.

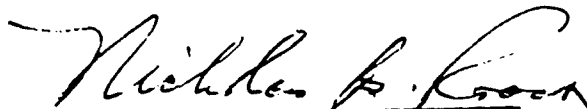
- (1) The report suggests this procedure would help ensure competition is not effectively excluded, increase competition in bidding, and possibly result in lower prices due to increased competition.
- (2) It is recognized that brand-name specifications enable prospective bidders to immediately identify that which is being specified.
- (3) Assurance can be given to a prospective bidder, through language added to the specifications, that alternative, competitive products are being sought, and if deemed to be equal, award will be made to other than the brand-name specified product.


II. STATEMENT OF POLICY AND PROCEDURES

- A. Effective immediately, the policy is hereby established that whenever possible, the Division of Purchases will require all agencies to indicate two or more acceptable brands when brand-name specifications are used on purchase requisitions.
 - (1) The brand names listed must be reasonably comparable or equivalent.
 - (2) All purchase requisitions should clearly indicate features or characteristics considered essential to the function or intended use of the product.
 - (3) Specifications must be edited for deletion of subjective descriptions, nonessential features, and proprietary characteristics of the named brands which tend to effectively exclude competition in bidding.
 - (4) The Division of Purchases will add one or more of the following statements to the bid specifications when it is determined that (1), (2) or (3) have not been accomplished by the agency.
 - (a) It is the intent of the State of Kansas for this request to permit competitive bidding. It shall be the bidder's responsibility to advise the Division of Purchases if any specification, language, other requirements, or any combinations thereof, inadvertently restricts or limits bidding to a single source. Such notification must be submitted in writing and must be received by the Division of Purchases no later than five (5) days prior to the bid closing.

- (b) BIDS ON COMPARABLE PRODUCTS ARE INVITED. INDICATE APPROPRIATE ITEMS, BRANDS AND MODEL NUMBERS. Minor deviations in size and operational characteristics from those set forth in the specifications will be considered when such deviations do not alter nor deter the agency from accomplishing the intended use or function. Each bidder must clearly indicate in writing where (if any) the characteristics of the offered product deviates from these specifications, and explain how the product accomplishes the desired function even though product characteristics may be different. Each bid must include descriptive and technical literature. BIDDERS WHO DO NOT COMPLY WITH THIS REQUEST MAY NOT HAVE THEIR PROPOSAL CONSIDERED FOR AWARD.

- B. Provisions of this memorandum also apply to agency purchasing transactions under authority delegated in Division of Purchases' Memorandum 29-E, dated June 1, 1983.
- C. Any exception to the foregoing policy must be justified in writing by a responsible agency official, and such justification submitted with the agency purchase requisition for review and approval by the Division of Purchases.


NICHOLAS B. ROACH
Director of Purchases

Approved: 
MARVIN A. HARDER
Secretary of Administration

STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION
Division of Purchases

JOHN CARLIN,
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February 3, 1986

DIVISION OF PURCHASES MEMORANDUM 65

SUBJECT: Schedule for Submission of Purchase Requisitions and Agency Contracts to Close Fiscal Year 1986 and Begin Fiscal Year 1987.

TO: All State Agencies

I. GENERAL INFORMATION

- A. To allow the Division of Purchases sufficient lead time for processing Purchase Requisitions funded from Fiscal Year 1986 appropriations, all agencies are requested to comply with the submission schedule outlined below.
- B. Because the submission schedule provides only minimal processing time, agencies are urged to submit Requisitions as far ahead of schedule as possible, specifically those for capital outlay items such as furniture, office machines, and laboratory or scientific equipment. Also, agencies are urged to establish internal procedures for timely submission of other Requisitions by deadline dates.
- C. Exceptions or deviations from the schedule will require justification by a responsible agency official and approval by the Director of Purchases.

II. A. AUTOMOBILES

Due to the April 1 deadline for ordering 1986 models of passenger cars, vans, pickups and trucks, the Division of Purchases will be unable to process advertised bids and obtain the usual competitive pricing after March 3, 1986.

- (1) Some manufacturers and dealers have remaining inventories of unsold 1986 cars.

These units usually will be equipped with considerably more special features and accessories than required on standard fleet vehicles. The dealer's fleet discount will not be available on these units, and the cost of such units will be correspondingly higher.

- (2) After March 3, 1986, the Division of Purchases will process Fiscal Year 1986 Requisitions for 1986 models only if the need is exceptionally urgent and agencies are fully aware of the anticipated higher cost.

B. CONTRACTUAL AND LEASE AGREEMENTS

Any new agreement for which a Form DA-46 or DA-146 is required, and is to be charged against Fiscal Year 1986 funds, should be submitted by Monday, April 28, 1986. In the event competitive bids are required, immediate submission is requested.

C. GENERAL REQUIREMENTS

1. If the amount of a purchase is estimated to exceed five thousand dollars (\$5,000), submit the Purchase Requisition by Monday, May 5, 1986. (Must be mailed from agency not later than Friday, May 2, 1986.)
2. If the amount of a purchase is estimated to be less than five thousand dollars (\$5,000), submit the Purchase Requisition by Monday, May 12, 1986. (Must be mailed from agency not later than Friday, May 9, 1986.)

D. CONSTRUCTION OF MAJOR REPAIRS AND IMPROVEMENTS

On any project financed with funds which lapse on June 30, 1986, preliminary work on plans and specifications should be started immediately so bids can be issued and submitted for advertising prior to, or not later than April 25, 1986. In the event a Construction Clearance Request (CCR) has not yet been processed, it should be initiated immediately.

E. CONFIRMATION ORDERS

Requisitions for confirmation orders resulting from authorized direct or emergency purchases will be accepted until Thursday, July 3, 1986. However, these Requisitions must be accompanied by invoices dated not later than June 30, 1986, as they will be processed with Fiscal Year 1986 transactions.

F. CERTIFICATE OF PARTICIPATION FINANCING

Please allow an additional five working days for any transaction for which certificate of participation financing is contemplated. This time is necessary to make interest rate comparisons and build payment schedules.

III. SCHEDULE FOR FISCAL YEAR 1987 PROCUREMENT

A. AUTOMOBILES

Purchase Requisitions for 1987 models will be accepted anytime after July 1, 1986; however, no bids will be requested for these new models until dealer pricing is released by the major manufacturers. We anticipate this being in late September or early October.

B. CONTRACTUAL AND LEASE AGREEMENTS

Any new agreement for which a form DA-46 or DA-146 is required, which will be paid from Fiscal Year 1987 funds, and the beginning date is July 1, 1986, should be submitted about June 16. The Department of Administration will make every effort to process the agreements for encumbering and release immediately after July 1.

C. GENERAL REQUIREMENTS

Purchase Requisitions for items other than automobiles, chargeable to Fiscal Year 1987 funds, will be accepted after June 2, 1986; however, there may be a delay in processing these Requisitions because transactions for Fiscal Year 1986 will be given priority.

NOTE: All Fiscal Year 1987 Purchase Requisitions submitted before July 1 must carry proper fund and account numbers and clearly be identified as Fiscal Year 1987 Requisitions.

Please remember, the Director of Accounts and Reports is unable to encumber new Fiscal Year obligations before July 1, and this office is unable to release Purchase Orders until the encumbrance process is completed.



NICHOLAS B. ROACH
Director of Purchases