

Approved: Deena Horst
5-4-01 Date

MINUTES OF THE E-GOVERNMENT COMMITTEE.

The meeting was called to order by Chairperson Deena Horst at 3:36 p.m. on March 13, 2001, in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Audrey Nogle, Legislative Research Department
Lisa Montgomery, Revisor of Statutes' Office
Jim Wilson, Revisor of Statutes' Office
Denise Richards, Committee Secretary

Conferees appearing before this Committee:

Proponents:

David Morel, Business Analyst, Procuri.com
Gary George, Assistant Superintendent, Olathe School District
Robert Stockwell, Kansas Performance Review Board
Ron Roe, Purchasing Director, Shawnee Mission School District
Representative Joe McLeland
Representative Mary Pilcher Cook
Senator Karin Brownlee
Sharon Zoellner, Deputy Superintendent, DeSoto School District
Diane Gjerstad, Wichita Public School District
Sue White, Wichita State University

Neutral:

John Houlihan, Division of Purchasing, Kansas Department of Administration

Opponents:

Corey Peterson, Executive Vice-President, Associated General Contractors of Kansas
Dean Ferrell, President, Ferrell Construction, Topeka
Will Larson, General Counsel, Associated General Contractors, Gehrt & Roberts
Bob Totten, Kansas Contractors Association
Orville Spray, Venture Corporation, Great Bend
Gary Roberson, Roberson Lumber, Silver Lake
Art Brown, Mid-America Lumberman's Association, Kansas City, Missouri
Dan Morgan, Builders Association, Kansas City
Woody Moses, Kansas Aggregate Producers Associates, Topeka

Others attending: See attached sheet.

The Chair welcomed conferees and introduced David Morel, Business Analyst for Procuri.com, who explained e-procurement, on-line bidding, and reverse auctions. (Attachment 1) He said finding suppliers for products, negotiating prices, and issuing purchase orders can all be accomplished on-line. Communications and competitive prices for supplies can be obtained by real-time bidding on-line, simplifying the purchasing process. He said that a typical auction includes defining the project, setting a bidding schedule, posting an RFP and specifications, allowing time for review and questions, and then conducting the on-line auction. Mr. Morel noted that electronic barriers must be removed for some suppliers to compete for on-line procurement. Answering questions, he said with on-line bidding, a buyer can set a maximum price and extend the time limit. He said two states currently use reverse auctions and 6-10 states are doing pilot projects.

The Chair opened the hearing for HB 2413 and SB 227, noting that the bills are identical except that SB 227, when it passed the Senate, had a bonding component added. Staff Audrey Nogle reviewed the provisions of HB 2413 and SB 227, stating that the bills would provide for on-line procurement of goods, services, construction materials or information services by the state. She said the bills would allow state agencies to use on-line bidding if the Director of Purchases or the Secretary of Transportation determined that electronic bidding would be more advantageous than other purchasing methods. Bidders could be required to pre-register or to agree to any terms or conditions of the solicitation. The Chair observed that although most testimony would refer to SB 227, members were to understand that the bills are considered

companion bills.

Gary George, Assistant Superintendent, Olathe School District, testified in support of **SB 227**. (Attachment 2) He said on-line bidding would be especially advantageous to school districts in selling bonds, a procedure that he thinks will save his district several thousand dollars.

Robert Stockwell provided (Attachment 3) as information for the committee, stating that the Kansas Performance Review Board Report reviews procurement policies and recommends efficient purchasing procedures. He pointed out that in a pilot auction program, Pennsylvania saved \$3.7 million over traditional sealed bid methods. Mr. Stockwell also said to date Pennsylvania has conducted 10 real time, online bids resulting in a savings of \$11 million. He said he would be available for questions during the meeting.

Ron Roe, Purchasing Services Manager for Shawnee Mission School District, spoke in support of the bill. (Attachment 4) He said on-line procurement can save a school district time, money, paper, minimize errors, and enhance communications with suppliers. He noted that suppliers will more likely provide current pricing to accommodate the shortened time of the bid process.

Representative Joe McLeland and Representative Mary Pilcher Cook spoke in support of the bill, noting that the bill utilizes technology to streamline the bidding process. (Attachment 5)

Senator Brownlee testified in support of the bill. (Attachment 6) She said the bill is permissive, not a mandate and would be especially helpful for school bonding issues.

Dr. Sharon Zoellner, Deputy Superintendent for the DeSoto School District, in support of the bill, said that the proposed legislation would increase efficiency and allow school districts to better utilize their funds. (Attachment 7)

Diane Gjerstad, Wichita Public Schools, and Sue White, Wichita State University, spoke as proponents. (Attachment 8) Ms. White said WSU has used electronic procurement since January 1999 and has increased efficiency in bidding by more than 200%. She listed advantages (increased efficiency, wider vendor base, shorter bid cycle, simpler tabulation of bids, and easier communication with vendors) and disadvantages (smaller vendors will not respond, bids with blueprints, etc., cannot be transmitted electronically).

John Houlihan, Director of Purchases, Kansas Department of Administration, provided information about present state policies for on-line bidding. (Attachment 9) He said presently 13 other states authorize or are preparing to authorize on-line bidding. He said he is presently converting his statewide contracts to an electronic catalog format, which will allow electronic ordering, billing, and payment, and will prepare the state for on-line bidding and eventually for reverse and regular auctions, but noted that fees for conducting on-line auctions range from 1-4% and may not result in a savings to the state. He included in his testimony a substitute for **HB 2413**, which he said would be more compatible with current Kansas statutes.

Corey Peterson, representing the Associated General Contractors of Kansas, testified in opposition to **SB 227**. (Attachment 10) He said that including construction in the bill, because of the complexity of construction projects, makes on-line bidding nearly impossible. He said present software works well for commodities, but not for complex services like construction projects. He said of the six states that allow on-line bidding, four of them exclude construction. He suggested amendments to the bills, noting that the Association does support submitting sealed bids electronically.

Dean Ferrell, President of Ferrell Construction, spoke in opposition to the bill. (Attachment 11) He said reverse auctions, where competitors were able to see each other's bids, would adulterate the bid process and, since it is similar to "bid shopping," would be considered unethical by the construction industry.

William Larson, General Counsel for the Associated General Contractors of Kansas, testified in opposition to the bill, saying that reverse auctions are inappropriate for construction projects and will increase mistakes in the bidding process. (Attachment 12) He noted that clerical errors are protected by law, but errors in judgment (the ones more likely in a reverse auction) are not protected, leaving a company exposed to serious financial loss. He further noted that reverse auctions tempt a contractor to underbid, again leaving a company exposed to a failure that could lead to delays in completing a project.

Bob Totten, Public Affairs Director, Kansas Contractors Association (KCA), spoke in opposition to the

bill. He said that although KCA favors electronic bid submission, it opposes reverse auctions. (Attachment 13) He stated that even electronic bid submission, which would work well for the Kansas Department of Transportation (KDOT) because they have adequate staff, might be prohibitive for counties and municipalities who have limited staff to handle such projects. He suggested excluding construction from the provisions of the bill.

Orville Spray, Chairman of Venture Corporation, spoke in opposition to the bill. (Attachment 14) He said as a contractor who specializes in highway construction, he finds the bill is not compatible with the number of variables in a contractor's bids on different projects. He noted, however, that, unlike a sealed bid where there was a difference between the lowest and next lowest bid, a reverse auction would eliminate that difference and would cost KDOT more money.

Gary Roberson, Roberson Lumber of Silver Lake, spoke in opposition to the bill. (Attachment 15) He expressed concern that, with a reverse auction, bidders from out-of-state who operate in areas with lower tax structures, would be given an unfair advantage over Kansas bidders.

Art Brown, representing the Mid-America Lumbermen's Association, spoke as a reluctant opponent. (Attachment 16) He said that, although lumbermen utilize the Internet for locating products, market reporting, product research, and other business activities, he is concerned that the wording of **SB 227**, by including construction materials, will become onerous for the lumber industry.

Dan Morgan, representing nearly 450 contractors and suppliers of the Builders' Association, spoke opposing the bill, asking the Committee to exempt construction from the reverse-auction provisions of the bill. Reiterating points already made, he stated that, though the wording of the bill is permissive, it opens the possibility of indiscretions and abuse of authority. (Attachment 17)

Woody Moses, Managing Director, Kansas Aggregate Producers' Association, spoke as an opponent. (Attachment 18) He said his association, with members in all Kansas legislative districts, provides building materials to all Kansans. He said real-time bids for construction and highway projects are unrealistic because of the complexity of such projects. He would, however, support sealed electronic bids.

A number of opponents, who were unable to attend the meeting, submitted written testimony, which is listed as follows: Trudy Aron, Executive Director, American Institute of Architects, Attachment 19; R.J. Koreen, Vice President and Business Manager, Andrews Asphalt and Construction, Attachment 20; Donald Popejoy, Executive Vice President, Ritchie Paving Company, Attachment 21; Richard Brown, President, Smoky Hill LLC, Attachment 22; Stanley Scudder, President, Bridges, Inc., Attachment 23; Vic Danner, Midwest Construction Company, Attachment 24; Scott Erickson, Smoky Hill LLC, Attachment 25; Randall Hardy, Reece Construction Company, Attachment 26; Larry Magill, Kansas Association of Insurance Agents, Attachment 27; and SueAnn Schultz, General Counsel, IMA Financial Group, Attachment 28.

The meeting was adjourned at 6:15 p.m. The next meeting is scheduled for Thursday March 15, 2001, at 3:30 p.m. in Room 526-S.

e-GOVERNMENT COMMITTEE

GUEST LIST

DATE: 03/13/01

NAME	REPRESENTING
George Barbee	Ks Consulting Engrs
Tim Wood	Conloo Consulting
Don Popejoy	Ritchie Paving, Inc.
Blair Coulter	Ks. Good Roads
Dan Rantow	KS Contractors Assn.
Ron Roe	Shawnee Mission Sch! Distr.
Bill Inck	Shawnee Mission Schools
Fay George	Olathe Schools
COREY PETERSON	ABC of Kansas
Will Larson	ABC of KMOAS
Tom Slattery	ABC of KS.
Lisa Counts	AccessKansas (INK)
Maels Brown	Day A. Legal
David Metzenthin	O/A - Purchases
Rob Sherrill	FORM
Robert Siskew	KPB
Michael Shilling	Shilling Const. Co., Inc.
K. Green	Andrews Asphalt & Const., Inc.
T. O. Anderson	Kansas Society of CPAs

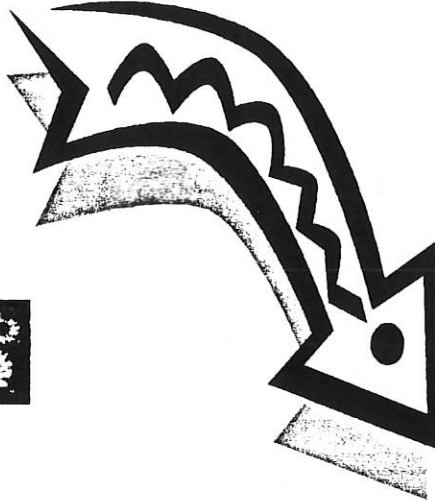
**e-GOVERNMENT COMMITTEE
GUEST LIST**

DATE: 3-13-01 Page 2

NAME	REPRESENTING
<i>Art Brown</i>	MCA
Chris Klaver	Klaver Const
CHANDLER COLLOR	CRETCHER-LYNCH & Co.
<i>John Houlihan</i>	Dept of Admin - Purchases
<i>David Morel</i>	Procuri.com
<i>RILL KLAVER</i>	KLAVER Const Company, Inc.
<i>MARY J. Sullivan</i>	Amino Brothers Const Co Inc.
<i>Paul Kemmetet</i>	Intern
<i>Larry O'Donnell</i>	Haas + Wilkerson
<i>Bob Holt</i>	Venture Corporation
<i>Stfan Scudder</i>	Bridges Inc.
MARK CLEMENTS	KDOT
<i>J. Chubb</i>	SOS
<i>Bob T. Hon</i>	Ks Contractors Const.

Successful
Reverse Auctions
for
The State of

KANSAS



Putting e-power into purchasing



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Account Executive/Business Analyst
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dmorel@procuri.com

- **E-procurement's Evolution**
- **Reverse Auctions**
 - The value...
 - The function...
- **Securing Success/5 Steps**
 - Define project...
 - Prepare Suppliers...
 - Develop strategy...
 - Conduct RFQ/RFP review...
 - Run the auction...
- **Finding The Right Provider**



Agenda

Today, I plan to briefly discuss the evolution of e-procurement and to explore reverse auctions in some detail. I will go through the 5 steps required for a successful reverse auction. Lastly, I plan to lay some issues that need to be evaluated when choosing a reverse auction provider.

Please feel free to stop me if you have any questions.

What is e-Procurement?

Leveraging technology to maximize productivity, resources and control.



What is e-Procurement?



I want to talk about the different types of eProcurement offerings. Let's start with a working definition of e-Procurement.

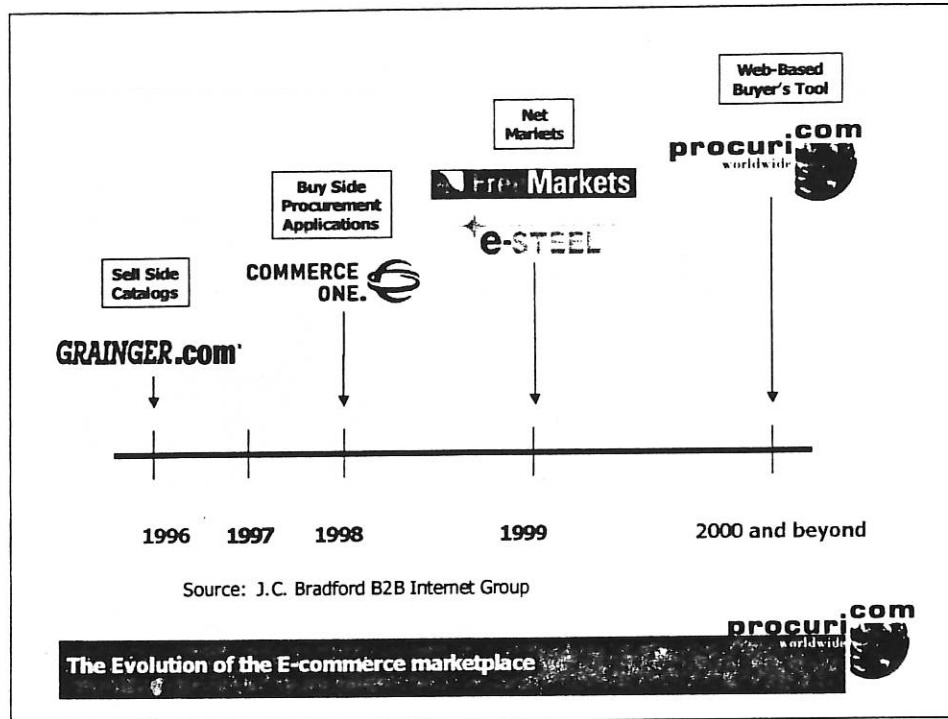
On a daily basis you probably:

- Find new suppliers
- Negotiate with suppliers to set price and terms
- Answer supplier questions
- Issue purchase orders

These manual tasks can be streamlined and completed electronically.

E-Procurement is not the solution to everything you do. You will still have tasks that e-Procurement can't help with:

- Qualify new suppliers
- Determine Material Requirements—ERP system
- Determine Distribution Requirements—Manufacturing schedule
- Inspect shipments from suppliers for quality, complete, and on-time delivery
- Work with suppliers to resolve quality or delivery issues.
- Design products



It was in 1996, with the introduction of Grainger.com, that we started down the path of e-procurement. This and other sites consisted of electronic catalogs that allowed purchasers to explore the offerings and purchase items.

CommerceOne developed one of the first buy-side applications allowing organizations to track and control the purchases enterprise wide.

1999 was the year of net markets. Vertically oriented sites were created in mass numbers to serve the purchasing needs of specific industries. A industry specific net market is E-steel and companies like Freemarkets have helped many industry groups create their own industry specific net market. At the end of last year, more than 2500 net markets existed. Industry experts I have heard, predict no more than 25 will survive beyond 2004.

Last year brought a new breed of e-procurement services to forefront, web-based buyers tools. Tools, such as self-service reverse auctions, are functionally oriented as opposed to industry specific. Purchasers can utilize the tools when they seem appropriate.

What is a Reverse Auction?

- A bidding process
- Prices collected competitively
- Prices drop from initial bids as suppliers compete



What is a Reverse Auction?

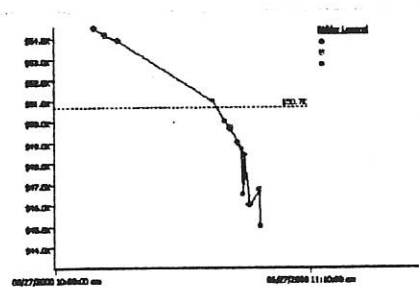


Lets look at Reverse Auctions...what are they?

It is a bidding process where prices are competitively submitted in a dynamic environment. The price drops as the bidders compete for the business.

How does a Reverse Auction work?

- Buyer configures & Posts RFQ/RFP
- Suppliers review & prepare bids
- Live Bidding Period
- Select Winners

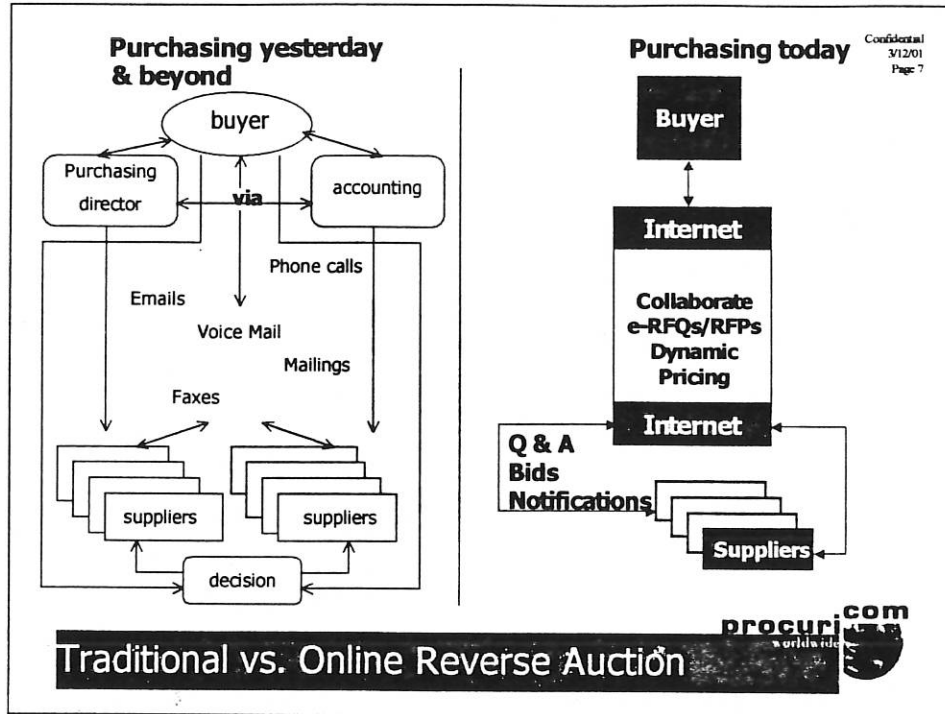


How does a Reverse Auction work?

How does a Reverse Auction work? First, a purchaser creates an electronic RFP, or request for proposal. This contains all the info the vendors will need to bid during the auction. After the suppliers are trained, they are allowed to review the information in order to prepare their bids. A period of a week is usually enough time for the review.

Once the bidding is open, the suppliers submit bids electronically. They can immediately see where they stand in relation to the other bidders and then decide if they can/want to go lower with their price. Bidding time varies depending upon the complexity of items included in the RFP. If you have a very involved bid screen with multiple items and sub-items then you might want to increase the open time of the auction. We have found that rarely does an auction need to be longer than 2 hours including extensions.

After the bidding, it is up to the purchaser to determine to which vendor wins the business. Depending how the RFP was worded, a contract doesn't have to go to the low bidder or even to one bidder. It is typical to have purchasers wait at least a week to declare a winner or winners.



This screen shows what the purchasing process was like prior to the internet's influence. With the introduction of buyers web based tools like ours, the process become much more efficient. No chasing of phone calls or faxes. You won't be mailing out 20 bid packages and having to re-mail the ones that got lost in route.

All bid information and communications are contained in a secure online environment. Both the purchaser and the vendors have the ability to ask questions of each other, share files and discuss the issues in real time.

- #1 – Define Project
- #2 – Prepare Suppliers
- #3 – Develop Strategy
- #4 – Conduct RFQ Review Period
- #5 – Run the Auction



5 STEPS to a Successful Auction



Reverse Auctions have saved a lot of time and dollars for purchasers, but they do require some work to insure success. We have broken that work into 5 important steps.

They are:

- Define Project
- Prepare suppliers
- Develop Strategy
- Conduct RFQ review period
- Run the Auction

Lets look at these in better detail...

- Select Item
- Set Schedule
- Prepare Internal Team

	Start	Finish	Dependencies	Dependencies
1 Define Project	31-Jan	1-Feb	Cast/Procure	
1.1 Complete Project Planning	31-Jan	31-Jan	Cast	Select Item Identify Team
1.2 Set Schedule	31-Jan	31-Jan	Cast/Procure	1.1
1.3 Train/Identify Buyers	31-Jan	1-Feb	Cast/Procure	1.1
2 Prepare Suppliers	4-Feb	27-Feb	Cast	
2.1 Identify Suppliers	4-Feb	15-Feb	Cast	1.1
2.2 Confirm Supplier Participation	16-Feb	21-Feb	Cast	2.1, 1.2
2.3 Register Suppliers Online	16-Feb	21-Feb	Suppliers	2.2
2.4 Schedule Supplier Training	21-Feb	26-Feb	Procure	2.2
2.5 Conduct Supplier Training	22-Feb	27-Feb	Procure	2.3, 2.4, 3.3
3 Develop Strategy	1-Feb	28-Feb	Cast/Procure	
3.1 Develop Item Specifications	1-Feb	20-Feb	Cast/Procure	1.3
3.2 Define Auction Parameters	16-Feb	16-Feb	Cast/Procure	1.3
3.3 Conduct Mock Event	20-Feb	20-Feb	Cast/Procure	3.1, 3.2
3.4 Final RFQ & Item Parameters	20-Feb	26-Feb	Cast/Procure	3.3
3.5 Complete Final Review	26-Feb	26-Feb	Cast/Procure	3.4
4 Conduct Review Period	28-Feb	7-Mar	Procure	
4.1 Post RFQ & Specifications	28-Feb	28-Feb	Cast	2.5, 3.5
4.2 Conduct RFQ Review Period	28-Feb	7-Mar	Cast	4.1
5 Run the Auction	8-Mar	8-Mar	Cast	
5.1 Live Bidding Period	8-Mar	8-Mar	Cast/Procure	4.2
5.2 Select Winners	8-Mar	8-Mar	Cast	5.1



STEP #1—Define Project



When defining the project...you need to first select the item, create a schedule and then choose/prepare the internal team.

- Direct Materials
- Capital Goods
- Services
- Indirect/MRO

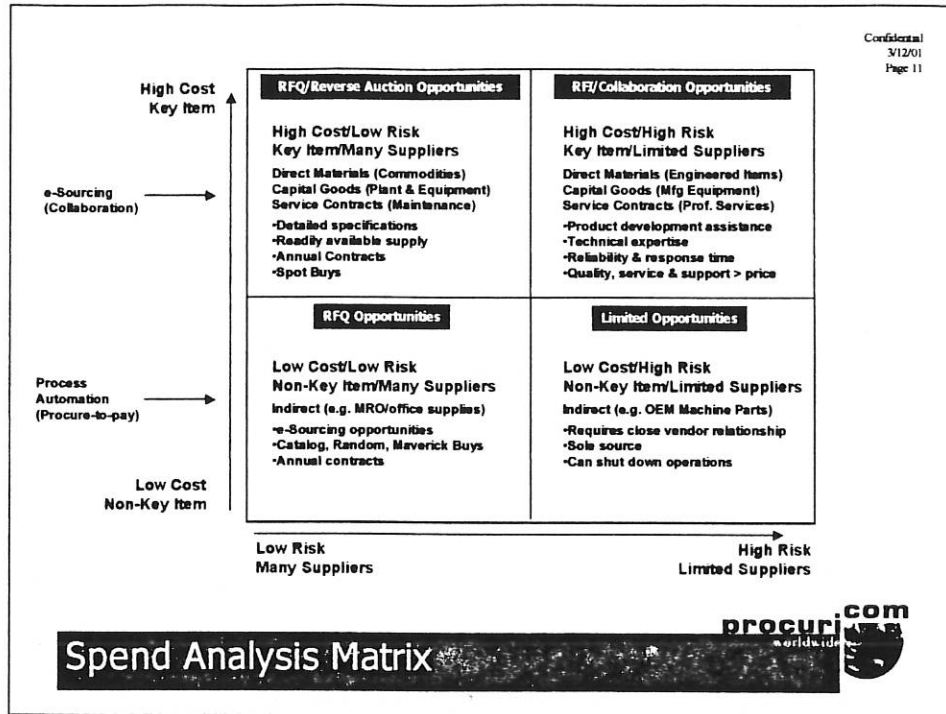


Define Project—Select Item



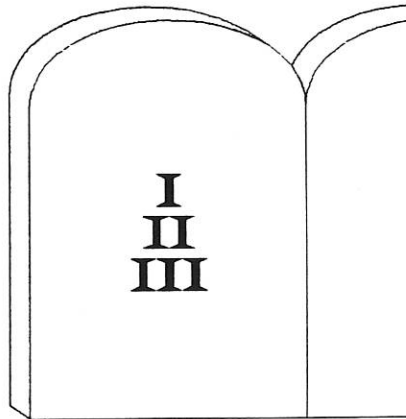
Selecting the item or items to be purchased via a reverse auction is probably the single most important step. We help clients review their spend to identify good candidates and evaluate their appropriateness.

There is no definitive area to avoid when looking for appropriate items. Direct materials, capital goods, services and even indirect/mro items have been successfully purchased via our service. You need to look a lot deeper than category titles when evaluating items.



Some industry “experts” have suggested a matrix like this to help in the process. The matrix compares items based upon cost and risk or number of available suppliers and if it is a key item for the organization. The least likely items come out of the Low Cost/High Risk or Non Key/Limited suppliers. Your best bet would be to start looking at items whose cost is significant and with limited risk and many suppliers.

- Multi-sourcable
- Definable
- Significant to Suppliers



3 Commandments of Item Selection



Unlike the aforementioned industry experts, I like to make things a little more understandable. I run items through what I call the 3 Commandments of Item Selection.

For an item to be a good candidate, it has to be “Multi-sourcable”. Sounds simple. Of course you can’t have a reverse auction with only one supplier. Two might or might not be enough. 3? 4? 10? I was working with an organization that makes fine men’s shoes. They purchased their leather from two suppliers, one in France and one in Germany. If you irritated either one of them, you could find yourself with out leather to make shoes.

Secondly, an item needs to be definable. If you are going to have vendors bid on an item or bundle of items, they are going to have to make bidding decisions based upon the information you provide them. An item doesn’t have to be simple, in fact we have had some very complex items purchased via reverse auctions. Radiological equipment and top-tier circuit boards are a few examples. But they were all very well defined in the RFP.

The last commandment, Supplier Significance, is probably the most crucial characteristics to evaluate. If the item is not enough to motivate suppliers to come off of their normal prices, you will most likely have disappointing results. One computer or ten computers would not likely be considered significant. But 500 to a thousand would definitely get vendor interested. Even the biggest of manufacturers would take notice and be interested in

		Start	Finish	Responsible	Dependencies
1	Define Project	31-Jan	1-Feb	Cust./Procuri	
1.1	Complete Project Planning	31-Jan	31-Jan	Cust.	Select Item, Identify Team
1.2	Set Schedule	31-Jan	31-Jan	Cust./Procuri	1.1
1.3	Train/Orient Buyers	31-Jan	1-Feb	Cust./Procuri	1.1
2	Prepare Suppliers	4-Feb	27-Feb	Cust.	
2.1	Identify Suppliers	4-Feb	15-Feb	Cust.	1.1
2.2	Confirm Supplier Participation	16-Feb	21-Feb	Cust.	2.1, 1.2
2.3	Identify Suppliers	16-Feb	21-Feb	Suppliers	2.2
2.4	Schedule Supplier Training	21-Feb	26-Feb	Procuri	2.2
2.5	Conduct Supplier Training	22-Feb	27-Feb	Procuri	2.3, 2.4, 3.3
3	Develop Strategy	1-Feb	26-Feb	Cust./Procuri	
3.1	Develop Item Specifications	1-Feb	20-Feb	Cust./Procuri	1.3
3.2	Define Auction Parameters	19-Feb	19-Feb	Cust./Procuri	1.3
3.3	Conduct Mock Event	20-Feb	20-Feb	Cust./Procuri	3.1, 3.2
3.4	Final RFQ & Item Revisions	20-Feb	26-Feb	Cust./Procuri	3.3
3.5	Complete Final Review	26-Feb	26-Feb	Cust./Procuri	3.4
4	Conduct Review Period	28-Feb	7-Mar	Procuri	
4.1	Post RFQ & Specifications	28-Feb	28-Feb	Cust.	2.5, 3.5
4.2	Conduct RFQ Review Period	28-Feb	7-Mar	Cust.	4.1
5	Run the Auction	8-Mar	8-Mar	Cust.	
5.1	Live Bidding Period	8-Mar	8-Mar	Cust./Procuri	4.2
5.2	Select Winners	8-Mar	8-Mar	Cust.	5.1

Define Project—Set Schedule



Another part of Defining the Project, is to set the schedule. In conducting a successful event, a lot of things need to be done and a lot of them are interdependent. So we have developed a schedule we follow. The details are not as important as understanding that you must accomplish certain tasks before other tasks can be started.

Typically, you will need to have a 3 week period to go through all tasks. Does that mean you can't do one in less time? Of course not. In fact, we did one last month with a 1 ½ week schedule. But, I would not recommend it for most auctions.

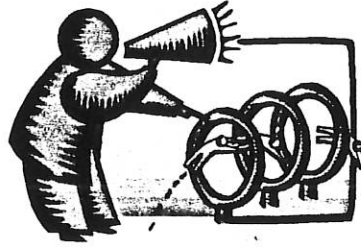
- Select Suppliers
- Confirm Participation
- Prepare



STEP #2—Prepare Suppliers

Preparing suppliers is a very important step because the more comfortable they are the more likely success for your event. All the events we have hosted have been private or semi-private. You are not just posting the auction and saying come and get it. The suppliers are your preferred suppliers, suppliers that you know can provide you the quality you require. One of our clients is a State Government. They must advertise their event to all, but they make a determination if the suppliers qualify or not. Those that do qualify are invited to participate in the event.

- Respect Your Suppliers
- Introduce Your New Process
 - Saves time—Gather documents electronically
 - Instant feedback—Respond to the market
 - Reduced selling cycle—Quickly move on
- Determine Who Will Bid
- Identify Technology Barriers



Prepare Suppliers—Confirm Supplier Participation 

Confirming supplier participation is an often over looked step. But it helps insure supplier buy in of the process and maintains the well cultivate relation you have with current suppliers.

A side benefit is that you can determine who is serious and who might have some technological barriers to participating.

- Train
- Provide Access to RFQ/RFP



Prepare Suppliers—Prepare



Once they are selected, you must prepare them for the event. Poor supplier training can result in very disappointing results. We make sure every supplier is comfortable with the site and the bidding process. We even let them bid in a mock event so there will not be any surprises come auction day.

Once they are trained, they get full access to the RFQ/FRP and they can start the review period.



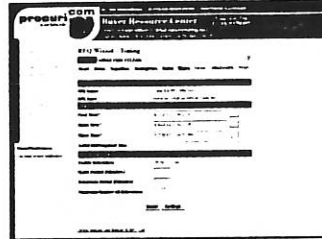
- Set Auction Structure
- Post Auction Online
- Conduct Mock Event
- Complete Final Review

STEP #3—Develop Strategy



While the "Prepare Supplier" phase is commencing, the purchaser is also involved in Developing the Strategy. This includes setting the structure, posting it, conducting a mock event and then completing final reviews.

- What items? What location? Supplier coverage?
- Number of bid points?
- How will winners be assigned?
- Terms and Conditions?
- Auction Parameters?
 - Open and close time, extension policy, maximum & reserve price, bid increments



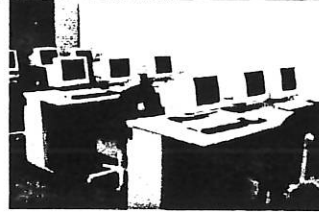
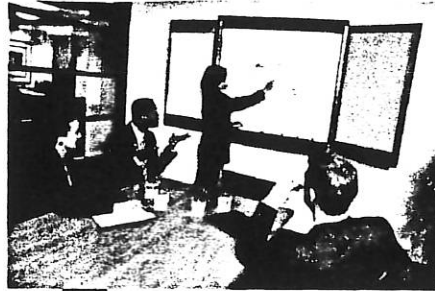
Develop Strategy—Auction Structure



You would be amazed at the flexibility available with some services when developing the structure. From multiple line items and multiple sub-items to quality ratings and price factors. You need to determine how winners will be selected and when. Terms and conditions need to be created and finalized. You also have to determine the auction parameters. When to open it? How long of an event? What about extensions? And then there is the bid policy, maximum, reserve and increment?

We are actively involved in this stage with most of our clients.

- Test Event
- Validate Setup
- Train Team



Develop Strategy—Conduct Mock Event

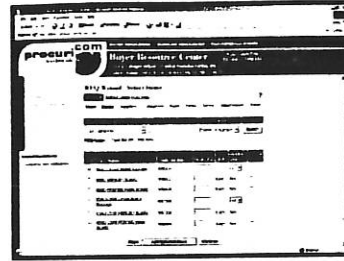


You might be surprised to learn that for every event we run live on our site, at least one mock auction preceded it. We use the mock event as a way to test the structure, validate our setup and train the team members.

A lot of benefit comes from a very simple step.

1-19

- Bid points are appropriate
- Item definitions are final
- Terms & conditions are complete

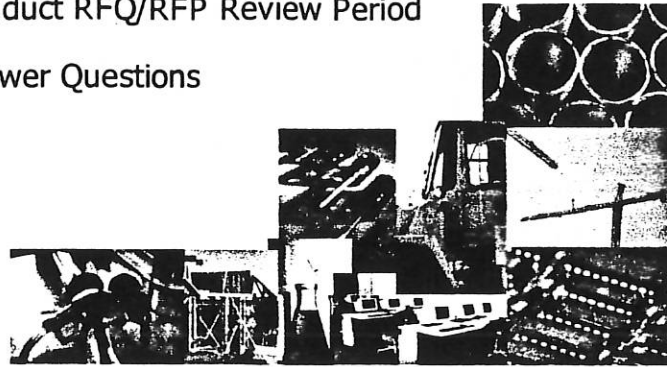


Develop Strategy—Complete Final Review 

Last part of this step is to complete a final review of the event. We need to know if the bid points are appropriate, the item definitions are final and the T&C's are complete.

When we are sure...we post the final version for the suppliers to view.

- Post RFQ/RFP & Specifications
- Conduct RFQ/RFP Review Period
- Answer Questions

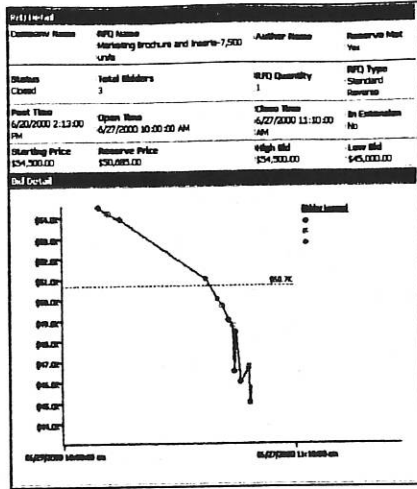


STEP #4—Conduct Review Period



During the review period, the suppliers are able to see what it is you are looking to acquire. They are able to view the item specs, the quantities being sought and even the delivery requirements. They are able to ask questions and have them answered online.

Some users utilize the collaborative features to request information and input from the suppliers. They might require MBE status or plant capacity figures prior to the event. Once again, they are using technology to make the purchasing process more efficient and more effective.



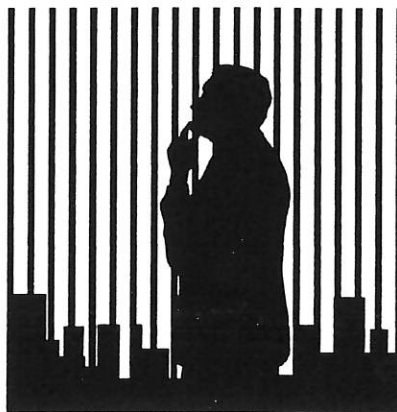
- Buyers see bids as they arrive
- Suppliers see other bids
- Suppliers bid multiple times
- Instant notifications
- Winners are selected



STEP #5—Run the Auction

Auction Day! It is an exciting time. You get to see the bids as they arrive as do the suppliers. They know where they stand in relation to the other bids at all times. It is up to them to make a more competitive bid or not.

Once the bidding is done, the purchaser has to make a determination and select the winner or winners.



- Full Service vs. Self Service
- Buyer or Supplier Centric
- RFI/Collaborative Functionality
- Site Capabilities...
- Personal Services
- Fee Model...

Finding the Right Provider...



The last area I wanted to touch on is on "Finding the right Provider". There are a lot of Reverse Auction providers but they all are of different capabilities and business models.

The first thing you need to do is decide if you are looking for a Full Service Model or Self Service. Prior to 2000, most services were the Full Service model, in essence out-sourcing the purchasing process. With consultants and high cost systems to be paid for, this was an effective but expensive route. Last year marked the entrance of low cost, Self Service models that provided all the functionality but without the purchasing infrastructure. With this model, organizations purchasing departments utilize the tool when appropriate. This meant e-procurement was in reach of smaller organizations.

Different providers focus on the buyer and other focus on the suppliers. As you explore services, keep this difference in mind and see which fits best.

The RFI capabilities of some providers are very powerful. Adding the power of collaboration with suppliers, opens the door to a myriad of items not naturally suited for the Reverse Auction. We have some clients that are actually utilizing the RFI service many times more than the Rev. Auction service!

The concept of a reverse auctions is quite generic, but the functionality of providers can be as different as night and day. Insist on multi-item/sub-item bidding. Your first auctions might not be complicated, but the subsequent ones will be for sure. You want the ability to award agreements to different suppliers for different items. Quantitative and Qualitative factoring should be essential functionality. To have the ability to factor value of different payment terms, warranties, performance histories and other factors is a must.

To better differentiate providers, talk with current customers about the personal service they provide, such as training, auction strategy consulting and support. In order for you to go beyond the "low hanging fruit", you will need the team of support professionals from a good provider.

Lastly, the cost of systems and the way they charge for it can mean major differences between providers. Some utilize a fee based upon a percentage of the transaction value and others charge a licensing fee for unlimited use. If using the system less than 2 times a month, the transaction model should fit fine. But, if the usage is more, organizations benefit greatly from the licensing model.

How are others approaching the e-procurement move?

1 Try... Try... Try...and...
2 Then
3 *Think About it!*

Finding the Right Provider...



One last tip I can provide...it is the advice that major research service are providing their customers...when asked on the best way to proceed with e-procurement services...they tell their clients to "Try...Try...Try...and then Think About IT"

They suggest you pilot a couple providers than evaluate your experiences. Evaluate your needs, the providers capabilities, the fee models and even if reverse auctions are right for your organization. If yes...then choose the provider that meets your needs best!

Thank you ...



1-25

Olathe School District USD 233
Gary George
Assistant Superintendent
March 13, 2001

Testimony for an Internet Auction Process
for Selling School Bonds

Representative Horst and members of the committee, it is a pleasure to meet with you today.

When the Senate Commerce Committee considered SB227, which is similar to HB2413, we were able to add language that would permit an Internet auction process for selling school bonds. We hope as you consider HB2413 and SB227 we can maintain the language in SB 227 that passed the Senate, which allows us to sell our bonds in an electronic real time auction. This process has the potential to save the taxpayers money as bidders bid more aggressively for the bonds. Our research indicates that since 1995 over \$5.1 billion in bonds have been sold through this process. This process is currently used in 25 states.

We believe that issuers of bonds should have this option. Entities, which prefer to sell bonds as they always have, could continue to do so. Those jurisdictions, which wish to use the Internet auction process, would have that option. Auctions have a long tradition in America. The Internet simply adds an electronic component to the process.

With this process we can save the cost of printing the preliminary official statement and the official statement. This could save us several thousand dollars. As bidders aggressively attempt to outbid one another, we have an opportunity to drive down the interest rate thereby saving local taxpayers substantial sums over a 20-year bond issue of millions of dollars. Our financial advisor suggests saving in the range of 3-5 basis points. Further, the Internet process should enable long-distance bidders to participate. As we increase the size of the pool of bidders, we have the potential to save our taxpayers additional money. In addition, as school districts acquire better interest, local taxpayers save. To the extent that the state helps with bond and interest payments, the state of Kansas also saves money.

Our bond counsel, Gilmore and Bell, has worked with the reviser's office and has prepared language which amends the existing statute KSA 10-106. We believe this would provide clear statutory language for us to use the Internet auction process.

In closing, let me say, once again, that this is permissive legislation. No one will be forced to use the electronic process for bond sales. This legislation, which can lower bond and interest rates, will allow us to save the taxpayers money. We urge you to give favorable consideration to this legislation.

Attachment 2
e-Gov 3-13-01

GILMORE & BELL

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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ONE MAIN PLACE
100 NORTH MAIN, SUITE 800
WICHITA, KANSAS 67202-1398
316-267-2091
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March 9, 2001

Representative Deena Horst
Chairperson, e-Government Committee
Room 174 West
State Capitol
300 S.W. 10th Avenue
Topeka, KS 66612

Re: Senate Bill 227

Dear Representative Horst:

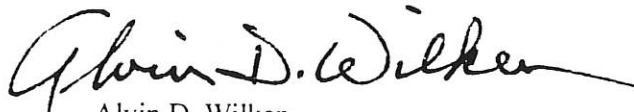
We are writing in regard to the proposed amendments to K.S.A. 10-106 contained in Senate Bill 227. The purpose of the amendments is to expand the scope of that section to allow the sale of bonds to be conducted by electronic auction as well as electronic bidding.

As you know, the concept of electronic bidding for contractual services by Kansas municipalities and political subdivisions has become a practical, workable mechanism in various areas, including for the sale of municipal bonds as governed by K.S.A. 10-106. An additional sale mechanism that has come into existence for municipal bonds is an electronic auction procedure, whereby bidders are allowed to know the position of their bid when it is submitted and, if they choose, to improve their bid so that it may become the lowest and best bid. The electronic auction process, if chosen by a municipality for the sale of its bonds, can help the municipality to sell its bonds at the lowest and best possible interest rates available at the time of the sale.

Please note that the changes made to 10-106 are only for the purpose of allowing an electronic auction as an additional option to the municipality; they do not require a political subdivision to utilize the electronic auction provisions. No other options are changed, and none of the terms and conditions relating to the sale of bonds by a municipality are limited or removed.

Please contact either of us at your convenience if you have any questions relating to the proposed amendments to K.S.A. 10-106.

Very truly yours,



Alvin D. Wilken



Gary A. Anderson

ADW:gbr

cc: Mr. Gary George

Testimony Prepared for the
Chair-Deana Horst
Regarding Legislation on Internet Bond Sales

Presented by
Marty Nohe, First Vice President
Public Finance Group
Kirkpatrick Pettis, A Mutual of Omaha Company
Friday, March 09, 2001

Adding New Method for Internet Sale of Bonds

Overview

As a Financial Advisor for hundreds of bond sales in Kansas over the past 2 decades, I feel reasonably qualified to speak on behalf of Kansas cities, counties, school districts and other jurisdictions in the methods of selling tax exempt municipal bonds.

The bill before this committee is simply a bill to add an additional platform or method of selling bonds over the internet. Currently there are 3 primary internet platforms competing in the open market attempting to have jurisdictions use their services for bidders to submit bids for the sale of bonds.

In Kansas, there have been around a dozen bond sales where bidders, which include investment banking/brokerage firms and dealer banks, have had the option to submit their bids on the internet on either the Bloomberg system or the Parity system. The third national platform, Muni-auction, which has the capability to conduct a true auction, unlike the other platforms, is not currently available to be utilized by Kansas jurisdictions. *This bill would allow a real-time auction to be available.*

The benefits for selling bonds electronically on the internet fall into three primary categories:

Interest Rate Savings Potential

Costs Avoidance

Administrative Enhancement

Interest Rate Savings Potential

Typically bond issues in the range of \$1-20 million, sold competitively in Kansas are primarily sold to regional brokerage firms and regional bank systems, which then are resold to both individuals and institutions like mutual bond funds and insurance companies. When the issue size is over approximately \$20 million the large national brokerage firms and national sized bank systems will be more likely to submit bids.

By allowing all forms of internet bidding, it opens and simplifies the bidding process to a larger universe of bidders, which as in all bidding or procurement processes, tends to have all bidders "sharpen their pencils" and improve their bids.

In addition, internet bidding can allow for bidders to bid on individual maturities, reflecting their customers needs more efficiently. For example, if my firm's primary customers are individuals which tend to buy bonds in the 5-10 year maturities and the bond issue is a 25 year bond issue, my firm can submit bids on only those bonds maturing in 2006 through 2011. This increases the likelihood of our firm's interest in submitting a bid.

As Financial Advisor, our firm has conducted several dozen internet sales and we estimate improved bids in the range of 3-5 basis points or 3-5 hundreds of one percent.

An improvement of 5 basis points on a 20 year, \$10,000,000 bond issue is \$100,000! Little improvements can generate a lot of taxpayers savings.

Cost Avoidance

With all initial security offerings, stocks and bonds, certain mandatory disclosure documents are required to be prepared and transmitted to potential buyers. In the municipal bond world this document is referred to as the Official Statement, which can be 75 or more pages. Traditionally this is printed and mailed or overnight delivered to bidders throughout the country to up to 100 locations. This cost to the taxpayer can range up to \$10,000. The internet bidding with one of the platforms, can "post" the Official Statement "on line" and bidders can view or download the document, thus the issuer can avoid this cost.

Administrative Enhancement

- ✓ Ease of submitting the bids via the internet avoids last minute human error.
- ✓ Results of the bids can be available to the public more quickly by posting results on the internet.
- ✓ Automatic bid error checking feature is built into all platforms
- ✓ Marketing and pre-solicitation to bidders and amendment to terms of the sale can be provided.

Summary

The passage of this bill has no "down side" and has the potential of improving the process for the sale of bonds by the governmental jurisdictions in Kansas. Traditional bids in the form of paper bids will continue to be allowed for those not ready or wishing to participate in e-commerce. Certainly there will be an evolution of the use of the internet in all procurement systems and I view this legislative amendment as a small technical improvement to Kansas law.

Sampling of some current Kansas Clients of Kirkpatrick Pettis:

**City of Lenexa
USD 233 Olathe School District
City of Pittsburg
City of Gardner
City of Spring Hill
City of DeSoto
Johnson County Park & Recreation District
Topeka & Shawnee County Library District**

**Mr. Nohe is a life long resident in Kansas and can be reached at 913-486-3355 or
800-206-0634**



BILL GRAVES
Governor

Robert L. Stockwell
Executive Director
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Topeka, KS 66612
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KANSAS PERFORMANCE REVIEW BOARD

March 13, 2001

The Honorable Deena Horst
Chairwoman, E-Government Committee
Kansas House of Representatives
Topeka, Kansas 66612

Dear Representative Horst and members of the Committee;

My name is Robert Stockwell and I am the Executive Director of the Kansas Performance Review Board. The Board's mission is to *review state agencies for efficiency and cost effectiveness; encourage innovation; recommend retention, modification, elimination, or privatization to the Governor and Legislature.*

In doing so, the Board reviewed the Division of Purchases last May and recommended several areas that could improve its service to state government. I am providing you a copy of this report for you information.

I would like to discuss one of the Board's general conclusions that may be pertinent to your discussion of House Bill 2413. The Board noted the lack of a state wide computer system that integrates state business activities. The Board encourages the State to obtain a modern Enterprise Resource Planning system that would integrate these business functions of government and allow greater opportunities to move toward e-commerce and e-government. At the same time, the Board recognizes the need to update procurement statutes that will encourage and not impede e-commerce initiatives.

The American Bar Association revised its Model Procurement Code and released it last year. To date nineteen states have adopted the code for their use. The revised model procurement code generalizes rather than specifies authorization for electronic transmissions:

New section 1-501 of the Model Procurement Code provides for the use of electronic media, including acceptance of electronic signatures, is authorized consistent with the state's applicable statutory, regulatory or other guidance for use of such media, so long as the guidance provides for:

~~Attachment 3~~
Attachment 3
e-Gov 3-13-01

- (a) *appropriate security to prevent unauthorized access to the bidding, approval and award process; and*
- (b) *accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.*

Essentially, this general method of enabling electronic transactions permits purchasing agents to conduct any or all transactions electronically.

House Bill 2413 takes a different approach to electronic transmissions by authorizing one specific measure that allows a "real time, competitive bidding event." This method is also referred to as "reverse on-line bidding" or a "reverse auction". The Commonwealth of Pennsylvania recently authorized "real time bidding" by contracting a private firm to recruit vendors, train them to participate in an online auction and then conduct the auction. In a three-event pilot auction program, Pennsylvania saved \$3.7 million over traditional sealed bid methods. To date, Pennsylvania has conducted 10 real time, online bids resulting in reported savings of \$11 million.

However, this method of procurement must be considered only one of a number of ways for the State to procure goods and services from the private sector. If the State operates a modern, sophisticated business system and has trained employees to conduct real-time bids, it could manage this process itself. Alternatively it could contract with private vendors that offer this type of service for fees. One vendor, for example, looks at three criteria to be present for the state to save money: 1) the ability to specify what is to be bought; 2) the need for competition in that industry; and 3) a large enough purchase to make the process worthwhile. This vendor also remarks that not every purchase is suitable to a real time bidding process.

This committee's discussion of House Bill 2413 concerning governmental purchasing, providing a mechanism for the submittal of on line bids, is innovative in nature and carries with it the potential to save the state taxpayer dollars. While it has a narrow focus it does not detract from future efforts to expand e-commerce nor does it prevent current procurement methods from being used.

Thank you for inviting me to comment on this bill.

Sincerely,

Robert L. Stockwell
Executive Director

800 SW Jackson
Suite 817
Topeka, KS 66612
(785) 296-4401

State of Kansas



Kansas Performance Review Board

Report

on the

Division of Purchases

Recommendation
May 16, 2000

3-3



BILL GRAVES
Governor

Kansas Performance Review Board
Mercantile Building, Suite 817
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Topeka, KS 66612
Tel (785) 296-4393
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May 17, 2000

The Honorable Bill Graves
Governor of Kansas
Capitol Building
Topeka, Kansas 66612

Dear Governor Graves:

The Kansas Performance Review Board has completed a study of the efficiency and cost effectiveness of the practices of the Division of Purchases. This study asked the question: "Are statewide contracting and purchasing methods uniformed, efficient and cost effective?" It also addressed a secondary question: "Is the State a good business partner?" We have attached a detailed report of that study and our recommendations for your consideration.

In the course of the review, we noted with concern the lack of a Department of Administration computer system sufficient to link the department's business activities with one another. The absence of this key business tool compounds the lack of a strategic plan within the Department of Administration and contributes to systemic inefficiencies in purchasing, budgeting, accounting, personnel, facility management, and other central services. These management shortcomings hinder collection of information, analysis, and short and long term decision-making and leave the state ill prepared to manage complex 21st Century business problems. We believe that many of these problems are solvable. DOA business activities, including purchasing functions, must move forward immediately to find integrated system solutions. This can be done by tasking (and funding) the Secretary of Administration to lead his division directors to form public-private partnerships to solve these deficiencies.

The lack of a sophisticated, integrated purchasing application hampers the Division of Purchases from analyzing spending patterns and maximizing savings. With the growing complexities of legal contracting and the technological sophistication of much of what the state purchases in goods and services there is an immediate need for expansion of the present Division of Purchases organization. This expansion must include a contract administration section. This section would up-date templates, amend contracts and monitor them, provide vendor performance information to all state agencies, and many other aspects associated with modern contract management. Additional in-house and agency training and publication of a new Policies and Procedures manual will provide further improvements in overall state purchasing efforts.

Notwithstanding the absence of a integrated purchasing computer application and despite recent headlines involving state contracting practices, the Division of Purchases meets or surpasses Purchasing Performance Benchmarks for State Governments in almost all categories. Moreover, a survey of current state vendors paints a favorable picture of purchasing practices and overall general satisfaction with the State as a business partner by giving the *State an A- grade* (3.81/4.0). There is concern, however, among vendors regarding the collection of contract administration fees for the Division of Purchases. While it seems reasonable to recoup statewide contract administrative costs from state agencies, the practice of using vendors as state collection agents just doesn't pass the common sense test. In our opinion, the vendors should not be required to collect fees without compensation and modification of existing contracts. There are many other practical in-house alternatives that the Director of Purchases should explore.

The Board expects that with the addition of a contract administration section in the Division of Purchases and immediate resolution of Department of Administration's business system problems, this approach, when completed, will save dollars, improve customer service, and safeguard the state and its vendors from inadvertent or purposeful opportunism or from faulty contract specifications, processes or performance.

We invite you to favorably consider this recommendation on the Division of Purchases. We would be pleased to discuss it in detail with you if you desire.

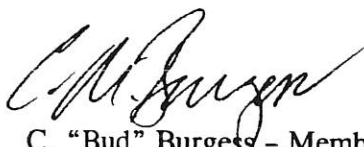
Respectfully submitted,



Dale K. Davis - Chairman



Howard R. Fricke - Vice-Chair



C. "Bud" Burgess - Member



William J. Falstad - Member

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SUMMARY OF REVIEW

SUMMARY OF THE REVIEW

The Kansas Performance Review Board reviewed the Division of Purchases at the request of a State Legislator. In doing so, the Board asked the question "Are statewide contracting and purchasing methods uniformed, efficient and cost effective?" It addressed a secondary question: "Is the State a good business partner?"

The study found that the Division of Purchases compared favorably with other states in most areas of contracting and purchasing. However, Division of Purchases can better manage state-wide purchasing needs by establishing a section for contract administration within the Division of Purchases, issuing a Policies and Procedures manual, improving in-house and agency training, and solving automation problems.

The Board noted with concern the continued absence of a statewide computer system that integrates state business activities. The absence of this key business tool compounds the lack of a strategic plan within the Department of Administration and contributes to systemic inefficiencies in purchasing, as well as in budgeting, accounting, personnel, facility management, and other central services.

The Board expects that with the addition of a contract administration section in the Division of Purchases and immediate resolution of Department of Administration's business system problems, this approach, when completed, will save dollars and improve customer service.

PART I - HISTORY

I. INTRODUCTION TO THE REVIEW AND AGENCY HISTORY

A. Purpose

The Kansas Legislature enacted the Performance Review Act in 1996 to provide a means to review the efficiency and cost-effectiveness of programs and agencies in state government. By 1997, the Kansas Performance Review Board was appointed by the Governor and opened its offices. Its mandate is to recommend to the Governor and the Legislature areas in state government that may save money or improve service.

The study of statewide contracting and purchasing methods is to determine if they are uniformed, efficient, cost effective and whether or not the State is a "good business partner".

B. Background of the Study

In April 1999 a request was made from a legislator to review state contracting. This request was prompted from several complaints from constituents that had been collected over a period of time. The issues involved the process for bidding and the award of said bids, a level playing field between the State and potential vendors and the overall contracting process. The Board approved the review request in late October 1999 (the Board did not meet from Jan-October 1999 because of a delay in appointing replacements for expired Board members). The Board approved the scope statement at the December 99-board meeting. The staff and consultants then commenced the review work in January 2000. Staff issued its preliminary recommendation in February 2000.

Kansas Performance Review Board
Report on the Division of Purchases

The staff contracted with Procurement Consulting Services, Inc., a private company that consults on government procurement matters to be the principle investigators. Mr. Phil Scales headed the team. Similarly, the staff requested information from Mr. Adrain Moore, Director of Economic Policy, Reason Public Policy Institute, and an author on contracting, about the theories and principles of contracting.

Overview. Contracts are the instruments governments use to procure supplies and services. New e-commerce technologies, changes in industries, and growing government outsourcing combine to make contracts, and managing them, an ever more important part of public administration. Every week local, state, and federal governments jointly pay billions of dollars to suppliers or contractors—state and local governments alone consumed \$763 billion in goods and services in 1997.¹ Common sense and fiscal responsibility demand that those dollars be well spent. As contract practices and the breadth of supplies and services purchased evolves and expands, contract management must change as well.

State of Kansas purchases in Fiscal Year 1997 totaled \$1,634,163,000, nearly twenty percent of the \$8.2 billion State budget. Twenty-two percent (\$359 million) was expended on goods, thirty-four percent (\$552 million) on services, and forty-four percent (\$723 million) on construction.

¹ U.S. Census Bureau, *Statistical Abstract of the United States*. 1998, table 508.

C. Scope of Study

The Performance Review Board focused on two questions: 1) "Are statewide contracting and purchasing methods uniformed, efficient and cost effective?" and 2) "Is the State a good business partner?". In researching these two questions KPRB looked at agencies that have high dollar and volume contracts. Several techniques were used to conduct this review. Specifically, the scope of the project encompassed:

- Survey literature and writings on government contracting and purchasing;
- Review Kansas Statutes, Informational Circulars, Memorandums and Executive Orders related to purchasing;
- Solicit benchmark data from the Division of Purchases and the Division of Accounts and Reports and comparing that data with published benchmark data from the Center for Advanced Purchasing Studies;
- Analyze customer survey data from the Division of Purchases for 1997, 1998 and 1999;
- Conduct interviews with every member of the Division of Purchases staff;
- Conduct interviews with representatives of eleven user agencies;
- Review published purchasing policies and procedures from representative user agencies;
- Conduct interviews with representatives of the Division of Accounts and Reports with respect to supplier payment and business procurement cards;
- Conduct interviews with representatives of the Division of Information Systems and Communications with respect to purchasing automation and planning for future automated systems;

Kansas Performance Review Board
Report on the Division of Purchases

- Review Performance Audit Reports from the Legislative Division of Post Audit relating to Contracting and Purchasing;
- Review correspondence related to contracting issues that were made available to KPRB;
- Review functional descriptions of Procurement Manager Plus and perform a gap analysis;
- Conduct a supplier survey and tabulate the results;
- Review the partial draft policies and procedures manual being developed by the Division of Purchases;
- Review current and prior fiscal year budgets for the Division of Purchases; and
- Identify applicable national best practices and obtain detailed information with respect to those best practices.

D. History of Purchasing

The Division of Purchases was first established in 1953 as part of the Department of Administration (Kansas Statutes Annotated 75-3737a through 75-3744). The Department of Administration was re-organized in 1972 with the appointment of a Secretary. The Division of Purchases remained a part of the Department.

The Division is responsible for state purchases by establishing state-purchasing contracts, soliciting bids for agency purchases, and control of delegated purchasing authority to individual state agencies. Within its own operations the Division has identified its requirements to include establishing standards of quality, development of standard specifications and prompt solicitation of bids and placement of orders for goods and services. The Division's purpose and identified objectives have not

Kansas Performance Review Board
Report on the Division of Purchases

changed much since 1953. The number of contracts and the type of contracts handled by the Division have changed over the years.

In 1962 there were 185 individual agency and statewide contracts for commodities and services. 1964 that was up to over 200 individual agency and statewide contracts. In 1987 there were 118 statewide purchasing contracts and 812 agency-specific purchasing contracts. Currently there are over 250 statewide contracts and in FY 1997 the State expended \$1,634,163,000 for purchases.

The Division responds to agencies purchasing needs. This is accomplished by utilizing statewide contracts for goods and services allowing large quantity discounts. The Division also assists agencies with specific needs for Request for Proposals (RFP) and the solicitation of those bids, sole source authorization, emergency authorization or other purchasing issues encountered by the agency in which the agency requests the Division's assistance.

The Division of Purchases employs 26 full time equivalent employees with a budget of \$1,458,397. The financial resources for the Division is both State General Funds and other funds which include the Purchasing Distribution Funds, authorized by the legislature in 1991 to recoup cost of reproduction and distribution of information. Then in 1992 the Purchasing Fee Fund was added for the collection of commissions on certain statewide contracts. The Division also has a Vendor registration fee. The Vendor registration fee, Purchasing Distribution Fund and Purchasing Fee Fund are all intended to reduce the Divisions dependence on the State General Fund. The vendor previously paid all of these additional funds. In April 2000 the Division issued a requirement from the Director to the vendors of

Kansas Performance Review Board
Report on the Division of Purchases

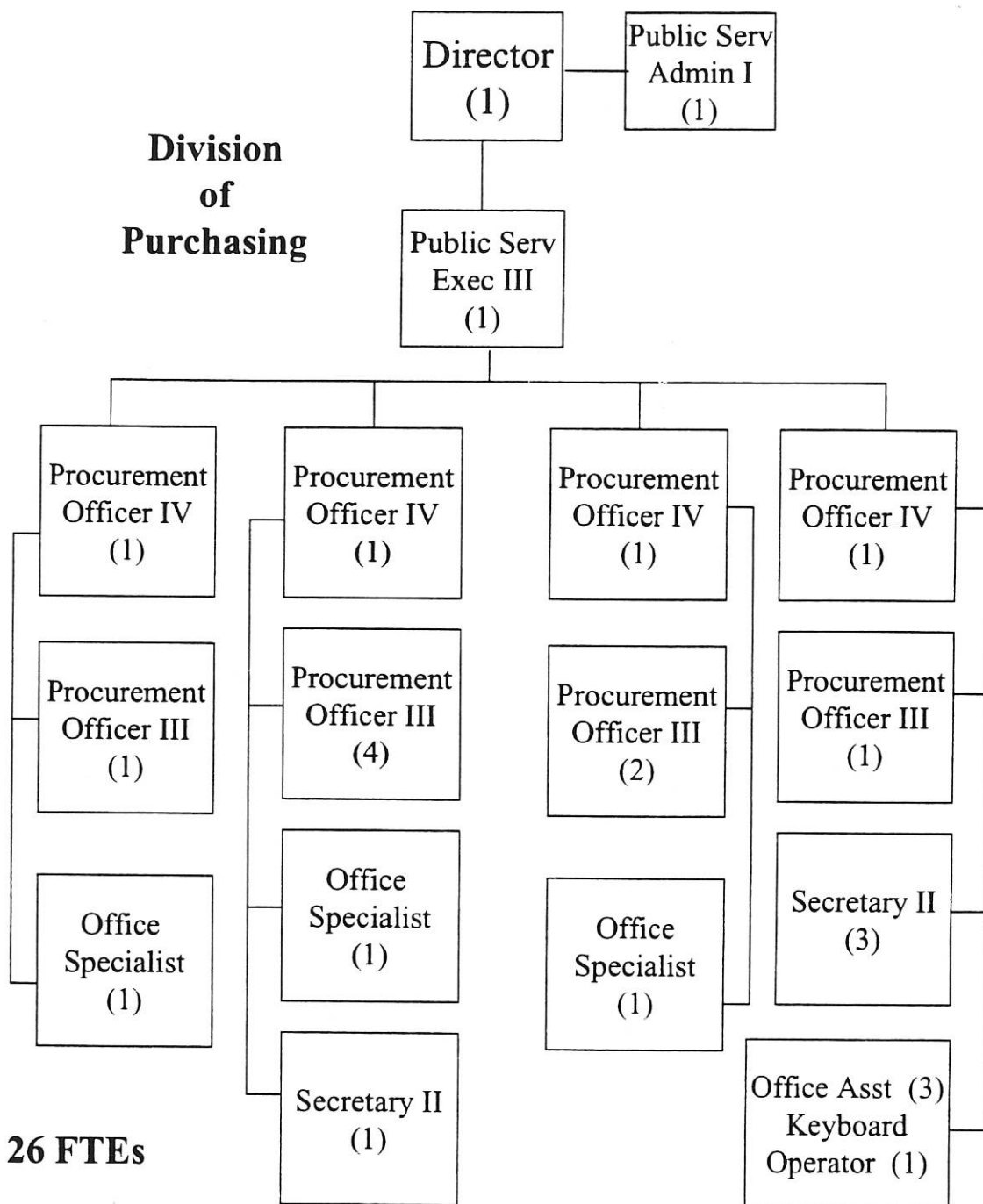
state contracts to collect a 1% administration fee from all agencies using the contract. The vendors are to pay this 1% back to the state by the 10th of each month for the previous months fees. This amount was later reduced to 1/2%. This additional 1/2% will come from the agencies or other local governments that use state contracts. This puts the vendor in the position of being a collection agency for the State.

Some state agencies have their own procurement officers or individuals within the agency who are responsible for overseeing the purchasing and contracting needs of the agency are met. While there may be some overlap in job responsibilities between the agencies and the Division of Purchases they are not significant and the personnel located at the agency levels are necessary at the agency level. Most agencies have had someone who is responsible for overseeing the purchasing for that agency prior to the establishment of the Division of Purchases in 1953.

The primary objective of state agencies that have procurement officers or employees responsible for the contracting and purchasing is to maintain control, provide consistency, and manage agency business. Since the State of Kansas has no way of tracking the contracts, dollars spent, vendor performance, volume, or monitoring of contract performance it is left up to the individual agencies to do so.

The organizational chart for the Division of Purchases follows on the next page.

Kansas Performance Review Board
 Report on the Division of Purchases



PART II - COST ANALYSIS

II. COST ANALYSIS

A. Overview

The Division of Purchases provides centralized procurement services for all state agencies. The division initiates major contracts for goods and services that enable state agencies and school districts to purchase items based on large quantity discounts. Other activities of the division include bidding and contracting for construction and major repairs, based on plans approved by the Secretary of Administration and administrative heads of agencies. According to the Governor's Fiscal Year 2001 Budget Report, the effective operation of the Division of Purchases requires establishment of standards of quality, development of standard specifications, and prompt solicitation of bids and placement of orders for goods and services.

Some cabinet level agencies maintain contracting and purchasing staffs with primary oversight responsibility for agency-unique contracting requirements. Additionally, these staffs serve as the primary link between Division of Purchases and the agencies. Agencies are responsible for full funding of these operations.

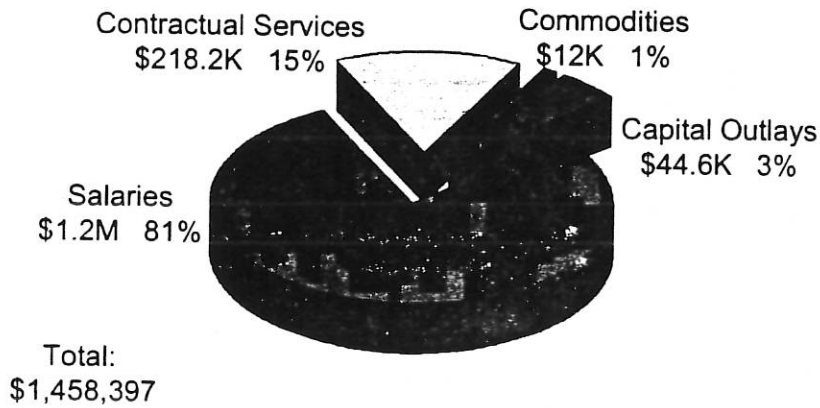
B. Budget

The Division of Purchases Fiscal Year 2001 budget is \$1,458,397. Table 1, FY 01 Budget, shows the standard breakout of budget expenditures and

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the number of full time employees assigned to the division.

Division of Purchasing
 FY 01 Budget



	FY 98	FY 99	FY 00	FY 01
Salaries and Wages	1,089,783	1,125,779	1,144,910	1,183,520
Contractual Services	212,877	192,423	212,521	218,194
Commodities	13,015	12,161	12,055	12,055
Capital Outlays	47,950	255,227	100,287	44,628
Total Expenditures	1,363,625	1,585,590	1,469,773	1,458,397
Total Employees	30	29	26	26

Table 1

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Salaries and Wages The 26 employees in the division provide all agencies with central procurement and bidding services. The division head is the Director of Purchases, with a Public Service Executive III responsible for administration and operations. A professional contracting staff of 12 procurement officers and 1 Public Service Executive I provide central purchasing services. A clerical support staff of 11 supports the procurement officers.

Contractual Services include rental of office space in the Landon State Office Building (\$119,763), telephone and postage services (\$45,265) provided by the Division of Information Systems and Communication (DISC). Other major expenditures include high volume copier/duplicator rental, advertising in the *Kansas Register* and travel related expenditures.

Commodities includes general office supplies used in support of daily office operations and the processing of bids.

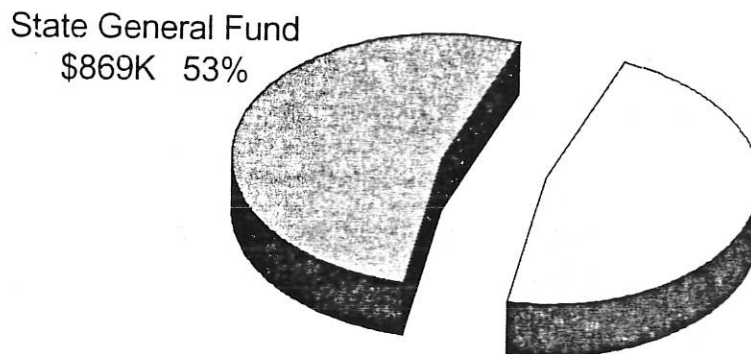
Capital Outlay supports office automation efforts in the division, including the replacement of five aging laser printers, and payment to the Kansas Finance Development Authority for the automated procurement system. The FY 99 actual includes a one-time charge of \$125,000, paid from the Accounting Services Recovery Fund, for the division's automated procurement system.

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C. Revenues

The Division of Purchases receives funding from the State General Fund and Purchasing Fee Fund. Table 2, FY 01 Revenue Summary, provides an overview of revenue sources.

Division of Purchasing
 FY 01 Revenue Summary



State General Fund
 \$869K 53%

Total:
 \$1,643,047

Contract Administration Fee
 \$774K 47%

	FY 98	FY 99	FY 00	FY 01
State General Fund	1,222,756	1,240,721	1,051,919	869,047
Purchasing Fees Fund:				
State Printed Matter	21,737	18,206	18,000	18,000
Other Reimbursements (Contract Administration Fee on Statewide Contracts - 1/2% in FYs 97-99, 1% in FY 00 - 01)	118,929	174,821	399,854	756,000
Total Funding	1,363,422	1,433,748	1,469,773	1,643,047

Table 2

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The ***Purchasing Fee Fund*** was established to collect fees for reproduction and distribution of purchasing information. The division assesses a fee to obtain copies of bid tabulation sheets, bid files, and statewide contracts. Also, vendors are charged a registration fee to be placed on the vendor list. In 1998, the division began charging a contract administration fee to administer some of the more difficult statewide contracts. In FY 99, a 1/2% fee was charged on selective purchases made by the state from statewide contracts.

In FY 00, the Director of Purchases issued Division of Purchases Informational Circular No. 601 dated April 4, 2000. It directed that all statewide contract vendors collect an additional 1% administrative fee on sales against statewide contracts beginning immediately with the first payment due May 10, 2000. The Director of Purchases cautioned vendors that failure to remit the fee in a timely manner might result in cancellation of their contract. The revenue projections in Table 1, FY 01 Revenue Summary, were based on the collection of the 1% administrative fee. Comparing division expenditures of \$1,458,397 with revenues of \$1,643,047 results in a potential FY 01 surplus of \$184,650, as shown below.

FY 01 Resources - 1% Fee

State General Fund	\$ 869,047
Purchasing Fees Fund:	
State Printed Matter	18,000
Other Reimbursements	756,000
(Contract Administration Fee on Statewide Contracts - 1% in FY 01)	
Total Funding	\$ 1,643,047
Less: Total Expenditures	1,458,397
FY 01 Projected Surplus	<u>\$ 184,650</u>

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Subsequent to the Kansas Performance Review Board presentation on central purchasing, the Director issued Division of Purchases Informational Circular No. 604, dated April 27, 2000. The circular reduced the 1% administrative fee to 1/2%. It is unclear what led to the change in fee charges, but the effect is obvious. The reduction to 1/2% will lower revenues and create a FY 01 budget shortfall of \$174,857.

FY 01 Resources - 1/2% Fee

State General Fund	\$ 869,047
Purchasing Fees Fund:	
State Printed Matter	18,000
Other Reimbursements	<u>396,493</u>
(Contract Administration Fee on Statewide Contracts - 1/2% in FY 01)	
Total Funding	\$ 1,283,540
Less: Total Expenditures	1,458,397
FY 01 Projected Shortfall	<u><u>\$ (174,857)</u></u>

The Governor's Budget forecasts \$589,350 in purchasing fee fund revenues or \$174,857 more than shown above. It is unlikely that a 1/2% administrative fee along with state printed matter charges will generate that level of revenues. According to the Director of Budget, the \$589,350 figure is based on an increase in administrative fees to 3/4%. Our analysis indicates that even with the increase to 3/4%, the Division of Purchases will still fall short by \$4,350.

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FY 01 Resources - 3/4% Fee

	KPRB	Gov's Budget
State General Fund	\$ 869,047	\$ 869,047
Purchasing Fees Fund:		
State Printed Matter	18,000	18,000
Other Reimbursements	567,000	571,350
(Contract Administration Fee on Statewide Contracts - 3/4% in FY 01)		
Total Funding	\$ 1,454,047	\$ 1,458,397
Less: Total Expenditures	1,458,397	1,458,397
 FY 01 Projected Shortfall	 \$ (4,350)	 \$ (0)

Given the unpredictable nature of these fees, which are based on usage by state agencies, the Director of Purchases should monitor monthly collections to ensure the division does not overspend in FY 01. Obviously, these calculations are based on a limited collection track record and consequently make estimating revenues difficult. Regardless of which numbers are used the Director of Purchases should either raise the administrative fee to 3/4% or consider areas within the budget for cuts.

Collection of Fees A survey of current state vendors paints a favorable picture of purchasing practices and overall general satisfaction with the State as a business partner. There is concern, however, among vendors regarding the collection of contract administration fees for the Division of Purchases. While it seems reasonable to recoup statewide contract administrative costs from state agencies, the practice of using vendors as state collection agents just doesn't pass the common sense test. The vendors should not be required to collect fees without compensation and modification of existing contracts. Furthermore, the collection of these

fees from agencies by the vendor does not necessarily reduce the dependency of the Division on State General Funds. It only shifts the appearance. There are many other practical in-house alternatives that the Director of Purchases should explore.

D. Business Procurement Card

The State launched a Business Procurement Card Program in 1996. At the time of our initial on-site interviews, thirteen agencies participated in the program. In FY 1999 there were approximately 29,000 transactions for a total of \$6,000,000. The State has computed administrative savings of \$40 per transaction, resulting in total administrative savings for the program of \$1,160,000 in FY 1999. The Division of Accounts and Reports, which administers the program, is initiating a major drive to enroll additional agencies and expand the program in 2000. The Division of Purchases is supporting this effort. This program will create substantial efficiencies in both the purchasing and payment processes that will reduce total administrative costs to the State. It can also be integrated with e-commerce solutions to further reduce costs.

E. Agency Storerooms

During our agency interviews, we found that several were still operating central storerooms for items such as office supplies. These storerooms add substantial personnel, storage, shrinkage, shipping, administrative and other costs. They also substantially delay delivery of the items to the end user.

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The State has over 250 procurement contracts in place to provide for all commonly required supplies. In particular, the office supply contract is already available on the Internet and provides for next day delivery to the end user. Most organizations are looking for ways to eliminate storerooms and warehouses as a way of reducing costs.

The State should conduct an immediate review of all storerooms and warehouses. Wherever these state-operated facilities duplicate services provided by the private sector, they should be closed. Items remaining in stock should be limited to those required for immediate use, those which cannot be delivered on a timely basis by the private sector, and those which are required for immediate response to disasters or emergencies.

F. Prompt Payment Act

KSA 75-6403 states, "each government agency which has received goods or services from a vendor and which does not make payment therefor as prescribed by this subsection shall be subject to an interest payment penalty if the vendor makes a request for payment." During FY 99, total prompt payment interest penalties were \$633.43. On February 23, 2000, current year penalties totaled \$609.15. The staff conducted a random sample of contracting vouchers filed in the Division of Accounts and Reports. There were no late payment discrepancies noted in the sample.

G. Contract Administration Section

Adding contract administration responsibility to the Division of Purchases will require additional funding and the authorization of six FTE (full-time equivalent) positions. The board recommends classifying these new

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positions as Procurement Officers IV, with an estimated total funding requirement of approximately \$358,000.

Overall cost will increase with the addition of a contract administration section. However, over the long run the tangible and intangible benefits will exceed the annual costs. The introduction of contracting innovation and efficiencies will allow cross leveling of personnel and possibly reduce the manpower requirement for the Administration Section. Additionally, the Director of Purchases should expand electronic commerce efforts, conduct an immediate review of all agency storerooms, and adopt innovative purchasing methodologies from the private and public sector. Annual projected savings could exceed \$18 million annually on supply purchases of approximately \$360 million.

H. Potential Cost Savings

Several governmental entities have reported savings from changes in their purchasing and contracting methods. Los Angeles County purchases up to \$650 million annually in supplies and equipment via the Internet. It achieved a one-time \$20 million dollar savings and ongoing savings of \$6 million per year by closing its central warehouse. Expectations are an additional 5% savings of total annual purchases through improved competition. This expectation is consistent with private sector experience. If the State of Kansas were to achieve similar results, it could save up to \$18 million annually on supply purchases of approximately \$360 million.

The State of Oregon's use of electronic commerce in public procurement documented \$144,000 annual savings on postage, printing, and other

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administrative costs. Competition was improved, resulting in savings estimated to be in the millions from lower bid prices.

The Commonwealth of Massachusetts, in an 18-month pilot electronic project with six other states reported a reduction in administrative costs by as much as 72%.

It is reasonable to assume that Kansas could achieve similar results.

PART III - FINDINGS AND OTHER ISSUES

III. FINDINGS AND OTHER ISSUES

A. Findings

Contract Management

Contract management is "a strategic management discipline . . . [with the objective] to manage customer and supplier expectations and relationships, control risk and cost, and contribute to organizational success."¹ Core activities of contract management professionals include structuring business relationships, contract formation, contract execution, pursuit of innovative contracting or approaches, decision making, and building relationships.² In each area, responsibilities for contract management professionals are broad and rapidly changing:

- Business relationships have evolved from simple customer-supplier arrangements to include more complex partnerships such as joint ventures;³
- Contracts are increasingly performance-based rather than fee-for-service;⁴
- Each year more supply purchases are made competitively on-line rather than through supplier agreements;

¹ Daniel O'Brien, "A Matter of Perspective," *Contract Management*, March 2000, p.4.

² Patrick J. Gnazzo and Paul L. Robert, "Building (and Rebuilding) Contract Management," *Contract Management*, March 2000, p.16.

³ E.g. Oklahoma's joint venture between the state and a private medical care company to manage the state university hospitals. See Richard L. Tradewell, *Privatizing Public Hospitals: Strategic Options in an Era of Industry-wide Consolidation*. Reason Public Policy Institute Policy Study No. 242. Los Angeles: Reason Public Policy Institute, 1998, pp.26-29.

⁴ Roger D. Behn, and Peter A. Kant, "Strategies for Avoiding the Pitfalls of Performance Contracting." *Public Productivity and Management Review*, 22(4), 1999, p.471.

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- Contract management decisions are ever less amenable to rote procedures, and ever more in need of decision making based on complex and expanding knowledge; and
- Building relationships with suppliers and contractors to achieve common goals has to be enmeshed in systems designed to prevent corruption.

The Department of Administration's Division of Purchases is the contract manager for the State.

Contract Administration

Contract administration involves those activities performed by government officials after a contract has been awarded to determine how well the government and the contractor performed to meet the requirements of the contract. It encompasses all dealings between the government and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved. As such, contract administration constitutes that primary part of the procurement process that assures the government gets what it paid for.⁵

Facilitating contract administration as a value-added service in partnership with other organizations within government means finding the right balance between centralized and decentralized contract administration.

A decentralized contract administration model lets individual agencies set their own contracting policies and procedures. Disadvantages of a decentralized approach include barriers to shared information, learning,

⁵ OFPP, cf note 9, p.2.

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and best practices between agencies, inconsistent policies across agencies, difficulty putting together joint procurements, and difficulty enforcing contracting law and regulations.

A centralized model creates a contracting office that manages contracts for all agencies in the government. Disadvantages of a centralized approach include encouraging a regulatory approach to contract administration, stifling experiments using new contract methods and structures, mingling of policy making and operational functions, and politicizing the allocation of contract administration resources across agencies.

A third model seeks to avoid the disadvantages of overly centralized or decentralized approaches, finding a middle ground of shared responsibilities. The American Bar Association Model Procurement Code offers an option of creating a state procurement policy office, designed to set policy centrally, with the operational aspects of procurement managed at the agency level.⁶ A mixed approach would allocate to an executive office responsibility for setting government-wide procurement policy, providing educational and shared-knowledge assistance across agencies, and perhaps also perform contracting quality assurance audits.⁷ However, it can be counter-productive to mingle educational and assistance functions with inspections and audit functions.

The State of Kansas uses a "mixed approach" in its purchases of goods and services. The Division of Purchases provides the governing aspects of

⁶ American Bar Association, *Model Procurement Code*, August 1999, p.15ff.

⁷ Private sector contract management organizations tend to use a mixed centralized/decentralized model. See Center for Advanced Purchasing Studies, "Purchasing's Organizational Roles and Responsibilities," 1996, www.capsresearch.org.

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contracting procedures and technical processing while the agencies serve as the subject matter experts for commodities or services they wish to purchase. By default, contract monitoring becomes the responsibility of agencies. However, full contract administration is unattended by both the Division of Purchases and the agencies.

Inherent in contract administration is the necessity to evaluate private vendors that do business with the government. The Office of Federal Procurement Policy published "A Guide to Best Practices for Past Performance" in May 1995. The introduction stated:

To select a high quality contractor, commercial firms rely on information about a contractor's past performance as a major part of the evaluation process. The government, on the other hand, for large contracts attempts to select a quality contractor by analyzing elaborate proposals describing how the work will be done and the management systems that will be used to ensure good performance. The current practice allows offerors that can write outstanding proposals, but may not perform accordingly, to continue to 'win' contracts when other competing offerors have significantly better performance records, and therefore, offer a higher probability of meeting the contract requirements. Even on simplified procurements, a common complaint is that the government must accept the low price offerors with marginal performance records even when higher priced offerors are more likely to be the 'best value' because of their excellent record of past performance.

Settling for inexpensive mediocrity hardly seems in the taxpayer's best interest if an agency determines that it can get better value by doing business with a higher priced supplier with an excellent track record... When the government demands high quality service as a requirement for future business opportunities, as does the private sector, competition will intensify and result in higher quality service by contractors.

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For federal agencies, general indicia of past performance includes:

- Quality of products or services;
- Timeliness of performance;
- Cost control;
- Business practices;
- Customer (end user) satisfaction.

Procurement Automation

In July 1999, the Division of Purchases implemented a new procurement automation system from Decision Technologies International, Inc. There appears to be two primary purposes for implementing Procurement Manager Plus: to replace an existing system that was not Y2K compliant and to establish Internet capability. Both of these objectives have been met. However, the Division of Information Systems and Communications related that Procurement Manager Plus is considered a short term, relatively inexpensive, Y2K solution.

The Division of Accounts and Reports, the Division of Purchases, the Division of Information Systems and Communications, the Department of Social and Rehabilitation Services and the Kansas Department of Transportation have formed a planning committee for a new financial information system to replace STARS. This committee has looked at Enterprise Resource Planning (ERP) systems from Oracle, PeopleSoft and SAP. They are still in the conceptual phase and are requesting funding for a feasibility study. Preliminary estimates of the cost for such a system are \$30 million, and implementation, which is dependent upon funding, is probably at least five years away. The Director of Purchases advised the Board in April 00 that due to the current state revenue deficit this committee has been put on the back burner. The Division of Purchases should explore alternative contracting methods that would not place a substantial financial burden on the state to implement such a system.

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There are two primary issues with Procurement Manager Plus. To keep costs at a minimum, it was only partially implemented. The cost for software, equipment, implementation and training was approximately \$400,000. A statewide enterprise license would have cost \$2,750,000. Adding costs for equipment, implementation and training, total cost to implement Procurement Manager Plus statewide would have probably exceeded \$5 million, an excessive cost for an interim solution. A more important issue may be the user interface. Comments from users in both the customer agencies and the Division of Purchases were consistently negative:

- "Labor intensive; not user friendly."
- "Extremely slow; very inefficient."
- "Difficult learning curve."
- Substantial performance issues, frequently crashes, fragile.
- "Cumbersome."
- "'Pac-Man' (the users' name for the system) is killing me."
- "Popular in third world countries."
- "Not a very good system; get rid of it."

Procurement automation was the most frequent response to the question to user agencies on how purchasing could be made more effective. Indeed, most substantive issues with respect to purchasing and contracting could be resolved through appropriate information technology solutions.

Procurement Contracts. The Division of Purchases has approximately 250 Procurement Contracts that provide the common equipment, supplies and services required by State agencies. State agencies are delegated virtually unlimited authority to place release orders against these requirement contracts. These releases are placed via Agency Purchase Orders (APO's), telephone, fax, and web-based catalogs. Each agency has its own policies as to who can issue releases, from the end user, to an area office, to the central office. While the Procurement Contracts are

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considered very effective by both the Division of Purchases and using agencies, no data is collected on actual purchases. Unless the agency has developed its own internal system, there is no budgetary control on contract purchases. To compensate for the lack of usage data, the Division of Purchases had required contractors to submit quarterly reports on purchases made by agencies under statewide contracts. With the 1% administrative fee instituted in late March 00, contractors are expected to now produce monthly reports (this has been since lowered to 1/2%).

Delegated Purchases. The Director of Purchases has delegated authority to using agencies in varying amounts between \$2,000 and \$25,000. Each agency is then responsible for establishing its own system for making these purchases. Most are manual, using paper requisitions and purchase orders. The Division of Accounts and Reports believes that there are 23 separate accounting systems in use by various agencies, and some of these systems may have purchasing functionality. Again, no data regarding these purchases is collected. Indeed, no one can even report how many purchases are being made, how many dollars are being expended, or what is being purchased. The Legislative Division of Post Audit cited this as a problem in a 1987 audit of state purchasing contracts. This audit found that "the State lacks a systematic method for determining which goods or services should be placed on purchasing contracts." In our interviews, Procurement Officers still find this to be a major problem. The using agencies have no access to the State's master vendor file; therefore, each agency must maintain its own. This severely limits competition. Agencies lack automated tools to support the purchasing function. No matter how they purchase, they must re-key all of the data into STARS when authorizing payment. In some cases, the data needs to be re-keyed into three or four stand-alone systems. Purchasing must conduct

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physical audits of delegated purchases, lacking any other means of accomplishing their oversight responsibility.

Contract Administration. Other than systems developed internally by several agencies, there are no automated tools to support contract administration. Even if Procurement Manager Plus were fully implemented, this functionality does not appear to exist.

Integration with Financial System. Due to the cost, Procurement Manager Plus has not been integrated with the State's financial system, STARS. Currently there exists a "sneaker net" where purchase orders are hand carried to Accounts and Reports to be entered in STARS, and then physically returned to Division of Purchases. A major effort has been made to expedite this process. Yet it still causes delays, not to speak of the costs of handling paper documents and re-keying the data.

Commodity Code. The State adopted the UN/SPSC commodity classification system from Dun & Bradstreet when implementing Procurement Manager Plus. The UN/SPSC code was selected because it was "free." Subsequently, the Procurement Officers have found that this code is inadequate with respect to services commonly used by State government, and is not sufficiently detailed to support requirements contracts.

e-Commerce. The Division of Purchases has also launched various e-commerce initiatives, targeting both customers and suppliers. A comprehensive guide for vendors is published on the State's web site. Various bid opportunities are posted to the site, reducing administrative costs, improving communications with vendors and allowing for greater competition. The State's term contracts are posted to the web site for use by both State agencies and local governments, substantially reducing costs for reproduction and mailing.

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The supplier survey revealed that 58% of the State's suppliers had not used the web site, mostly because they simply did not know it was there.

The list of successful government e-commerce initiatives grows daily. The following represents just a few of the programs:

Oregon's Vendor Information Program (VIP) - The State of Oregon was the first state to boldly introduce the use of Electronic Commerce in public procurement with VIP in 1992. It allowed vendors to register on-line, search and download bids, and obtain prior award information and pricing. Early in the program, Oregon documented \$144,000 annual savings on postage, printing and other administrative costs. Competition was improved, resulting in savings estimated to be in the millions from lower bid prices.

General Services Administration "Advantage" e-Catalog System - The General Services Administration launched their "Advantage" electronic catalog system in 1995. The system is fully integrated with the Federal procurement card program.

San Diego County BuyNet - The first successful electronic bid and response system to be launched by a state or local government. An article from the March/April 1998 The Public Purchaser describes this program in detail.

Massachusetts EMall - The Commonwealth of Massachusetts, in conjunction with six other states conducted an 18 month pilot of electronic procurement system. Massachusetts announced last month that it is proceeding with the EMall in full production mode with the original pilot vendor. Other states who participated in the pilot are adopting similar alternative solutions. The Massachusetts pilot reduced administrative costs during the pilot by as much as 72%.

Los Angeles County e-Catalog - Los Angeles County has launched an e-Catalog to enable over 10,000 users to purchase up to \$650 million annually in supplies and equipment via the Internet. The County was able to achieve a one-time \$20 million dollar savings and ongoing savings of \$6 million per year by closing its central warehouse. The County expects to save an additional 5% of total annual purchases through improved competition. This expectation is consistent with private sector experience. If the State of Kansas were to achieve similar results, it could save up to \$18 million annually on supply purchases of approximately \$360 million.

CURRENT GOVERNMENT e-COMMERCE INITIATIVES

Texas and Idaho - Texas and Idaho are in the process of implementing both e-catalogs and bid and response systems. An award in Maine is pending for the same system.

Arizona - The State has awarded contracts to four firms in a design competition to create an Internet-based automated purchasing system that focuses on the competitive sealed proposal process from development of statements of work through receipt of proposals, evaluation and award. The Arizona system may also include on-line vendor registration, a bid and response system, e-catalog and contract administration.

Policies and Procedures Manual

The Performance Audit Report of March 1996 stated: "Kansas has no centralized policies and procedures to guide state agencies after a contract has been awarded." The report went on to recommend that such a manual be developed.

Almost four years later, we found that the Policy and Procedures Manual is still "being developed." The previous manual was rescinded in May 1993, in part because the policies were becoming outdated. In the absence of a replacement, most using agencies continue to use the "outdated" manual. Not only are there no centralized policies and procedures to guide state agencies after a contract has been awarded as stated in the audit, but other than state statutes, there are no policies and procedures to guide state agencies on soliciting and awarding contracts under their delegated authority.

The Division of Purchases currently relies upon a number of "Circulars" that have been issued over the years. These "Circulars" are advisory, not mandatory. Few personnel in using agencies are even aware of their existence. One document they are aware of is Memorandum 88 regarding Delegated Purchase Authority, which many consider virtually incomprehensible. It is difficult for users to comply with policies and procedures that are not published and which they cannot understand. Indeed, many using agencies cited this as the most critical problem with the current purchasing process.

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Training

Individuals interviewed in both the Division of Purchases and using agencies cited lack of training as another critical issue. The Division of Purchases has sought to maximize available training resources through various programs for their staff and using agencies.

Using agencies stated that the Division of Purchases conducts periodic workshops on the State's procurement practices. They also offer workshops on such topics as Specification Writing and Contract Administration. However, using agencies believe that more training should be offered. While some personnel performing purchasing functions in using agencies were certified (C.P.M., C.P.P.B., etc.), most had little, if any, formal training in purchasing. And, while purchasing personnel might attend the workshops on Contract Administration, the program and project managers responsible for actually administering contracts were seldom aware that this training was available. Finally, almost everyone felt that there had been insufficient training on Procurement Manager Plus, the new automated purchasing system.

While the State is to be commended for delegating small purchases and contract administration to the using agencies, to do so effectively requires that those employees in the using agencies receive adequate training.

Employees within the Division of Purchases also cited a lack of training. Clerical and support staff felt that there was inadequate training when changing from Corel Suite (WordPerfect) to Microsoft Office (Word and Excel). At one time, approximately half of the professional staff held professional certification as either a Certified Professional Public Buyer (CPPB) or Certified Public Purchasing Official (CPPO). Now, due to lack of

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professional development opportunities, individuals have let their certification lapse and now not a single employee of the division is certified. Purchasing officers cite a lack of even basic professional training, let alone advanced training. Like agency personnel, most believe there has been insufficient training on Procurement Manager Plus.

State and Local Governments adopt training programs:

Texas - A law adopted in 1997 establishes three training levels and two certification levels. The first training level covers basics of public purchasing, including training in current Texas practice, and ethics; the second goes into contract negotiation, specification writing and electronic commerce; and the third teaches how to evaluate best value and offers more training on negotiation. In addition to automated purchasing tools, training and certification at the agency level drive the level of delegated purchasing authority.

Illinois - The Procurement Policy Board has recently engaged the National Institute of Governmental Purchasing (NIGP) to provide a comprehensive training program for State employees involved in purchasing and contracting.

New York City - The Procurement Training Institute has trained and certified over 2,000 NYC employees as Certified Professional Public Buyers.

City of Chicago - The City recently issued a Request for Statement of Qualifications for a comprehensive training program to be conducted over the next two years. Lack of training has been cited as a significant deficiency in several recent studies.

General Services Administration - In partnership with ESI International and The George Washington University, GSA offers over fifty different courses related to federal purchasing and contracting to its employees.

Oklahoma, Maryland, Virginia, Oregon, Idaho and Utah all have comprehensive training programs in place for purchasing personnel.

B. Other Issues

1. Communications with state agencies and the personnel at the agency level who are responsible for contracting and purchasing is minimal. Improved communications should include at a minimum sharing of best practices, vendor information, and innovative contracting alternatives. Agencies should not be required to find out on their own about changes to Division of Purchases procedures or training.

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2. The Division of Purchases depends on each agency for subject matter expertise when preparing a Request for Proposal. However, the agencies are not always aware of technical contracting issues before entering the procurement process to ask proper questions of the vendors or write an appropriate or adequate request for proposal that produces the desired outcomes for the agency.
3. Establish information collection policies and procedures to capture and manage both best practices and in-house experience. Ensure that decisions and policies are made in light of other government's experiences as well as on well-kept data about Kansas' own contracting history.
4. There currently is no audit mechanism in place. There should be audit activities to separate functions that are frequently repeated and which change little or slowly. For these functions develop standardized procedures and tracking systems. For functions that are more unique or flexible, develop a set of principles for decision making, information gathering and recording requirements, and crosschecks to avoid inconsistent decisions.
5. Establish government-wide contract administration and management quality assurance systems. The goal is to ensure that best practices are being used, policies are being followed, and instances of corruption are rooted out.
6. As e-commerce continues to grow the State should take advantage of these technologies, but should not think that it eliminates the requirements for contract management. Develop a system for identifying the kind of contract management functions that can be automated with e-commerce and take advantage. Also, create polices that allow agencies to experiment with new technologies, within

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reason, so that they can be incorporated into best practices if they prove effective.

7. Contract administration and management is an increasingly complex and evolving skill and should be a career track on par with supervising programs and personnel. There should be a comprehensive policy for training contract managers. Moreover, adapt personnel classification systems and contract management procedures to facilitate personnel movement across agencies.

C: Public Hearing

K.S.A. 75-7104(d) requires the Kansas Performance Review Board to hold public hearings on the Boards preliminary recommendation. This public hearing was held on April 25, 2000 at 10:30 p.m. in the old Supreme Courtroom, State Capitol Building, Topeka, Kansas. There were only two people present from the general public and no comments were made on the preliminary recommendation.

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PART IV - CONCLUSIONS AND RECOMMENDATIONS

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

The review of the Division of Purchases asked the question: "Are statewide contracting and purchasing methods uniformed, efficient and cost effective?" It addressed a secondary question: "Is the State a good business partner?"

The study found that the state contracting mechanism is adequate for the present. However with the growing complexities of legal contracting and the technological sophistication of much of what the state purchases in goods and services there is an immediate need for expansion of the present Division of Purchases organization to include a contract administration section. Similarly the lack of a sophisticated, integrated purchasing application hampers the Division of Purchases from analyzing spending patterns and maximizing savings. Also, additional in-house and agency training, publication of a new Policies and Procedures manual, codification of the term "grant", and competition for "professional" service will provide further improvements in overall state purchasing efforts.

The State fiscal year 1997 was selected for this review. FY 97 was the base year for the benchmark comparison study. State of Kansas Purchases in Fiscal Year 1997 totaled \$1,634,163,000, nearly twenty percent of the \$8.2 billion State budget. Twenty-two percent (\$359 million) was expended on goods, thirty-four percent (\$552 million) on services, and forty-four percent (\$723 million) on construction.

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The total FY 00 Budget for the Division of Purchases is \$1.47 million, of which \$1.14 million, or seventy-eight percent, is for Salaries and Wages. Total revenues in FY00 were estimated at approximately \$417,000. Sources of revenues include commissions on certain contracts, fees to obtain copies, and a vendor registration fee. Until April 2000, a 1/2% administrative fee was charged for selective statewide contracts. That fee was increased to 1% in April and applied to all state contracts but was immediately brought back down to 1/2%.

Contract Management

Contracts throughout the state are negotiated, written and processed in the same format as they have been for years. The State should consider innovative means to obtain services at the lowest cost to the state for the best service. This requires a concerted effort on the leadership's part to remain current with contracting and purchasing developments and to ensure the staff is educated and cross-trained in all aspects of procurement management. With the change in business practices and the ability to partnership, the State should write performance-based contracts and incentive contracts.

Contract Administration

While some agencies have internally developed or procured automated systems to manage the financial aspects of these contracts and to generate various grant reports, there remains no consistent, reliable method to perform this function. Contract modifications and amendments are handled informally through word processing systems. The Division of Purchases has no means to monitor these contracts once they have been awarded. The amount spent on services is growing at a rate much greater than the amount spent on supplies and equipment, and that trend is

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expected to continue. The ability to manage these contracts financially is only as good as the system (manual or automated) that has been implemented in each state agency. The State should explore the feasibility of providing a statewide contract financial management system.

Contract monitoring is a critical part of maintaining contracts and ensuring the State is getting the goods and services required and that the terms of the contract are being met.

There is currently little information collected on a contractor's performance in the Division of Purchases. Under delegated purchasing authority, one agency could award a contract for janitorial services to a firm who has performed abysmally for several other State agencies on similar type contracts. The federal government has launched a successful initiative to use a contractor's past performance as a major evaluation factor on service contracts.

The State of Kansas should develop and implement a system for systematically gathering contractor performance data, sharing that data between agencies, and using that information as evaluation criteria on future awards.

Procurement Automation

Effective management of the State's \$1.6 billion plus in purchases is nearly impossible without accurate, timely information on which to base decisions.

Report on the Division of Purchases

The States of Louisiana and Minnesota and the City of Philadelphia have implemented comprehensive contract management systems. The City of Chicago is including a contract administration module in its new ERP system. An automated solution for contract administration should be implemented prior to and independent of a comprehensive ERP.

In the months since Procurement Manager Plus was originally selected, procurement technology, particularly with respect to e-commerce tools, has changed dramatically. Indeed, business-to-business procurement is the fastest growing e-commerce function. There now appears to be affordable e-commerce tools that would address both the issues of procurement contracts and delegated purchases. These tools would provide a "front-end" to the existing Procurement Manager Plus system, so that this investment would continue to be utilized, primarily within the Division of Purchases

The Division of Purchases should investigate adopting a more suitable commodity code to replace the "free" UN/SPSC Code from Dun & Bradstreet.

Policies and Procedures Manual

Contract administration and management is an evolving area of public administration. Prescriptive, anticipatory policies inevitably run into unexpected situations or encourage some individuals to seek loopholes. Resilient adaptive policies based on sound principles and designed to incorporate best practices as they emerge will better guide operational and oversight personnel to desired decisions.

Report on the Division of Purchases

The lack of a working Policies and Procedures Manual has caused confusion and contributed to inefficiencies in the Division of Purchases and throughout state agencies. Without a proper policy and procedure manual agencies are left to their own devices for determining what constitutes a grant, contract, and professional services. These terms need to be define clearly as to what they are, or establish a test for determining if a given service fits, and justify clearly any exceptions to procurement law that apply to them. Require that all contracts be performance-based with proper justification for choosing service providers on other than a low-bid basis.

A new Policy and Procedures Manual must be published immediately including applicable information that is now contained in various Circulars. A copy of this manual should be provided to all state agencies and posted to the Internet (or Intranet) so that all State of Kansas employees involved with purchasing or contracts can readily find the information they need. This manual should be periodically reviewed and revised to prevent it from becoming "outdated." Finally, the Division of Purchases should offer a series of workshops to introduce the new manual.

Training

Division of Purchasing and using agency personnel involved in the purchasing and contracting process are responsible for the expenditure of over 1.6 billion taxpayer dollars annually. It is imperative that State of Kansas employees have skills commensurate with their private sector counterparts when developing, negotiating and administering contracts. Otherwise, the State will find itself at a competitive disadvantage. A well trained staff will operate more effectively and efficiently, thus increasing

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Report on the Division of Purchases

the organization's performance. It is simple to account for the direct costs associated with training. Yet it is far more difficult to account for the indirect return through improved productivity. Organizations that have identified their employees as critical assets typically invest at least 2% of their total budgets on training. If the Division of Purchases is to also provide training for using agencies, the training budget should be at least 4% of its total budget, or \$59,200. Yet only \$12,000 has been allocated in the FY 2001 budget for this purpose.

Definition of "Grant"

Legislation from the current session (SUB2627) provides that if a state agency expends grant funds to purchase goods or services for which the state agency receives a direct service or tangible asset, the procurement of those goods or services shall be subject to competition pursuant to other listed statutes. In addition, it provides that nothing in the new statute "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."

The State Legislature still needs to clearly define the term "grant" as it applies to the State providing assistance to local governments and other qualified recipients. The legislation should also stipulate when competition is required (i.e., minimum dollar value, availability of competition, etc.), and the roles of the Division of Purchases and the using agency. If properly drafted, this legislation would eliminate confusion and decrease incidents where "grants" or "fellowships" are used to circumvent the normal procurement process. If grants were awarded on a competitive basis similar to contracts, there would no longer be incentives for an agency to circumvent the procurement process.

Report on the Division of Purchases

Delegation of Purchasing Authority

The 1998 changes to the Division of Purchases statute increased the maximum delegation amount from \$10,000 to \$25,000. This action is consistent with changes occurring in both private and public sector purchasing where end user process routine procurement transactions and central purchasing concentrates on high value and high-risk procurements. There has been considerable discussion regarding this increased delegation and those issues should be addressed.

The Director of Purchases can delegate the authority to purchase but not the responsibility. Therefore, it is incumbent upon the Director of Purchases to provide policies and procedures, adequate training, and oversight of the purchases. All have been previously discussed in this report. It is also important for the Director of Purchases and his staff to have an excellent working relationship with purchasing personnel working for using agencies. Communications need to be fostered.

B. PERM Analysis

In accordance with the policies and procedures of the Kansas Performance Review Board, a basic PERM analysis of the Division of Purchases was conducted with the following conclusions:

Privatization: Based upon the CAPS benchmarking data, the Division of Purchases appears to provide a higher level of service at a lower cost than the average of the fourteen states that participated in the survey. The Division of Purchases does earn some revenues, indicating that

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Report on the Division of Purchases

privatization is possible. However, these revenues are only on the procurement contracts and not for the one time buy or negotiated contracts. There are several firms that are trying to package contracts for equipment and supplies and have governments use these contracts. But none of these firms would want to tackle individual purchases, services, or construction. There simply has not been any significant privatization of the government procurement function in this country. Even if there were experienced providers, there does not appear to be any benefit to be derived from privatization at this time.

Elimination: The Division of Purchases provides a high level of service to its customers and appears to enjoy excellent relations with the State's suppliers. It provides value-added service. Elimination is not a viable option.

Retention: A number of issues have been addressed in this report that makes this option undesirable.

Modification: The State of Kansas has a solid purchasing program in place that, like any other program, can be improved. This report outlines a number of modifications that should be made to the State's contracting and purchasing process to accomplish those improvements.

C. Recommendations

The Kansas Performance Review Board recommends the modification of the Division of Purchases and certain purchasing procedures to improve customer service and lower the costs of goods and services.

Report on the Division of Purchases

After a thorough review of all aspects of purchasing activities within the state, the Board concludes that Division of Purchases can better manage state-wide purchasing needs by establishing a section for contract administration within the Division of Purchases, issuing a Policies and Procedures manual, improving in-house and agency training, and solving automation problems.

The Board notes with concern the continued absence of a statewide computer system that integrates state business activities. These activities include accounting, receiving, accounts payable, payroll, workflow and other areas that can be integrated in a comprehensive management tool such as an Enterprise Resource Planning system. This lack of a modern, computerized business tool extends to the Division of Purchases as well. The Division of Purchases must address its automation needs by first fixing the current, short-term DTI system deficiencies and then by finding a long-term solution to procurement automation. In doing so, Division of Purchases should consider becoming a part of a statewide financial information system such as an ERP. In its absence, Division of Purchases should consider an independent procurement system for long term management. In both cases, statewide business activities and purchasing functions, the state must move forward immediately to find solutions. This can be done tasking (and funding) the Director of Purchases and the Director of Information Systems and Communications (DISC) to form a public-private task force to solve these deficiencies.

The Board also recommends that the Division of Purchases establish and maintain a contract administration section for the purpose of, template updating, contract amending, contract monitoring, vendor performance and other aspects associated with thorough contract management.

Report on the Division of Purchases

The Director of Purchases must finalize and publish a Policies and Procedures manual at the earliest opportunity. This manual should be coordinated with using agencies with input from an ad hoc vendor's group. This manual must be "reader" and "user" friendly and provide definitive guidance for internal and agency personnel. This manual should be provided to all agencies and posted on the division's web-site, reviewed and updated routinely.

In order to solve both operational deficiencies and personnel training needs, the Division of Purchases should create a comprehensive training program for its internal staff and for agency personnel associated with procurement. By doing so, Division of Purchases will be able to establish standards, cross-train individuals and increase productivity.

These measures will aid the Division of Purchases in solving existing problems, increase customer satisfaction, and improve vendor relationships. Although these recommendations may increase costs initially, restructured service provision assets will balance costs with customer satisfaction, reliability of the state as a business partner, and increased competition among vendors to lower prices in the mid-to-long term.

D. Potential Challenges to Implementation

1. There are no legal, liability or employee issues that would prevent implementation of the recommendation.
2. Legislative changes are required to adequately define "grant" and to give the Division of Purchases the necessary authority over "grants".

Kansas Performance Review Board
Report on the Division of Purchases

3. Since the recommendation is not to eliminate a government function, there is no economic impact on the community.
4. If the Department of Administration continues to shift funding of the Division of Purchases from the State General Fund to a proprietary fund, large agencies may object to these unanticipated increases in overall costs for purchasing good and services without a corresponding increase in their own funding.

E. Questions

Questions or requests for information about this report may be directed to Robert L. Stockwell, Executive Director, Kansas Performance Review Board, 800 SW Jackson, Suite 817, Topeka, KS. 66612, (785) 296-4401.

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the pros have already



Compaq Tray

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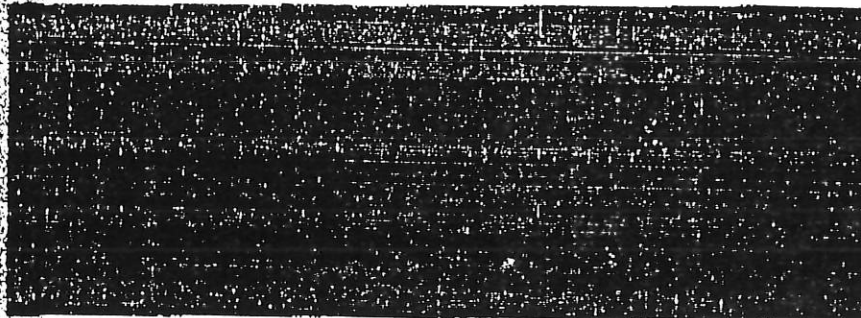
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BIDDING DOWN

By Brian McDonough
News Editor

A new online-procurement paradigm, a reversed auction, saves Pennsylvania \$3.7 million in a three-event pilot program.

Starting with \$2.4 million worth of aluminum, Pennsylvania took a daring jump into a new method of Internet-based procurement, saving \$3.7 million over three bids.

Instead of putting out the usual request for bids and opening them in accordance with the tried, true and convoluted methods of the past, the Pennsylvania Department of General Services (DGS) paid a private company in Pittsburgh to recruit vendors, train them to participate in an online auction and then conduct it once all parties were ready. In fact, DGS paid \$240,000 for the firm to run three auctions, then saved \$250,000 on the first one alone.

The department figured its savings by researching the market and past contracts, and came up with a price it would expect to pay for the two lots of aluminum through the usual sealed-bid process. That number was \$250,000 more than they ended up paying through the auction set up by FreeMarkets Online, which pitted vendors against each other live, via the Internet, letting them underbid each other until the lowest bid went unmatched.

Suppliers gathered live online in late March. In each lot, they bid against each other for 30 minutes before the auction went to a final round, in which the lowest bid would stand, unless a lower offer came within a minute.

"Both auctions ran another 20 minutes or so over," said Gary Ankabrandt, the department's assistant chief counsel. "They kept putting in lower bids."

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that first event paid for the entire pilot. The May 19 event auctioned off 31 coal contracts in one long day of bidding. The 155,000 tons of Pennsylvania anthracite will cost the state about \$10 million, about \$950,000 less than it expected to pay. The June 9 auction had 972,000 tons of road salt bid for in 17 lots. A payout of \$30 million saved the state \$2.5 million, bringing the total savings of the three events to \$3.7 million.

The Way It Works

The government agency doesn't do a thing. FreeMarkets, a 5-year-old company that, until now, has only worked for private industry, gets paid to do the work. In what the company describes as a turnkey solution, it organizes and orchestrates the entire event, from the recruitment and training of vendors to the actual auctions. The software and procedure require no training from the client's end, but bidding vendors are up to speed on FreeMarkets' software before the big day.

"We work with the buyer and supplier to make sure that the buyer is applying this tool in the right way, and the suppliers are prepared and comfortable and ready to bid. We're a service business," said Rob Stevens, FreeMarkets' director of market-making. "Technology without the service does not provide the best outcome. The market we serve is mainly buyers of industrial parts or things like that, so they're making multimillion-dollar decisions. So this is really a way to help them make better decisions and get better purchase prices. To do that, you need to make sure it's not just, 'Hey, here's a piece of software; good luck.'"

Clients don't have to rely only on price as a decision factor, and can make allowances for other issues, including quality. Some states have programs that favor certain categories, such as minority ownership of a business. In the aluminum auction, Pennsylvania sought recycled aluminum.

"The invitation for bid indicated if they offered recycled aluminum, they'd be given a 5 percent bidding preference," Ankabrandt recalled. "Well, all the bidders offered recycled aluminum in various percentages. I think our requirement to get the bidding preference was that it had to be 10 percent recycled."

The winning bidder offered aluminum with 95 percent recycled content.

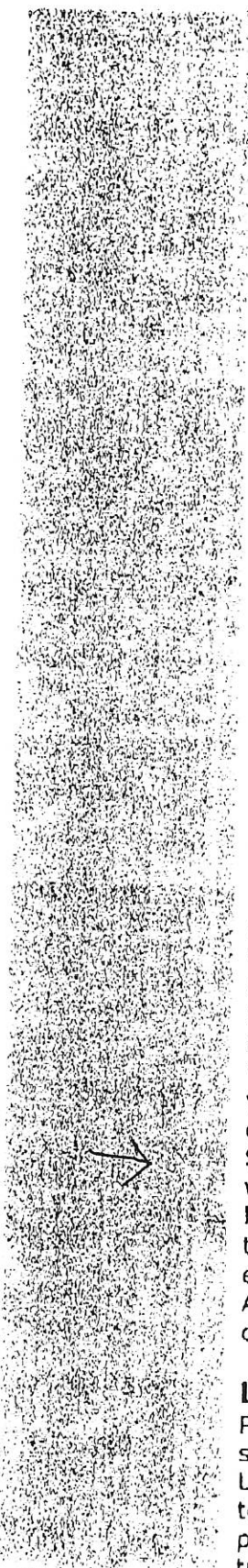
Vendor's View

The shift from the traditional sealed bid -- figuring the most you can charge and still beat every other bidder in one blind guess -- to the digital shoving match of undercutting rivals in a live, competitive auction is not an easy transition. Government officials can save money while watching vendors fall all over themselves. For the vendor, it's not so pretty.

Redding Anthracite Co. was one of the winning bidders in the daylong auction of 32 coal contracts. Deborah Fehr said it was a tense and not entirely satisfying day.

"It was very long. It started at 9 and never ended until 7 o'clock," she said, still sounding tired, though good-humored, two months later. "One thing bothered [the executive doing the bidding]: We understand that it's a competitive bid, but there are times when the bids would go down like \$5 [per ton] at a shot, and it took you out of the market right away."

Adjusting to cutthroat competition wasn't easy, and a bidder skilled at the sealed-envelope method could be frustrated when those



well-honed skills couldn't be brought into play. "There were some bids that we could have potentially got if it hadn't been bid that way," she said. "[A sealed bid] would've been one shot and done; everyone submits their first and final bid. We felt there were some contracts we should have been able to get [by that method] but didn't."

While noting that 32 bids in a single day, when quick-profit calculations in which million-dollar decisions were made by the minute, was rather draining, Fehr said using the equipment and working online was easy and comfortable. And she said her company would be back next time coal bids went on the electronic block.



Not for Everything

Given the cost of setting up the auction and locating and training vendors, it's not a method suited to buying office supplies,

unless you need paper clips by the metric ton. Purchases that require flexibility or that lack uniformity, such as multiple agencies' needs for differently configured computers and software, won't work



either.

"We'll still use the sealed-bid process for procuring the other items that we need," said Samantha Elliot, DGS press secretary. "Obviously, we can't do every purchase with this. But with aluminum and coal, it was a good choice."

"You've got to have something, of course, where there's competition," Ankabrandt said. "You've got to have something where there's a large dollar volume to justify the cost. If it's only a \$10,000 contract, it's not going to pay for the cost of FreeMarkets to train, to run their software, to provide copies of their software and all that."

"We look at three criteria," FreeMarkets' Stevens said. "The first is, you need to be able to specify what you're buying. If you can write down what you expect suppliers to bid on, that meets that criteria. Second, there's got to be competition in that industry. An industry where there's only one supplier, or two, is not well-suited for this kind of competition aspect. And third, the buy has to be big enough to make this process worthwhile. A thousand dollars worth of equipment, this is not the right answer. A million dollars? Absolutely. And there's no specific cutoff. It depends on the circumstances."



Letter of the Law

Pennsylvania is FreeMarkets' first public-sector client, and there was some concern about state laws governing procurement methods. Laws governing the process of opening envelopes are going to have to be rewritten for an increasingly paperless age. New methods of procurement, from the FreeMarkets concept to online submission of traditional blind bids to multistate collaborations such as the EMail



project, will require new legislative concepts.

Ankabrandt said a new procurement code consolidating and updating many procedures provided some of the flexibility necessary to experiment with the auction format.

The oddest part of matching new technology to old legal concepts was the bid opening, which technically occurred, but without that traditional hallmark of bidding -- an actual number.

"When they submit their proposals in response to the invitation to qualify, there is a bid opening at that time," Ankabrandt said. "There are no prices with their bids, there is just qualification information and their agreement to comply. So at that time, there's a bid opening, if you want to call it that, but there are no prices. Then it takes us two weeks, roughly, to process the contracts, and then we can have the competitive bidding event, the auction."



Round Two?

The opportunity to refine the auction process seems likely, according to state representatives, who began discussing a post-pilot relationship with FreeMarkets before the third auction took place.

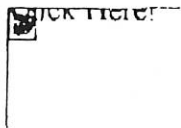
"We're in negotiations right now," Ankabrandt said. "The legislative change isn't something that can happen overnight. The Legislature won't be back until fall. I don't see us making any changes to our process. When we did the aluminum, we saw some things that needed to be done, and we did that for the coal."

Ankabrandt noted that the auction process doesn't actually save the state any time or labor -- it was a long coal day from his end, too -- but the savings in costs were compelling and the company's market reports and efforts to recruit new vendors were an additional value. "We saved the taxpayers \$3.7 million," Elliot emphasized. "I think we'll do this again."

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TO: Representative Denna Horst, Chairperson of E-Government Committee
RE: Testimony for HB 2413 and SB 227

Madame Chairman,

My name is Ron Roc and I am the Manager of Purchasing Services for the Shawnee Mission School District. I want to thank you for this opportunity to testify in support of both HB 2413 and SB 227. Electronic procurement is in its infancy stage with the public school industry, however, I believe that electronic bidding is an important step in it ultimately becoming a more useful tool in the procurement process. The following reasons are the basis of my support for electronic bidding:

- 1) electronic bidding can reduce the cycle time for the processing of bids;
- 2) electronic bidding can reduce paper processes and ultimately, the number of clerical/data entry errors;
- 3) electronic bidding helps new and potential suppliers in understanding the bid process;
- 4) electronic bidding can lower transaction costs;
- 5) electronic bidding streamlines the process of doing bid addendums;
- 6) electronic bidding offers the potential of disseminating contract information to a large number of users who may need to place orders using that information;
- 7) electronic bidding offers the ability to more immediately post bid results;
- 8) electronic bidding offers more up-to-date pricing capabilities; and
- 9) electronic bidding can free up more time for purchasing personnel to do other things.

Generally, the minimum number of steps required to manually process bids include the following: generation of bid specifications, generation of bid documents, generation of a list of potential vendors, disseminating bid documents to those bidders, disseminating bid addendums (when required), receiving completed bid documents, conducting a formal bid opening, generating spreadsheets (bid tabulations) for evaluation and board approval, sharing bid results with bidders and district users, and notification of the bid award(s). The cycle time for manually processing bids can take as long as 5 to 8 weeks, depending on bid complexity and board meeting schedules. School districts have to allow time for bidders to manually complete the bid forms and to return their sealed bid responses in the mail or special delivery. This can account for up to 7 days. Time also has to be allowed for manually preparing the bid tabulations for evaluation and board presentation. Complex bid tabulations can take several reviews before making sure that there are no errors and that the information is complete. An electronic bid allows for the bid responses to be downloaded into a spreadsheet thus instantly creating a bid tabulation. These are just two examples of where time could be reduced from the overall process by doing electronic bidding. This same electronic spreadsheet can also be easily and quickly disseminated with those users who need the pricing to generate purchase requests.

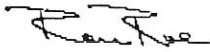
Reducing the bid processing time also allows vendors to provide more current and accurate pricing. Vendors know that a purchase order may not be generated for several

Attachment 4
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weeks after submitting a bid and might have to accommodate potential price increases during those weeks by submitting a higher bid price. Shortening the bid processing time decreases the vendor's need for passing such higher prices to us. Finally, the reduction of paperwork equates to a reduction in labor (transaction costs) and allows more time for purchasing personnel to concentrate on other tasks.

I hope the above information provides insight as to how electronic bidding can improve the purchasing process in public schools. I want to thank Madame Chairman Horst for the opportunity to testify and welcome any questions that the committee might have for me.

Sincerely,



Ron Roc, C.P.M.
Manager of Purchasing Services
Shawnee Mission School District

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On-Line Bidding
March 13, 2001

Thank you, Madame Chairman, for the opportunity to testify today in support of **HB 2413** and **SB 227**. This bill allows all levels of government to use on-line bidding for procurement of goods and services. On-line bidding provides a powerful tool to manage the day-to-day processes of direct and indirect materials, goods and services procurement in a secure web-based environment. It aids purchasing managers by streamlining the repetitive tasks associated with traditional procurement methods. This bill gives purchasing managers the ability to create bidding events in which suppliers compete based on price as well as other attributes (i.e. payment terms, lead times, product life, warranties).

On-line bidding can:

- Streamline the traditionally labor-intensive, paper-based procurement processes for direct and indirect materials, goods and services
- Increase the speed and richness of information flows – internally and externally
- Provide access to real-time information for improved decision making
- Negotiate the best available terms and price
- Allow suppliers to differentiate themselves

Madame Chairman, I understand that this bill will have some opponents that would like to exclude themselves from being allowed to do on-line bidding. Frankly, I find this confusing. This is a permissive bill. It does not contain any mandates. If the service or material is not deemed to be appropriate for on-line bidding, there is no mandate to use it. HB 2413 gives state agencies the freedom to determine for themselves if this is the most advantageous method to use for their specific circumstances. It is used at the agency's discretion. However, if an exclusion is put in the bill, that does have the result of being a reverse mandate. If a time should then arise when on-line bidding is desired for that exclusion, there will be no allowance for it. Therefore, I would recommend that no exclusions be made.

Thank you, Madame Chairman and committee.

Attachment 5
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DIVISION OF THE BUDGET
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Topeka, Kansas 66612-1575
(785) 296-2436
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<http://da.state.ks.us/budget>
March 9, 2001

Bill Graves
Governor

Duane A. Goossen
Director

The Honorable Deena Horst, Chairperson
House Committee on e-Government
Statehouse, Room 174-W
Topeka, Kansas 66612

Dear Representative Horst:

SUBJECT: Fiscal Note for HB 2413 by Representative Cook, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2413 is respectfully submitted to your committee.

HB 2413 would authorize the Secretary of Administration or state agencies to accept bids for purchasing goods and services electronically over the Internet if they determined that it was more advantageous to use this method compared to others. The bill specifies how on-line competitive bidding would be conducted, allows for the pre-qualification of bidders, and exempts on-line bidding from the existing competitive bidding statutes. Municipalities would be authorized to adopt similar measures.

The passage of HB 2413 would not require additional resources for the Division of Purchases. However, there would be a cost resulting from the need to pay a third party service provider for the ability to undertake on-line competitive bidding. The cost could take the form of a percentage-based management fee and a fee based on a percentage of costs saved. For any electronic bidding done by the Division of Purchases, the cost would be passed on to agencies. In addition, the Division estimates that allowing state agencies to bid electronically without central coordination could hinder the aggregation of purchases to realize volume discounts. This, in turn, could result in some lost savings. No part of the fiscal effect that might result from the passage of this bill is included in *The FY 2002 Governor's Budget Report*. The fiscal effect on municipalities is unknown.

Sincerely,

A handwritten signature in cursive script, appearing to read "Duane A. Goossen".

Duane A. Goossen
Director of the Budget

cc: Pat Higgins, Department of Administration



TOPEKA

SENATE CHAMBER

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COMMERCE, CHAIRPERSON

UTILITIES
ELECTIONS & LOCAL GOVERNMENT

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KARIN BROWNLEE

SENATOR, 23RD DISTRICT
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DURING SESSION

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Senate Bill 227 On-Line Bidding

Thank you for the opportunity to testify in support of Senate Bill 227. I have a couple of brief points that I would like you to consider.

1. Permissive bill. This is not a mandate.
2. School District Bonding Issues
3. Senate adopted amendments
 - A. Department of Administration
 - B. KDOT
 - C. Construction Materials

Thank you for your time. I would be happy to answer any questions.

Attachment 6
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35200 W. 91st. Street
DeSoto, Kansas 66018-
Phone: 913/583-8300
FAX: 913/583-8303
E-mail: szoellner@usd232.org

Dr. Sharon Zoellner
Deputy Superintendent

March 13, 2001

To: Members of the E-Government Committee
From: Sharon Zoellner, Deputy Superintendent
Re: Testimony on Senate Bill 227

Thank-you Madame Chairman and members of the committee for permitting me time to address Senate Bill 227.

School Districts are constantly looking for methods to increase efficiency and effectiveness with dwindling dollars.

The ability for school districts to use electronic means to secure bids will help streamline the manner in which we do business by reducing the amount of time it takes to complete the process and saving costs in paperwork. Increasing efficiency in the business office of the school district frees up funds that can be allocated more directly to the classroom.

This method of securing bids will also be more cost effective for vendors wishing to submit a bid. They will have instant access to the specifications and will not have to pay for paper copies of bid packages.

It is imperative that the final language of the bill be inclusive of school districts. Specifically, K.S.A. 72-6770 which requires sealed bids will need to be noted as exempt for this process

Thank-you for your time and I would be happy to address any questions you might have.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Zoellner".

Sharon Zoellner, Ph.D.
Deputy Superintendent

*e*procurement
Wichita State University

Some facts regarding WSU's experience with eprocurement:

- 1) WSU has used eprocurement since 1/99. The system used was a previous version than what is available today. The difference is that in the system used, the software was PC based, while today's systems are internet based.
 - a. WSU had great success processing over 300 bid documents, having increased productivity of the bid process by more than 200%.
 - b. Benefits include:
 - i. Increased efficiency (# of bids completed)
 - ii. Increased vendor base
 - iii. Shorter bid cycle time
 - iv. Easier tabulation of bids
 - v. Automation of results to vendors
 - c. Downside:
 - i. Some small vendors do not like computers and will not respond
 - ii. Not all types of bids can be sent out electronically (cannot transmit a document such as blueprints) without upgrade in technology
- 2) We are addressing the following issues as we are evaluating the move to the internet platform:
 - a. Completion of the RFP must be uncomplicated and quick and include a minimal number of internet "connections"
 - b. Must allow for a printable version to provide for document retention. The printed version must be understandable and presentable. WSU is addressing this by having eprocurement contractor use an electronic form developed in house. This also takes into consideration #2a.
 - c. Must address the solicitation of current or local vendors who are not yet current members of the system.
 - i. Policy on whether we will allow anybody to bid outside the system and how long we will allow this
 - ii. Policy on how to deal with local constituents who do not have a computer
 - d. Must be compatible with all electronic financial systems. The selling point to current vendors must be the ease and quickness with which they receive payment of their invoices thereby reducing their cost of money. Otherwise they will view it as a way to loose business to vendors who provide nothing more than a wholesaler or etailor who provides no added value. As an interim to electronic financial systems, we can use the Procurement Card as a payment vehicle.
 - e. The system should include a catalog function
 - i. Current open-end contracts should be listed
 - ii. Other vendors who do not have contracts could be solicited (WW Grainger) to pay to include their catalogs.
 - iii. Agency departments need the ability to compare contract prices and submit pricing concerns to proper responsible authority.

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DEPARTMENT OF ADMINISTRATION
Division of Purchases

BILL GRAVES
Governor

DAN STANLEY
Secretary of Administration

JOHN T. HOULIHAN
Director of Purchases
900 S.W. Jackson, Room 102-N
Landon State Office Building
Topeka, KS 66612-1286
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COMMITTEE ON e-GOVERNMENT
TESTIMONY ON HOUSE BILL NO. 2413
March 13, 2001

Presented by John T. Houlihan
Director of Purchases

Madam Chair and members of the committee. I am John Houlihan, the State Director of Purchases. Thank you for the opportunity to speak on behalf of the Department of Administration about House Bill 2413.

House Bill 2413 would allow the state to accept bids that are transmitted electronically over the Internet in a real time, competitive bidding event, also known as a reverse auction. The legislation would also exempt on-line bidding from K.S.A. 75-3739 *et seq.*, the competitive bid statutes.

This type of on-line bidding is authorized or is pending authorization in 13 other states, and most notably the State of Pennsylvania. The computer hardware and software used to stage these events is usually provided by a third party application service provider specializing in this area, and funded on a "pay as you go" basis by two methods. First, a percentage fee to manage the event is charged to the state agency or central procurement authority initiating the event. Second, a fee calculated as a percentage of the cost savings that are obtained is assessed. These savings are based on the historical amounts paid for the service or commodity by the state entity. If the bidding were conducted by the Division of Purchases, the fee paid by the State for each event would have to be passed on to the agencies, with that cost to be covered out of the agency's cost savings. The fee for running these events is usually 1% to 4%, and may or may not result in a savings to the state.

Reverse auctioning is a small part of the overall procurement reform that I have been working on. We are working on a competitive solicitation to install an Internet based overall electronic procurement system in the state.

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My first priority is to get my statewide contracts into an electronic catalog format, which will allow electronic ordering, billing and payment. The next priority will be to accept electronic bids and conduct sealed electronic bid openings. Last priority will be other electronic features such as reverse and regular auctioning.

I believe the words in H.B. 2413 are based on model legislation and as such are somewhat generic in nature. I would like to propose a substitute for H.B. 2413, which will be more compatible with our current Kansas purchasing statutes and practices. The substitute bill will simply modify our current purchasing statute K.S.A. 75-3739.

[Explain substitute bill]

This concludes my prepared testimony, are there any questions?

SUBSTITUTE FOR HOUSE BILL No. 2413

By Committee on e-Government

AN ACT relating to state purchasing, authorizing electronic sealed bids and authorizing electronic sealed bids and authorizing reverse auctioning; amending K.S.A. 2000 Supp. 75-3739 and repealing the existing section.

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

Section 1. K.S.A. 2000 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.

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, 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, reverse auctioning or 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, 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 reverse auctioning or the 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 by reverse auctioning or 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, 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. 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 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, 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 this section:

(1) "Sealed bids" may include a procurement process following procedures approved by the director of purchases in which proposals pursuant to K.S.A. 37,102, and amendments thereto, or bids pursuant to this section are received electronically over the internet; and

(2) "reverse auctioning" means a procurement process following procedures approved by the director of purchases where bidders are invited to bid on specific goods or services through real-time electronic bidding, with the award being made to the lowest responsive 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.

Sec. 2. K.S.A. 2000 Supp. 75-3739 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

**TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE HOUSE COMMITTEE ON E-GOVERNMENT
ON HB 2413 AND SB 227**

March 13, 2001

By Corey D Peterson, AGC of Kansas, Inc.

Madam Chairman and members of the committee, my name is Corey D Peterson, Executive Vice President of the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing building general contractors and subcontractors throughout Kansas (with the exception of Johnson and Wyandotte counties).

The Associated General Contractors of Kansas is opposed to the inclusion of “construction” in House Bill No. 2413 and Senate Bill No. 227. This opposition is due to the fact the bill provides the State of Kansas and the State’s municipalities the ability to conduct on-line “reverse auctions” for construction projects.

Reasons the AGC of Kansas opposes this new procurement method for construction include:

- 1) **The complexity of compiling and establishing bids for building construction projects makes live bidding virtually impossible.** When generating a bid for building construction, the general contractor must first obtain bids from several layers of subcontractors and suppliers. Because of this, making adjustments based on sound business practices to the bid price during an auction would not be possible.
- 2) As stated by the online bidding software supplier, **the software for online auctioning is intended for “commodity-type” products, which building construction is not.** During the vendor’s testimony, it was stated that six states had adopted this new procurement method. Of these six states, **four (South Carolina, Missouri, Minnesota & Virginia) have been confirmed to not include construction** in their new statute permitting “reverse auctioning.” The remaining two states’ positions have not be confirmed.
- 3) This is a **completely new procurement method** that could replace the tried and tested method of “lowest responsible bidder” for construction projects determined by sealed bid. This method has served the State of Kansas well for many years.

*Attachment 10
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- 4) **Bonding companies would be reluctant to extend bonding capacity** to all but the most solvent companies if there was “reverse auctioning.” This could have the **effect of reducing competition**.
- 5) A “reverse auctioning” event would unnecessarily tempt companies to underbid projects. This could lead to **construction companies having to default**, which would cause tremendous **problems for the state in getting work done correctly and on time**.
- 6) This new procedure would certainly have the effect of **increasing the potential for mistakes in bids**. This can also cause problems for the state as well as the contractor.
- 7) This bill would supercede existing detailed purchasing statutes that include many important exceptions and requirements.
- 8) Language in the bill is vague, leaving room for confusion as to what is actually covered.
- 9) “Reverse auctioning” is not defined, although the intent of the bill is to allow for it. Although not stated in the bill, this event would allow a contractor to bid \$X for a project, the next contractor would bid less, and just like in an auction, bidding would go back and forth lower until no further bids are received. This is a completely new procurement method, much different than the traditional sealed lowest responsible bid.

Because of the reasons stated above, AGC of Kansas suggests the following amendments:

Senate Bill No. 227

- | | |
|----------------------|--|
| Page 1, lines 40&41. | Delete "construction materials". |
| Page 1, line 41 | Add ", <i>but not construction</i> ," after "information services". |
| Page 2, line 6 | Add ", <i>but not construction</i> ." at the end of the sentence after "services". |
| Page 2, line 29 | Add ", <i>but not construction</i> ." at the end of the sentence after "services". |

House Bill No. 2413

- | | |
|-----------------|--|
| Page 1, line 36 | Delete the word "construction". |
| Page 1, line 37 | Add ", <i>but not construction</i> ," after "information services". |
| Page 1, line 43 | Add ", <i>but not construction</i> ." to the end of the sentence after "services". |
| Page 2, line 17 | Add ", <i>but not construction</i> ." to the end of the sentence after "services". |

AGC of Kansas, however, **does** support the ability to submit traditional sealed bids via the internet.

Many of our members, particularly those located in the outlying areas of the state, would benefit from this. This could possibly be allowed with an amendment to an existing statute, possibly K.S.A. 75-3739 or K.S.A. 75-3740.

Thank you for your consideration.

FERRELL

**CONSTRUCTION
OF TOPEKA, INC.
TESTIMONY PRESENTED TO THE HOUSE
E-GOVERNMENT COMMITTEE
MARCH 13, 2001
BY
DEAN F. FERRELL**

Madam Chair and Members of the Committee.

My name is Dean Ferrell. I am President and Owner of Ferrell Construction of Topeka, Inc., and I am a past president of the Associated General Contractors of Kansas. My company specializes in commercial building construction and, through the years, we have completed several State of Kansas projects.

I am here to speak against House Bill 2413 and Senate Bill 227, regarding internet bidding.

When I first read the proposed legislation, regarding "on line" bidding, I was enthused, knowing that it would allow contractors the opportunity to bid projects without having to send bid "runners" to the State Capital. At the present time all bidders must have their proposals delivered or mailed to the Director of Purchasing - prior to bid time. As society moves forward in the age of technology, "on line" bidding would appear to be a logical step.

However, I have been informed by those more familiar with these bills that I may have missed something in my interpretation. I am told that what these bills actually do is set up the opportunity for the State to have "reverse" auctions, wherein all bidders are allowed to see their competitor's bids and thereby can modify, and continually modify, their own bids until the "closing" time.

*Attachment 11
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In the construction industry, this would be a bad practice to ever think about starting. What would result is a deterioration of the bid process that we have today - and even though the present system may not be perfect - it works. "Reverse auctioning", often times referred to as "bid shopping", has always been considered an unethical practice in our industry. Exposing one's proposal to a competing contractor prior to bid time invites problems, and I urge you to **not** support this bill in its present form.

I am told that the Directors of Purchasing and Architectural Services have indicated they would not utilize "reverse auctioning" for construction services procurement. However, they will not always be in charge, and passage of this bill now would allow their successors to use this practice sometime in the future.

I personally think the practice of "reverse auctioning" is wrong for any industry; however at this time I am concerned mainly with how it affects construction. If you think the State really needs this for purchasing materials and equipment, so be it. I do ask, however, that you give strong consideration to **excluding** the construction industry from this bill.

**TESTIMONY OF WILLIAM A. LARSON, GENERAL COUNSEL
FOR ASSOCIATED GENERAL CONTRACTORS OF KANSAS, INC.
APPEARING IN FRONT OF HOUSE E-GOVERNMENT COMMITTEE
REGARDING SENATE BILL 227 AND HOUSE BILL 2413.**

Other representatives of the Associated General Contractors of Kansas and Members of the Association have or will testify that the provisions of Senate Bill 227 which allow for reverse auctioning are inappropriate and inadvisable for construction projects. I want to focus on a couple of specific points and then talk generally as to why construction projects should be excluded from the Bill.

One of the issues which has been raised by opponents of Senate Bill 227 is that in a reverse auction atmosphere, where bidders will be altering and changing bids at the last minute, there will be a significant increase in the likelihood of bid mistakes. Construction bids, particularly on larger construction projects where there may be several alternates to bid, are highly complex often times taking considerable time to generate. I do not think that there is any question but that the altering and changing of these bids at the last minute that would be necessitated by the reverse auction procedures in this Bill would significantly increase the likelihood of mistakes in the bids.

The problem of bid mistakes is a costly problem whenever it occurs for both the contractor and for the public entity involved. Several years ago, K.S.A. 75-6901 et seq. was enacted to provide equitable relief to contractors for certain types of bid mistakes. I believe the statutes have worked well. Nevertheless, it is an involved procedure, which necessarily results in some delays in the construction project.

Furthermore, K.S.A. 75-6901 et seq. only provides relief for certain types of clerical mistakes. It does not provide relief for judgmental errors, for example an error in interpreting the plans and specifications. A reverse auction would undoubtedly increase not only the likelihood of clerical mistakes but also judgmental errors for which there is no equitable relief for a contractor.

Even without making an error, the reverse auction means of procurement could well tempt some contractors to seriously underbid a project. At first blush, this may seem to be an advantage to governmental entities, but I would suggest that underbidding projects, in the long run, does not really benefit anyone. The underbidding of projects is probably the leading cause of construction company failures. Public entities are protected by bonding but if a bonding company has to take over a job, it usually creates substantial delays in the completion of the project and often leads to legal disputes which do not benefit either side.

*Attachment 12
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It is my understanding that on the Senate side virtually all of the proponents and opponents of Senate Bill 227 agreed that reverse bidding would not be appropriate for construction projects. However, construction was not exempted from Senate Bill 227 on the basis that the reverse auctioning procedures were permissive and not mandatory and it was unlikely that they would be used on construction projects. I would suggest that this reasoning is flawed and diametrically opposed to the system of government that we have.

In this State and in this Country, we do not grant governmental entities broad unlimited powers on the belief that governmental officials would never abuse those powers. Rather, we grant limited powers in order to protect citizens from improper use of governmental power.

Probably the most famous example of limiting governmental powers is the Bill of Rights. We limit the government from abolishing things like freedom of speech or freedom of the press. We do not rely on the discretion of governmental officials to refrain from limiting our basic freedoms.

The justification used by proponents of Senate Bill 227 to refuse to exclude construction from its provisions that it was permissive and not mandatory is an analogous to giving governmental officials the right to abolish freedom of speech and defending the decision to do so by arguing that government officials would be unlikely to actually do it.

If everyone agrees that the reverse auction provisions of Senate Bill 227 should not be applied to construction, the only logical thing to do is to exempt construction from the provisions of the Bill.

THE KANSAS CONTRACTORS ASSOCIATION, INC.



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Testimony

By the Kansas Contractors Association before the House E-Government

Committee regarding Electronic Submission of Bids---S 227/H2413

March 13, 2001

Madame Chairman and members of the House E-Government Committee, I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our organization represents over 400 companies who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest.

I wanted to let you know the Kansas Contractors Association is in opposition to Senate Bill 227 in its present form. We do support electronic bid submission which our organization has suggested to KDOT many times, but for whatever reasons it has not occurred.

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Other states are getting into electronic bid submission and although some of our members have some valid concerns about this, we believe KDOT, which is our largest customer, will work out the bugs and get this accomplished. We do caution KDOT as well as counties who are considering electronic bid submission that they make sure the encryption methods that they use will work. We are greatly concerned that electronic bids could be subject to hacking and that could present a large problem for all of us.

This bill, mentions that it would allow counties and municipalities to also become involved in electronic bid submission. We have a good relationship with the smaller governmental entities but we are aware they have a small staff and there is a possibility that to conduct electronic bid submission they might need a larger staff. We hope that isn't the case since it could raise the cost of doing business with those various governmental entities. KDOT on the other hand an adequate staff and we feel more comfortable they could handle a new program such as this.

In addition, we are greatly concerned about another element of the bill which would allow "reverse auctions". Although it is not defined, it appears this legislation would allow such a procedure for construction projects. Our industry has always been accustomed to the lowest and best bid determining who gets the work and it has worked for over 90 years in all forms of government.

In our opinion, it allows the state to get the best bang for the buck. It also insures an equal opportunity for those bidding for a job. Although you have seen a demonstration of how a reverse auction works for commodity items, we believe it would be a disaster if used in bidding complex, construction projects.

We are concerned that it could become a frenzy in bidding and in essence a company could bid way below cost and end up losing its bond and going bankrupt. We think that would be a problem for both our industry and the state.

Our suggestion is to eliminate construction from this proposal.

When the Kansas Senate passed this bill, they intended to restrict the bill to not include construction projects and in their amendment on the floor they added the word "materials" which shows up in line 41 on page 1 of SB 227.

But after the vote, it was determined that just putting a new word doesn't take care of our concern and it still would allow either the state or the counties or others to conduct auctions of construction projects.

We respectfully suggest the following language could be added as amendment...."The purchase of goods or nonprofessional services, but not construction or professional services may be made by reverse auctioning."

We further suggest that a definition of what a reverse auction is be included in the proposal before you. I have language that could be used as a definition.

I thank you for your time and would be glad to answer any of your questions if I may.

TESTIMONY
Before the House E-Government Committee:

Regarding On-Line Bidding/Reverse Auctions
House Bill 2413/Senate Bill 227

Mister Chairman and members of the Senate Transportation Committee. I appreciate the opportunity to address this committee on this very important issue.

I am Orville (Butch) Spray, Chairman of Venture Corporation. Venture Corporation is a prime (General) contractor who specializes in Department of Transportation work. (Highways)

The current Secretary of Transportation has characterized this bill, as applied to construction projects, as a "disaster". I would characterize it, to our industry, as a "wind fall". Let me try and explain these different interpretations.

Currently contractors request a set of objective plans and specifications. Although many projects are similar, each is different with an infinite number of variables. The contractor analyzes the work to be done, solicits sub-contractors, material quotes & delivery, computes productions and derives an estimated cost with profit for the project. The total estimate cost then is placed in a sealed envelope. All bids are opened at a designated time & location.

When the bids are opened the lowest bidder is normally awarded the contract. A term our industry uses is "how much money was left on the table." This refers to the difference in the estimate cost between the low bidder and the second bidder, created by the here-to for mentioned variables. This difference can be a significant amount. (See

Attachment 14
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enclosures)

In today's world, the cost of preparing a bid is significant. Therefore a contractor will only bid a project in which they are interested. In a sealed bid environment we realize we could lose the bid by a small amount. We therefore, conduct our own little internal auction. We ask ourselves, repeatedly, the least amount we will bid. This is the final bid placed in the sealed envelope. It would be no less in a live auction, but it could be more.

You can begin to understand why the secretary would consider this bill a disaster and I a windfall. In an auction the differential between low and 2nd bidder would be essentially eliminated. It would be great for the contracting industry. If the mathematical difference between the low and 2nd bidder were average and applied to the 1999 CTP, it would cost the KDOT in excess of \$50,000,000.00

We realize this bill only allows and does not mandate auctions. Our concern is the future and individuals that may have the authority to implement the procedure without an understanding of the consequences.

I do not believe electronic bidding by Internet has sufficient security at this point in time for construction projects.

Sincerely,
VENTURE CORPORATION

Orville (Butch) Spray
Chairman

PLANHOLDERS FOR THE KDOT LETTING TO BE HELD FEBRUARY 21, 2001
 AT 2:00 PM AT THE TOPEKA CAPITAL PLAZA

PAGE ONE

JOHNSON 7.46 K 7323.01
 GRADING, CONC PAVEMENT & BR NO

LEAVENWORTH 52 U 1690.01
 GRADING, BITUMINOUS SURFACING & BR

AMINO BROS. CO., INC. _____
 BARCUS, L. G. & SONS, INC. _____
 CLARKSON CONST. CO. \$3,951,056.06 ✓
 LEAVENWORTH EXC. & EQUIP. \$4,108,006.25
 O'DONNELL & SONS CONST. CO., _____
 BEACHNER CONST. CO., INC. _____
 KNAPP, R.A. CONST., INC. \$4,749,850.45
 KINGS CONST. CO., INC. _____
 ELLIS, W. A. CONST. CO. _____
 FAHEY J M CONST. CO. \$4,096,851.06 ~
 L. B. ENTERPRISES, INC. _____
 MILES EXCAVATING, INC. \$4,269,029.62
 NEGUS.SONS, INC. _____
 PAVERS, INC. _____
 PYRAMID CONTRACTORS, INC. \$4,281,414.30
 KING CONST. CO., INC. & SUBSIDS. _____
 TENSON CONST., INC. _____
 COMANCHE CONST. INC & SUB _____
 APAC KANSAS, INC., WILKERSON _____
 APAC KANSAS, INC., RENO DIV. \$4,274,129.31
 FREEMAN, D.F. CONTRS., INC.& \$4,564,486.34

AMINO BROS. CO., INC. _____
 BARCUS, L. G. & SONS, INC. _____
 LEAVENWORTH EXC. & EQUIP. \$1,097,658.15
 MIDWEST CONST. CO., INC. _____
 O'DONNELL & SONS CONST. CO., _____
 BEACHNER CONST. CO., INC. _____
 KINGS CONST. CO., INC. \$1,034,050.75
 FAHEY J M CONST. CO. \$1,208,946.65
 MILES EXCAVATING, INC. \$1,200,624.59
 PYRAMID CONTRACTORS, INC. _____
 KING CONST. CO., INC. & SUBSIDS. _____
 APAC.MISSOURI, INC. _____
 APAC KANSAS, INC., RENO DIV. _____
 LINAWEAVER CONSTRUCTION, \$1,046,920.45
 LARKIN EXCAVATING, INC. \$1,002,739.56 ~
 FREEMAN, D.F. CONTRS., INC.& _____

LEAVENWORTH 52 U 1606.01
 GRADING & BITUMINOUS SURFACING

LYON 99.56 K 6420.01
 GRADING, SURFACING & BR NO

AMINO BROS. CO., INC. \$422,951.14 ✓
 LEAVENWORTH EXC. & EQUIP. \$425,412.32 -
 O'DONNELL & SONS CONST. CO., _____
 BEACHNER CONST. CO., INC. _____
 INDUSTRIAL EXCAVATING & _____
 KINGS CONST. CO., INC. \$447,139.30
 FAHEY J M CONST. CO. \$529,162.50
 MC ANANY CONST. INC. \$434,010.71
 MILES EXCAVATING, INC. \$465,095.05
 APAC.MISSOURI, INC. _____
 APAC KANSAS, INC., RENO DIV. _____
 LINAWEAVER CONSTRUCTION, \$433,786.39
 LARKIN EXCAVATING, INC. \$449,191.21
 FREEMAN, D.F. CONTRS., INC.& _____

MIDWEST CONST. CO., INC. _____
 REECE CONST. CO., INC. _____
 UTILITY CONTRACTORS, INC. _____
 BEACHNER CONST. CO., INC. _____
 STEUBER A.O. CONST. CO., INC. _____
 DUFUR BRIDGE CO., INC. _____
 SHILLING CONST. CO., INC. _____
 BRIDGES, INC. \$919,107.95
 DONDLINGER & SONS CONST. CO., _____
 PYRAMID CONTRACTORS, INC. _____
 KING CONST. CO., INC. & SUBSIDS. \$834,115.60
 APAC KANSAS, INC., SHEARS DIV. _____

PAGE TOTAL
 \$ 6,475,422 - 2nd bids
 \$ 6,210,862 - low bids
 \$ 264,560 - DIFF:
 4.26%

14-3

MARSHALL 77.58 K 6385.01
GRADING, SURFACING & BR NO

REPUBLIC 148.79 K 6422.01
GRADING, SURFACING & BR NO

AMINO BROS. CO., INC.	_____
MIDWEST CONST. CO., INC.	_____
REECE CONST. CO., INC.	_____
BEACHNER CONST. CO., INC.	_____
L & M CONTRACTORS, INC.	_____
STUEBER A.O. CONST. CO., INC.	_____
SHILLING CONST. CO., INC.	_____
BRIDGES, INC.	\$998,868.67
KING CONST. CO., INC. & SUBSIDS.	_____
_____	_____
_____	_____
_____	_____

AMINO BROS. CO., INC.	_____
REECE CONST. CO., INC.	\$879,908.89
BEACHNER CONST. CO., INC.	_____
L & M CONTRACTORS, INC.	\$676,155.71
STUEBER A.O. CONST. CO., INC.	_____
DUFUR BRIDGE CO., INC.	_____
BRIDGES, INC.	\$722,321.07
KING CONST. CO., INC. & SUBSIDS.	_____
APAC KANSAS, INC., SHEARS DIV.	_____
_____	_____
_____	_____
_____	_____

SHAWNEE 89 U 1457.01
GRADING, SURFACING & BR STA 1+085

WASHINGTON 148.101 K 6368.01
GR, BIT SURF & BR NO 148.101.39.40(051)

MIDWEST CONST. CO., INC.	_____
BEACHNER CONST. CO., INC.	_____
WILDCAT CONST. CO., INC. SUB.	\$498,600.05
DONDLINGER & SONS CONST. CO.,	\$475,053.51
KING CONST. CO., INC. & SUBSIDS.	\$414,818.15
_____	_____
_____	_____

AMINO BROS. CO., INC.	_____
MIDWEST CONST. CO., INC.	_____
REECE CONST. CO., INC.	\$694,870.76
BEACHNER CONST. CO., INC.	_____
L & M CONTRACTORS, INC.	\$655,478.91
STUEBER A.O. CONST. CO., INC.	_____
CLAYCAMP CONST., INC.	_____
SHILLING CONST. CO., INC.	_____
CAPITAL CONTRACTORS, INC.	\$619,721.76
BRB CONTRACTORS, INC.	\$726,377.08
BRIDGES, INC.	\$612,533.39
KING CONST. CO., INC. & SUBSIDS.	_____
_____	_____
_____	_____

DICKINSON 56B.21 K 6383.01
GRADING, SURFACING BR NO

PHILLIPS 383.74 K 6369.01
GRADING, SURFACING & BR NO

KLAVER CONST. CO., INC.	_____
REECE CONST. CO., INC.	\$162,303.23
BEACHNER CONST. CO., INC.	_____
L & M CONTRACTORS, INC.	_____
STUEBER A.O. CONST. CO., INC.	\$158,734.83
WEBB, L.J. CONTRACTOR, INC.	_____
WRENCH CONST. CO.	_____
CLAYCAMP CONST., INC.	\$155,934.13
SHILLING CONST. CO., INC.	_____
DONDLINGER & SONS CONST. CO.,	\$191,581.53
LMK CONCRETE CONST., INC.	\$205,304.33
APAC KANSAS, INC., SHEARS DIV.	_____
_____	_____
_____	_____

BRIDGES, INC. - base	\$2,610,373.68
alt bid	\$250,000.00
total	\$2,860,373.68
_____	_____
KING CONST. CO., INC. & SUBSIDS.	_____
base-	\$2,496,254.39
alt	\$250,000.00
total	\$2,746,254.39
_____	_____

4,836,204 2nd bids
 # 4,605,695 Low bids
 # 230,509 DIFF
 5.00% 14-4

SHERMAN 27.91 K 5738.01
GRADING, BIT. SURF. & BR

SHERMAN 27.91 K 5740.01
SEEDING

DOBSON BROTHERS CONST. CO.	\$5,287,348.84
REECE CONST. CO., INC.	
J & R SAND CO., INC.	\$5,405,004.49
BEACHNER CONST. CO., INC.	
L & M CONTRACTORS, INC.	
WESTERN ENGINEERING CO., INC.	
VENTURE CORP.	\$5,303,035.13
SMITH SAND CO., INC.	
SHILLING CONST. CO., INC.	
BRIDGES, INC.	
BROCE CONST. CO., INC. &	
RITCHIE PAVING, INC. & SUB.	\$4,869,643.97
WITTWER, INC. & SUBSIDIARY	
COMMERCIAL CONST., INC.	
KING CONST. CO., INC. & SUBSIDS.	
LAFARGE CORP.	\$5,740,195.26
APAC KANSAS, INC., SHEARS DIV.	
DOUBLE D CONSTRUCTION, LLC	

BEACHNER CONST. CO., INC.	\$74,831.40
DICKHUT SEED CO.	\$45,043.60
NEBRASKA HYDRO SEEDING CO.	\$51,805.20
R.F.B. CONST. CO., INC.	
TREGO 147.98 K 6367.01	
GRADING, SURFACING & BR NO	
REECE CONST. CO., INC.	
BEACHNER CONST. CO., INC.	
L & M CONTRACTORS, INC.	\$902,793.06
BRB CONTRACTORS, INC.	\$990,959.12
BRIDGES, INC.	\$877,953.87
RITCHIE PAVING, INC. & SUB.	
KING CONST. CO., INC. & SUBSIDS.	\$943,202.69
APAC KANSAS, INC., SHEARS DIV.	

SHERMAN 27.91 K 5738.01
SEEDING

CHEROKEE 11 U 1702.01
GRADING, SURFACING & BR STA 1+078

BEACHNER CONST. CO., INC.	\$53,339.80
DICKHUT SEED CO.	\$32,836.20
NEBRASKA HYDRO SEEDING CO.	\$39,200.94
R.F.B. CONST. CO., INC.	

KLAVER CONST. CO., INC.	
REECE CONST. CO., INC.	
BEACHNER CONST. CO., INC.	
STEUER A.O. CONST. CO., INC.	
LAFORGE & BUDD CONST. CO., INC.	
J & J CONTRACTORS, INC.	
BRUMBACK & ATKINSON	\$245,504.00

SHERMAN 27.91 K 5740.01
GRADING, BIT. SURF. & BR NO 21.08(044) &

DOBSON BROTHERS CONST. CO.	\$6,989,880.40
REECE CONST. CO., INC.	
J & R SAND CO., INC.	\$6,896,156.68
BEACHNER CONST. CO., INC.	
L & M CONTRACTORS, INC.	
WESTERN ENGINEERING CO., INC.	
VENTURE CORP.	\$6,407,595.77
SMITH SAND CO., INC.	
SHILLING CONST. CO., INC.	
BRIDGES, INC.	
BROCE CONST. CO., INC. &	
RITCHIE PAVING, INC. & SUB.	\$6,272,494.74
WITTWER, INC. & SUBSIDIARY	
COMMERCIAL CONST., INC.	
KING CONST. CO., INC. & SUBSIDS.	
LAFARGE CORP.	\$6,764,074.00
APAC KANSAS, INC., SHEARS DIV.	
DOUBLE D CONSTRUCTION, LLC	

-11,710,631

-11,142,139

12,663,904 2nd Bid
12,097,972 Low bid
565,932 DIFF
4.68%

14-5

HARVEY 196.40 K 5661.01
GR, BIT SURF & BR NO 196.40.9.56(088)

CLARK 160.13 K 2452.01
GRADING, SURFACING & BR NO

REECE CONST. CO., INC.
UTILITY CONTRACTORS. INC. \$945,007.09
BEACHNER CONST. CO., INC.
L & M CONTRACTORS, INC.
WILDCAT CONST. CO., INC. SUB.
BRIDGES, INC. \$964,629.80
DONDLINGER & SONS CONST. CO., \$956,376.74
RITCHIE PAVING, INC. & SUB.
KING CONST. CO., INC. & SUBSIDS. \$832,576.93
APAC KANSAS, INC., SHEARS DIV.

REECE CONST. CO., INC.
BEACHNER CONST. CO., INC.
L & M CONTRACTORS, INC. \$1,720,828.34
CAPITAL CONTRACTORS, INC.
BRIDGES, INC. \$1,457,500.24
KING CONST. CO., INC. & SUBSIDS. \$1,452,333.83
APAC KANSAS, INC., SHEARS DIV.

HARVEY 196.40 K 6786.01
GRADING, SURFACING & BR NO

BARBER 4 C 3360.01
GRADING & BR STA 32+170

REECE CONST. CO., INC.
UTILITY CONTRACTORS. INC. \$1,521,387.40
BEACHNER CONST. CO., INC.
L & M CONTRACTORS, INC.
WILDCAT CONST. CO., INC. SUB.
BRIDGES, INC. \$1,602,495.70
DONDLINGER & SONS CONST. CO., \$1,522,285.68
RITCHIE PAVING, INC. & SUB.
KING CONST. CO., INC. & SUBSIDS. \$1,360,351.47
APAC KANSAS, INC., SHEARS DIV.

KLAVER CONST. CO., INC. \$97,119.75
REECE CONST. CO., INC. \$95,779.50
UTILITY CONTRACTORS. INC.
BEACHNER CONST. CO., INC.
L & M CONTRACTORS, INC.
DUFUR BRIDGE CO., INC. \$144,256.60
J & J CONTRACTORS, INC.
DONDLINGER & SONS CONST. CO.,

RICE 56.80 K 6361.01
GRADING, SURFACING & BR NO

DOUGLAS 59.23 K 7940.01
BR NO

REECE CONST. CO., INC. \$1,034,019.02
BEACHNER CONST. CO., INC.
L & M CONTRACTORS, INC. \$927,530.85
STEUBER A.O. CONST. CO., INC.
VENTURE CORP.
BRIDGES, INC. \$1,063,173.74
DONDLINGER & SONS CONST. CO., \$1,018,226.84
KING CONST. CO., INC. & SUBSIDS. \$950,538.49
APAC KANSAS, INC., SHEARS DIV.

BARCUS, L. G. & SONS, INC.
REECE CONST. CO., INC.
BEACHNER CONST. CO., INC.
WILDCAT CONST. CO., INC. SUB. \$436,740.75
PROGRESSIVE CONTRS. INC. \$432,628.95
DONDLINGER & SONS CONST. CO.,
KING CONST. CO., INC. & SUBSIDS.
COMANCHE CONST. INC & SUB \$399,491.25

5,408,292 2nd bids
5,101,200 low bids
307,092 = 6.0%

 JOHNSON 69.46 K 7943.01
 BR NO 69.46.16.937(135) REPAIR

BARCUS, L. G. & SONS, INC.
 CLARKSON CONST. CO.
 BEACHNER CONST. CO., INC.
 WILDCAT CONST. CO., INC. SUB.
 PROGRESSIVE CONTRS. INC.
 DONDLINGER & SONS CONST. CO.,
 KING CONST. CO., INC. & SUBSIDS.
 COMANCHE CONST. INC & SUB
 FREEMAN, D.F. CONTRS., INC. &

\$204,956.25

\$186,526.75

 OS.SN 75.106 K 8171.01
 SURFACE RECYCLE, BITUMINOUS

BEACHNER CONST. CO., INC.
 VENTURE CORP.
 HENNINGSEN CONST., INC.
 SHILLING CONST. CO., INC.
 HAMM COMPANIES, INC., THE
 U.S. ASPHALT CO.
 APAC KANSAS, INC., SHEARS DIV.
 FREEMAN, D.F. CONTRS., INC. &

\$3,235,411.14

\$3,141,732.13

\$3,138,191.74

\$3,233,386.28

\$3,122,175.49

\$3,302,406.52

 WYANDOTTE 70.105 K 8287.01
 CONCRETE PAVEMENT PATCHING

CLARKSON CONST. CO.
 KAAZ, JULIUS CONST. CO., INC.
 BEACHNER CONST. CO., INC.
 IOWA EROSION CONTROL, INC.
 FORBY CONTRACTING, INC.
 WILDCAT CONST. CO., INC. SUB.
 FAHEY J M CONST. CO.
 PROGRESSIVE CONTRS. INC.
 REALM CONST., INC.
 MUSSELMAN & HALL
 HUFF SEALING CORP.
 PENHALL CO. & SUB.
 TENSION CONST., INC.
 COSTELLO INDUSTRIES INC. &
 FREEMAN, D.F. CONTRS., INC. &

\$1,036,161.91

\$1,115,281.92

\$2,199,919.90

 CHASE 177.9 K 6761.01
 GRADING & SURFACING

DROP

 WABAUNSEE 70.99 K 8227.01
 GRADING

BAYER CONST. CO., INC.
 BEACHNER CONST. CO., INC.
 EMERSON CONST., INC.
 EBERT CONST. CO., INC.
 SHILLING CONST. CO., INC.
 ESFELD CONST., INC.
 CRIQUI CONST., INC.
 KINGS CONST. CO., INC.
 SMOKY HILL, L.L.C.

\$368,368.10

\$587,687.35

\$192,676.13

\$539,602.10

\$351,741.00

\$403,699.00

4,810,171 2nd bids
 # 4,537,539 low bids
 # 272,632 = 6.0%

 CK.EK.LB.MG 160.106 K 6254.01
 HIGHWAY SIGNING

J R F CONST.N CO., INC. \$15,050.50
 BEACHNER CONST. CO., INC. _____
 C.D.L. ELECTRIC CO., INC. _____
 BUFFALO STRIPE, A \$15,965.15

 CRAWFORD 69.19 K 5746.01
 BITUMINOUS OVERLAY & BR NO

REECE CONST. CO., INC. _____
 BEACHNER CONST. CO., INC. _____
 HECKERT CONST. CO., INC. \$1,572,990.49
 SHILLING CONST. CO., INC. _____
 BRIDGES, INC. _____
 U.S. ASPHALT CO. _____

 LABETTE 160.50 K 7705.01
 GRADING, SURFACING & CULVERTS

REECE CONST. CO., INC. _____
 BEACHNER CONST. CO., INC. \$449,543.35
 LAFORGE & BUDD CONST. CO., INC. _____
 EBERT CONST. CO., INC. _____
 SE.KAN ASPHALT SERVICES, INC. _____
 DUFUR BRIDGE CO., INC. _____
 RECLAMATION ASSOCIATES, INC. _____
 J & J CONTRACTORS, INC. \$458,112.60
 KNAPP, R.A. CONST., INC. _____
 EARTHWORKS CONST., INC. _____
 COMMERCIAL CONST., INC. _____
 LMK CONCRETE CONST., INC. _____
 JRB INDUSTRIES, INC. _____

 LABETTE 400.50 K 8231.01
 GRADING & BR NO 400.50.14.83

AMINO BROS. CO., INC. \$6,676,276.79
 CLARKSON CONST. CO. _____
 REECE CONST. CO., INC. _____
 UNITED CONTRACTORS, INC. _____
 BEACHNER CONST. CO., INC. _____
 MALM CONST. CO. _____
 LAFORGE & BUDD CONST. CO., INC. \$8,535,060.05
 EBERT CONST. CO., INC. _____
 SE.KAN ASPHALT SERVICES, INC. _____
 DUFUR BRIDGE CO., INC. _____
 KNAPP, R.A. CONST., INC. _____
 IDEKER, INC. & SUBSIDIARY _____
 COMMERCIAL CONTRS. EQUIP., \$7,496,977.24
 BERGKAMP, BOB CONST. CO. INC. \$8,504,439.22
 SHERWOOD CONST. CO., INC. & \$8,715,215.03
 NEGUS.SONS, INC. _____
 PAVERS, INC. _____
 U.S. ASPHALT CO. _____
 COMMERCIAL CONST., INC. \$7,582,002.50
 COMMERCIAL CONST., INC., J R B _____

*DIFF
 A829701*

 LABETTE 400.50 K 8231.01
 BR NO 400.50.9.45(077)

REECE CONST. CO., INC. \$513,025.45
 UNITED CONTRACTORS, INC. _____
 BEACHNER CONST. CO., INC. \$414,791.25
 STEUBER A.O. CONST. CO., INC. \$410,376.75
 LAFORGE & BUDD CONST. CO., INC. _____
 DUFUR BRIDGE CO., INC. _____
 KNAPP, R.A. CONST., INC. _____
 KING CONST. CO., INC. & SUBSIDS. _____

*# 8,385,846 2nd bids
 # 7,551,245 Lowbids
 # 834,601 DIFF
 11.1% 14-8*

ROBERSON LUMBER CO., INC.

PHONE 582-4015

BOX 94

SILVER LAKE, KS. 66539

House on E-Gov. Comm.
Send Bill 227

- 1 1. TRANSACTION FEES: THERE IS NO
2 MENTION IN THE SENATE OR THE
3 HOUSE BILLS ABOUT THE AMOUNT
4 OF TRANSACTION FEES THE WOULD
5 BE CHARGED BY THE SOFTWARE
6 PROVIDER. NICE WORK IF YOU
7 CAN PROVIDE FREE SOFTWARE,
8 BUT CHARGE AN UNSPECIFIED
9 AMOUNT FOR THE TRANSACTION
10 FEES. 1% ON A 10 MILLION
11 DOLLAR CONSTRUCTION PROJECT
12 OR A 25 THOUSAND DOLLAR
13 LUMBER SALE IS A SWEET WAY TO
14 MAKE MONEY. THERE HAS BEEN
15 SOME TALK ON THE SOFTWARE
16 PROVIDER BEING PAID ON A
17 PERCENTAGE OF SAVINGS OR ON
18 COMMISSION FEE. WHAT IS THE
19 SO CALLED SAVINGS BASED ON,
20 THE PRICE MATERIAL IS BOUGHT
21 AT VERSES A PUBLISHED LIST
22 PRICE?
- 23 2. THE PROPER STATE PURCHASING
24 OFFICAL MUST HAVE THE FINAL
25 SAY ON WHO IS AWARDED BIDS,
26 THIS MUST NOT BE LEFT UP TO
27 THE SOFTWARE COMPANY. THEY
28 COULD BE TOO EASILY SWAYED
29 BY PRIVATE COMPANIES WANTING
30 TO DO BUSINESS WITH THE STATE
31 WE HAVE SOME PROTECTION FROM
32 LOBBYING IN THE STATE OF
33 KANSAS BUT WOULD HAVE NO
34 CONTROL OVER A PRIVATE FIRM
35 IN AWARING OF BIDS IS LEFT
36 UP TO THEM.

CONTINUED TO NEXT PAGE

Attachment 15
e-Gov 3-13-01

ROBERSON LUMBER CO., INC.

PHONE 582-4015

BOX 94

SILVER LAKE, KS. 66539

House on E-Gov. Comm.
Senate Bill 227

- 37 3. ON THE SUBJECT OF BIDS BEING
38 POSTED ELECTRONICALLY AND
39 UPDATED ON A REAL TIME BASIS,
40 THIS SOUNDS LIKE MY PRICING
41 COULD BE SOLD OUT MINUTE BY
42 MINUTE IN EFFECT CONDUCTING
43 A REVERSE AUCTION. SOME PRO-
44 VISION MUST BE MADE FOR BIDS
45 TO BE MADE AND KEPT UNDER
46 WRAPS UNTIL A DESIGNATED
47 CLOSING TIME AND THEN OPENED
48 OR READ.
- 49 4. KANSAS BIDDERS: ON THE ISSUE
50 OF IN STATE BIDS I KNOW THAT
51 UNDER CURRENT STATUES THE
52 STATE MUST ACCEPT THE LOWEST
53 BID FROM THE LOWEST RESPOND-
54 SIBLE BIDDER. UNDER THIS NEW
55 PROPOSAL THIS IS NOT REALLY
56 FAIR. WE ARE STUCK HERE IN
57 KANSAS PAYING HIGH PERSONAL
58 AND REAL ESTATE TAX AND WILL
59 HAVE TO BID AGAINST FIRMS IN
60 OTHER STATES WITH LOW AND
61 SOMETIMES NO PROPERTY TAXES.
62 THIS SOUNDS LIKE A "FREE
63 TRADE AGREEMENT" WHEREBY
64 STATES NOT PLAYING BY THE
65 SAME RULES CAN HAVE EQUAL
66 ACCESS. THIS IS NOT FAIR TO
67 THE TAX PAYING BUSINESSES OF
68 KANSAS. YOU NEED TO START
69 DOING SOMETHING TO KEEP
70 BUSINESSES IN KANSAS, YOU ARE
71 LOSING THEM DAILY.
- 72 5. I DON'T QUITE UNDERSTAND WHY

CONTINUED TO NEXT PAGE

15-2

ROBERSON LUMBER CO., INC.

PHONE 582-4015

BOX 94

SILVER LAKE, KS. 66539

House on E-Gov. Comm.
Senate Bill 227

73 THE STATE NEEDS TO HIRE A
74 "MIDDLEMAN" TO DO SOMETHING
75 YOU ARE ALREADY DOING WITH
76 YOUR DIVISION OF PURCHASES
77 AND KDOT AND PAY THEM FOR
78 THIS. SOUNDS LIKE DUPLICATION
79 TO ME.

80 6. IN THE EVENT OF A TIE BID
81 BETWEEN A KANSAS BUSINESS
82 AND AN OUT OF STATE BUSINESS
83 WHO GETS THE BID. UNDER
84 CURRENT PROVISIONS OF KANSAS
85 75-3739 THE TIE WOULD GO TO
86 THE KANSAS BIDDER BUT IF I
87 READ THIS BILL RIGHT THIS
88 KA-75-3739 IS BEING REPEALED.
89 NEED PROVISION AWARDED TIE
90 TO IN STATE BIDDER INCLUDED
91 IN THIS BILL.

92 *****
93 THANK YOU FOR THE CHANCE TO
94 ADDRESS THESE CONCERNS TO
95 YOU. I MAY BE REACHED AT
96 785-582-4015 DURING BUSINESS
97 HOURS TO TALK TO YOU IF
98 NEEDED.
99

GARY ROBERSON.

15-3



MID-AMERICA LUMBERMENS ASSOCIATION

TESTIMONY

HOUSE e-GOVERNMENT COMMITTEE

March 13, 2001

Senate Bill No. 227

Madam Chair: Members of the Committee. My name is Art Brown. I represent the retail lumber and building material dealers in the State of Kansas through the Mid-America Lumbermens Association.

Please understand that we are not dinosaurs. We utilize the Internet in a wide variety of ways in our business, including such activities as locating products, market reporting, and product research just to name a few. It would be an understatement to say that we value the Internet as a valuable tool not only for our membership, but also for the entire business community as a whole.

Speaking for our Board, we applaud the far-sightedness of the authors of SB 227 in wanting to utilize this most valuable tool in an area of State government that could decrease costs and increase efficiency.

However, again speaking for our Board, we feel we must object to the use of on-line bidding as defined in SB 227 to include the language found on page 1, line 41 which includes construction materials as added by the Senate Committee of the Whole. There are

638 West 39th Street • P. O. Box 419264 • Kansas City, Missouri 64141-6264
800-747-6529; 816-561-5323 • Fax: 816-561-1991 • E-Mail: mail@TheMLA.com

A PROUD MEMBER OF THE NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION

Attachment 16
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Pg. 2—Testimony to House e-Government Committee, SB 227, March 13, 2001

other areas of concern in this otherwise well intended bill that will be pointed out to you in testimony from one of our members, Gary Roberson, Roberson Lumber, Silver Lake.

In the interest of time, I would defer my comments regarding these concerns on the bill and let Mr. Roberson, articulate these issues from a dealer's perspective.

I will stand ready to answer any questions or address any comments you may have at a time designated appropriate from the Chair. Thank you for this opportunity to express the viewpoint of our Board of Directors.

Now if it pleases the Chair, I would like for Mr. Roberson to address the Committee with his testimony.

**TESTIMONY BEFORE THE
E-GOVERNMENT COMMITTEE
REGARDING SB 227 AND HB 2413
BY DAN MORGAN, THE BUILDERS' ASSOCIATION
MARCH 13, 2001**

Thank you Madam Chairman and members of the Committee. I appreciate the opportunity to testify this afternoon regarding SB 227 and HB 2413. On behalf of nearly 450 general contractor, subcontractor and supplier members of the Builders' Association who are domiciled in and/or perform commercial and industrial building construction in Kansas, I would like to urge you to exempt construction from these so-called "reverse auctioning" proposals.

While we see merit in the on-line delivery of "sealed" bids for construction projects as a helpful option for bidding on public projects, we submit that reverse auctioning would result in serious negative consequences for public owners and for participating contractors as well. While reverse auctioning has apparently been approved for the purchase of commodities in three or four states, we know of no states that authorize reverse auctioning for construction services.

In recent discussions with the Division of Architectural Services regarding the pre-qualification of contractors for state building construction projects, the Director noted several problems he hoped pre-qualification would address. Most of those problems would only be exacerbated if reverse auctioning were applied to construction. If applied to construction, reverse auctioning would likely:

- Make the initial low bid for a project the starting place for dangerous underbidding;
- Increase the likelihood of mistakes in an already complicated bidding process;
- Lead to less involvement by qualified contractors who would deem the process as unsound;
- Encourage delays on projects when contractors either go out of business or divert needed manpower to more profitable projects in order to maintain positive cash flow; and
- Encourage the unscrupulous to "low ball" their bids to get the work and then charge high prices for change orders in order to make up for it.

In any industry, there are some business practices that are very dimly viewed. In our industry, "bid shopping" and "bid peddling" are practices that are resented by all but those who do it. I'm sorry, but I have to say that the application of this reverse auctioning process seems a lot like bid shopping. Rightly or wrongly, that is the reaction from the people I have talked to about it.

Finally, we would respectfully disagree with those who say that construction ought to be included in the proposal because the language is permissive and that we ought to trust our government officials to know when it is appropriate to use it. We agree with those who believe that the government ought to be granted limited powers so that citizens are protected from indiscretions or abuses of authority. Thank you for the opportunity to present our views on this issue. I will be happy to try to answer any questions that you might have.

*Attachment 17
e-Gov 3-13-01*

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

Date: March 13, 2001
By: Woody Moses, Managing Director,
Kansas Aggregate Producers' Association
Regarding: SB 227
Before: House Committee on E-Government

Good Afternoon Madam Chairman and Members of the Committee:

My name is Edward R. Moses, Managing Director of the Kansas Aggregate Producers' Association. The Kansas Aggregate Producers' Association is an industry wide trade association comprised of over 250 members located in all 165 legislative districts in this state, providing basic building materials to all Kansans. On behalf of our members, I am appearing before you today in opposition of SB 227, a bill while good in concept, is weak in practicality.

Our opposition is primarily focused on the section of the bill that would allow real time bidding. This practice would allow the submission of quotes up until the last moment prior to bid close. If this were allowed to happen on a construction or highway project, the results would be disastrous.

These types of bids are complicated, sometimes requiring us to provide quotes on several different items, a practice known as unit-pricing. If a primary bidder should desire to change the total price it would consequently require our industry to review our pricing structure on many different products. Faced with such a situation, many suppliers will probably elect not to quote prices as opposed to complying with the nearly impossible turnarounds required by real time bidding.

In closing, we are supportive overall of electronic bid submittal. However, such a submittal should be done on a "sealed" basis with the apparent low bidder the winner. If SB 227 can be amended to include this, we will stand in support of the measure.

Thank you for your time and consideration. I now stand for any questions you may have at this time.

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e-Gov 3-13-01

March 13, 2001



TO: Chair Horst and Members of the House e-Government Committee

FROM: Trudy Aron, Executive Director

RE: Opposition to HB 2413 and SB 227 for Construction

President
Wendy Ornelas, AIA
Manhattan

President Elect
Nancy L. Steele, AIA
Wichita

Secretary
Robert D. Fincham, AIA
Topeka

Treasurer
Matthew D. Werner, AIA
Topeka

Directors

Neal J. Angrisano, AIA
Overland Park

Richard A. Bartholomew,
AIA
Overland Park

Michelle Black
Lawrence

Ron Brown, Allied Member
Wichita

Carolyn Campbell
Manhattan

Timothy J. Clark, AIA
Manhattan

Ken Conrad, P.E.
Overland Park

Michael C. Eidem, AIA
Kingman

Ashley Fiss, AIA
Hugoton

Mark Franzen, AIA
Overland Park

John Gaunt, FAIA
Lawrence

Georgia Gavito, AIA
Lawrence

Dale Glenn, AIA
Lawrence

Ken Helmer, AIA
Wichita

Dirk Henke
Lawrence

Eugene Kremer, FAIA
Manhattan

Barbara Pearson, Assoc.
AIA
Emporia

Daniel R. Rowe, AIA
Topeka

Executive Director
Trudy Aron, Hon. AIA, CAE
aron@aiaks.org

Good Afternoon Madam Chair and members of the Committee. I am Trudy Aron, Executive Director, of the American Institute of Architects in Kansas. I am out of town today but would like to express our concerns to HB 2413 and SB 227.

AIA Kansas is a statewide association of architects and intern architects. Most of our 700 members work in over 100 private practice architectural firms designing a variety of project types for both public and private clients including justice facilities, schools, hospitals and other health facilities, industrial buildings, offices, recreational facilities, housing, and much more. The rest of our members work in industry, government and education where many manage the facilities of their employers and hire private practice firms to design new buildings and to renovate or remodel existing buildings.

HB 2413 allows for the on-line bidding of construction services and SB 227 allows for the on-line bidding of construction materials.

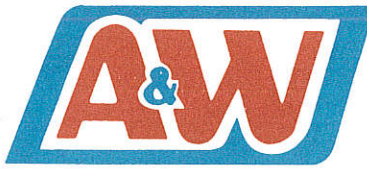
Typically, a construction contract is held by a general contractor who subcontracts portions of the work to specialty contractors – earth removal, concrete, structural steel, mechanical, electrical, drywall, painting, etc. All construction materials, from large heating/ventilation/air conditioning units to door levers, are included in the bid.

The State of Kansas and our municipalities have an excellent system in place where contractors submit sealed bids with the award to the lowest responsible bidder. Under HB 2413, bids would be submitted online allowing all potential bidders to see the bids. Under this “reverse auction,” bidders will be allowed to change their bids until no one will go lower. With the complexity of construction projects, this system will greatly increase the complexity of an already complex construction process. The result will be construction problems, change orders, and even lengthier completion of buildings, highways, and bridges.

Under SB 227, the “reverse auction” is for construction materials. Frankly, we don’t see how this could work. Will each material be bid separately? If so, the process would be impossibly long. Imagine having to bid each separate item that goes into a building – it could take virtually forever.

Our current construction project bidding process is working and the changes in these two bills would substantially harm it. Thank you, we urge you to amend HB 2413 and SB 227 to remove construction and construction materials from a live online bidding process. If you have questions, please let us know.

Attachment 19
e-Gov 3-13-01



Andrews Asphalt & Construction, Inc.

Testimony

By Andrews Asphalt & Construction, Inc.

Before the House E-Government Committee
Regarding On-line Bidding

Madam Chairman and Members of the Committee, I appreciate the opportunity to testify today.

I am R. J. Koreen, Vice President and Business Manager for Andrews Asphalt & Construction, Inc. located here in Topeka, Kansas. We are a small paving contractor and an asphalt producer servicing northeast Kansas.

I would like to speak against on-line, competitive, interactive, real-time, reverse auctions as it applies to construction contracts.

We have been bidding state highway projects since 1984, not always as a general contractor. The complexity of and the number of bid items within the proposal involves sometimes weeks of work to generate a final bid. This bid is submitted by line item as well as a bottom line total bid.

In putting together our bid we have to consider state mandated labor rates,

PHONE
785-232-0188



P.O Box 750015
TOPEKA, KANSAS 66675-0015



FAX
785-232-0122

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material costs, equipment needs and location, and subcontractor bids for work we do not do ourselves. At times the subcontract work may involve further tiers of subcontractors.

Currently we and our subcontractors and suppliers use the lowest and best prices and submit a bid to the state at a time and date certain. The bid can be submitted in electronic or written form.

In an on-line, real-time, reverse auction bidding situation, it would not only be impractical it would be impossible to coordinate price reductions within any time frame required by real-time bidding.

If construction contracts are subjected to this type of process, we frankly would not participate. I find it hard to imagine any contractor participating.

Senate Bill 227/House Bill 2413 must be amended to specifically exclude construction contracts. We cannot just “hope” that the procuring authority will not use this legislation in a way it was not intended.

Thank you for allowing me to offer this perspective.



March 15, 2001

Rep. Joe McLeland
Kansas House of Representative
Address

Re: House E-Government Committee hearing March 13, 2001

Dear Representative McLeland:

It was my privilege to attend on Tuesday, when the House E-Government Committee heard testimony on SB 227/HB 2413.

I am Executive Vice President of Ritchie Paving, Inc., and of course, I live and work in our mutual hometown of Wichita.

While I found all the testimony most interesting, I was particularly motivated to answer the question you posed at the end of the hearing. However, due to the lateness of the hour, I have chosen to respond to your question in this manner. I will also forward a copy of this letter to Rep. Horst for distribution to the other E-Government Committee members, if she desires.

You prefaced your question with an anecdotal story of a company with whom you interviewed for employment years ago. You recalled the potential employer told you that computers would never have a place in his industry. You then asked those present in opposition to the Bill how we could expect our companies to be in business twenty years from now if we continue to ignore the ongoing revolution in information technology.

I submit, Rep. McLeland, your question actually begs the question, which is before the E-Government Committee.

Your question implies that opposition to governmental use of on-line reverse auctions for procurement of construction goods and services equates to a lack of willingness to adapt our business practices to conform to advancements in information technology.

This conclusion is simply not true, and I will relate an anecdotal story to make my point.



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Wichita, Kansas 67277-7717
316-462-0200
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In 1855, in the midst of American civil strife, a former Army officer named Colonel John Ritchie joined with local abolitionists in Topeka, Kansas, to help runaway slaves find their way to Canada. Colonel Ritchie had just opened a rock quarry and lime kiln company to provide paving and construction materials to the Topeka Area. The business he started more than a century ago formed the foundation for what today is known as "Ritchie Companies, Inc." Shortly after the turn of the century, the Company moved its operations to Wichita, Kansas, where it has continued to grow.

In 1987, the family members representing the decedents of Colonel John Ritchie reorganized the various business entities that had grown from the original company. "Ritchie Companies, Inc." emerged as an organization again focused entirely on construction and construction related industries. Today this family of companies encompasses paving, ready mix concrete, aggregates, concrete accessories, materials processing, and production. The company that I serve, Ritchie Paving, Inc., is a part of this family.

As proponents of Information Technology, the Ritchie organization has not only been quick to adopt computerized systems within our own operations, but we have also been instrumental in promoting their use among our industries. Through IT, we continue to realize gains in productivity and profitability in all areas, from scheduling and production to material planning to office systems. (In 1993, Tom Ritchie, President of Ritchie Paving, developed the prototype program for the KDOT computerized bidding system.)

The simple fact is that our company is an industry leader in the implementation of informational technology. At the same time, we are firmly and strongly opposed to on line reverse auction of construction goods and services.

Our opposition to HB 2413 does not grow out of fear or ignorance of high-tech innovation.

We are opposed, Rep. McLeland, because this proposed bill would leave us in violation of the principles of ethical conduct which govern the way we do business.

A reverse auction is predicated on the assumption that a bidder will lower his price after he learns the proposed price of a competitor. This is merely a high-tech application of an old, detested, and highly unethical bidding practice known as "price shopping". Price shopping may initially appear to result in a lower cost to the owner for goods or services. Any reading of the history of the construction industry, however, reveals that price shopping will always ultimately result in less, rather than more competition. It makes no difference whether an agency of government conducts a reverse auction on line, or in a public auditorium. The long-term result will always be reduced competition, with resultant higher costs to the agency. The testimony yesterday of Mr. Spray goes directly to this point.

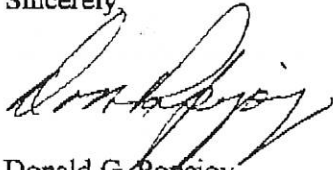
Our company would embrace and offer our help in any efforts of the Legislature to apply informational technology to streamline and economize the current practice of competitive sealed bids for construction goods and services.

The reverse auction process will never be a successful means to this end.

By the way, Rep. McLeland, I would almost wager you the price of a steak dinner against the cost of a doughnut that the Ritchie Companies will, in fact, be in business twenty years from now. The only reason I do not offer the wager is that I am not so sure I would still be around to enjoy the doughnut.

Please know that our Company will always be ready to assist in the effort to apply informational technology to find better and more efficient ways to offer our goods and services to the State of Kansas.

Sincerely,



Donald G. Popejoy
Executive Vice President

SMOKY HILL, L.L.C.
645 East Crawford, Suite E-1
Salina, KS, 67401
Tuesday, March 13, 2001

TO KANSAS SENATORS AND REPRESENTATIVES:

I am writing about SB 227, the "E-mail auction" bill. I am very much opposed to this bill, for the following reasons:

First, consider: Would any of us be comfortable in asking suppliers or contractors to bring their quotes/bids into a room, turn them in, have them read publicly, and then invite each and every one to lower his bid and continue lowering until nobody responded? This isn't any different than an E-mail auction, except that the person receiving the quotes doesn't have to face the people.

Second, consider the following:

1. The quote/bid process has traditionally contained a large element of fairness. This auction concept destroys it completely.
2. Who is most likely to end up with the low and assumed winning bid? It will most likely be one of the following:
 - A. A beginner in the business that doesn't yet know what his true costs are.
 - B. A large firm with enough resources that they can underbid less well financed competitors repeatedly and run them out of business much faster than they would be able to do absent the reverse auction.
 - C. An out of area firm or new entrant to the area market who decides to take advantage of the lower cost for an "extra unit" of production, and price his/her quote accordingly, as opposed to covering all costs of production. This is probably the most common way for a new entrant to gain significant market share. This technique is particularly valuable to the out of area or out of state firm, and the reverse auction plays into out of stater's hands.
1. Consider: How effective will the reverse auction technique be in reducing costs?
 - A. There are obviously reasons that quotes/bids will be reduced. However:
 - B. Consider that preparing a quote/bid is expensive - sometimes thousands of dollars. If bidders can't depend on the "as read" low bidder getting the job, they may decide not to even stand the expense of preparing a bid.
 - C. Consider also that preparing an important quote/bid is a BIG mental and psychological investment. My experience, in both wholesale and construction, is that if I don't think I'm going to get a fair shake I won't prepare a quote/bid at all.
 - D. I foresee that over time the more irresponsible bidders are likely to end up with the order.
1. Quote and bid openings have been considered important from a business and legal standpoint, and a large body of custom and legal procedures have been developed over time to protect the procedure. This reverse auction system destroys the fairness and confidence that quoters/bidders have in the system.

One final comment and question: Is it good public policy to try to devise methods to beat the last dollar of profit out of suppliers/contractors and make it unlikely that the “winner” will show a profit? I submit that it is NOT!

Thank you for your consideration.

Respectfully,

Richard E. Brown

Pres/Member, Smoky Hill, L.L.C.



STANLEY E. SCUDDER, PRESIDENT
TELEPHONE (316) 283-9350
FAX (316) 283-9363
MOBILE (316) 772-3408
E-MAIL: brdgsinc@southwind.net

March 13, 2001

Ms. Deena Horst, Chair
E-Government Committee
Room 181-W, State Capitol
300 Southwest 10th Avenue
Topeka, Kansas 66612-1504

Dear Representative Horst:


I wish to express my opposition to SB-227 and the language that allows 'real-time' bidding on construction contracts.

Logistically this would be a nightmare for submitting bids. Most contractors submit bids on several projects at each letting. Bid items on each project may number in the hundreds. Prices for materials and subs generally are not received until midnight before the letting. It is not uncommon to be up the entire night prior to the bid opening preparing the bids.

For example, this past letting we were up all night and submitted the sealed bids for twelve projects just ten minutes prior to the 2:00 PM deadline. Being subjected to a reverse auction process after going through all this would be ludicrous. It would destroy the integrity of the process and invite impropriety. You would no longer receive the lowest responsible bid - instead the successful bidder would be the one with the best computer operator. Bids would start high and would stay there if there were no other bids. Bids would be unbalanced. In addition, it would eliminate many small contractors who are not using computers or the internet in their business.

Auction bidding simply does not fit our business with the Kansas Department of Transportation. Please remove it from this proposed bill. Thank you.

Sincerely,
BRIDGES INC.


Stanley E. Scudder,
President

SES:bjb

Attachment 23
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Who came up with this ridiculous idea of reverse auctioning construction projects (SB227 or its counter part HB2413)? Change is good, but this is the most unrealistic approach to awarding construction projects I've ever heard of. Have you heard the quote: "If it's working – don't fix it"? The system of awarding projects by bidding on them is working great. It's a fair system. It would be wise to listen to the contractors that currently bid on jobs and are opposed to reverse auctioning of construction projects. Contractors are the ones affected by this bill. They should have some input on a bill that will affect their business. Rumor has it that the reverse auction would be over the internet. That makes it even worse. What about those contractors that don't even use a computer? What happens when there is a problem connecting to the internet? Even on MSN, that happens to us – all circuits are busy or some other problem. We have gone days without being able to connect. Reverse auctioning of construction projects would cause more problems than you can imagine. There would be total chaos.

Please oppose SB227 or its counter part HB2413.

Vic Danner
Midwest Construction Co., Inc.
Holton, KS 66436

Attachment 24
e-Gov 3-13-01

From: "Scott Erickson" <serickson@smokyhillconst.com>
To: <horst@house.state.ks.us>
Date: Tue, Mar 13, 2001 12:24 PM
Subject: auctioning construction

Dear Representative Horst,

I would like to register my opposition towards SB 227 and HB 2413 that would allow auctioning of construction projects.

I believe this would be a major setback for the smaller companies of Kansas.

Thank you for your time.

Scott Erickson
Smoky Hill, LLC
785-825-1224, Fax 785-825-7416

Attachment 25
e-Gov. 3-13-01

From: Randall Hardy <pyric@usa.net>
To: <horst@house.state.ks.us>
Date: Mon, Mar 12, 2001 2:57 PM
Subject: Online bidding

(This is intended to be testimony)

Dear Deena,

I would like to see one part of the online bidding system utilized in Kansas. Currently in Kansas, bids for construction work with KDOT are manually submitted, and they are opened and read publicly. KDOT then takes the written or printed proposals back to the Topeka office where they are tabulated by hand over a three or four day period.

Recently, KDOT implemented a new bid system called "Expedite". It enables the contractor to print out proposals for submission instead of hand-writing them. Expedite includes the capability of submitting proposals online, but KDOT has not followed through with that portion of the program yet. The ability to submit proposals online would benefit the state and the contractor. The contractor would be able to work from an office or home on a proposal, and then use the electronic signature process to submit it. (Currently, contractors must establish a portable "office" in Topeka or Wichita the night before a letting).

The state would benefit by not needing to manually tabulate the proposals. The letting results would be available immediately instead of several days after the letting. Also, any chance for human error in the transcription process would be eliminated.

I see this prospect as a "win-win" situation for the state of Kansas. Of course, please feel free to call me if you need additional information.

Randall Hardy
Reece Construction Co., Inc.
1240 W. North St.
Salina, KS 67401
785.827.8044
rrhardy@swbell.net

Attachment 26
e-Gov 3-13-01

**Testimony on Senate Bill 227 and HB 2413
Before the House e-Government Committee
By Larry Magill
Kansas Association of Insurance Agents
March 13, 2001**

Thank you madam chair and members of the committee for the opportunity to appear today in opposition to Senate Bill 227 and House Bill 2413 as currently drafted. They appear to allow the on-line bidding of insurance purchases by public entities including the State, Counties, Cities and School Districts. This is a new concept in public procurement that we feel would be extremely dangerous and ill-advised.

With the possible exception of the State, public bidding of insurance purchases is not required under Kansas Statutes since it is viewed the same as other professional services where the advise and professional expertise of the individual providing the services is the most important element. The legislature has always allowed public bodies to negotiate for these professional services where personal expertise and ability is the overriding criteria.

Insurance is not a commodity like pencils or paper clips. Public entities' insurance needs are extremely complex and ever changing. All insurance agents are not well versed in identifying and analyzing the exposures facing public entities, ways to minimize those exposures or ways to transfer them including through the purchase of insurance. These are the functions of a risk manager, a role filled by the agent in most cases for public entities.

Public entity insurance is not provided on standardized insurance policy forms. In fact, there is very little standardization of forms in commercial insurance today. Nor are all insurance companies created alike. There are at least four different rating organizations that rate insurers on financial and claims paying strength. After a prolonged "soft market" cycle with continually decreasing prices for property and casualty insurance, many insurers find themselves in "delicate" financial condition but this is not always apparent, even to seasoned professionals.

As a practical matter, it is hard to imagine an insurer willing to go to the trouble and expense of developing a quote to have it posted on the Internet so someone can beat it by a dollar or two. Most public entities only put their insurance out to bid once every three years to give insurers some incentive to bid. The same is doubly true for on-line bidding.

Even though the language of the legislation is permissive, it makes no sense to put complex public entity insurance needs out to public auction on the internet. It makes far more sense as good public policy to carefully experiment with the concepts in these two bills by limiting their application to the purchase of "goods" and to specifically exclude from the definition of goods, the purchase of insurance or other professional services. This can be accomplished by striking everything after "goods" on line 40 of SB 227 up to

"over the internet in a competitive bidding event" through line 42 and on page 2 line 6 place a period after "goods" and strike all after that.

Thank you for the opportunity to provide written testimony on this issue. We would be happy to provide any additional information the committee needs.

TESTIMONY REGARDING SENATE BILL No. 227
and
HOUSE BILL No. 2413
e-Government Committee - Kansas House of Representatives
March 13, 2001

Madam Chairperson and Members of the committee, thank you for this opportunity to testify regarding Senate Bill 227 and House Bill No. 2413.

I currently serve as General Counsel to The IMA Financial Group, Inc., a Kansas company that is the 19th largest independent insurance agency in the United States. Our client base consists of numerous companies and businesses throughout the U.S. with in excess of three quarters of our revenues derived from commercial property and casualty coverages. As a large provider of commercial property and casualty insurance, we have many clients that are concerned with Senate Bill 227 and we appear on behalf of those clients, which include Eby Companies (Wichita), N.R. Hamm Companies (Perry) and Crossland Construction Company (Columbus), as well as appearing as a representative of the insurance and surety industry.

The premise behind Senate Bill 227 – an on-line procurement process designed to allow governmental entities to obtain certain goods and services in an efficient and cost effective manner, is a premise supported by all the clients and entities that I represent. However, including “construction” as one of those services is an extension of this process that we are opposed to.

The construction bidding process is one that takes a great deal of pre-submission work and relies upon numerous participants (general contractor, subcontractors, surety carrier, financial institution, etc.). Most project plans and specs are let 4 weeks prior to the bid submission deadline and the construction industry spends those 4 weeks developing data for their bid, including obtaining bonding. As part of the bond process the financial strength of the bidder is of primary importance. Surety companies continually evaluate contractors’ work under bid, work in progress and work completed when setting and reviewing bonding capacity, and anything that the surety thinks might detrimentally impact the financial condition of a contractor can be the basis for the surety refusing to extend bonding or to cancel existing bonding. It is highly probable that a bid process that actually encourages reverse bidding, ie...an auction approach to bidding construction jobs, would cause the surety bond carrier a great deal of discomfort, because it could cause contractors to cut bids on projects without full review of the overall impact, perhaps without getting necessary approvals under subcontracts, etc., and thus impact the overall financial stability of the bidding contractor. The surety industry is not interested in a bid process that would encourage inflated bids or a bid process that causes precipitous underbidding just to “get the job”. The end result would be a greatly tightened market for obtaining contract bonds, and the cost of those bonds would also escalate, thus reducing the overall availability, affordability and capacity of contractors to obtain bonding for construction projects.

Attachment 2 8
e-Gov 3-13-01

Another concern raised by including construction in this procurement process is the lack of coordination between the current fixed bid process and statutory regulations prescribing that process versus the current bill that has no protocols for participation. Currently, when any state agency seeks to procure commodities, the standards and specifications of those commodities are generally well established and thus bids can be submitted quickly and on a fair and equitable basis (if the Dept. of Administration needs 100,000 #2 pencils, they identify the required commodity, size, type, etc. and take bids). In a construction project, there are no "standard" construction specifications – each job and its specific requirements is unique. The current fixed bid process allows time for the plans and specifications to be provided to any interested bidder and allows that bidder to gather sufficient information to submit a qualified bid. KDOT is currently studying various on-line bid submission processes and will make their recommendations upon completion of their study. We suggest that eliminating construction from this bill and waiting for KDOT's recommendations would be appropriate.

IMA respectfully requests that you amend Senate Bill 227 to specifically exclude construction. I am open for questions.

Respectfully submitted,

SueAnn V. Schultz
General Counsel,
The IMA Financial Group, Inc.