

Approved: _____

Deena Horst
Date 2-5-02

MINUTES OF THE E-GOVERNMENT COMMITTEE.

The meeting was called to order by Chairperson Deena Horst at 3:30 p.m. on January 24, 2002, in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Robert Chapman, Kansas Legislative Research Department
Trevor Steinert, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Jim Wilson, Revisor of Statutes' Office
Lisa Montgomery, Revisor of Statutes' Office
Gary Deeter, Committee Secretary

Others attending: See attached sheet.

Chairperson Horst introduced new members of the Committee: Representative Dan Williams and Representative Alan Goering. She introduced Researcher Robert Chapman, who introduced two new committee staff Researchers—Trevor Steinert and Martha Dorsey. She then outlined the study sub-committees of e-Government: Economy, State and Local Government Services, Education, and Technology. (See Attachment 1)

John Houlihan, Director of Purchasing, Division of Budget, Department of Administration (DOA), reviewed the state's historical procedures for accepting bids, which are set out in the 1953 statutes K.S.A. 75-3739. He said the procedure prescribed only paper submission of bids, a physical bulletin board, and United States Postal Service mail. He noted that the Division now uses faxes, a television monitor rather than a bulletin board, Fed-Ex and UPS as well as USPS mail. He distributed a letter from DOA Secretary Joyce Glasscock requesting legislation to modify present statutes to allow internet posting of bids and electronic submission of bids, and a copy of the proposed legislation. (See Attachments 2 and 3) He noted that except for cleaning up some language, the thrust of the legislation was stated on page 6, expanding the statute to include electronic solicitation and submission of bids. Representative Burroughs made a motion, seconded by Representative Morrison, to introduce the proposed legislation. The motion passed.

Chairperson Horst announced that the sub-committee chairs and staff would meet briefly after adjournment. The meeting was adjourned at 3:59 p.m. The next meeting is scheduled for Thursday, January 31, 2002, at 3:30 p.m. in Room 526-S.

e-GOVERNMENT COMMITTEE
GUEST LIST

DATE: JANUARY 24 2002

NAME	REPRESENTING
Robert Knapp	INK
John Houghan	DoFA
Zeo Vogel	DoFA

E-Government Study Committees

Mission: Plan for future state policy and service provisions needed to facilitate a technology-friendly environment in Kansas. Such an environment is intended to enhance and bolster the state's economy, provide needed links between individuals and their local and state government, improve access to quality education for Kansas residents, and preserve the privacy rights of Kansans.

Sub-Committees:

Economy-related Sub-committee: Examine what policies and service provisions are needed through technology to grow the future economy in Kansas (business, agriculture, tourism, etc.)

Al Lane (chair), LeeTafanelli, Alan Goering, Brodrick Henderson

State and Local Government Services Sub-committee: Study policies and service provisions that will be needed to ensure individuals receive a higher level of service from local and state government through enhanced use of technology. Utilities infrastructure and delivery can be included in this area.

Carl Holmes (chair), Joe McLeland, Bill Levinson

Education Sub-committee: Peruse policy and service provisions needed to ensure that all Kansas residents have access to a high quality of education.

John Faber (chair), Daniel Williams, R. J. Wilson

Technology Sub-committee: Consider what policies and services are needed to ensure that Kansas residents can, through technology, access government services and meet future hardware and software needs while preserving privacy rights of Kansas residents. The sub-committee will also look at cyber-terrorism and funding issues.

Jim Morrison (chair), Mary Pilcher Cook, Tom Burroughs

HOUSE e-GOVERNMENT COMMITTEE 2002 Members

Chairperson.....Representative Deena Horst
Vice Chairperson.....Representative John Faber
Ranking Minority Member.....Representative Doug Gatewood
Members:

Representative Jim Morrison
Representative Broderick Henderson
Representative Carl Holmes
Representative Tom Burroughs
Representative Joe McLeland
Representative Dan Williams
Representative Mary Pilcher Cook
Representative R. J. Wilson
Representative Alan Goering
Representative Al Lane
Representative Lee Tafanelli
Representative Bill Levinson

Staff:

Jim Wilson, Revisor of Statutes' Office
Lisa Montgomery, Revisor of Statutes' Office

Robert Chapman, Kansas Legislative Research Department
Trevor Steinert, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Gary Deeter, Secretary to the Committee

Attachment 1
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BILL GRAVES
Governor

JOYCE H. GLASSCOCK
Acting Secretary
of Administration
1000 SW Jackson, Suite 500
Topeka, KS 66612-1300
(785) 296-3011
FAX (785) 296-2702

DEPARTMENT OF ADMINISTRATION

January 22, 2002

Representative Deena Horst, Chairperson
House e-Government Committee
526-S Statehouse
Topeka, Kansas 66612

HAND-DELIVERED

Re: Request for Introduction of Legislation

Dear Representative Horst:

I am writing to request the assistance of the House e-Government Committee in introducing a Department of Administration legislative proposal that would revise and clarify K.S.A. 75-3739 to allow electronic notification of requests for proposals (RFP) or solicitations of bids, as well as electronic bids. Current law is seen as precluding electronic purchasing due to the use of terms like "sealed bids" which imply that bids are on paper and submitted in sealed envelopes. While various security measures can be applied so that an electronic bid is "sealed," amendments to the statute would clarify the applicability of that term to electronic bids. Moreover, the requirements for notice of RFP and solicitation of bids would be revised to permit posting the notice on the Internet.

These changes would provide the potential for increased efficiencies for state agencies and potential vendors by eliminating some postage costs for vendors and may reduce publication costs for notices. Most importantly, providing this authority is consistent with ongoing efforts to provide electronic access to state government (Irs1486.)

In addition to these revisions that would enable electronic purchasing, additional reporting requirements are reduced under K.S.A. 75-3739 to increase organizational efficiency and clean-up obsolete language (e.g. references to the Performance Review Board). While reducing reporting requirements, the legislature clearly remains in a

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Representative Deena Horst
January 22, 2002
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position to request information regarding purchasing activities as it would deem necessary.

A copy of the bill is attached. Michael Corrigan of the Revisor's Office has been handling the bill draft. I have asked my Director of Purchases, John Houlihan, and my Deputy Secretary, Keith Meyers, to brief you regarding this proposed legislation. Please let me know if you have questions regarding the proposal or need further information before presenting it to the Committee for introduction. Thank you for your assistance in bringing this legislation to the attention of the Committee.

Sincerely,



Joyce H. Glasscock
Acting Secretary of Administration

Attachment

cc: D. Keith Meyers
John Houlihan

By

AN ACT relating to state purchasing procedures; amending K.S.A. 75-3738 and 75-3740 and K.S.A. 2001 Supp. 75-3739 and repealing the existing sections.

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

Section 1. K.S.A. 75-3738 is hereby amended to read as follows: 75-3738. The director of purchases shall:

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

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

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

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

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

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

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

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

Sec. 2. K.S.A. 2001 Supp. 75-3739 is hereby amended to read

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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 \$57,000

\$10,000 entered into without competitive bids under subsection (a)(1), (2), (3), (5), (6) or (7). The director shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate, and the chairperson of the committee on appropriations of the house of representatives ~~and the chairperson of the Kansas performance review board.~~

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

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

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

(d) All purchases estimated to be more than \$5,000, but less

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

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

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

(g) Notwithstanding anything herein to the contrary, all contracts with independent construction concerns for the

construction, improvement, reconstruction and maintenance of the state highway system and the acquisition of rights-of-way for state highway purposes shall be advertised and let as now or hereafter provided by law.

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

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

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

(k) The director of purchases shall prepare a detailed report at least once each calendar quarter of all contracts over

\$10,000 for services, supplies, materials or equipment entered into pursuant to subsection (h), or (i) ~~or (j)~~ and submit it to the legislative coordinating council, the chairperson of the committee on ways and means of the senate, and the chairperson of the committee on appropriations of the house of representatives ~~and the chairperson of the Kansas performance review board.~~

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

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

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

Sec. 3. K.S.A. 75-3740 is hereby amended to read as follows: 75-3740. (a) Except as provided by K.S.A. 75-3740b, all contracts and purchases made by or under the supervision of the director of purchases or any state agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids.

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

(1) The dollar amount of the bid received from the lowest

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

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

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

(c) Any or all bids may be rejected, and a bid shall be rejected if it contains any material alteration or erasure made after the bid is opened. The director of purchases may reject the bid of any bidder who is in arrears on taxes due the state, who is not properly registered to collect and remit taxes due the state or who has failed to perform satisfactorily on a previous contract with the state. The secretary of revenue is hereby authorized to exchange such information with the director of purchases as is necessary to effectuate the preceding sentence notwithstanding any other provision of law prohibiting disclosure of the contents of taxpayer records or information. Prior to determining the lowest responsible bidder on contracts for construction of buildings or for major repairs or improvements to buildings for state agencies, the director of purchases shall consider: (1) The criteria and information developed by the secretary of administration, with the advice of the state building advisory commission to rate contractors on the basis of their performance under similar contracts with the state, local governmental entities and private entities, in addition to other criteria and information available, and (2) the recommendations

of the project architect, or, if there is no project architect, the recommendations of the secretary of administration or the agency architect for the project as provided in K.S.A. 75-1254, and amendments thereto. In any case where competitive bids are required and where all bids are rejected, new bids shall be called for as in the first instance, unless otherwise expressly provided by law or the state agency elects not to proceed with the procurement.

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

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

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

Sec. 4. K.S.A. 75-3738 and 75-3740 and K.S.A. 2001 Supp. 75-3739 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.