

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:30 a.m. on March 21, 2002 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Sherman Parks, Revisor of Statutes
Norman Furse, Revisor of Statutes
April Holman, Legislative Research
Debra Holon, Legislative Research
Lea Gerard, Committee Secretary

Conferees appearing before the committee: Jack Brier, President, KDFFA
John Houlihan, Director of Purchases

Others attending: See attached list.

SB 611—Concerning the redevelopment of the sunflower army ammunition plant in Johnson County.

Senator Jordan offered an amendment to **SB 611** that if a business is approved for STAR Bonds, the business must generate at least \$10M in sales annually. This amendment would address the concerns regarding the use of STAR Bonds, the openness of the bonds and the combined use of TIF and STAR Bonds.

Senator Jordan moved, seconded by Senator Steineger, that the threshold for STAR Bonds be at least \$10M in sales. Motion carried.

Jack Brier, President, KDFFA, responded to the question if TIF and STAR Bonds are offered and limited to five years, what would the impact be? Jack Brier stated he understood what the committee was trying to do and that is to achieve the absolute perfect balance between not over enriching developers and a stimulus that encourages development. He commented on how revenues and interests rates would tie to TIF and that if a developer borrowed \$1M at 5% interest over five years, the annual debt service (principle and interest) would be \$226,455 a year. A million dollars would effectively not buy much more than one 10,000 square foot building and probably without the ground. The point he was making is that five years does not create an economic opportunity that would work on the TIF alone. To take that one step further, use the same million dollars, the same 5% and spread out over 25 years and the debt service would be \$70,000 a year. This is how the difference works for a developer.

Senator Jordan moved, seconded by Senator Steineger to move SB 611 as amended out favorably for passage. Motion carried.

The committee discussed the concern regarding potential liability and the risk involved for Johnson County and/or the State of Kansas regarding environmental clean-up. It was decided to reinstate language in **SB 611** that would address the committee's concern.

Senator Kerr moved, seconded by Senator Emler to make a substitute motion to reinstate the language on SB 611, Page 11, Line 4, after the word "the", to read "written opinion of a competent attorney, specializing in environmental law and maintaining professional liability insurance and"; and to move the substitute bill out favorably for passage. Motion carried.

HB 2676—Electronically printed credit card receipts, restrictions.

Chairperson Brownlee commented on the amendment she offered regarding signature verification and decided she might pursue this next year.

Senator Jordan moved, seconded by Senator Emler to amend HB 2676 by inserting on Page 1, Lines 21 and 22 after the word "card", "debit card". Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE at on March 21, 2002 in Room 123-S of the Capitol.

Senator Wagle moved, seconded by Senator Emler to amend **HB 2676** on Line 23, strike "2003" and insert "2004"; Line 26, strike "2003" and insert "2004"; and Line 28 strike "2003" and insert "2004". Motion carried.

Senator Emler moved, seconded by Senator Wagle to amend **HB 2676** on Line 14 and 15, Section 1, Subsection (a) to strike after the word "No", "~~person, firm, partnership, association or corporation~~", and insert after the word "No", "supplier". Motion carried.

Senator Jordan moved, seconded by Senator Brungardt to move **HB 2676** out favorably for passage. Motion carried.

HB 2719—Amendments to state purchasing.

Sherman Parks, Revisor of Statutes, explained the two major amendments would be integrating **SB 481** and **SB 620** into **HB 2719** (Attachment 1).

Senator Jenkins moved, seconded by Senator Wagle to adopt all the balloon amendments for **HB 2719**. Motion carried.

The committee discussed the detailed report that is provided by the Director of Purchases and the threshold for contracts to be included in the report.

Senator Barone moved, seconded by Senator Jenkins to amend **HB 2719**, Page 2, Line 28 to read "all contracts over \$5,000". Motion carried.

Chairperson Brownlee introduced a free-standing amendment for **HB 2719** (Attachment 2). This is a request from a House member and would allow the state to make purchases from a vendor other than the contracted vendor for a lower price.

Senator Kerr made a request that John Houlihan, Director of Purchases, prepare the language for **HB 2719** Page 4, subsections (j) and (k) regarding the detailed report of purchases over \$5,000 and a brief explanation of why the language should read as presented.

Meeting adjourned at 9:30 a.m.

The next meeting is scheduled for Friday, March 22, 2002.

HOUSE BILL No. 2719

By Committee on E-Government

1-28

10 AN ACT relating to state purchasing procedures; amending K.S.A. 75-
11 3738 and 75-3740 and K.S.A. 2001 Supp. 75-3739 and repealing the
12 existing sections;

concerning certain governmental procedures;
repealing the Kansas performance review act;

13
14 *Be it enacted by the Legislature of the State of Kansas:*
15 Section 1. K.S.A. 75-3738 is hereby amended to read as follows: 75-
16 3738. The director of purchases shall:

and 75-3739a

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

; also repealing K.S.A. 75-7101, 75-7102,
75-7103, 75-7104, 75-7105 and 75-7107

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

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

24 (d) Prescribe the time, manner and authentication of making requi-
25 sitions for supplies, materials, equipment and contractual services.

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

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

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

36 ~~(h) Require reports by state agencies of stocks of supplies, materials~~
37 ~~and equipment on hand and prescribe the form of such reports and de-~~
38 ~~liver copies of such reports to the director of purchases and the director~~
39 ~~of accounts and reports.~~

40 Sec. 2. K.S.A. 2001 Supp. 75-3739 is hereby amended to read as
41 follows: 75-3739. In the manner as provided in this act and rules and
42 regulations established thereunder:

43 (a) All contracts for construction and repairs, and all purchases of and

Senate Commerce Committee
March 21, 2002
Attachment 1-1

1 contracts for supplies, materials, equipment and contractual services to
2 be acquired for state agencies shall be based on competitive bids, except
3 that competitive bids need not be required in the following instances:

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

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

10 (3) when, in the judgment of the director of purchases, an agency
11 emergency requires immediate delivery of supplies, materials or equip-
12 ment, or immediate performance of services;

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

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

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

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

22 When the director of purchases approves a purchase of or contract for
23 supplies, materials, equipment, or contractual services in any instance
24 specified in this subsection, the director may delegate authority to make
25 the purchase or enter the contract under conditions and procedures pre-
26 scribed by the director.

27 The director of purchases shall prepare a detailed report at least once
28 in each calendar quarter of all contracts over ~~\$5,000~~ ~~\$10,000~~ [**\$5,000**]
29 entered into without competitive bids under subsection (a)(1), (2), (3),
30 (5), (6) or (7). The director shall submit the report to the legislative co-
31 ordinating council, the chairperson of the committee on ways and means
32 of the senate; *and* the chairperson of the committee on appropriations of
33 the house of representatives ~~and the chairperson of the Kansas perform-~~
34 ~~ance review board.~~

35 (b) (1) If the amount of the purchase is estimated to exceed \$50,000,
36 sealed bids shall be solicited by notice published once in the Kansas reg-
37 ister not less than 10 days before the date stated in the notice for the
38 opening of the bids. The director of purchases may waive this publication
39 of notice requirement when the director determines that a more timely
40 procurement is in the best interest of the state. The director of purchases
41 also may designate a trade journal for the publication. The director of
42 purchases also shall solicit such bids by sending notices by mail to pro-
43 spective bidders and by posting the notice on a public bulletin board for

6-1

1 at least 10 business days before the date stated in the notice for the
2 opening of the bids unless otherwise provided by law. All bids shall be
3 sealed when received and shall be opened in public at the hour stated in
4 the notice.

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

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

16 (d) All purchases estimated to be more than \$5,000, but less than
17 \$25,000, may be made after the receipt of three or more bid solicitations
18 by telephone, telephone facsimile or sealed bid, following at least three
19 days' notice posted on a public bulletin board. Such bids shall be recorded
20 as provided in subsection (e) of K.S.A. 75-3740 and amendments thereto.
21 Any purchase that is estimated to be less than \$5,000 may be purchased
22 under conditions and procedures prescribed by the director of purchases.
23 Purchases made in compliance with such conditions and procedures shall
24 be exempt from other provisions of this section.

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

35 (f) Subject to the provisions of subsection (e), contracts and purchases
36 shall be based on specifications approved by the director of purchases.
37 When deemed applicable and feasible by the director of purchases, such
38 specifications shall include either energy efficiency standards or appro-
39 priate life cycle cost formulas, or both, for all supplies, materials, equip-
40 ment and contractual services to be purchased by the state. The director
41 of purchases may reject a contract or purchase on the basis that a product
42 is manufactured or assembled outside the United States. No such speci-
43 fications shall be fixed in a manner to effectively exclude any responsible

1-3

1 bidder offering comparable supplies, materials, equipment or contractual
2 services.

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

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

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

23 (j) The director of purchases may delegate authority to any state
24 agency to make purchases under certain prescribed conditions and pro-
25 cedures when the acquisition is funded, in whole or in part, from a grant.
26 Purchases made in compliance with such conditions and procedures shall
27 be exempt from other provisions of this section. As used in this subsection
28 the term "grant" means a disbursement made from federal or private
29 funds, or a combination of these sources, to a state agency. *Nothing in*
30 *this subsection shall allow federal grant moneys to be handled differently*
31 *from any other moneys of the state unless the requirements of the appli-*
32 *cable federal grant specifically require such federal moneys to be handled*
33 *differently.*

34 (k) The director of purchases shall prepare a detailed report at least
35 once each calendar quarter of all contracts ~~over \$10,000~~ for services,
36 supplies, materials or equipment entered into pursuant to subsection (h);
37 ~~or (i) or (j)~~ and submit it to the legislative coordinating council, the chair-
38 person of the committee on ways and means of the senate; *and* the chair-
39 person of the committee on appropriations of the house of representatives
40 ~~and the chairperson of the Kansas performance review board.~~

41 (l) Except as otherwise specifically provided by law, no state agency
42 shall enter into any lease of real property without the prior approval of
43 the secretary of administration. A state agency shall submit to the sec-

h-1

5-1

1 retary of administration such information relating to any proposed lease
2 of real property as the secretary may require. The secretary of adminis-
3 tration shall either approve, modify and approve or reject any such pro-
4 posed lease.

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

7 (n) *As used in article 37 of chapter 75 of the Kansas Statutes Anno-*
8 *tated, and amendments thereto, and other statutory provisions concerning*
9 *state procurement, "sealed bids," "bulletin boards" and "mail" shall in-*
10 *clude electronic bids, electronic bulletin boards and electronic mail when*
11 *such items are utilized in accordance with procedures prescribed by the*
12 *director of purchases.*

See Attachment #1

13 Sec. ~~37~~ K.S.A. 75-3740 is hereby amended to read as follows: 75-
14 3740. (a) Except as provided by K.S.A. 75-3740b, all contracts and pur-
15 chases made by or under the supervision of the director of purchases or
16 any state agency for which competitive bids are required shall be awarded
17 to the lowest responsible bidder, taking into consideration conformity
18 with the specifications, terms of delivery, and other conditions imposed
19 in the call for bids.

4.

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

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

26 ~~(2) in the case of bids for paper products specified in K.S.A. 75-~~
27 ~~3740b, the dollar amounts of the bids received from two or more lowest~~
28 ~~responsible bidders are identical, the contract shall be awarded to the~~
29 ~~bidder whose bid is for those paper products containing the highest per-~~
30 ~~centage of recyclable materials; and~~

31 ~~—(3) in the case of bids for paper products specified in K.S.A. 75-~~
32 ~~3740b, the dollar amounts of the bids received from two or more lowest~~
33 ~~responsible bidders are identical, the contract shall be awarded to the~~
34 ~~bidder whose bid is for those paper products containing the highest per-~~
35 ~~centage of recycled materials.~~

36 (c) Any or all bids may be rejected, and a bid shall be rejected if it
37 contains any material alteration or erasure *made after the bid is opened.*
38 The director of purchases may reject the bid of any bidder who is in
39 arrears on taxes due the state, who is not properly registered to collect
40 and remit taxes due the state or who has failed to perform satisfactorily
41 on a previous contract with the state. The secretary of revenue is hereby
42 authorized to exchange such information with the director of purchases
43 as is necessary to effectuate the preceding sentence notwithstanding any

Sec. 3. K.S.A. 2001 Supp. 75-3739a is hereby amended to read as follows: 75-3739a.

ATTACHMENT #1

The director of purchases shall conduct a pilot study utilizing the reverse auctioning electronic procurement process for the purchase of selected goods or materials for one or more state agencies in accordance with this section. The director of purchases shall adopt policies and procedures for such pilot project in accordance with and subject to the provisions of this section.

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

(c) Reverse auctioning shall not be used for the acquisition of any services for construction projects or for the acquisition of any other services.

(d) On or before January 15, 2002, and ~~each six-months thereafter~~ on or before January 15, 2003, the director of purchases shall submit a written report to the secretary of the ~~legislative-coordinating-council, the secretary of the senate and the chief clerk~~ standing committee on commerce of the senate and the standing committee on e-government of the house of representatives on the activities and results of the pilot project utilizing the reverse auctioning electronic procurement process under this section and make recommendations whether or not the authority to use such procurement process should be continued beyond June 30, 2003. The director of purchases also shall notify each remaining member of the legislature of the availability of copies of such report. The report shall be

9
/

made by the director by publishing such report on the internet and by notifying each member that the report is available and providing, as part of such notice, the uniform resource locator (URL) at which such report is available.

~~{e}--Each year, the legislative post auditor shall conduct a performance audit of the pilot project utilizing the reverse auctioning electronic procurement process under this section and the activities of the division of purchases in relation to such pilot project. In conducting such audit, the post auditor shall include a determination of the applicable factors specified in subsection (b) of K.S.A. 74-7287, and amendments thereto, and such other factors as may be directed by the legislative post audit committee. Such audit shall be conducted as soon after the close of the fiscal year as practicable. Upon completion of such audit, the legislative post audit committee shall review and accept such report.~~

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

{g} (f) The provisions of this section shall expire June 30, 2003.

5-1

8-1

1 other provision of law prohibiting disclosure of the contents of taxpayer
 2 records or information. Prior to determining the lowest responsible bid-
 3 der on contracts for construction of buildings or for major repairs or
 4 improvements to buildings for state agencies, the director of purchases
 5 shall consider: (1) The criteria and information developed by the secretary
 6 of administration, with the advice of the state building advisory commis-
 7 sion to rate contractors on the basis of their performance under similar
 8 contracts with the state, local governmental entities and private entities,
 9 in addition to other criteria and information available, and (2) the rec-
 10 ommendations of the project architect, or, if there is no project architect,
 11 the recommendations of the secretary of administration or the agency
 12 architect for the project as provided in K.S.A. 75-1254, and amendments
 13 thereto. In any case where competitive bids are required and where all
 14 bids are rejected, new bids shall be called for as in the first instance,
 15 unless otherwise expressly provided by law or the state agency elects not
 16 to proceed with the procurement.

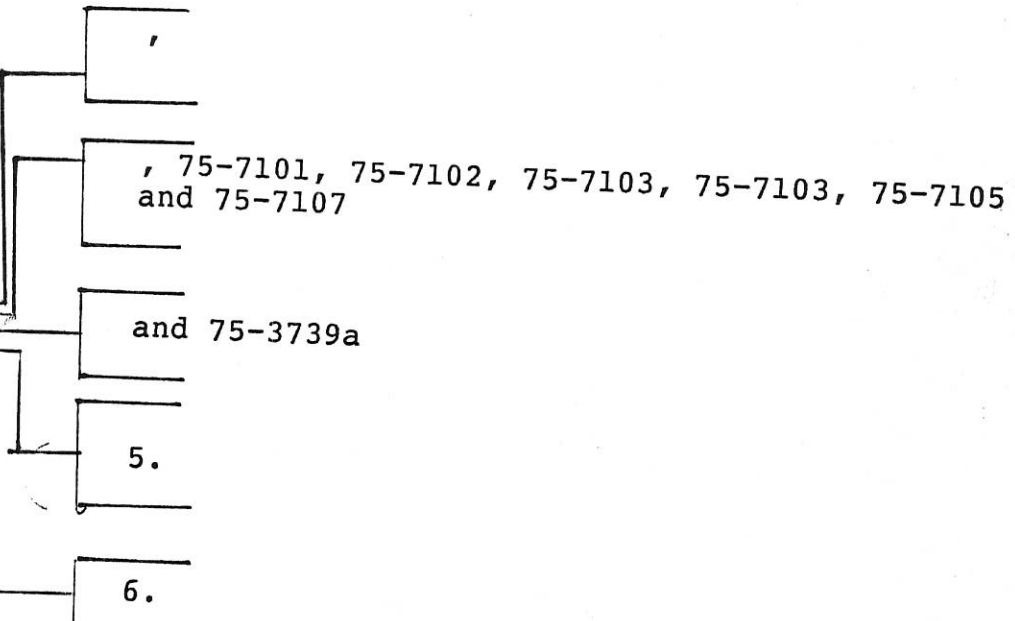
17 (d) Before the awarding of any contract for construction of a building
 18 or the making of repairs or improvements upon any building for a state
 19 agency, the director of purchases shall receive written approval from the
 20 state agency for which the building construction project has been ap-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

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

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

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

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



() Whenever the director of purchases has entered into a statewide contract with a vendor under which state agencies may purchase supplies, materials or equipment at stated prices from such vendor, each state agency is hereby authorized to purchase the same or equivalent supplies, materials or equipment from a different vendor from a location within Kansas at a lower price than the price under the statewide contract, if, as determined by the chief administrative officer of the state agency, an agency emergency exists or it is otherwise in the best interest of the state agency to make such purchase from such different vendor at a lower price.
