

Approved: 02-19-2010
Date

MINUTES OF THE HOUSE EDUCATION BUDGET COMMITTEE

The meeting was called to order by Chairman Joe McLeland at 3:30 p.m. on February 4, 2010, in Room 159-S of the Capitol.

All members were present except:

Rep Aurand, excused
Rep Rardin, excused

Committee staff present:

Theresa Kiernan, Office of the Revisor of Statutes
Audrey Dunkel, Legislative Research Department
Reagan Cussimano, Legislative Research Department
Dee Heideman, Committee Assistant

Conferees appearing before the Committee:

David Weaver, Vice President, Real Estate, Kansas State University Foundation
Theresa Gordzica, Chief Financial Office, University of Kansas
Michael Lane, President, Emporia State University
Darren Muci, Operations Division Director, Wichita Public Schools
Tom Krebs, Government Relations Specialist, Kansas Association of School Boards
Eric Stafford, Account Executive, Associated General Contractors of Kansas, Inc

Others attending:

See attached list.

HB 2446 - State educational institutions; gifts and donations; investments.

Theresa Kiernan, Office of the Revisor of Statutes, explained what this bill is intended to accomplish.

Support for this bill came from David Weaver, Vice President, Real Estate, Kansas State University Foundation, who stated this bill addresses an obsolete issue in the current statute wording and offers an additional investment option supported by the recent adoption of the Uniform Prudent Management of Institutional Funds Act by the State of Kansas. He further stated that Kansas State University has worked together with the University of Kansas and Emporia State University in drafting this proposed legislation and all are in agreement. (Attachment 1)

As the Chief Business and Financial Planning Officer at the University of Kansas, Theresa Gordzica, spoke in support of **HB 2446** because it would streamline rules governing donation to the university, eliminating inefficiency and duplication, and would thereby, maximize the effect of donors' gifts. The legislature has stressed to state agencies the importance of being good stewards of taxpayer dollars. So we continue to look for opportunities for the university to become more efficient in its operations. (Attachment 2)

Michael Lane, President, Emporia State University is a proponent of **HB 2446** and said Section 4 and 5 are of the most direct interest to the university. These sections increase flexibility to the Emporia State University Foundation in investing the State Normal School Fund. The legislation allows the university foundation to invest the fund in its permanent endowment, an option which Emporia State University Foundation utilizes in most funds under its jurisdiction. Emporia State University is supportive of this provision, although, President Lane stated it is likely to have more applicability to the larger institutions. (Attachment 3)

CONTINUATION SHEET

Minutes of the House Education Budget Committee at 3:30 p.m. on February 4, 2010, in Room 159-S of the Capitol.

The President and CEO of the Kansas Board of Regents submitted written testimony, which stated, the bill would update outdated language in existing investment statutes and offer an additional investment option consistent with the recent adoption of the Uniform Prudent Management of Institutional Funds Act. This legislation would allow for university foundation/endowments' for administration of gifts made to their respective universities without the concurrent requirements for maintaining such gifts as agency fund accounts and entering into agreements to administer each of those accounts on a gift by gift basis. He pointed out an error in the bill draft. On page three, line 13, the word endowment' should be stricken as the correct name is the "Fort Hays state university foundation." ([Attachment 4](#))

No opponents for **HB 2446** appeared before the committee, nor submitted written testimony.

The hearing on **HB 2446** was closed by the chair after all questions were answered.

HB 2559 - School districts; expenditures over \$20,000.

Explanation of **HB 2559** was provided by Theresa Kiernan from the Office of the Revisor of Statutes.

Darren Muci, Operations Division Director, Wichita Public Schools, spoke as a proponent because as written, K.S.A. 72-6760 does not allow school districts to utilize a standard procurement method that provides for best value for the taxpayers. The American Bar Association 2000 Model Procurement Code provides definitions and facilitation methods for using a sealed competitive proposal procurement method. Cities and Counties in Kansas have the flexibility to utilize this procurement method and it is recommended that the statute be amended to allow for its use. School districts interested in utilizing this procurement method would be required to adopt policy and procedures referencing guidelines established by the 2000 Model Procurement Code and amendments thereto. ([Attachment 5](#))

Tom Krebs, Government Relations Specialist, Kansas Association of School Boards stated the KASB favors this bill because their position is districts benefit when they have flexibility in allocating resources. For many districts, the sealed bid process is appropriate and effective. It gives the districts that have the necessary personnel and other resources the opportunity to use a process they believe will maximize district expenditures. The officials are locally elected, so if the process is not used appropriately, the citizens have recourse. ([Attachment 6](#))

The only opponent was Eric Stafford, Account Executive, Associated General Contractors of Kansas, Inc, who outlined to the committee that this bill would exempt expenditures in excess of \$20,000 for the "reconstruction, remodeling, repairing or equipping building" from bidding statutes. The goal of the proponents is to address emergency situations that arise at a facility in their district. As a public owner, Associated General Contractors feels there is an extra level of trust and accountability which must be followed to ensure the taxpayer is receiving the best product and the best price by the best contractor. ([Attachment 7](#))

The chair gave the committee members the opportunity to ask questions and when all were answered, he closed the hearing on **HB 2559**

The next meeting is scheduled for February 8, 2010.

The meeting was adjourned at 4:29 p.m.

EDUCATION BUDGET COMMITTEE GUEST LIST
 DATE: FEBRUARY 4, 2010

NAME	REPRESENTING
Maryanne Worley	Emporia State Univ
Peter L. Brookie	Emporia State University
Theresa Gudzica	Univ of Kansas
Diane Gjerstad	USD 259
Darren Muai	USD 259
Sue Petersen	K-state
David Weaver	K-state Foundation
Lois Cox	K-state Foundation
C. David Bennett	Keamey ⇒ Assoc.
Dodie Wellshear	USA/KS
Bill Reardon	USD 500 (KCKS)
Cheryl Crow	USD 501
Jylene Miller	KCBOR
Janet Jones	Benchmark Communications

Testimony on HB 2446
House Education Budget Committee
Representative Joe McLeland, Chairman
Presented by David Weaver Vice-President for Real Estate and Investments
Kansas State University
February 4, 2010

2010 Legislative Proposal

Amend KSA 76-718, KSA 76-308, KSA 76-410a and KSA 76-604

This proposal is presented to address an obsolescence issue in the current statute wording and to offer an additional investment option supported by the recent adoption of the Uniform Prudent Management of Institutional Funds Act by the State of Kansas.

We are proposing the change to address the updated regulatory authorities of financial institutions. In addition, the proposed amendments allow for the addition of the endowment pools as an investment option. The respective pools of money are permanent endowment pools in nature, as stated in the authorizing statutes, and therefore their investment objectives are compatible with those of the respective institutions endowment pools. Including this investment option has the dual benefits of better matching the investment objectives of the pools of funds with authorized investment options and simplifying the implementation of actual investment of the funds through existing investment pools at each institution.

We have worked together with Kansas University and Emporia State University in drafting this proposed legislation and all are in agreement.



House Education Budget Committee
Hearing on H.B. 2446
February 4, 2010

Testimony of Theresa Gordzica
Chief Business & Financial Planning Officer
University of Kansas

Chairman McLeland and Vice Chair Aurand and the Ranking Minority member Lane, I am Theresa Gordzica, Chief Financial Officer for the University of Kansas and I am here to testify in support of H.B. 2446. This bill would streamline rules governing donations to the university, eliminating inefficiency and duplication, and thereby maximizing the effect of donors' gifts.

The University of Kansas appreciates the Committee's attention to this legislation. Over the years the Legislature has stressed to all state agencies the importance of being good stewards of taxpayer dollars. We continue to look for opportunities for KU to become more efficient in its operations.

KSA 76-156a was written in 1969 to identify specific endowment associations and foundations that are authorized agents to invest "endowments and bequests" received by Regents institutions. Over the years many gifts of varying dollar magnitudes have been received that have been directed to the university rather than the endowment association. Under current law, the terms "endowments" and "bequests" are not defined.

An example of a gift that might not qualify as "endowments or bequests" under the current statute would be a \$100 donation made payable to the University for the benefit of the KU Libraries. A gift that clearly does constitute an "endowment" or "bequest" would be a \$5,000 bequest to KU to establish a scholarship fund.

However, under current law, the only way for KU to have KU Endowment administer these gifts – as opposed to administrative personnel at KU having to do so in addition to their other duties – is for KU to deem these gifts to be "endowments" or "bequests" and, for each such gift, regardless of its size and purpose, to create a new separate "agency account" with KU Endowment.

Often there already is an existing KU Endowment account set up to receive contributions that are made directly to KU Endowment to support the same purpose at KU but under current law such contributions cannot go into such a non-agency account. This bill would enable KU to simply direct that these types of gifts and bequests would go directly to KU Endowment to administer in a non-agency account.

Further, under current law, KU has to use its own administrative personnel – whose have other primary job duties – to generate a gift receipt to the donor for such a gift. In contrast, KU Endowment already has the infrastructure to generate gift receipts when funds are deposited in a KU Endowment account.

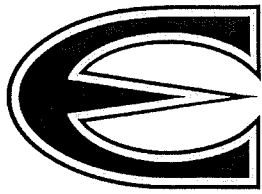
Although the current statute's "endowments and bequests" language is not well defined, its intent is clear – to allow the endowment associations and foundations to manage these charitable contributions that are directed to the universities in concert with the other contributions that are made directly to their respective foundation or endowment, which such foundations or endowments already invest and distribute for the universities' benefit.

KU works closely with the KU Endowment and has established "agency fund accounts" for gifts that are clearly "endowments and bequests." Nearly all gifts carry donor restrictions for specific uses and the University and KU Endowment have established procedures to ensure the donor's wishes are honored.

The proposed legislation will clarify the original intent of the existing legislation, reduce each university's administrative effort to establish separate "agency" fund accounts and to generate receipts for such gifts, and eliminate the inefficiency and duplication of effort required by the endowment associations and foundations to manage duplicative accounts.

The proposed legislation also provides some additional investment options for the permanent university fund held at the KU Endowment and similar funds held at the respective foundations for Emporia State and Kansas State universities. The legislation would expand the investment options from interest bearing instruments only to allow those funds to be invested in the endowment or foundations' long term investment pool. The longer term investment of the funds would help the institutions to preserve the purchasing power of the funds over time.

I would be happy to answer any questions.



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OFFICE OF THE PRESIDENT
Campus Box 4001

February 04, 2010

Representative Joe McLeland, Chairman
House Education Budget Committee
Statehouse, Room 458-W
Topeka, KS 66612

Dear Chairman McLeland:

On behalf of Emporia State University, I am appearing today in support of H.B. 2446.

Sections 4 and 5 of H.B. 2446 are of the most direct interest to ESU. Those sections increase flexibility available to the ESU Foundation in investing the State Normal School Fund. The legislation allows the University Foundation to invest the Fund in its permanent endowment, an option which the ESU Foundation utilizes in most Funds under its jurisdiction.

As its name implies, The State Normal School Fund is a very old Fund, which was donated to the University prior to the existence of the ESU University Foundation. It has been administered by the ESU Foundation for several years under provisions of existing statute. The fund presently has an original principal of \$294,251, which cannot be distributed under provisions of both existing statute and H.B. 2446. This amendment is a part of the 2010 Legislative program approved by the Kansas Board of Regents.

Section 1 of H.B. 2446 is also a part of the Board of Regents 2010 Legislative program. The section streamlines and clarifies the authority of a University in relationship to its Foundation. Emporia State is supportive of this provision, although it is likely to have more applicability to the larger Universities.

Thank you for this opportunity to appear and for consideration of our request.

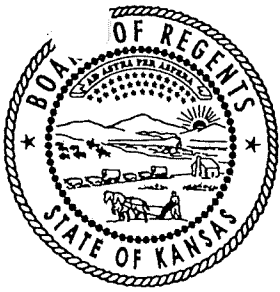
Sincerely,

Michael R. Lane

President

Emporia State University

Cc: Committee Members



KANSAS BOARD OF REGENTS

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February 4, 2010

Representative Joe McLeland, Chairman
House Education Budget Committee
Statehouse, Room 458-W
Topeka, KS 66612

Representative Harold Lane, Ranking Member
House Education Budget Committee
Statehouse, Room 43-S
Topeka, KS 66612

Dear Chairman McLeland and Ranking Member Lane:

On behalf of the Kansas Board of Regents, I write to you in support of House Bill 2446. This legislation would clearly allow for university foundation/endowments' administration of gifts made to their respective universities without the concurrent requirements for maintaining such gifts as agency fund accounts and entering into agreements to administer each of those accounts on a gift by gift basis. The bill would also update outdated language in existing investment statutes and offer an additional investment option consistent with the recent adoption of the Uniform Prudent Management of Institutional Funds Act.

As the state universities have continued to look for ways to achieve cost savings in their operations, this proposal, to streamline the rules governing donations and thereby eliminate inefficiencies and maximize the value of the gifts surfaced, is one that would require legislative action. Under the terms of the bill, the university CEO would continue to control which gifts are transferred to the foundation/endowment, and any restrictions placed on the gift would remain intact, but the steps of creating a special fund account within the university for each gift and then entering an agreement with the foundation/endowment for administration of each of those accounts would be eliminated.

In addition, we note that there is an error in the bill draft. On page three, line 13, the word "endowment" should be stricken as the correct name is the "Fort Hays state university foundation."

Thank you for your favorable consideration of House Bill 2446.

Sincerely,

Reginald L. Robinson
President & CEO

House Education Budget Committee
Date: 02-04-2010
Attachment #: 4

TITLE: Suggested Amendment to K.S.A. 72-6760

ISSUE: K.S.A. 72-6760 does not allow the use of Competitive Sealed Proposals to facilitate the purchase of materials, goods, or wares, or construction, reconstruction, or remodel services.

AUTHOR: Unified School District 259

DATE: February 2, 2010

OVERVIEW: K.S.A. 72-6760 states that the requirements relating to bids and bidders for School district expenditures over \$20,000 that, *"...no expenditure involving an amount greater than \$20,000 for construction, reconstruction or remodeling or for the purchase of materials, goods or wares shall be made by the board of education of any school district except upon sealed proposals, and to the lowest responsible bidder."*

This language limits school districts to only using a competitive sealed bidding method for purchases exceeding \$20,000 for materials, goods, or wares, or construction or remodeling. A competitive sealed bid (Request for Bid)– *as defined in the American Bar Association 2000 Model Procurement Code* – provides for an opportunity for interested vendors to submit sealed offers for the purchase of materials, goods, or wares, or construction, reconstruction, or remodel services within either design, or performance specifications and all contractual terms and conditions applicable to the purchase. Competitive sealed bidding does not guarantee the best value for local taxpayers. For example it does not allow for negotiations with vendors after the receipt and opening of a bid, and awards can only be made based strictly on the criteria (i.e., specifications and all contractual terms and conditions applicable to the purchase) set forth in the Request for Bid. Award is made to the vendor offering the lowest, responsive and responsible bid meeting the specifications.

USD 259 desires to use a **competitive sealed proposal** process to facilitate – *when appropriate and beneficial* – the purchase of materials, goods, or wares, or construction, reconstruction, or remodel services. A competitive sealed proposal (Request for Proposal) as defined by the American Bar Association 2000 Model Procurement Code asks interested vendors to provide a solution (e.g., service, materials, or construction services, etc.) to meet a particular purpose or requirements as described in the Request for Proposal. Proposals are evaluated against established criteria stating the relative importance of price and other factors and sub factors. No other factors or criteria can be considered in the evaluation of the submitted proposals. Award is made to the responsible vendor(s) whose proposal conforms most favorably to the purpose and requirements stated in the Request for Proposal.

Other minor changes have also been suggested to streamline the procurement process.



JUSTIFICATION: As written, K.S.A. 72-6760 does not allow school districts to utilize a standard procurement method that provides for best value for the taxpayers. The American Bar Association 2000 Model Procurement Code provides definitions and facilitation methods for using a sealed competitive proposal procurement method. Cities and Counties in Kansas have the flexibility to utilize this procurement method and it is recommended that K.S.A. 72-6760 be amended to allow for its use. School districts interested in utilizing this procurement method would be required to adopt policy and procedures referencing guidelines established by the American Bar Association 2000 Model Procurement Code and amendments thereto.

ATTACHED SUPPORT DOCUMENTATION:

1. Summary of Suggested Changes to KSA 72-6760
2. Competitive Sealed Proposals: A Recommended Method of Source Selection – Published by the National Institute of Governmental Purchasing (NIGP) December 2009
3. Peer Governmental Entity (Political Subdivision) Use of Competitive Sealed Proposals:
 - a. Sedgwick County, Kansas (Iris Baker, Director of Purchasing)
 - Letter of Verification
 - Sedgwick County Charter Resolution No. 57

K.S.A 72-6760

EXPLANATION OF SUGGESTED AMENDMENTS – HB 2559

USD 259

February 4, 2010

NOTE – Section (a) below delineates a threshold amount of \$20,000 requiring Board of Education approval prior to making any purchase described herein.

Section 1 K.S.A. 72-6760 is hereby amended..... (a) Except as provided by this section and K.S.A. 72-6760b, no expenditure involving an amount greater than \$20,000 for construction, reconstruction or remodeling or for the purchase of materials, goods or wares shall be made by the board of education of any school district except upon sealed proposals, and to the lowest responsible bidder.

(b) The provisions of subsection (a) ~~do~~ shall not apply to expenditures by a board of education for ~~the purchase of:~~

- (1) Services;
- (2) products required to be purchased under the provisions of K.S.A. 75-3317 through 75-3322, and amendments thereto;
- (3) educational materials directly related to curriculum and secured by copyright;
- (4) motor fuels required to provide or furnish transportation;
- (5) food and foodstuffs necessary for the implementation or operation of any child nutrition program;
- (6) articles or products that are produced, manufactured or provided by inmates under the prison-made goods act of Kansas;
- (7) natural gas that will be consumed in buildings owned or operated by the school district;
- ~~(8) materials, goods or wares required for reconstructing, remodeling, repairing or equipping buildings when such purchase has been necessitated by the occurrence of a loss against which the board of education has purchased property or casualty insurance; and~~
- ~~(9) materials, goods or wares which are purchased:~~
 - (8) reconstructing, remodeling, repairing or equipping buildings and the materials, goods or wares required to reconstruct, remodel, repair or equip such buildings when such expenditure has been necessitated by the occurrence of a loss against which the board of education has purchased property or casualty insurance or by the occurrence of a loss for which the district is self-insured; and

EXPLANATION – Current language provides for an exemption if “*the board of education has purchased property or casualty insurance.*” Many USDs are self-insured, thus the request for this as an additional exemption.

(9) reconstructing, remodeling, repairing or equipping buildings and any materials, goods or wares;

EXPLANATION – This section provides for the use of cooperative contracts. Current language only provides for the purchase of “materials goods or wares.” The suggested language would allow for the use of cooperative contracts for “reconstructing, remodeling, repairing or equipping buildings.” There are many local, regional, and national cooperative contracts that are available for accessing and use, and many use local or State Vendors/Contractors/Suppliers as sources.

(A) From vendors who have entered into contracts with the state director of purchases pursuant to state purchasing statutes for purchases by state agencies;

(B) under the same pricing provisions established in the state contracts, subject to agreement of the vendor to honor the state contract prices; and

(C) under the same pricing provisions established in federal, national or other state contracts facilitated by a federal or local governmental entity or agency, subject to:

(i) Agreement of the vendor to honor the contract prices; ~~and~~

(ii) approval by the board of education for expenditures in an amount greater than \$20,000.

(10) software application licenses;

EXPLANATION – Section (b)(3) implies that educational software application licenses are exempt. This new section requests an exemption for operational software application licenses which are nearly always only available from the developer/publisher.

(11) reconstructing, remodeling, repairing or equipping of buildings and the materials, goods or wares required to reconstruct, remodel, repair or equip such buildings when a request for a competitive sealed proposal method is used that complies with the requirements specified in the American bar association 2000 model procurement code that pertain to and apply to competitive sealed proposals; and

EXPLANATION – This section addresses the use of a competitive sealed proposal (CSP) (aka – Request for Proposal (RFP)) for construction projects. The ABA Model Procurement Code provides clear guidelines for the use of the CSP/RFP and the USD should adopt procedures or policies to be in compliance.

(12) when a board of education determines there is only one source available for the reconstructing, remodeling, repairing or equipping of buildings or there is only one source available from which to purchase materials, goods or wares for such buildings.

EXPLANATION – This section allows the Board of Education to make a determination to proceed with a purchase with an only known source.

(c) Whenever the board of education of any school district lets bids for the purchase of materials, goods or wares and bids are submitted by bidders domiciled within the school district and by bidders domiciled outside the school district and the low bid is submitted by a bidder domiciled outside the school district, the school district domiciliary which submitted the lowest bid may be deemed the preferred bidder and awarded the bid if:

(1) The quality, suitability and usability of the materials, goods or wares are equal;

(2) the amount of the bid of the school district domiciliary is not more than 1% greater than the amount of the low bid; and

(3) the school district domiciliary agrees to meet the low bid by filing a written agreement to that effect within 72 hours after receiving notification of being deemed the preferred bidder.

(d) The provisions of subsection (c) ~~do~~ shall not apply to expenditures for construction, reconstruction or remodeling.

END OF DOCUMENT

5-5



Competitive Sealed Proposals:

A Recommended Method of Source Selection

It is widely recognized that competitive sealed bidding has been the preferred method for contracting in public procurement. However, it is not the only accepted method and should be supplemented with informal procedures for small purchases, as well as procedures for exceptions such as sole sources, and emergency situations.

Competitive negotiation should also be an authorized source selection method.

The American Bar Association's Model Procurement Code has included competitive sealed negotiation as a recommended source selection method since its adoption in 1979. While the original Model Procurement Code held competitive sealed bidding as the preferred method this was modified in the 2000 update. There is no longer a preference for competitive sealed bidding in the Model Procurement Code. **Rather, procurement officials should be given adequate authority to conduct procurement transactions by fair and open competition under varying market conditions in order to satisfy public needs for supplies, services, and construction at the most economical prices.** In short, procurement officials should be able to choose the appropriate source selection method to meet the circumstances of every procurement.

The competitive sealed proposal method should be available for use when competitive sealed bidding is either not practicable or not advantageous. As with Invitations for Bid, a clear and concise Request for Proposals (RFP) document serves to promote fair and just competition. The RFP process has the added benefit of allowing the procuring entity the flexibility in evaluation through weighted criteria, in contrast to competitive bids that are awarded on price alone. Through the RFP process, public agencies acquire innovative solutions as recommended by the supplier community. Public entities using the RFP process recognize that the best solutions often come from the experts (suppliers) who deal with similar issues on a daily basis. This advantage is gained through the RFP process while still providing for competition on price.

Competitive sealed bidding and competitive sealed proposals differ in several ways. Under competitive sealed bidding, judgmental factors may be used only to determine if the supply, service, or construction item bid meets the purchase description. **Under competitive sealed proposals, judgmental factors may be used to determine not only if the items being offered meet the stated requirement, but also to evaluate**

the relative merits of competing proposals. The quality of competing products or services may be compared and trade-offs made between price and quality of the products or services offered (all as set forth in the solicitation).

In addition, under competitive sealed bidding, no change in bids is allowed once they have been opened, except for correction of errors in limited circumstances. The competitive sealed proposal method, on the other hand, permits discussions after proposals have been opened to allow clarification and changes in proposals (provided that adequate precautions are taken to treat each offeror fairly and to ensure that information gleaned from competing proposals is not disclosed to other offerors). These discussions provide the procurement official an opportunity to make certain that offerors fully understand the solicitation requirements and provides offerors an opportunity to clarify proposals where necessary to assure responsiveness to the solicitation. This 'meeting of the minds' leads to improved price discussions and negotiations, with a greater likelihood that the needs of the public will be met at a reasonable cost.

When choosing the best source selection method, the purchasing official should consider whether competitive sealed bidding is practicable and advantageous to the public entity. Generally, competitive sealed bidding is practicable (possible to practice or perform), when the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids. **This may not be the case when:**

- a) **Specifications cannot be established in order to provide a clear picture of the item, process, or output desired by the public entity;**
- b) **Oral or written discussions of technical and price aspects of proposals prior to selection and award would be beneficial to the public entity;**
- c) **Revision to proposals, including price, prior to selection and award would be beneficial to the public entity;**
- d) **Negotiation of pricing is desired;**
- e) **The best price or value is determined not by the initial cost of a good or service but by the combination of a series of factors assessed over the life of the product or service;**
- f) **Technology is changing at such a rate that the most cost effective solutions to public problems may need to be created as analyses of the problems are made;**
- g) **Award should be based upon comparative evaluation of price, quality, and contractual factors in order to determine the most advantageous offering to the public entity; or**
- h) **The primary consideration in determining award should not be price.**

Sometimes, competitive sealed bidding may be practicable, but still not advantageous to the public entity. The 2002 ABA Model Procurement Regulations provides the following examples of circumstances when competitive sealed bidding is practicable but not advantageous.

(1) While it may be "practicable" to base a procurement of asphalt, for example, on competitive sealed bids even though it is known that only two contractors in the area have asphalt plants with sufficient capacity to submit responsive bids, the potential for inflated (and perhaps collusive) bids is high. Accordingly, it might not be "advantageous" to use the competitive sealed bidding method. Competitive sealed proposals, which permit negotiation, might be preferable as enhancing the competition for the procurement.

(2) It could be "practicable" to invite competitive sealed bids on a functional specification prepared by the public entity for equipment that is highly specialized such as airport emergency equipment. However, the contract award would likely better serve the public interest if it were made based on the most advantageous proposal rather than the lowest responsive and responsible bidder. Therefore, it would not be "advantageous" to take competitive sealed bids, as the specification could conceivably result in an acceptable product but another could have been obtained more economically and in a form that would better serve the public needs. Competitive sealed proposals would also afford the opportunity to discuss design characteristics with the offerors.

Many of the steps in competitive sealed bidding are part of the competitive sealed proposals process, including market research, solicitation document development, identification of potential suppliers, distribution of the RFP, public advertising, pre-proposal conference, addenda, proposal acceptance and security until opening, public opening, award, and a protest process. However, the competitive sealed proposals process is also different in a few key areas: use of an evaluation team, development and application of evaluation criteria, and the basis for award.

The RFP process begins with the formation of a team consisting of those who will be responsible for significant aspects of the procurement, such as contracting, fiscal, legal, end-users, and technical personnel. The team will evaluate proposals, and may be used to develop the RFP, including the specifications or statement of work and evaluation criteria.

In an RFP, a good specification or statement of work defines the need or problem to be solved without dictating exactly how the need should be fulfilled or the problem solved. This maintains full and open competition as in competitive sealed bidding, and allows for innovation from the private sector.

Another key difference between competitive sealed bidding and competitive sealed proposals is how proposals are evaluated and awarded. In competitive sealed bidding, award is made to the lowest responsive and responsible bidder, that is, the bidder that meets the exact and specific requirements of the solicitation (responsive), and is deemed fully capable of carrying out the resulting contract (responsible), and offers the lowest cost. In competitive sealed proposals, a need or problem is defined with each offer providing a unique solution. To be considered for award, offerors must still be fully capable of carrying out the resulting contract, but the way in which they are responsive will differ, as will the relative value of their offerings. Therefore, the criteria by which the proposals will be evaluated become critical.

The development of evaluation criteria should take into consideration many factors, including the nature of the specific requirement, the ability of the end-user to define the requirement in a clear and concise manner, relevant evaluation criteria, and the jurisdictional culture or environment. While cost is typically an evaluation factor, it is not the only or even primary factor in the basis for award. Other criteria may address supplier qualifications, experience, project approach, innovation, and creativity or value-added services.

The ability to discuss proposals, to request best and final offers, and to negotiate before award also add value to the competitive sealed proposals process not available through sealed bidding.

In summary, there is no source selection method that is appropriate for every procurement. It is imperative that public purchasing officials have a vast array of tools available to meet every public contracting need in the most effective and efficient manner. **The value of competitive sealed proposals as a source selection method has been proven, and should be an authorized source selection method.**

Resources:

American Bar Association (2000). The 2000 Model Procurement Code for State and Local Governments. Chicago: American Bar Association.

American Bar Association (2002). 2002 ABA Model Procurement Regulations. Chicago: American Bar Association.

National Institute of Governmental Purchasing, Inc. (NIGP) (2008). Sourcing in the Public Sector. Herndon, VA: NIGP.

National Institute of Governmental Purchasing, Inc. (NIGP) (2009). Introduction to Public Procurement, 2nd edition. Herndon, VA: NIGP.

National Institute of Governmental Purchasing, Inc. (NIGP) (2007). Developing and Managing Requests for Proposals in the Public Sector, Second Edition. Herndon, VA: NIGP.



SEDGWICK COUNTY, KANSAS

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January 16, 2010

To Whom It May Concern:

Sedgwick County uses the request for proposal process, a type of bid process for most services, and goods and products that have a several year life expectancy, and on-going or future costs associated with the acquisition. The county considers the total life-cycle cost of goods and products as part of the evaluation process when making purchases. This methodology gets the organization the "best bang for the buck" when purchasing goods and services.

One of the largest benefits to the rfp process is the ability to negotiate anything related to the acquisition (a huge benefit for value). Negotiating is generally very limited or non-existent in a bid process. The rfp process is a beneficial tool in obtaining a wide range of responses from all sectors of industry. Vendors will often offer a broader range of goods and services for consideration (opposed to just the minimum required in a bid) and will often times offer options and ideas for other consideration in the process. Another result of the rfp process is a tendency to provide better education to staff for product availability or the extent of service available and offered because vendor responses often broaden ideas and opportunities. In a bid process one is usually looking for something specific and therefore, not as open-minded and can miss opportunities for various goods and products or limit what may be offered in services by defining the scope too narrowly.

The use of the rfp process also includes the evaluation of qualifications and experience of individuals and firms making solicitations, and evaluation of performance and quality of a good or product, again often times netting a better value over the life of the acquisition.

The rfp process offers better flexibility in obtaining goods and services and better allows for the best value not just the cheapest price, which benefits the organization and tax payer.

Regards,

Iris Baker, C.P.M.
Purchasing Director

(Published in THE DAILY REPORTER on May 14 and May 21, 2004)
CHARTER RESOLUTION NO. 57
Effective: July 21, 2004

A CHARTER RESOLUTION OF SEDGWICK COUNTY, KANSAS PROVIDING THAT K.S.A. 19-260a AND 19-260b NOT APPLY TO SAID COUNTY AND EXEMPTING SAID COUNTY THEREFROM AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS UPON THE SAME SUBJECT; AND PROVIDING THAT SAID COUNTY PURCHASE GOODS AND SERVICES PURSUANT TO COMPETITIVE PURCHASING PROCEDURES UNDER THE DIRECTION OF THE COUNTY PURCHASING DIRECTOR; AND REPEALING CHARTER RESOLUTION NO. 55.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS that:

SECTION I. Sedgwick County is a duly organized county within the State of Kansas and, pursuant to the home-rule authority vested in said county by K.S.A. 19-101a and K.S.A. 19-101b, hereby exempts said county from and makes inapplicable to it a non-uniform act of the legislature: K.S.A. 19-260a and 19-260b; and Sedgwick County hereby enacts the following substitute and additional provisions therefor.

SECTION II. Charter Resolution No. 55 is hereby repealed upon the Effective Date of this Charter Resolution.

SECTION III. General Requirements. All supplies, equipment and services acquired for Sedgwick County, for each and every office and department thereof, and for each and every elected official and for the Eighteenth Judicial District, regardless of the source of funds used to make the acquisition, shall be acquired in accordance with this Resolution and the policies and procedures established pursuant to it.

A. Each purchase, including acquisitions by rental, lease, and lease/purchase, in an amount exceeding \$25,000.00 shall be offered to responsible vendors prior to issuing a purchase order or contract for said goods or services, and said purchase order or contract shall be awarded to a qualified vendor submitting the lowest responsible bid or best proposal as determined by the Board of County Commissioners after review of all vendor proposals and recommendation by the user department, the Purchasing Department and the Board of Bids and Contracts subject only to the exceptions provided in this Resolution.

B. Each purchase, including acquisitions by rental, lease, and lease/purchase, in an amount exceeding \$10,000.00 but not more than \$25,000.00 shall be offered to responsible vendors prior to issuing a purchase order or contract for said goods or services, and said purchase order or contract shall be awarded to the vendor submitting the lowest price as determined by the County Manager after review of all vendor bids/proposals and recommendation by the user department and Purchasing Department; or if the County Manager determines that the County interest is best served by a vendor not offering the lowest price said purchase order or contract shall be awarded to the lowest responsible bid or best proposal as determined by the Board of Bids and Contracts after review of all vendor proposals and recommendation by the County Manager.

C. Each purchase, including acquisitions by rental, lease, and lease/purchase, in an amount exceeding \$1,500.00 but not more than \$10,000.00 shall be offered by the Purchasing

2.
Department to responsible vendors prior to issuing a purchase order or contract for said goods or services, and said purchase order or contract shall be awarded to the vendor submitting the lowest responsible bid or best proposal as determined by the Purchasing Director subject only to the exceptions provided in this Resolution.

D. Each purchase, including acquisitions of vehicles or equipment by rental or lease for a

temporary period, in an amount not exceeding \$1,500.00 may be made by the user department using a county-issued credit or procurement card in accordance with established policy governing the use of credit cards or by the Purchasing Department using procedures established pursuant to this Resolution.

SECTION IV. Waiver of Bid/Proposal Requirements. Requirements that purchases be offered to multiple vendors may be waived by the Purchasing Director as to subsections "A" through "G" and shall be waived by the Purchasing Director as to subsection "H". Except as otherwise provided in this Section, approval of any such purchases shall occur in the manner provided in this Resolution.

A. Emergencies. Competitive bid/proposal requirements may be waived when unexpected or unforeseen events may cause serious financial loss to public or private property, endanger the health or lives of the citizens of Sedgwick County, or have economic impact on County business unless immediate action is taken to purchase said goods or services. Emergency purchases may be approved by the Purchasing Director.

B. Public Exigency. Competitive bid/proposal requirements may be waived when after advertising for bids, no bids are received, and the needs of the county warrant purchasing said goods or services without delay while awaiting additional advertising for bids.

C. Sole Source. Competitive bid/proposal requirements may be waived for the procurement of items or services that are generally available only from one manufacturer, publisher, local distributor, or dealer and for which there is no basis for expecting multiple vendors to bid on said items.

D. Joint Governmental Purchases. Competitive bid/proposal may be waived when purchases are made in cooperation with other city, county, state, or federal agencies and it is deemed to be in the best interest of the County to purchase supplies, services and equipment from contracts and agreements of other governmental agencies.

E. Trade/Barter. Competitive bid/proposal requirements may be waived when procuring goods or services by either trade or barter in an amount less than \$10,000.00 and it is in the best interest of the County to procure goods or services in such a manner. Whenever it is deemed by the Purchasing Director that it is in the best interest of the County to procure goods or services by trade or barter such procurement shall be made in accordance with policies and procedures established by the Purchasing Director and subject to approval by the County's Chief Financial Officer.

F. Insurance. Competitive bid/proposal requirements may be waived for the purchase of insurance and indemnity contracts shall be approved on the recommendation of the County's Risk Manager.

G. Professional Services. Competitive bids/proposals may be waived for contracts for Professional Services. Professional Services shall be defined as services provided and performed by individuals or firms where a certification mandated by local, state or federal government is required. Examples of said services include but are not limited to architectural, engineering, specialized consulting, accounting, and medical services.

H. Legal Professional Services. Competitive bids/proposals are unnecessary for contracts for Legal Professional Services. Legal Professional Services are defined as services that may

only be performed by licensed attorneys (including support staff) in representing or advising the Board of County Commissioners or any agent or employee of Sedgwick County. All purchases of Legal Professional Services shall be approved by the County Counselor or by the Board of County Commissioners.

SECTION V. Contract Amendments. No work shall be authorized and no payment may be made pursuant to any contract except as provided by the contract. Changes to contracts shall be made in accordance with the following procedures:

A. Changes during the performance of a contract shall be accomplished by issuance of a change order, amendment, modification, stop-work or termination notice, or by renewal or extension of a contract. An amendment shall also require a modification to a purchase order originally issued to authorize the procurement.

B. Except where specifically authorized by resolution of the Board of County Commissioners,

the following approval limitations apply to contract amendments:

1. Multi-Department Commodities and Supply Contracts. The Purchasing Director may approve all amendments to commodities and supply contracts that involve multiple departments, so long as the cumulative amendments do not exceed 10% of the original contract cost. The Purchasing Director may also approve all amendments to such contracts that extend the contract time of performance, so long as the cumulative amendments do not exceed 10% of the original contract term or time of performance.
2. Construction and Professional Services Contracts. Amendments to construction projects and Professional Services contracts that do not expand the intended result of the project, and that cumulatively do not exceed 10% of the original contract cost, or \$75,000.00, whichever is less, may be approved by the appropriate division or department director, so long as the cumulative amount of the amendments do not cause the project to exceed its project authorization amount. The appropriate division or department director may also approve all amendments to such contracts that extend the contract time of performance, but do not expand the intended result of the project, and that cumulatively do not exceed 10% of the original contract time of performance.
3. Other Contracts. The appropriate division or department director may approve all other amendments so long as the cumulative amendments do not exceed 10% of the original contract cost, or \$25,000.00, whichever is less. The appropriate division or department director may also approve all other amendments to extend the contract time of performance so long as the cumulative amendments do not exceed 10% of the original contract time of performance.
4. Any amendment that would cause the cumulative total of amendments to a contract to exceed the limitations set forth in this Section may be approved by the Board of County Commissioners upon the recommendation of the Board of Bids and Contracts.

C. Each amendment shall be executed in writing. Prior to approval, each amendment shall be reviewed by the Finance Division, an official of which shall affirm by signature that the amendment does not cause the project to exceed its project authorization amount; and by the County Counselor's Office, an official of which shall approve the change order as to form. The change order shall be signed by the County official authorized to give approval and the authorized official of the vendor. All approved change orders shall be executed in three original copies, one of which shall be filed with the County Clerk, one with the Purchasing Director, and one with the vendor.

SECTION VI. Requirements for Competition. Whenever a purchase must be offered to responsible vendors the Purchasing Director shall determine the procedure for compliance. Purchases of \$1,500.00 to \$10,000.00 shall be offered by informal bid/proposal. Purchases of more than \$10,000.00 shall be offered by sealed bid/proposal. Any purchase may, in lieu of informal or sealed bids or proposals, be offered to responsible vendors by use of an internet-based auction or reverse auction service. All requests for bids/proposals shall be advertised at the discretion of the Purchasing Director. Competitive sealed bids/proposals shall be opened at a time and place specified pursuant to said public notice. The Purchasing Director shall make the determination as to whether purchases subject to this Resolution shall be made by requests for bids or requests for proposals. The following requirements shall apply for purposes of this Resolution:

A. **Competitive Bid.** Bids shall be evaluated based on the requirements set forth in the request for bids/quotations, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, deliver, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs, and be specifically set forth in the request for bids/quotations. Contracts shall be awarded to a qualified vendor submitting the lowest responsible bid. No criteria may be used in bid evaluation that has not been set forth in the request for bids/quotations.

B. Competitive Proposal. Proposals shall be evaluated based upon criteria formulated around the most important features of a product or service, of which quality, availability or capability may be overriding factors and price may not be determinative in the issuance of a contract or award. The proposal evaluation criteria should be viewed as standards that measure how

well a vendor's approach meets the desired requirements and needs of the County. Those criteria that will be used and considered in evaluation for award shall be specifically set forth in the request for proposal. Contracts shall be awarded to a qualified vendor submitting the best proposal.

SECTION VII. Board of Bids and Contracts; Creation, Membership, Responsibility.

A. There shall hereby be established pursuant to this Resolution a Sedgwick County Board of Bids and Contracts, which Board shall be responsible for recommending the purchase of materials, supplies, equipment and services in excess of \$25,000.00 and approving purchases in excess of \$10,000.00 but not exceeding \$25,000.00 when required pursuant to this Resolution; and to review such other purchases as may be requested from time to time at the discretion of the Purchasing Director.

B. The Board of Bids and Contracts shall be composed of five members. The chairperson of said Board shall be the Director of Accounting and the Director of the Division of Public Works shall serve as vice-chairperson. In addition there shall be a representative from the Sedgwick County elected officials other than a county commissioner appointed by the County Manager, one representative from the Eighteenth Judicial District to be determined by the Chief Judge, and a member at large appointed by the County Manager from a roster listing all division and department directors. Members appointed by the County Manager shall serve two-year terms, and shall continue serving until a successor is appointed. Duties of a member of the Board of Bids and Contracts may not be delegated. The County Counselor or an assistant designated by the County Counselor shall serve in an advisory capacity to the Board. The Board of Bids and Contracts shall meet and follow policies and procedures as promulgated by the Purchasing Director.

SECTION VIII. Purchasing Director's Authority and Responsibilities.

A. Adoption of Policies and Procedures. Pursuant to and in conjunction with this Charter Resolution, the Purchasing Director may adopt policies and procedures governing the purchase of all goods and services for Sedgwick County and for the Board of Bids and Contracts. Any policies promulgated by the Purchasing Director shall be consistent with this Resolution.

B. Execution of Contracts. Once any purchase has been approved pursuant to this Resolution, the Purchasing Director shall have the authority to execute any contracts or other similar documents necessary to facilitate the purchase, consistent with any bid documents, subject to approval as to form by the County Counselor.

C. Authority to Reject Bids. The Purchasing Director shall have the authority at any time to reject any and all bids/proposals when it is deemed in the best interest of the County. In those instances where after advertising for bids/proposals, those bids/proposals received exceed the budgeted amount, the Purchasing Director is authorized to negotiate for purchases with the responsive low bidder or best proposal to bring such bids/proposals within the budgeted amounts.

D. Authority to Negotiate Purchases. The Purchasing Director is authorized to negotiate all purchases, subject to the approval requirements set forth in this Resolution which include the following limitations:

1. If approved by the Board of County Commissioners, purchases in excess of 25,000.00;
2. If approved by the County Manager, purchases in excess of \$10,000.00 but not exceeding \$25,000.00;
3. Purchases not exceeding \$10,000.00.

SECTION IX. County Manager's Authority. Notwithstanding any other provisions to the contrary, the County Manager is authorized to execute contracts for services, not to include Legal Professional Services, in amounts not exceeding \$10,000.00 without seeking competitive proposals or involving the Purchasing Director, subject to approval of the contracts as to form by the County Counselor and notification of the Board of County Commissioners within one week of the date of execution. All such contracts shall be executed in three original copies, one of which shall be filed with the County Clerk, one with the Purchasing Director, and one with the vendor.

SECTION X. Notifications to the Board of County Commissioners.

A. The Purchasing Director shall, within one week of the date of purchase, notify the Board of County Commissioners of each purchase in excess of \$10,000.00 but not more than \$25,000.00. The notification shall include the good or service purchased, amount of purchase, name of user department, number of bids/proposals received, and if competitive bid/proposal were waived pursuant to Section IV of this Resolution, an explanation of the condition resulting in the waiver.

B. The Purchasing Director shall, within one week of any such purchase, notify the Board of County Commissioners in writing of each emergency purchase and of the nature of the emergency.

C. The Purchasing Director shall periodically deliver to the County Manager and the Board of County Commissioners a report of all change orders approved since the prior report, showing the purpose of the change order, financial impact of the change order, cumulative total of change orders for the project, and percentage of the original contract total represented by the cumulative change orders.

SECTION XI. Delegation of Authority. Whenever pursuant to this Resolution duties or responsibilities are assigned to the Purchasing Director, County Manager, or County Counselor, that official may delegate the duties or responsibilities to a subordinate.

SECTION XII. Publication. This Charter Resolution shall be published once each week for two consecutive weeks in the official County newspaper.

SECTION XIII. Effective Date. This Charter Resolution shall take effect 60 days after final publication unless a sufficient petition for referendum is filed and a referendum held on the resolution pursuant to provisions of K.S.A. 19-101b(c) in which case this Charter Resolution shall become effective when approved by a majority of the electors voting thereon.

ADOPTED this 12th day of May, 2004.
BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

THOMAS G. WINTERS, Chairman
Third District
ATTEST: _____
DAVE UNRUH, Chair Pro Tem
First District

DON BRACE, County Clerk TIM R. NORTON, Commissioner
Second District

APPROVED AS TO FORM: CAROLYN McGINN, Commissioner
Fourth District

RICHARD A. EUSON BEN SCIORTINO, Commissioner
County Counselor Fifth District

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony before the
House Education Budget Committee
on
HB 2559

by
Tom Krebs, Governmental Relations Specialist
Kansas Association of School Boards

February 4, 2010

Mr. Chairman, Members of the Committee:

KASB appears today as a proponent for **HB 2559**.

A basic KASB position is districts benefit when they have flexibility in allocating resources. In fact, one of the KASB Board of Director's priorities is "districts should have more ability to make decisions regarding the most effective use of resources in meeting the needs of their community."

We also support the bill because of its permissive nature. For many districts, the sealed bid process is appropriate and effective. **HB 2559**, however, gives the districts that have the necessary personnel and other resources the opportunity to use a process they believe will maximize district expenditures both in terms of quality and stretching dollars to the max. And as locally elected officials, they are ultimately accountable to their patrons, so if the process is not used appropriately, the citizens have recourse.

Thank you for your consideration.

House Education Budget Committee
Date: 02-04-2010
Attachment #: 6



Building a Better Kansas Since 1934

200 SW 33rd St. Topeka, KS 66611 785-266-4015

**TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE HOUSE COMMITTEE ON EDUCATION BUDGET
HB 2559**

February 4, 2010

By Eric Stafford, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Eric Stafford. I am the Director of Government Affairs for the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

The AGC of Kansas opposes House Bill 2559 and asks that you do not recommend it favorably for passage.

HB 2559 would exempt expenditures in excess of \$20,000 for the “reconstruction, remodeling, repairing or equipping building” from bidding statutes. The goal of the proponents is to address emergency situations that arise at a facility in their district.

AGC feels HB 2559 could have significant unintended consequences which the proponents did not consider. Public owners, in this case school districts have the ability today under existing law to handle emergency situations as they arise. To add a blanket exemption from the bidding statutes is excessive and unnecessary.

For example, if HB 2559 were to pass in its current form, if a school was completely destroyed by a flood, fire or other disaster, the district would not have to send the new school project out for bid. As a public owner, AGC feels there is an extra level of trust and accountability which must be followed to ensure the taxpayer is receiving the best product and the best price by the best contractor.

Most of the exemptions in this statute are related to educational materials, motor fuel, natural gas, etc. These items have nothing to do with construction. The one exemption existing statute specific to construction allows for the purchase of materials, goods or wares necessary to fix the emergency, but the construction services are not included and AGC supports their exclusion from this statute.

Again, the AGC of Kansas respectfully requests that you do not recommend HB 2559 favorably for passage. Thank you for your consideration.

House Education Budget Committee
Date: 02-04-2010
Attachment #: 1