

SENATE BILL No. 444

By Committee on Ways and Means

2-22

1 AN ACT concerning individuals with disabilities; relating to employment
2 and competitive bids for state contracts; amending K.S.A. 2011 Supp.
3 75-3739 and 75-3740 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2011 Supp. 75-3739 is hereby amended to read as
7 follows: 75-3739. In the manner as provided in this act and rules and
8 regulations established thereunder:

9 (a) All contracts for construction and repairs, and all purchases of and
10 contracts for supplies, materials, equipment and contractual services to be
11 acquired for state agencies shall be based on competitive bids, except that
12 competitive bids need not be required in the following instances:

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

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

19 (3) when, in the judgment of the director of purchases, an agency
20 emergency requires immediate delivery of supplies, materials or
21 equipment, or immediate performance of services;

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

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

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

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

31 When the director of purchases approves a purchase of or contract for
32 supplies, materials, equipment, or contractual services in any instance
33 specified in this subsection, the director may delegate authority to make
34 the purchase or enter the contract under conditions and procedures
35 prescribed by the director. Except for purchases or contracts entered into
36 without a competitive bid under subsection (a)(3), (a)(4), (a)(6) or

1 subsection (h), no purchase or contract entered into without a competitive
2 bid for an amount in excess of \$100,000 shall be entered into by the head
3 of any state agency or approved by the director of purchases unless the
4 director of purchases first posts an on-line notice of the proposed purchase
5 or contract at least seven days before the purchase or contract is awarded.
6 The director of purchases shall provide notice thereof to members of the
7 legislature at the beginning of each calendar year that such information
8 will be posted and the director of the division of purchases shall provide
9 the uniform resource locator (URL) and the number of times such
10 information shall be available. In the event a written protest of the
11 awarding of such a contract occurs during the seven-day notice period, the
12 director of purchases shall request from the protestor the contact
13 information, including name and mailing address, of the person or entity
14 that has expressed an interest in supplying the goods or services and
15 provide a copy of the specification to the person or entity that has
16 expressed an interest in supplying the goods or services and verify that
17 such person or entity is interested and capable of supplying such goods or
18 services.

19 Upon satisfaction of the director of purchases regarding the validity of
20 the protest and the existence of competition, the director of purchases shall
21 proceed with a competitive procurement. A competitive procurement shall
22 not be required when, in the judgment of the director of purchases, the
23 validity of the protest cannot be determined or competition for such goods
24 or services cannot be verified by the director of purchases.

25 The director of purchases shall prepare a detailed report at least once in
26 each calendar quarter of all contracts over \$5,000 entered into without
27 competitive bids under subsection (a)(1), (2), (3), (5), (6) or (7). The
28 director shall submit the report to the legislative coordinating council, the
29 chairperson of the committee on ways and means of the senate and the
30 chairperson of the committee on appropriations of the house of
31 representatives.

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

1 the notice.

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

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

12 (d) All purchases estimated to be more than \$5,000, but less than
13 \$25,000, may be made after the receipt of three or more bid solicitations
14 by telephone, telephone facsimile or sealed bid, following at least three
15 days' notice posted on a public bulletin board. Such bids shall be recorded
16 as provided in subsection ~~(e)~~ (f) of K.S.A. 75-3740, and amendments
17 thereto. Any purchase that is estimated to be less than \$5,000 may be
18 purchased under conditions and procedures prescribed by the director of
19 purchases. Purchases made in compliance with such conditions and
20 procedures shall be exempt from other provisions of this section.

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

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

41 (g) Notwithstanding anything herein to the contrary, all contracts with
42 independent construction concerns for the construction, improvement,
43 reconstruction and maintenance of the state highway system and the

1 acquisition of rights-of-way for state highway purposes shall be advertised
2 and let as now or hereafter provided by law.

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

8 (i) The director of purchases may participate in, sponsor, conduct, or
9 administer a cooperative purchasing agreement or consortium for
10 purchases of supplies, materials, equipment, and contractual services with
11 federal agencies or agencies of other states or local units of government.
12 Cooperative purchasing agreements entered into under this subsection
13 shall not be subject to K.S.A. 75-3739 through 75-3740a, and amendments
14 thereto.

15 (j) The director of purchases may delegate authority to any state
16 agency to make purchases under certain prescribed conditions and
17 procedures when the acquisition is funded, in whole or in part, from a
18 grant. Except as otherwise provided in subsection (k) of this section,
19 purchases made in compliance with such conditions and procedures shall
20 be exempt from other provisions of this section. As used in this subsection
21 the term "grant" means a disbursement made from federal or private funds,
22 or a combination of these sources, to a state agency. Nothing in this
23 subsection shall allow federal grant moneys to be handled differently from
24 any other moneys of the state unless the requirements of the applicable
25 federal grant specifically require such federal moneys to be handled
26 differently.

27 (k) The director of purchases shall prepare a detailed report at least
28 once each calendar quarter of all contracts over \$5,000 for services,
29 supplies, materials or equipment entered into pursuant to subsection (h), (i)
30 or (j) and submit it to the legislative coordinating council, the chairperson
31 of the committee on ways and means of the senate and the chairperson of
32 the committee on appropriations of the house of representatives.

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

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

41 (n) As used in article 37 of chapter 75 of the Kansas Statutes
42 Annotated, and amendments thereto, and other statutory provisions
43 concerning state procurement, "sealed bids," "bulletin boards" and "mail"

1 shall include electronic bids, electronic bulletin boards and electronic mail
2 when such items are utilized in accordance with procedures prescribed by
3 the director of purchases.

4 Sec. 2. K.S.A. 2011 Supp. 75-3740 is hereby amended to read as
5 follows: 75-3740. (a) Except as provided by *subsection (b) and K.S.A. 75-*
6 *3740b, and amendments thereto*, all contracts and purchases made by or
7 under the supervision of the director of purchases or any state agency for
8 which competitive bids are required shall be awarded to the lowest
9 responsible bidder, taking into consideration conformity with the
10 specifications, terms of delivery, and other conditions imposed in the call
11 for bids.

12 *(b) A contract shall be awarded to a certified business which is also a*
13 *responsible bidder, whose total bid cost is not more than 10% higher than*
14 *the lowest competitive bid. Such contract shall contain a promise by the*
15 *certified business that the percentage of employees that are individuals*
16 *with disabilities will be maintained throughout the contract term and a*
17 *condition that the certified business shall not subcontract for goods or*
18 *services in an aggregate amount of more than 25% of the total bid cost.*

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

21 *(1)(A) A responsible bidder purchases from a qualified vendor goods*
22 *or services on the list certified by the director of purchases pursuant to*
23 *K.S.A. 75-3317 et seq., and amendments thereto, the dollar amount of such*
24 *purchases made during the previous calendar year shall be deducted from*
25 *the original bid received from such bidder for the purpose of determining*
26 *the lowest responsible bid, except that such deduction shall not exceed*
27 *10% of the original bid received from such bidder; or*

28 *(B) a responsible bidder purchases from a certified business the*
29 *dollar amount of such purchases made during the previous calendar year*
30 *shall be deducted from the original bid received from such bidder for the*
31 *purpose of determining the lowest responsible bid, except that such*
32 *deduction shall not exceed 10% of the original bid received from such*
33 *bidder;*

34 ~~(+)~~ (2) the dollar amount of the bid received from the lowest
35 responsible bidder from within the state is identical to the dollar amount of
36 the bid received from the lowest responsible bidder from without the state,
37 the contract shall be awarded to the bidder from within the state; and

38 ~~(2)~~ (3) in the case of bids for paper products specified in K.S.A. 75-
39 3740b, *and amendments thereto*, the dollar amounts of the bids received
40 from two or more lowest responsible bidders are identical, the contract
41 shall be awarded to the bidder whose bid is for those paper products
42 containing the highest percentage of recycled materials.

43 ~~(e)~~ (d) Any or all bids may be rejected, and a bid shall be rejected if it

1 contains any material alteration or erasure made after the bid is opened.
2 The director of purchases may reject the bid of any bidder who is in
3 arrears on taxes due the state, who is not properly registered to collect and
4 remit taxes due the state or who has failed to perform satisfactorily on a
5 previous contract with the state. The secretary of revenue is hereby
6 authorized to exchange such information with the director of purchases as
7 is necessary to effectuate the preceding sentence notwithstanding any other
8 provision of law prohibiting disclosure of the contents of taxpayer records
9 or information. Prior to determining the lowest responsible bidder on
10 contracts for construction of buildings or for major repairs or
11 improvements to buildings for state agencies, the director of purchases
12 shall consider: (1) The criteria and information developed by the secretary
13 of administration, with the advice of the state building advisory
14 commission to rate contractors on the basis of their performance under
15 similar contracts with the state, local governmental entities and private
16 entities, in addition to other criteria and information available; and (2) the
17 recommendations of the project architect, or, if there is no project
18 architect, the recommendations of the secretary of administration or the
19 agency architect for the project as provided in K.S.A. 75-1254, and
20 amendments thereto. In any case where competitive bids are required and
21 where all bids are rejected, new bids shall be called for as in the first
22 instance, unless otherwise expressly provided by law or the state agency
23 elects not to proceed with the procurement.

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

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

40 (g) *As used in this section:*

41 (1) *"Certified business" means any business certified annually by the*
42 *department of administration that is a sole proprietorship, partnership,*
43 *association or corporation domiciled in Kansas, or any corporation, even*

1 *if a wholly owned subsidiary of a foreign corporation, that:*

2 *(A) Does business primarily in Kansas or substantially all of its*
3 *production in Kansas;*

4 *(B) employs at least 20% full-time employees in Kansas that are*
5 *individuals with disabilities;*

6 *(C) offers to contribute at least 70% of the premium cost for*
7 *individual health insurance coverage for each employee. The level of such*
8 *coverage shall be at least equal to the level of benefits offered by the state*
9 *employee benefit program established by K.S.A. 75-6501 et seq., and*
10 *amendments thereto. The department of administration shall require a*
11 *certification of these facts as a condition to the certified business being*
12 *awarded a contract pursuant to subsection (b); and*

13 *(D) does not employ individuals under a certificate issued by the*
14 *United States secretary of labor under subsection (c) of 29 U.S.C. § 214;*

15 *(2) "full-time" means employment of persons residing in this state*
16 *and working at least 40 hours per week in this state, which has a minimum*
17 *six-month duration during any twelve-month period;*

18 *(3) "individuals with disabilities" or "individual with a disability"*
19 *means any individual certified by the department of social and*
20 *rehabilitation services as having a physical or mental impairment which*
21 *constitutes a substantial barrier to employment and:*

22 *(A) Is receiving services, has received services or is eligible to*
23 *receive services under a home and community based services program, as*
24 *defined by this section;*

25 *(B) is employed by a charitable organization domiciled in the state of*
26 *Kansas and exempt from federal income taxation pursuant to section*
27 *501(c)(3) of the federal internal revenue code of 1986, as amended; or*

28 *(C) is an individual with a severe and persistent mental illness, as*
29 *determined by a clinical or functional assessment approved by the*
30 *secretary of social and rehabilitation services;*

31 *(4) "physical or mental impairment" means:*

32 *(A) Any physiological disorder or condition, cosmetic disfigurement*
33 *or anatomical loss substantially affecting one or more of the following*
34 *body systems: Neurological; musculoskeletal; special sense organs;*
35 *respiratory, including speech organs; cardiovascular; reproductive;*
36 *digestive; genitourinary; hemic and lymphatic; skin; or endocrine; or*

37 *(B) any mental or psychological disorder, such as intellectual*
38 *disability, organic brain syndrome, mental illness, and specific learning*
39 *disabilities. The term "physical or mental impairment" includes, but is not*
40 *limited to, such diseases and conditions as orthopedic, visual, speech and*
41 *hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple*
42 *sclerosis and intellectual disability; and*

43 ~~*(f) As used in this section and in K.S.A. 75-3741, and amendments*~~

1 ~~thereto~~; (5) "project architect" shall have the meaning ascribed thereto in
2 K.S.A. 75-1251, and amendments thereto.

3 (h) *Any state agency authorized by the director of purchases to make*
4 *purchases pursuant to subsection (e) of K.S.A. 75-3739, and amendments*
5 *thereto, shall consider any unsolicited proposal for goods or services*
6 *under this section.*

7 (i) *The secretary of administration and the secretary of social and*
8 *rehabilitation services, jointly, shall adopt rules and regulations as*
9 *necessary to effectuate the purpose of this section.*

10 (j) *On and after January 1, 2014, at the beginning of each regular*
11 *session of the legislature, the secretary of administration and the secretary*
12 *of social and rehabilitation services shall submit to the social services*
13 *budget committee of the house of representatives and the appropriate*
14 *subcommittee of the committee on ways and means of the senate, a written*
15 *report on:*

16 (1) *The number of certified businesses certified by the department of*
17 *administration during the previous calendar year;*

18 (2) *the number of certified businesses awarded contracts pursuant to*
19 *subsection (b) during the previous calendar year;*

20 (3) *the number of individuals with disabilities removed from or*
21 *reinstated to home and community based services or other medicaid*
22 *program services during the previous calendar year as a result of full-time*
23 *employment with a certified business; and*

24 (4) *savings resulting from the removal of individuals with disabilities*
25 *from home and community based services or other medicaid program*
26 *services during the previous calendar year as a result of full-time*
27 *employment with a certified business.*

28 (k) *On or before January 1, 2014, and every six months thereafter, a*
29 *certified business awarded a contract pursuant to subsection (b) during*
30 *the previous year shall submit a report to the director of purchases that*
31 *includes, but is not limited to:*

32 (1) *The number of contracts awarded under subsection (b) to the*
33 *certified business during the previous six months;*

34 (2) *the number of full-time individuals employed by the certified*
35 *business during the previous six months;*

36 (3) *the number of full-time individuals with disabilities employed by*
37 *the certified business during the previous six months; and*

38 (4) *such other matters relating to certified businesses as the secretary*
39 *of administration deems appropriate.*

40 New Sec. 3. (a) As used in this section:

41 (1) "Certified business" shall have the meaning ascribed thereto in
42 K.S.A. 75-3740, and amendments thereto;

43 (2) "full-time" shall have the meaning ascribed thereto in K.S.A. 75-

1 3740, and amendments thereto;

2 (3) "home and community based services programs" shall have the
3 meaning ascribed thereto in K.S.A. 39-7,100, and amendments thereto;

4 (4) "individuals with disabilities" or "individual with a disability"
5 shall have the meaning ascribed thereto in K.S.A. 75-3740, and
6 amendments thereto;

7 (5) "medicaid program" means the Kansas program of medical
8 assistance for which federal or state moneys, or any combination thereof,
9 are expended as administered by the department of social and
10 rehabilitation services, or its fiscal agent, or any successor federal or state,
11 or both, health insurance program or waiver granted thereunder;

12 (6) "physical or mental impairment" shall have the meaning ascribed
13 thereto in K.S.A. 75-3740, and amendments thereto; and

14 (7) "secretary" means the secretary of social and rehabilitation
15 services or the secretary's designee.

16 (b) There is a rebuttable presumption that an individual with a
17 disability shall be eligible for reinstatement to the level of home and
18 community based services or other medicaid program services such person
19 was entitled to on the day preceding the day such person stopped receiving
20 home and community based services or other medicaid program services
21 if:

22 (1) Such individual had received home and community based services
23 or other medicaid program services pursuant to an application filed with
24 the department of social and rehabilitation services, and entitlement to
25 receive or receipt of home and community based services or other
26 medicaid program services terminated due to full-time employment for a
27 certified business, not medical recovery or any other reason; and

28 (2) the individual with a disability is currently under a physical or
29 mental impairment that was the basis for the finding of disability that gave
30 rise to the entitlement for the services specified in subsection (b)(1). Upon
31 reinstatement to the medicaid program to receive home and community
32 based services or other medicaid program services, such individual shall
33 receive services and not wait to receive services under such program.

34 (c) The secretary may adopt rules and regulations as necessary to
35 effectuate the purpose of this section.

36 Sec. 4. K.S.A. 2011 Supp. 75-3739 and 75-3740 are hereby repealed.

37 Sec. 5. This act shall take effect and be in force from and after
38 January 1, 2013, and its publication in the statute book.