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MEMORANDUM

To: Chairman Hutton and House Committee on Commerce, Labor and Economic Development

From: Assistant Revisor Charles Reimer

Date: 2/18/2015

Subject: HB 2267

House Bill 2267 makes amendments to three acts that provide an alternative to the standard competitive bidding procedure (requiring the project be awarded to the lowest responsible bidder) for certain construction projects for school districts, board of regents and state agencies.

The three acts involved in this bill:

- Kansas unified school district alternative project delivery building construction procurement act. KSA § 72-6760c, et Seq.
- Kansas alternative project delivery building construction procurement act. KSA 75-37,141, et. Seq.
- The state educational institution project delivery construction procurement act. KSA 76-7,125 et Seq.

The bill makes two changes to these alternative project delivery statutory schemes:

1. Notice provisions are expanded to provide for notice to general contractor industry associations.
2. The analysis of the financial portion of proposals by contractors is made by the Department of Administration and public recommendations are provided to the government entity that issued the request for proposal.

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I. Expansion of Notice Provisions.

In addition to the current means of notice provided by each statutory scheme, the bill provides that project notices are to be sent to the general contractor industry associations, as specified, for distribution to their members.

A. With regard to school districts:

These changes are found at page 1, Section 1(c) of the bill. Notice is to be given to the associated general contractors of Kansas.

B. With regard to state agencies:

1. Notice of a request by a state agency for alternative delivery procurement must be made to all active general contractor industry associations in the state, for purposes of a public hearing held by the state building advisory commission on the state agency's request. Page 5, Sec. 2(d).
2. Notice for a request for project services must be made to all active general contractor industry associations. Page 5, Sec. 2(g).
3. If the state agency's request is approved, for construction management at-risk, notice of the request for qualifications and proposals must be made to all active general contractor industry associations in the state. Page 5, Sec. 3(c).
4. Notice is similarly expanded for building design-build project delivery procedures. All active general contractor industry associations are notified of the request for proposal. Page 9, Sec. 4(b).

C. With regard to board of regents:

A similar requirement is found at page 13 of the bill, Sec. 5(e).

II. The bill changes how fees and general conditions are analyzed for construction management at-risk projects during the state entity's process of reviewing submissions by contractors to requests for proposals in each of the three alternative project delivery acts.

The bill separates consideration of costs and fees (fees and general conditions) from other portions of the response.

All responders to a request for proposal (RFP) that have passed an initial qualification review must submit their fees and general conditions portion of their proposal directly to the Department of Administration. The other portions of the proposal are sent to the issuer of the RFP for consideration in the current manner.

The Department of Administration analyzes and scores the financial aspect of the proposal for the best value, independently from the rest of the RFP response and sends its analysis to the RFP issuer. The DOAs recommendations are open for public review.

The RFP issuer then reviews the information provided by the DOA and its own consideration of the response and makes an independent decision. In doing so, the financial analysis of the proposed fees and general conditions by the DOA is limited to 25% of the total score given to a proposal. The bill does not change current alternative project delivery provisions that do not require the contract be made with the lowest bid.

A. With regard to school districts:

This change is made for construction management at-risk project delivery procedures at page 2, (Sec. 1.) The school district's selection recommendation committee selects the firm utilizing the recommendations of the secretary of administration. Page 3 (Sec. 1).

B. With regard to state agencies:

This change is also made to the statute governing construction management at-risk project delivery procedures at page 7 (Sec. 3).

C. With regard to the board of regents:

See page 15, pertaining to construction at-risk procedures.

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III. There are two additional changes:

At page 12, line 3 (Sec. 4). For purposes of building design-build project submissions to state agencies, to be entitled to a stipend to cover some cost of submitting a proposal, prequalified building design-builders must submit a “substantially” responsive proposal.

At page 16, line 19. (Sec. 6.)

The procedure for construction management at-risk project delivery for the state board is changed in that a construction manager or general contractor that is permitted by the institution to bid directly on the construction services instead of bidding such services out must submit a bid prior to the receipt of other bids from competing firms.

Notes:

For purposes of the statutes for alternative project delivery for state agencies, “state agency” is defined as:

“The agency or state educational institution, as defined in K.S.A. 76-756, and amendments thereto, with the authority to award public contracts for building design and construction.” KSA § 75-37,142.

“State educational institution” means Fort Hays state university, Kansas state university of agriculture and applied science, Kansas state university veterinary medical center, Emporia state university, Pittsburg state university, university of Kansas, university of Kansas medical center, Wichita state university and Kansas state university, college of technology at Salina. K.S.A. 76-756.