

HOUSE BILL No. 2619

By Committee on Corrections and Juvenile Justice

2-4

1 AN ACT concerning the department of administration; relating to
2 competitive bids; bidding procedures; amending K.S.A. 2015 Supp. 75-
3 3739 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2015 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 of *non-agricultural products* estimated to be more
13 than \$5,000, but less than \$25,000 and *agricultural products estimated to*
14 *be less than \$50,000*, may be made after the receipt of three or more bid
15 solicitations by telephone, telephone facsimile, *email* or sealed bid,
16 following at least three days' notice posted on a public bulletin board. Such
17 bids shall be recorded as provided in ~~subsection (f)~~ of K.S.A. 75-3740(f),
18 and amendments thereto. Any purchase that is estimated to be less than
19 \$5,000 may be purchased under conditions and procedures prescribed by
20 the director of purchases. Purchases made in compliance with such
21 conditions and procedures shall be exempt from other provisions of this
22 section. *Agricultural products does not include equipment.*

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

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

43 (g) Notwithstanding anything herein to the contrary, all contracts with

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

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

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

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

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

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

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

43 (n) As used in article 37 of chapter 75 of the Kansas Statutes

1 Annotated, and amendments thereto, and other statutory provisions
2 concerning state procurement, "sealed bids," "bulletin boards" and "mail"
3 shall include electronic bids, electronic bulletin boards and electronic mail
4 when such items are utilized in accordance with procedures prescribed by
5 the director of purchases.

6 Sec. 2. K.S.A. 2015 Supp. 75-3739 is hereby repealed.

7 Sec. 3. This act shall take effect and be in force from and after its
8 publication in the statute book.