

FIRST REGULAR SESSION

# HOUSE BILL NO. 137

## 98TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE MCCAHERTY.

0724H.011

D. ADAM CRUMBLISS, Chief Clerk

---

### AN ACT

To repeal section 34.040, RSMo, and to enact in lieu thereof one new section relating to competitive bidding.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 34.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 34.040, to read as follows:

34.040. 1. All purchases in excess of three thousand dollars shall be based on competitive bids, except as otherwise provided in this chapter.

2. On any purchase where the estimated expenditure shall be twenty-five thousand dollars or over, except as provided in subsection 5 of this section, the commissioner of administration shall:

(1) Advertise for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders and may advertise in at least two weekly minority newspapers and may provide such information through an electronic medium available to the general public at least five days before bids for such purchases are to be opened. Other methods of advertisement, which may include minority business purchase councils, however, may be adopted by the commissioner of administration when such other methods are deemed more advantageous for the supplies to be purchased;

(2) Post a notice of the proposed purchase in his or her office; and

(3) Solicit bids by mail or other reasonable method generally available to the public from prospective suppliers. All bids for such supplies shall be mailed or delivered to the office of the commissioner of administration so as to reach such office before the time set for opening bids.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17           3. The contract shall be let to the lowest and best bidder. The commissioner of  
18 administration shall have the right to reject any or all bids and advertise for new bids, or purchase  
19 the required supplies on the open market if they can be so purchased at a better price. When bids  
20 received pursuant to this section are unreasonable or unacceptable as to terms and conditions,  
21 noncompetitive, or the low bid exceeds available funds and it is determined in writing by the  
22 commissioner of administration that time or other circumstances will not permit the delay  
23 required to resolicit competitive bids, a contract may be negotiated pursuant to this section,  
24 provided that each responsible bidder who submitted such bid under the original solicitation is  
25 notified of the determination and is given a reasonable opportunity to modify their bid and  
26 submit a best and final bid to the state. In cases where the bids received are noncompetitive or  
27 the low bid exceeds available funds, the negotiated price shall be lower than the lowest rejected  
28 bid of any responsible bidder under the original solicitation.

29           4. **The director of the department of revenue shall follow bidding procedures as**  
30 **contained in this section and may promulgate rules necessary to establish such procedures.**  
31 **No points shall be awarded on a request for proposal for a contract license office to a**  
32 **bidder for a return-to-the-state provision offer.**

33           5. All bids shall be based on standard specifications wherever such specifications have  
34 been approved by the commissioner of administration. The commissioner of administration shall  
35 make rules governing the delivery, inspection, storage and distribution of all supplies so  
36 purchased and governing the manner in which all claims for supplies delivered shall be  
37 submitted, examined, approved and paid. The commissioner shall determine the amount of bond  
38 or deposit and the character thereof which shall accompany bids or contracts.

39           [5.] 6. The department of natural resources may, without the approval of the  
40 commissioner of administration required pursuant to this section, enter into contracts of up to  
41 five hundred thousand dollars to abate illegal waste tire sites pursuant to section 260.276 when  
42 the director of the department determines that urgent action is needed to protect public health,  
43 safety, natural resources or the environment. The department shall follow bidding procedures  
44 pursuant to this section and may promulgate rules necessary to establish such procedures. Any  
45 rule or portion of a rule, as that term is defined in section 536.010, that is created under the  
46 authority delegated in this section shall become effective only if it complies with and is subject  
47 to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and  
48 chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant  
49 to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are  
50 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed  
51 or adopted after August 28, 1999, shall be invalid and void.

52 [6.] 7. The commissioner of administration and other agencies to which the state  
53 purchasing law applies shall not contract for goods or services with a vendor if the vendor or an  
54 affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of  
55 storage, use, or consumption in this state but fails to collect and properly pay the tax as provided  
56 in chapter 144. For the purposes of this section, "affiliate of the vendor" shall mean any person  
57 or entity that is controlled by or is under common control with the vendor, whether through stock  
58 ownership or otherwise.

✓