

SECOND REGULAR SESSION

# HOUSE BILL NO. 1354

97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE FITZPATRICK.

4595H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 8.681 and 34.040, RSMo, and to enact in lieu thereof three new sections relating to competitive bidding.

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

Section A. Sections 8.681 and 34.040, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 8.681, 34.040, and 88.005 to read as follows:

8.681. When selecting a construction manager for a project, the public owner shall consider the following for each construction manager who has submitted a proposal: fees for overhead and profit; reimbursable costs for reimbursable items as defined in the public owner's request for proposal; qualifications; demonstration of ability to perform projects comparable in design, scope and complexity; demonstration of good faith efforts to achieve compliance with federal, state and local affirmative action requirements; references of owners for whom construction management has been performed; financial strength; qualifications of in-house personnel who will manage the project; **whether the construction manager is a local business**; and the demonstration of successful management systems which have been employed for the purposes of estimating, scheduling and cost controls. The public owner may negotiate a contract for construction management services with any construction manager thus selected. If the public owner is unable to negotiate a contract for the type of services required with any of the construction managers selected for a project at a price determined by the public owner to be fair and reasonable, the public owner shall reevaluate the necessary construction management services, including the scope and reasonable fee requirements, and again advertise and solicit proposals from construction managers complying with the terms of the revised requests for proposal.

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.

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

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

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

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

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

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

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

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

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

**88.005. As used in this chapter, the term lowest and best bidder may include as a  
2 consideration the locality of the prospective supplier.**

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