

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2140

99TH GENERAL ASSEMBLY

5849H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 34.010, 34.040, 34.042, 34.044, 34.047, 34.048, and 34.353, RSMo, and to enact in lieu thereof seven new sections relating to public contracts for purchasing supplies.

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

Section A. Sections 34.010, 34.040, 34.042, 34.044, 34.047, 34.048, and 34.353, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 34.010, 34.040, 34.042, 34.044, 34.047, 34.048, and 34.353, to read as follows:

34.010. 1. The term "department" as used in this chapter shall be deemed to mean department, office, board, commission, bureau, institution, or any other agency of the state, except the legislative and judicial departments **and public institutions of higher education**.

2. The term "lowest and best" in determining the lowest and best award, cost, and other factors are to be considered in the evaluation process. Factors may include, but are not limited to, value, performance, and quality of a product.

3. The term "Missouri product" refers to goods or commodities which are manufactured, mined, produced, or grown by companies in Missouri, or services provided by such companies.

4. The term "negotiation" as used in this chapter means the process of selecting a contractor by the competitive methods described in this chapter, whereby the commissioner of administration can establish any and all terms and conditions of a procurement contract by discussion with one or more prospective contractors.

5. The term "purchase" as used in this chapter shall include the rental or leasing of any equipment, articles or things.

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.

15 6. The term "supplies" used in this chapter shall be deemed to mean supplies, materials,
16 equipment, contractual services and any and all articles or things, except for utility services
17 regulated under chapter 393 or as in this chapter otherwise provided.

18 7. The term "value" includes but is not limited to price, performance, and quality. In
19 assessing value, the state purchaser may consider the economic impact to the state of Missouri
20 for Missouri products versus the economic impact of products generated from out of state. This
21 economic impact may include the revenues returned to the state through tax revenue obligations.

 34.040. 1. All purchases in excess of [~~three~~] **ten** 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~~] **one hundred**
4 thousand dollars or over, except as provided in subsection 6 of this section, the commissioner
5 of 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. 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 chapter and may promulgate rules necessary to establish such procedures. No
31 points shall be awarded on a request for proposal for a contract license office to a bidder for a
32 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 6. The department of natural resources may, without the approval of the commissioner
40 of administration required pursuant to this section, enter into contracts of up to five hundred
41 thousand dollars to abate illegal waste tire sites pursuant to section 260.276 when the director
42 of the department determines that urgent action is needed to protect public health, safety, natural
43 resources or the environment. The department shall follow bidding procedures pursuant to this
44 section and may promulgate rules necessary to establish such procedures. Any rule or portion
45 of a rule, as that term is defined in section 536.010, that is created under the authority delegated
46 in this section shall become effective only if it complies with and is subject to all of the
47 provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
48 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536
49 to review, to delay the effective date or to disapprove and annul a rule are subsequently held
50 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after
51 August 28, 1999, shall be invalid and void.

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

59 **8. The commissioner of administration shall be authorized to hold a reverse auction**
60 **to procure merchandise, supplies, raw materials, or finished goods if price is the primary**
61 **factor in evaluating bids. The office of administration shall promulgate rules regarding**
62 **the handling of the reverse auction process. Any rule or portion of a rule, as that term is**
63 **defined in section 536.010, that is created under the authority delegated in this section shall**
64 **become effective only if it complies with and is subject to all of the provisions of chapter**

65 **536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and**
66 **if any of the powers vested with the general assembly pursuant to chapter 536 to review,**
67 **to delay the effective date, or to disapprove and annul a rule are subsequently held**
68 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
69 **after August 28, 2018, shall be invalid and void.**

34.042. 1. When the commissioner of administration determines that the use of
2 competitive bidding is either not practicable or not advantageous to the state, supplies may be
3 procured by competitive proposals. The commissioner shall state the reasons for such
4 determination, and a report containing those reasons shall be maintained with the vouchers or
5 files pertaining to such purchases. All purchases in excess of [~~five~~] **ten** thousand dollars to be
6 made under this section shall be based on competitive proposals.

7 2. On any purchase where the estimated expenditure shall be [~~twenty-five~~] **one hundred**
8 thousand dollars or over, the commissioner of administration shall:

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

16 (2) Post notice of the proposed purchase; and

17 (3) Solicit proposals by mail or other reasonable method generally available to the public
18 from prospective offerors.

19

20 All proposals for such supplies shall be mailed or delivered to the office of the commissioner of
21 administration so as to reach such office before the time set for opening proposals. Proposals
22 shall be opened in a manner to avoid disclosure of contents to competing offerors during the
23 process of negotiation.

24 3. The contract shall be let to the lowest and best offeror as determined by the evaluation
25 criteria established in the request for proposal and any subsequent negotiations conducted
26 pursuant to this subsection. In determining the lowest and best offeror, as provided in the request
27 for proposals and under rules promulgated by the commissioner of administration, negotiations
28 may be conducted with responsible offerors who submit proposals selected by the commissioner
29 of administration on the basis of reasonable criteria for the purpose of clarifying and assuring full
30 understanding of and responsiveness to the solicitation requirements. Those offerors shall be
31 accorded fair and equal treatment with respect to any opportunity for negotiation and subsequent

32 revision of proposals; **however, a request for a proposal may set forth the manner for**
33 **determining which offerors are eligible for negotiation including, but not limited to, the use**
34 **of shortlisting.** Revisions may be permitted after submission and before award for the purpose
35 of obtaining best and final offers. In conducting negotiations there shall be no disclosure of any
36 information derived from proposals submitted by competing offerors. The commissioner of
37 administration shall have the right to reject any or all proposals and advertise for new proposals
38 or purchase the required supplies on the open market if they can be so purchased at a better price.

39 4. The commissioner shall make available, upon request, to any members of the general
40 assembly, information pertaining to competitive proposals, including the names of bidders and
41 the amount of each bidder's offering for each contract.

34.044. 1. The commissioner of administration may waive the requirement of
2 competitive bids or proposals for supplies when the commissioner has determined in writing that
3 there is only a single feasible source for the supplies. Immediately upon discovering that other
4 feasible sources exist, the commissioner shall rescind the waiver and proceed to procure the
5 supplies through the competitive processes as described in this chapter. A single feasible source
6 exists when:

7 (1) Supplies are proprietary and only available from the manufacturer or a single
8 distributor; or

9 (2) Based on past procurement experience, it is determined that only one distributor
10 services the region in which the supplies are needed; or

11 (3) Supplies are available at a discount from a single distributor for a limited period of
12 time.

13 2. On any single feasible source purchase where the estimated expenditure shall be [~~five~~]
14 **ten** thousand dollars or over, the commissioner of administration shall post notice of the
15 proposed purchase. Where the estimated expenditure is [~~twenty-five~~] **one hundred** thousand
16 dollars or over, the commissioner of administration shall also advertise the commissioner's intent
17 to make such purchase in at least two daily newspapers of general circulation in such places as
18 are most likely to reach prospective bidders or offerors and may provide such information
19 through an electronic medium available to the general public at least five days before the contract
20 is to be let. Other methods of advertisement, however, may be adopted by the commissioner of
21 administration when such other methods are deemed more advantageous for the supplies to be
22 purchased. The requirement for advertising may be waived, if not feasible, due to the supplies
23 being available at a discount for only a limited period of time.

34.047. Notwithstanding any provision in section 34.040, section 34.100, or any other
2 law to the contrary, departments shall have the authority to purchase products and services
3 related to information technology when the estimated expenditure of such purchase shall not

4 exceed ~~[seventy-five]~~ **one hundred fifty** thousand dollars, the length of any contract or
5 agreement does not exceed twelve months, the department complies with the informal methods
6 of procurement established in section 34.040, and 1 CSR 40-1.050(1) for expenditures of less
7 than ~~[twenty-five]~~ **one hundred** thousand dollars, and the department posts notice of such
8 proposed purchase on the online bidding/vendor registration system maintained by the office of
9 administration. For the purposes of this section, "information technology" shall mean any
10 computer or electronic information equipment or interconnected system that is used in the
11 acquisition, storage, manipulation, management, movement, control, display, switching,
12 interchange, transmission, or reception of information, including audio, graphic, and text.

34.048. 1. In any contract for purchasing supplies as defined in section 34.010 ~~[not~~
2 ~~exceeding the threshold for competitive bids set forth under section 34.040]~~, the office of
3 administration ~~[shall not prevent]~~ **may, for** any department, office, board, commission, bureau,
4 institution, political subdivision, or any other agency of the state ~~[from purchasing supplies from~~
5 ~~an authorized]~~ , **participate in a cooperative purchasing agreement whereby supplies are**
6 **procured pursuant to a contract that is open to state entities and established by the** General
7 Services Administration ~~[vendor]~~ including "GSA Advantage", "GSA e-Buy", or successor
8 sources. **The office of administration may utilize such cooperative purchasing when such**
9 **participation is determined to be advantageous to the state.**

10 **2. Beginning January 1, 2019, the office of administration shall produce a report**
11 **of all cooperative purchasing agreements entered into under subsection 1 of this section**
12 **and shall annually provide such report to the president pro tempore of the senate and the**
13 **speaker of the house of representatives.**

14 **3. Pursuant to section 23.253, RSMo, of the Missouri Sunset Act:**

15 **(1) The provisions of the new cooperative purchasing program authorized under**
16 **this section shall automatically sunset 6 years after the effective date of this section unless**
17 **reauthorized by an act of the general assembly; and**

18 **(2) If such program is reauthorized, the program authorized under this section**
19 **shall automatically sunset 12 years after the effective date of the reauthorization of this**
20 **section; and**

21 **(3) This section shall terminate on September first of the calendar year immediately**
22 **following the calendar year in which the program authorized under this section is sunset.**

34.353. 1. Each contract for the purchase or lease of manufactured goods or
2 commodities by any public agency, and each contract made by a public agency for construction,
3 alteration, repair, or maintenance of any public works shall contain a provision that any
4 manufactured goods or commodities used or supplied in the performance of that contract or any
5 subcontract thereto shall be manufactured or produced in the United States.

6 2. This section shall not apply where the purchase, lease, or contract involves an
7 expenditure of less than [~~twenty-five~~] **one hundred** thousand dollars. This section shall not
8 apply when only one line of a particular good or product is manufactured or produced in the
9 United States.

10 3. This section shall not apply where the executive head of the public agency certifies
11 in writing that:

12 (1) The specified products are not manufactured or produced in the United States in
13 sufficient quantities to meet the agency's requirements or cannot be manufactured or produced
14 in the United States within the necessary time in sufficient quantities to meet the agency's
15 requirements;

16 (2) Obtaining the specified products manufactured or produced in the United States
17 would increase the cost of the contract by more than ten percent;

18 (3) The specified products are to be purchased or leased by a state-supported four-year
19 institute of higher education and such certification as required by subdivision (1) or (2) of this
20 subsection has been made within the last three years;

21 (4) The specified products are to be purchased or leased by a publicly supported
22 institution and such certification as required by subdivision (1) or (2) of this subsection has been
23 made within the last three years; or

24 (5) The political subdivision has adopted a formal written policy to encourage the
25 purchase of products manufactured or produced in the United States.

26 4. The certificate required by this section shall specify the nature of the contract, the
27 product being purchased or leased, the names and addresses of the United States manufacturers
28 and producers contacted by the public agency or the project architect or engineer, and an
29 indication that such manufacturers or producers could not supply sufficient quantities or that the
30 price of the products would increase the cost of the contract by more than ten percent.

31 5. Certificates required by this section shall be maintained by the public agency for a
32 period of three years.

✓