

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2140
99TH GENERAL ASSEMBLY

Reported from the Committee on Government Reform, May 15, 2018, with recommendation that the Senate Committee Substitute do pass.

5849S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 34.010, 34.040, 34.042, 34.044, 34.047, 34.048, 34.353, and 37.007, RSMo, and to enact in lieu thereof eight 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Section A. Sections 34.010, 34.040, 34.042, 34.044, 34.047, 34.048, 34.353, 2 and 37.007, RSMo, are repealed and eight new sections enacted in lieu thereof, 3 to be known as sections 34.010, 34.040, 34.042, 34.044, 34.047, 34.048, 34.353, 4 and 37.007, to read as follows:

34.010. 1. The term "department" as used in this chapter shall be deemed 2 to mean department, office, board, commission, bureau, institution, or any other 3 agency of the state, except the legislative and judicial departments **and public** 4 **institutions of higher education.**

5 2. The term "lowest and best" in determining the lowest and best award, 6 cost, and other factors are to be considered in the evaluation process. Factors 7 may include, but are not limited to, value, performance, and quality of a product.

8 3. The term "Missouri product" refers to goods or commodities which are 9 manufactured, mined, produced, or grown by companies in Missouri, or services 10 provided by such companies.

11 4. The term "negotiation" as used in this chapter means the process of 12 selecting a contractor by the competitive methods described in this chapter, 13 whereby the commissioner of administration can establish any and all terms and 14 conditions of a procurement contract by discussion with one or more prospective

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 contractors.

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

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

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

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

3 2. On any purchase where the estimated expenditure shall be **[twenty-**
4 **five] one hundred** thousand dollars or over, except as provided in subsection 6
5 of this section, the commissioner of administration shall:

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

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

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

19 3. The contract shall be let to the lowest and best bidder. The
20 commissioner of administration shall have the right to reject any or all bids and
21 advertise for new bids, or purchase the required supplies on the open market if
22 they can be so purchased at a better price. When bids received pursuant to this
23 section are unreasonable or unacceptable as to terms and conditions,
24 noncompetitive, or the low bid exceeds available funds and it is determined in

25 writing by the commissioner of administration that time or other circumstances
26 will not permit the delay required to resolicit competitive bids, a contract may be
27 negotiated pursuant to this section, provided that each responsible bidder who
28 submitted such bid under the original solicitation is notified of the determination
29 and is given a reasonable opportunity to modify their bid and submit a best and
30 final bid to the state. In cases where the bids received are noncompetitive or the
31 low bid exceeds available funds, the negotiated price shall be lower than the
32 lowest rejected bid of any responsible bidder under the original solicitation.

33 4. The director of the department of revenue shall follow bidding
34 procedures as contained in this chapter and may promulgate rules necessary to
35 establish such procedures. No points shall be awarded on a request for proposal
36 for a contract license office to a bidder for a return-to-the-state provision offer.

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

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

60 7. The commissioner of administration and other agencies to which the

61 state purchasing law applies shall not contract for goods or services with a vendor
62 if the vendor or an affiliate of the vendor makes sales at retail of tangible
63 personal property or for the purpose of storage, use, or consumption in this state
64 but fails to collect and properly pay the tax as provided in chapter 144. For the
65 purposes of this section, "affiliate of the vendor" shall mean any person or entity
66 that is controlled by or is under common control with the vendor, whether
67 through stock ownership or otherwise.

68 **8. The commissioner of administration shall be authorized to**
69 **hold a reverse auction to procure merchandise, supplies, raw materials,**
70 **or finished goods if price is the primary factor in evaluating bids. The**
71 **office of administration shall promulgate rules regarding the handling**
72 **of the reverse auction process. Any rule or portion of a rule, as that**
73 **term is defined in section 536.010, that is created under the authority**
74 **delegated in this section shall become effective only if it complies with**
75 **and is subject to all of the provisions of chapter 536, and, if applicable,**
76 **section 536.028. This section and chapter 536 are nonseverable, and if**
77 **any of the powers vested with the general assembly pursuant to chapter**
78 **536 to review, to delay the effective date, or to disapprove and annul a**
79 **rule are subsequently held unconstitutional, then the grant of**
80 **rulemaking authority and any rule proposed or adopted after August**
81 **28, 2018, shall be invalid and void.**

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

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

11 (1) Advertise for proposals in at least two daily newspapers of general
12 circulation in such places as are most likely to reach prospective offerors and may
13 advertise in at least two weekly minority newspapers and may provide such
14 information through an electronic medium available to the general public at least
15 five days before proposals for such purchases are to be opened. Other methods

16 of advertisement, however, may be adopted by the commissioner of administration
17 when such other methods are deemed more advantageous for the supplies to be
18 purchased;

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

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

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

26 3. The contract shall be let to the lowest and best offeror as determined
27 by the evaluation criteria established in the request for proposal and any
28 subsequent negotiations conducted pursuant to this subsection. In determining
29 the lowest and best offeror, as provided in the request for proposals and under
30 rules promulgated by the commissioner of administration, negotiations may be
31 conducted with responsible offerors who submit proposals selected by the
32 commissioner of administration on the basis of reasonable criteria for the purpose
33 of clarifying and assuring full understanding of and responsiveness to the
34 solicitation requirements. Those offerors shall be accorded fair and equal
35 treatment with respect to any opportunity for negotiation and subsequent revision
36 of proposals; **however, a request for a proposal may set forth the manner**
37 **for determining which offerors are eligible for negotiation including,**
38 **but not limited to, the use of shortlisting.** Revisions may be permitted after
39 submission and before award for the purpose of obtaining best and final offers.
40 In conducting negotiations there shall be no disclosure of any information derived
41 from proposals submitted by competing offerors. The commissioner of
42 administration shall have the right to reject any or all proposals and advertise
43 for new proposals or purchase the required supplies on the open market if they
44 can be so purchased at a better price.

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

34.044. 1. The commissioner of administration may waive the
2 requirement of competitive bids or proposals for supplies when the commissioner
3 has determined in writing that there is only a single feasible source for the

4 supplies. Immediately upon discovering that other feasible sources exist, the
5 commissioner shall rescind the waiver and proceed to procure the supplies
6 through the competitive processes as described in this chapter. A single feasible
7 source exists when:

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

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

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

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

34.047. Notwithstanding any provision in section 34.040, section 34.100,
2 or any other law to the contrary, departments shall have the authority to
3 purchase products and services related to information technology when the
4 estimated expenditure of such purchase shall not exceed [~~seventy-five~~] **one**
5 **hundred fifty** thousand dollars, the length of any contract or agreement does
6 not exceed twelve months, the department complies with the informal methods
7 of procurement established in section 34.040, and 1 CSR 40-1.050(1) for
8 expenditures of less than [~~twenty-five~~] **one hundred** thousand dollars, and the
9 department posts notice of such proposed purchase on the online bidding/vendor
10 registration system maintained by the office of administration. For the purposes
11 of this section, "information technology" shall mean any computer or electronic
12 information equipment or interconnected system that is used in the acquisition,
13 storage, manipulation, management, movement, control, display, switching,

14 interchange, transmission, or reception of information, including audio, graphic,
15 and text.

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

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

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

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

22 (2) If such program is reauthorized, the program authorized
23 under this section shall automatically sunset 12 years after the
24 effective date of the reauthorization of this section; and

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

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

7 2. This section shall not apply where the purchase, lease, or contract

8 involves an expenditure of less than [twenty-five] **one hundred** thousand
9 dollars. This section shall not apply when only one line of a particular good or
10 product is manufactured or produced in the United States.

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

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

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

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

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

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

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

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

37.007. Within six months of August 28, 2012, the commissioner of the
2 office of administration shall develop and implement a statewide system or
3 contract with any third party to allow all state agencies and departments to
4 accept payments made by a credit card, debit card, or other electronic method
5 designated by the commissioner. State agencies and departments shall not incur
6 any additional fees for utilizing such payment methods, **unless authorized by**
7 **the commissioner of administration upon a finding that the payment of**

8 such fees would result in a positive fiscal impact to the state.

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