

FIRST REGULAR SESSION

SENATE BILL NO. 389

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS SILVEY AND WALSH.

Read 1st time February 3, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1886S.011

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Section A. Section 34.040, RSMo, is repealed and one new section enacted
2 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
2 based on competitive bids, except as otherwise provided in this chapter.

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

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

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 section and may promulgate rules**
35 **necessary to establish such procedures. No points shall be awarded on**
36 **a request for proposal for a contract license office to a bidder for a**
37 **return-to-the-state provision offer.**

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

46 **[5.] 6.** The department of natural resources may, without the approval
47 of the commissioner of administration required pursuant to this section, enter
48 into contracts of up to five hundred thousand dollars to abate illegal waste tire
49 sites pursuant to section 260.276 when the director of the department determines
50 that urgent action is needed to protect public health, safety, natural resources or
51 the environment. The department shall follow bidding procedures pursuant to
52 this section and may promulgate rules necessary to establish such
53 procedures. Any rule or portion of a rule, as that term is defined in section
54 536.010, that is created under the authority delegated in this section shall
55 become effective only if it complies with and is subject to all of the provisions of

56 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
57 nonseverable and if any of the powers vested with the general assembly pursuant
58 to chapter 536 to review, to delay the effective date or to disapprove and annul
59 a rule are subsequently held unconstitutional, then the grant of rulemaking
60 authority and any rule proposed or adopted after August 28, 1999, shall be
61 invalid and void.

62 [6.] 7. The commissioner of administration and other agencies to which
63 the state purchasing law applies shall not contract for goods or services with a
64 vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible
65 personal property or for the purpose of storage, use, or consumption in this state
66 but fails to collect and properly pay the tax as provided in chapter 144. For the
67 purposes of this section, "affiliate of the vendor" shall mean any person or entity
68 that is controlled by or is under common control with the vendor, whether
69 through stock ownership or otherwise.

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Bill

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