

FIRST REGULAR SESSION

SENATE BILL NO. 176

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUGH.

Pre-filed December 13, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0998S.011

AN ACT

To repeal sections 34.040, 34.042, 34.044, and 34.047, RSMo, and to enact in lieu thereof four new sections relating to public contracts.

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

Section A. Sections 34.040, 34.042, 34.044, and 34.047, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 34.040, 34.042, 34.044, and 34.047, to read as follows:

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.

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

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. **(1) The commissioner of administration may hold a reverse**
69 **auction to procure merchandise, supplies, raw materials, or finished**
70 **goods if price is the primary factor in evaluating bids. The office of**
71 **administration shall promulgate rules regarding the handling of the**
72 **reverse auction process.**

73 **(2) Any rule or portion of a rule, as that term is defined in**
74 **section 536.010 that is created under the authority delegated in this**
75 **section shall become effective only if it complies with and is subject to**
76 **all of the provisions of chapter 536, and, if applicable, section**
77 **536.028. This section and chapter 536 are nonseverable and if any of**
78 **the powers vested with the general assembly pursuant to chapter 536,**
79 **to review, to delay the effective date, or to disapprove and annul a rule**
80 **are subsequently held unconstitutional, then the grant of rulemaking**
81 **authority and any rule proposed or adopted after August 28, 2019, shall**
82 **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, **provided that a request for a proposal may set forth the**
37 **manner for determining which offerors are eligible for negotiation**
38 **including, but not limited to, the use of shortlisting.** Revisions may be
39 permitted after submission and before award for the purpose of obtaining best
40 and final offers. In conducting negotiations there shall be no disclosure of any
41 information derived from proposals submitted by competing offerors. The
42 commissioner of administration shall have the right to reject any or all proposals
43 and advertise for new proposals or purchase the required supplies on the open
44 market if they 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.

Unofficial

Bill

Copy