

# SENATE BILL NO. 1253

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR THOMPSON REHDER.

4615S.01H

KRISTINA MARTIN, Secretary

## AN ACT

To repeal section 34.042, 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Section A. Section 34.042, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 34.042,  
3 to read as follows:

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

10 2. On any purchase where the estimated expenditure  
11 shall be one hundred thousand dollars or over, the  
12 commissioner of administration shall:

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

19 purchases are to be opened. Other methods of advertisement,  
20 however, may be adopted by the commissioner of  
21 administration when such other methods are deemed more  
22 advantageous for the supplies to be purchased;

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

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

27 All proposals for such supplies shall be mailed or delivered  
28 to the office of the commissioner of administration so as to  
29 reach such office before the time set for opening  
30 proposals. Proposals shall be opened in a manner to avoid  
31 disclosure of contents to competing offerors during the  
32 process of negotiation.

33 3. The contract shall be let to the lowest and best  
34 offeror as determined by the evaluation criteria established  
35 in the request for proposal and any subsequent negotiations  
36 conducted pursuant to this subsection. In determining the  
37 lowest and best offeror, as provided in the request for  
38 proposals and under rules promulgated by the commissioner of  
39 administration, negotiations may be conducted with  
40 responsible offerors who submit proposals selected by the  
41 commissioner of administration on the basis of reasonable  
42 criteria for the purpose of clarifying and assuring full  
43 understanding of and responsiveness to the solicitation  
44 requirements. Those offerors shall be accorded fair and  
45 equal treatment with respect to any opportunity for  
46 negotiation and subsequent revision of proposals; however, a  
47 request for proposal may set forth the manner for  
48 determining which offerors are eligible for negotiation,  
49 including, but not limited to, the use of shortlisting.

50 Revisions may be permitted after submission and before award  
51 for the purpose of obtaining best and final offers. In  
52 conducting negotiations there shall be no disclosure of any  
53 information derived from proposals submitted by competing  
54 offerors. The commissioner of administration shall have the  
55 right to reject any or all proposals and advertise for new  
56 proposals or purchase the required supplies on the open  
57 market if they can be so purchased at a better price.

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

63 5. **If identified in the solicitation, the commissioner**  
64 **may award a contract to the lowest and best responsive**  
65 **vendor as determined by the evaluation criteria set out in**  
66 **the solicitation, while reserving certain contract**  
67 **provisions for negotiation after the notice of award. The**  
68 **reserved contract provisions for post-award negotiation**  
69 **shall not be provisions that were part of the evaluation**  
70 **criteria and scoring or provisions that impacted such**  
71 **criteria or scoring. The timeframe for such post-award**  
72 **negotiations shall be set out in the solicitation itself,**  
73 **and if such negotiations fail, the commissioner may cancel**  
74 **the award and award the contract to the next lowest and best**  
75 **vendor. If satisfied with the lowest and best responsive**  
76 **vendor's proposal, the commissioner may waive post-award**  
77 **negotiations.**

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