

HOUSE BILL No. 2723

By Committee on Appropriations

2-17

1 AN ACT creating the taxpayer empowerment, accountability and
2 transparency in state contracting act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Sections 1 through 6, and amendments thereto, shall be
6 known and may be cited as the taxpayer empowerment, accountability and
7 transparency in state contracting act.

8 (b) As used in sections 1 through 6, and amendments thereto, unless
9 the context clearly requires otherwise:

10 (1) "Agency" means any state agency, authority or any political
11 subdivision of state or local government, including, but not limited to,
12 county, city, township, village or municipal government, local school
13 districts, institutions of higher education, any state-supported institution or
14 a joint agency composed of political subdivisions.

15 (2) "Privatization" means a contract or a lease between an agency and
16 a person or firm, regardless of whether the person or firm is a for-profit
17 entity or a not-for-profit entity, for any function, operation or service
18 performed by personnel employed by an agency on July 1, 2014, or the
19 termination of a state-provided function, operation or service where the
20 practical impact is that such function, operation or service will be
21 performed by another entity.

22 Sec. 2. (a) The division of purchases of the department of
23 administration shall establish and maintain an online database that is
24 accessible, searchable, sortable and downloadable. The database shall
25 include the following:

- 26 (1) A description of the contract for services being purchased;
27 (2) the name of the agency, department or division contracting for the
28 service;
29 (3) the name of the contractor and any and all subcontractors;
30 (4) effective and expiration dates of the contract;
31 (5) the annual amount paid to the contractor in the past fiscal years
32 and the current fiscal year under the contract by funding source;
33 (6) the annual amount proposed to be paid to the contractor in the
34 fiscal years beyond the approved budget;
35 (7) the total projected cost of the contract for all fiscal years by
36 funding source; and

1 (8) a list of private contractor employees for each contract, reflected
2 as full-time equivalent positions, their hourly wage rate and the number of
3 private contractor employees and consultants for the current and previous
4 fiscal years.

5 (b) The information described in subsection (a) shall be compiled in
6 an annual service contractor expenditure budget accompanying the
7 governor's budget, detailing total spending on total service contracts for
8 the state.

9 (c) Each service contract in excess of \$25,000 between an agency and
10 a person or firm for the performance of a governmental function shall:

11 (1) Provide that the agency is entitled to receive a copy of records and
12 files related to the performance of the governmental function; and

13 (2) indicate that such records and files are subject to the Kansas open
14 records act, K.S.A. 45-215, et seq., and amendments thereto, and shall be
15 disclosed by the agency.

16 (d) Any contractor doing business with an agency shall:

17 (1) Keep and maintain the public records that ordinarily and
18 necessarily would be kept and maintained by the agency in order to
19 perform the service or activity;

20 (2) provide the agency with access to such public records on the same
21 terms and conditions and at a cost that does not exceed costs as defined in
22 K.S.A. 45-222, and amendments thereto, or as otherwise provided by law;
23 and

24 (3) abide by the provisions of the Kansas open meetings act, K.S.A.
25 75-4317 et seq., and amendments thereto, ensuring that any and all
26 meetings between the private contractor and officials acting on behalf of
27 the jurisdiction are open to the public.

28 Sec. 3. (a) Before any contract is finalized, the contracting agency
29 shall prepare a request to the governing body for an appropriation and any
30 authority that is necessary for the contracting agency to hire personnel and
31 obtain resources necessary to oversee and monitor performance of service
32 contracts and enforce other conditions required by law. No procurement
33 for such contract shall proceed unless the necessary appropriation and
34 authority have been granted.

35 (b) If the contracting agency procures services, the contracting
36 agency shall:

37 (1) Keep a record of the cost analysis and findings that the
38 contracting agency makes for each procurement the agency conducts,
39 along with the basis for the decision to proceed with the procurement;

40 (2) properly ensure that the contractor is providing services as
41 required by the contract within the costs as established by the contract;

42 (3) enforce performance standards established by the contract;

43 (4) collect and provide copies of the records required by law; and

1 (5) ensure that any and all aspects of the contract are properly
2 enforced.

3 (c) Any service contract shall incorporate specific performance
4 criteria and cost parameters, and the contractor shall submit quarterly
5 reports to the secretary of administration on the contractor's compliance
6 with the performance criteria and actual costs incurred. The service
7 contract may be cancelled if the contractor fails to comply with the
8 performance criteria and other requirements set out in the contract and if
9 annual costs exceed those established by the contract. The contract may be
10 cancelled at any time if the contractor fails to comply with all applicable
11 local, state and federal laws, rules and regulations and statutes.

12 (d) Any private entity that has a contract with the state of Kansas can
13 have no adjudicated record of substantial or repeated willful
14 noncompliance with any relevant federal, state or local statute or rules and
15 regulations, including payment of taxes or other payments owed to a
16 public entity. Prior to awarding a contract, bidders are required to submit
17 documentation to the secretary of administration, signed by the bidder
18 under penalty of perjury, attesting to compliance with all applicable local,
19 state and federal laws, including health and safety, labor and employment
20 and licensing laws, that affect the employees, worksite or performance of
21 the contract. All bidders and contractors shall complete a pledge of
22 compliance provided by the secretary of administration attesting under
23 penalty of perjury to comply with all applicable laws, rules and
24 regulations and statutes.

25 Sec. 4. (a) Prior to entering into a private service contract, the
26 secretary of administration shall make public a cost comparison. No
27 agency may enter a private service contract, unless the proposed contract
28 is projected to result in overall cost savings to the state of at least 10% less
29 than the projected cost of having the services provided by public
30 employees. Contract costs shall include direct costs, including salaries and
31 fringe benefits, indirect overhead costs, including the contractor's
32 proportional share of existing administrative salaries and benefits, rent and
33 equipment costs, utilities and materials. Additionally, transition costs,
34 including unemployment compensation, shall be included in the analysis
35 of contractor costs.

36 (b) Projected cost savings may not derive from a bidder's failure to
37 provide health and retirement benefits and adequate wages to its
38 employees. Contractors are required to pay wages comparable to step one
39 of current wages for public employees performing similar work or the
40 average private sector wage, whichever is less. In addition, contractors
41 must pay no less than the current percentage for health benefits
42 comparable to those offered current public employees or a wage
43 differential sufficient to cover the cost of the health benefits. The wages

1 and benefits must be included in any bid and actual wages and benefits
2 shall be reported to the contracting agency on a quarterly basis. This
3 information shall be public record, and itemized per employee of the
4 contractor.

5 Sec. 5. (a) Prior to entering into a private contract for public services,
6 the secretary of administration or agency designee shall produce a
7 thorough analysis of the possible impacts of the private contract. The
8 analysis shall include, but is not limited to, the following:

- 9 (1) Possible loss of employment or income in a local area;
- 10 (2) impacts on social services in the local area;
- 11 (3) impacts on public assistance programs;
- 12 (4) economic impact on local businesses;
- 13 (5) any possible loss or increase in tax revenue for the local area; and
- 14 (6) any environmental impacts that may result from the private
15 contract, including any upgrades or possible degradation.

16 (b) This report detailing the analysis conducted pursuant to
17 subsection (a) shall be made public and posted on the department of
18 administration public website. The contracting agency shall conduct public
19 meetings in order for all citizens to have an opportunity to address
20 concerns and obtain information.

21 (c) No contract shall be automatically renewed without utilizing the
22 competitive bidding process. Any in-house bids submitted shall be
23 considered. If an in-house bid or proposal meets the cost and performance
24 criteria specified in the law or the request for proposal, it shall be deemed
25 the most qualified bid.

26 (d) No agency may enter into a contract that guarantees payment for
27 services not provided. Service or asset contracts shall not unduly restrict
28 the government from taking actions in the public interest and shall not
29 unfairly place the burden of risk on taxpayers.

30 (e) No contracts shall:

- 31 (1) Provide for guaranteed occupancy rates for private prisons,
32 dormitories or any other contracted facility;
- 33 (2) prohibit a government entity from maintaining, improving or
34 building public infrastructure; and
- 35 (3) penalize a jurisdiction if a contractor loses revenue as a result of
36 natural or man-made emergencies, such as acts of terrorism or acts of
37 mother nature.

38 (f) Any increases in fees or charges for public services shall be
39 submitted to the governing body of the jurisdiction for approval. The
40 decision to approve or disallow increases shall be made in a public
41 manner, subject to the requirements of the Kansas open meetings act.

42 Sec. 6. Prior to outsourcing any work, both the in-house and proposed
43 contractors' costs and scope of work shall be estimated by the head of the

1 agency and provided to affected bargaining representatives, along with all
2 source information on all cost estimates. The bargaining representative
3 shall be provided a full and fair opportunity to present its own cost
4 estimates and recommendations for the new work processes. Such
5 estimates and recommendations shall be given full consideration.

6 Sec. 7. This act shall take effect and be in force from and after its
7 publication in the statute book.