SENATE BILL No. 2

By Joint Committee on Legislative Post Audit

AN ACT concerning the department of administration; relating to competitive bids; bidding procedures; requiring bidders to sign a statement certifying they will not hire former state employees except as otherwise allowed by law; amending K.S.A. 2010 Supp. 75-3739 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2010 Supp. 75-3739 is hereby amended to read as follows: 75-3739. In the manner as provided in this act and rules and regulations established thereunder:

(a) All contracts for construction and repairs, and all purchases of and contracts for supplies, materials, equipment and contractual services to be acquired for state agencies shall be based on competitive bids, except that competitive bids need not be required in the following instances:

(1) For contractual services, supplies, materials, or equipment when, in the judgment of the director of purchases, no competition exists;

(2) when, in the judgment of the director of purchases, chemicals and other material or equipment for use in laboratories or experimental studies by state agencies are best purchased without competition, or where rates are fixed by law or ordinance;

(3) when, in the judgment of the director of purchases, an agency emergency requires immediate delivery of supplies, materials or equipment, or immediate performance of services;

(4) when any statute authorizes another procedure or provides an exemption from the provisions of this section;

(5) when compatibility with existing contractual services, supplies, materials or equipment is the overriding consideration;

(6) when a used item becomes available and is subject to immediate sale; or

(7) when, in the judgment of the director of purchases and the head of the acquiring state agency, not seeking competitive bids is in the best interest of the state.

When the director of purchases approves a purchase of or contract for supplies, materials, equipment, or contractual services in any instance specified in this subsection, the director may delegate authority to make the purchase or enter the contract under conditions and procedures prescribed by
the director. Except for purchases or contracts entered into without a
competitive bid under subsection (a)(3), (a)(4), (a)(6) or subsection (h), no
purchase or contract entered into without a competitive bid for an amount in
excess of $100,000 shall be entered into by the head of any state agency or
approved by the director of purchases unless the director of purchases first
posts an on-line notice of the proposed purchase or contract at least seven days
before the purchase or contract is awarded. The director of purchases shall
provide notice thereof to members of the legislature at the beginning of each
calendar year that such information will be posted and the director of the
division of purchases shall provide the uniform resource locator (URL) and the
number of times such information shall be available. In the event a written
protest of the awarding of such a contract occurs during the seven-day notice
period, the director of purchases shall request from the protestor the contact
information, including name and mailing address, of the person or entity that
has expressed an interest in supplying the goods or services and provide a
copy of the specification to the person or entity that has expressed an interest
in supplying the goods or services and verify that such person or entity is
interested and capable of supplying such goods or services.

Upon satisfaction of the director of purchases regarding the validity of the
protest and the existence of competition, the director of purchases shall
proceed with a competitive procurement. A competitive procurement shall not
be required when, in the judgment of the director of purchases, the validity of
the protest cannot be determined or competition for such goods or services
cannot be verified by the director of purchases.

The director of purchases shall prepare a detailed report at least once in
each calendar quarter of all contracts over $5,000 entered into without
competitive bids under subsection (a)(1), (2), (3), (5), (6) or (7). The director
shall submit the report to the legislative coordinating council, the chairperson
of the committee on ways and means of the senate and the chairperson of the
committee on appropriations of the house of representatives.

(b) (1) If the amount of the purchase is estimated to exceed $50,000,
sealed bids shall be solicited by notice published once in the Kansas register
not less than 10 days before the date stated in the notice for the opening of the
bids. The director of purchases may waive this publication of notice
requirement when the director determines that a more timely procurement is in
the best interest of the state. The director of purchases also may designate a
trade journal for the publication. The director of purchases also shall solicit
such bids by sending notices by mail to prospective bidders and by posting the
notice on a public bulletin board for at least 10 business days before the date
stated in the notice for the opening of the bids unless otherwise provided by
law. All bids shall be sealed when received and shall be opened in public at the
hour stated in the notice.

(2) The director of purchases shall prepare a detailed report at least once
in each calendar quarter of all instances in which the director waived
publication of the notice of bid solicitations in the Kansas register as provided
in this subsection. The director shall submit the report to the legislative
coordinating council, the chairperson of the committee on ways and means of
the senate and the chairperson of the committee on appropriations of the house
of representatives.

(c) All purchases estimated to exceed approximately $25,000 but not
more than $50,000, shall be made after receipt of sealed bids following at least
three days' notice posted on a public bulletin board.

(d) All purchases estimated to be more than $5,000, but less than
$25,000, may be made after the receipt of three or more bid solicitations by
telephone, telephone facsimile or sealed bid, following at least three days' notice posted on a public bulletin board. Such bids shall be recorded as
provided in subsection (e) of K.S.A. 75-3740 and amendments thereto. Any
purchase that is estimated to be less than $5,000 may be purchased under
conditions and procedures prescribed by the director of purchases. Purchases
made in compliance with such conditions and procedures shall be exempt from
other provisions of this section.

(e) With the approval of the secretary of administration, the director of
purchases may delegate authority to any state agency to make purchases of
less than $25,000 under certain prescribed conditions and procedures. The
director of purchases shall prepare a report at least once in each calendar
quarter of all current and existing delegations of authority to state agencies as
provided in this subsection. The director shall submit the report to the
legislative coordinating council, the chairperson of the committee on ways and
means of the senate and the chairperson of the committee on appropriations of
the house of representatives.

(f) Subject to the provisions of subsection (e), contracts and purchases
shall be based on specifications approved by the director of purchases. When
deemed applicable and feasible by the director of purchases, such
specifications shall include either energy efficiency standards or appropriate
life cycle cost formulas, or both, for all supplies, materials, equipment and
contractual services to be purchased by the state. The director of purchases
may reject a contract or purchase on the basis that a product is manufactured
or assembled outside the United States. No such specifications shall be fixed in
a manner to effectively exclude any responsible bidder offering comparable
supplies, materials, equipment or contractual services.

(g) Notwithstanding anything herein to the contrary, all contracts with
independent construction concerns for the construction, improvement,
reconstruction and maintenance of the state highway system and the
acquisition of rights-of-way for state highway purposes shall be advertised and
let as now or hereafter provided by law.

(h) The director of purchases may authorize state agencies to contract for
services and materials with other state agencies, or with federal agencies, political subdivisions of Kansas, agencies of other states or subdivisions thereof, or private nonprofit educational institutions, without competitive bids.

(i) The director of purchases may participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for purchases of supplies, materials, equipment, and contractual services with federal agencies or agencies of other states or local units of government. Cooperative purchasing agreements entered into under this subsection shall not be subject to K.S.A. 75-3739 through 75-3740a, and amendments thereto.

(j) The director of purchases may delegate authority to any state agency to make purchases under certain prescribed conditions and procedures when the acquisition is funded, in whole or in part, from a grant. Except as otherwise provided in subsection (k) of this section, purchases made in compliance with such conditions and procedures shall be exempt from other provisions of this section. As used in this subsection the term "grant" means a disbursement made from federal or private funds, or a combination of these sources, to a state agency. Nothing in this subsection shall allow federal grant moneys to be handled differently from any other moneys of the state unless the requirements of the applicable federal grant specifically require such federal moneys to be handled differently.

(k) The director of purchases shall prepare a detailed report at least once each calendar quarter of all contracts over $5,000 for services, supplies, materials or equipment entered into pursuant to subsection (h), (i) or (j) and submit it to the legislative coordinating council, the chairperson of the committee on ways and means of the senate and the chairperson of the committee on appropriations of the house of representatives.

(l) Except as otherwise specifically provided by law, no state agency shall enter into any lease of real property without the prior approval of the secretary of administration. A state agency shall submit to the secretary of administration such information relating to any proposed lease of real property as the secretary may require. The secretary of administration shall either approve, modify and approve or reject any such proposed lease.

(m) The director of purchases shall require all bidders on state contracts to sign a statement certifying that such bidder will not hire as an employee, independent contractor or subcontractor, any individual that participates as a state officer or employee in the making of a contract with the bidder unless such individual is in compliance with subsection (a)(2) of K.S.A. 46-233, and amendments thereto. The director of purchases shall disqualify any bidder that refuses to sign a statement as described in this paragraph.

(n) As used in article 37 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto, and other statutory provisions concerning state procurement, "sealed bids," "bulletin boards" and "mail" shall include
electronic bids, electronic bulletin boards and electronic mail when such items are utilized in accordance with procedures prescribed by the director of purchases.

Sec. 2. K.S.A. 2010 Supp. 75-3739 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.