

SENATE BILL No. 241

By Committee on Ways and Means

2-17

1 AN ACT concerning the department of administration; relating to certain
2 state contracts; **concerning competitive bidding**; amending K.S.A. 75-
3 3743 and 75-3744 **and K.S.A. 2015 Supp. 75-3739** and repealing the
4 existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 **Section 1. K.S.A. 2015 Supp. 75-3739 is hereby amended to read**
8 **as follows: 75-3739. In the manner as provided in this act and rules**
9 **and regulations established thereunder:**

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

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

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

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

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

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

29 **(6) when repairs to a vehicle are required and it is impracticable to**
30 **take the vehicle to multiple vendors to determine what is necessary to**
31 **effectuate the repairs and the cost of such repairs;**

32 **(7) when a used item becomes available and is subject to**
33 **immediate sale; or**

34 **~~(7)~~(8) when, in the judgment of the director of purchases and the**
35 **head of the acquiring state agency, not seeking competitive bids is in**
36 **the best interest of the state.**

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

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

32 **The director of purchases shall prepare a detailed report at least**
33 **once in each calendar quarter of all contracts over—~~\$5,000~~ \$10,000**
34 **entered into without competitive bids under subsection (a)(1), (2), (3),**
35 **(5), (6)—~~or~~, (7) or (8). The director shall submit the report to the**
36 **legislative coordinating council, the chairperson of the committee on**
37 **ways and means of the senate and the chairperson of the committee on**
38 **appropriations of the house of representatives.**

39 **(b) (1) If the amount of the purchase is estimated to exceed**
40 **\$50,000, sealed bids shall be solicited by notice published once in the**
41 **Kansas register not less than 10 days before the date stated in the**
42 **notice for the opening of the bids. The director of purchases may**
43 **waive this publication of notice requirement when the director**

1 determines that a more timely procurement is in the best interest of
2 the state. The director of purchases also may designate a trade journal
3 for the publication. The director of purchases also shall solicit such
4 bids by sending notices by mail to prospective bidders and by posting
5 the notice on a public bulletin board for at least 10 business days
6 before the date stated in the notice for the opening of the bids unless
7 otherwise provided by law. All bids shall be sealed when received and
8 shall be opened in public at the hour stated in the notice.

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

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

20 (d) All purchases estimated to be more than ~~\$5,000~~ \$10,000, but
21 less than \$25,000, may be made after the receipt of three or more bid
22 solicitations by telephone, telephone facsimile or sealed bid, following
23 at least three days' notice posted on a public bulletin board. Such bids
24 shall be recorded as provided in ~~subsection (f) of K.S.A. 75-3740(f),~~
25 and amendments thereto. Any purchase that is estimated to be ~~less~~
26 ~~than \$5,000~~ \$10,000 or less may be purchased under conditions and
27 procedures prescribed by the director of purchases. Purchases made
28 in compliance with such conditions and procedures shall be exempt
29 from other provisions of this section.

30 (e) With the approval of the secretary of administration, the
31 director of purchases may delegate authority to any state agency to
32 make purchases of ~~less than \$25,000~~ \$50,000 or less under certain
33 prescribed conditions and procedures. The director of purchases shall
34 prepare a report at least once in each calendar quarter of all current
35 and existing delegations of authority to state agencies as provided in
36 this subsection. The director shall submit the report to the legislative
37 coordinating council, the chairperson of the committee on ways and
38 means of the senate and the chairperson of the committee on
39 appropriations of the house of representatives.

40 (f) Subject to the provisions of subsection (e), contracts and
41 purchases shall be based on specifications approved by the director of
42 purchases. When deemed applicable and feasible by the director of
43 purchases, such specifications shall include either energy efficiency

1 standards or appropriate life cycle cost formulas, or both, for all
2 supplies, materials, equipment and contractual services to be
3 purchased by the state. The director of purchases may reject a
4 contract or purchase on the basis that a product is manufactured or
5 assembled outside the United States. No such specifications shall be
6 fixed in a manner to effectively exclude any responsible bidder
7 offering comparable supplies, materials, equipment or contractual
8 services.

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

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

19 (i) The director of purchases may participate in, sponsor,
20 conduct, or administer a cooperative purchasing agreement or
21 consortium for purchases of supplies, materials, equipment, and
22 contractual services with federal agencies or agencies of other states or
23 local units of government. Cooperative purchasing agreements
24 entered into under this subsection shall not be subject to K.S.A. 75-
25 3739 through 75-3740a, and amendments thereto.

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

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

1 **house of representatives.**

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

9 **(m) The director of purchases shall require all bidders on state**
10 **contracts to disclose all substantial interests held by the bidder in the**
11 **state.**

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

18 ~~Section 1.~~ **Sec. 2.** K.S.A. 75-3743 is hereby amended to read as
19 follows: 75-3743. Whenever the secretary of administration or any
20 division head of the department of administration shall so require, certain
21 specified contracts and leases of any state agency shall be approved as to
22 form or execution by the attorney general. ~~A copy of every contract or~~
23 ~~lease extending for a term longer than one year shall be filed with the~~
24 ~~director of accounts and reports.~~ All orders or requisitions for supplies,
25 materials; *and* equipment ~~and contractual services~~ shall be made on forms
26 prescribed by the director of accounts and reports, *unless a purchase order*
27 *is required for each payment against a contract.*

28 ~~Sec. 2.~~ **3.** K.S.A. 75-3744 is hereby amended to read as follows: 75-
29 3744. Except as otherwise provided in this act and rules and regulations
30 adopted thereunder:

31 ~~(1)(a)~~ **(1)(a)** Every contract subject to the approval of the attorney general
32 shall be signed by the administrative head of the affected state agency. No
33 such contract shall be valid or effective without the approval and signature
34 of the director of purchases ~~and the countersignature of the director of~~
35 ~~accounts and reports.~~

36 ~~(2)(b)~~ **(2)(b)** All other purchase orders and contracts issued or entered into
37 by the division of purchases shall be signed by the director of purchases.
38 Such purchase orders ~~or contracts~~ shall show on their face that an
39 appropriation fund or allotment has been encumbered for the full amount
40 of the liability.

41 ~~Sec. 3.~~ **4.** K.S.A. 75-3743 and 75-3744 **and K.S.A. 2015 Supp. 75-**
42 **3739** are hereby repealed.

43 ~~Sec. 4.~~ **5.** This act shall take effect and be in force from and after its

- 1 publication in the statute book.