

SENATE BILL No. 249

By Committee on Ways and Means

2-17

1 AN ACT concerning purchasing law; relating to competitive bidding;
2 amending K.S.A. 2014 Supp. 75-3739 and repealing the existing
3 section.

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

6 Section 1. K.S.A. 2014 Supp. 75-3739 is hereby amended to read as
7 follows: 75-3739. In the manner as provided in this act and rules and
8 regulations established thereunder:

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

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

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

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

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

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

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

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

31 ~~(7)~~ (8) when, in the judgment of the director of purchases and the
32 head of the acquiring state agency, not seeking competitive bids is in the
33 best interest of the state.

34 When the director of purchases approves a purchase of or contract for
35 supplies, materials, equipment, or contractual services in any instance
36 specified in this subsection, the director may delegate authority to make

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

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

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

35 (b) (1) If the amount of the purchase is estimated to exceed \$50,000,
36 sealed bids shall be solicited by notice published once in the Kansas
37 register not less than 10 days before the date stated in the notice for the
38 opening of the bids. The director of purchases may waive this publication
39 of notice requirement when the director determines that a more timely
40 procurement is in the best interest of the state. The director of purchases
41 also may designate a trade journal for the publication. The director of
42 purchases also shall solicit such bids by sending notices by mail to
43 prospective bidders and by posting the notice on a public bulletin board for

1 at least 10 business days before the date stated in the notice for the
2 opening of the bids unless otherwise provided by law. All bids shall be
3 sealed when received and shall be opened in public at the hour stated in
4 the notice.

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

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

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

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

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

1 contractual services.

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

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

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

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

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

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

43 (m) The director of purchases shall require all bidders on state

1 contracts to disclose all substantial interests held by the bidder in the state.

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

8 Sec. 2. K.S.A. 2014 Supp. 75-3739 is hereby repealed.

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