

SECOND REGULAR SESSION

HOUSE BILL NO. 1606

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES NOLTE (Sponsor), WILDBERGER, SPRENG, CORCORAN,
McGHEE, MEADOWS, FISHER, WHORTON, SCHAD, DIXON,
SCHNEIDER AND SANDERS BROOKS (Co-sponsors).

Read 1st time January 31, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4653L.01I

AN ACT

To repeal section 34.040, RSMo, and to enact in lieu thereof one new section relating to state purchasing.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 34.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 34.040, to read as follows:

34.040. 1. All purchases in excess of three thousand dollars shall be based on competitive bids, except as otherwise provided in this chapter.

2. On any purchase where the estimated expenditure shall be twenty-five thousand dollars or over, except as provided in subsection 5 of this section, the commissioner of administration shall:

(1) Advertise for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders and may advertise in at least two weekly minority newspapers and may provide such information through an electronic medium available to the general public at least five days before bids for such purchases are to be opened. Other methods of advertisement, which may include minority business purchase councils, however, may be adopted by the commissioner of administration when such other methods are deemed more advantageous for the supplies to be purchased;

(2) Post a notice of the proposed purchase in his or her office; and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 (3) Solicit bids by mail or other reasonable method generally available to the public from
15 prospective suppliers. All bids for such supplies shall be mailed or delivered to the office of the
16 commissioner of administration so as to reach such office before the time set for opening bids.

17 3. The contract shall be let to the lowest and best bidder. The commissioner of
18 administration shall have the right to reject any or all bids and advertise for new bids, or purchase
19 the required supplies on the open market if they can be so purchased at a better price. When bids
20 received pursuant to this section are unreasonable or unacceptable as to terms and conditions,
21 noncompetitive, or the low bid exceeds available funds and it is determined in writing by the
22 commissioner of administration that time or other circumstances will not permit the delay
23 required to resolicit competitive bids, a contract may be negotiated pursuant to this section,
24 provided that each responsible bidder who submitted such bid under the original solicitation is
25 notified of the determination and is given a reasonable opportunity to modify their bid and
26 submit a best and final bid to the state. In cases where the bids received are noncompetitive or
27 the low bid exceeds available funds, the negotiated price shall be lower than the lowest rejected
28 bid of any responsible bidder under the original solicitation.

29 4. All bids shall be based on standard specifications wherever such specifications have
30 been approved by the commissioner of administration. The commissioner of administration shall
31 make rules governing the delivery, inspection, storage and distribution of all supplies so
32 purchased and governing the manner in which all claims for supplies delivered shall be
33 submitted, examined, approved and paid. The commissioner shall determine the amount of bond
34 or deposit and the character thereof which shall accompany bids or contracts.

35 5. The department of natural resources may, without the approval of the commissioner
36 of administration required pursuant to this section, enter into contracts of up to five hundred
37 thousand dollars to abate illegal waste tire sites pursuant to section 260.276, RSMo, when the
38 director of the department determines that urgent action is needed to protect public health, safety,
39 natural resources or the environment. The department shall follow bidding procedures pursuant
40 to this section and may promulgate rules necessary to establish such procedures. Any rule or
41 portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the
42 authority delegated in this section shall become effective only if it complies with and is subject
43 to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
44 section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the
45 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to
46 disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking
47 authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

48 6. The commissioner of administration and other agencies to which the state purchasing
49 law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of

50 the vendor makes sales at retail of tangible personal property or for the purpose of storage, use,
51 or consumption in this state but fails to collect and properly pay the tax as provided in chapter
52 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or
53 entity that is controlled by or is under common control with the vendor, whether through stock
54 ownership or otherwise.

55 **7. Any contract let under subsections 1 to 5 of this section after August 28, 2006,**
56 **for the performance of services shall include provisions which specify that only citizens of**
57 **the United States and persons authorized to work in the United States under federal law**
58 **shall be employed in the performance of services under the contract or any subcontract**
59 **awarded under the contract, unless one of the following conditions is met:**

60 (1) The vendor or its subcontractor provides a unique good or service; the
61 particular good or service is deemed mandatory for the purposes of the purchasing agency;
62 and no comparable domestically-provided good or service can adequately duplicate the
63 unique features of the good or service provided by the vendor or its subcontractor; or

64 (2) The vendor or its subcontractor is a foreign firm hired to market Missouri
65 services or products to a foreign country.

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