

SECOND REGULAR SESSION

HOUSE BILL NO. 1794

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DEEKEN (Sponsor) AND LAMPE (Co-sponsor).

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D. ADAM CRUMBLISS, Chief Clerk

4493L.01I

AN ACT

To repeal sections 34.010, 34.031, 34.032, 34.040, 34.042, 34.044, 34.065, and 34.130, RSMo, and to enact in lieu thereof six new sections relating to state procurement.

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

Section A. Sections 34.010, 34.031, 34.032, 34.040, 34.042, 34.044, 34.065, and 34.130, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 34.010, 34.031, 34.032, 34.040, 34.042, 34.044, to read as follows:

34.010. 1. The term "department" as used in this chapter shall be deemed to mean department, office, board, commission, bureau, institution, or any other agency of the state, except the legislative and judicial departments.

2. The term "lowest and best" [in] **as used in this chapter means** determining the lowest and best award, cost, and other factors [are to be] considered in the evaluation process. Factors may include, but are not limited to, value, performance, and quality of a product.

3. The term "Missouri product" refers to goods or commodities which are manufactured, mined, produced, or grown by companies in Missouri, or services provided by such companies.

4. The term "negotiation" as used in this chapter means the process of selecting a contractor by the competitive methods described in this chapter, whereby the commissioner of administration can establish any and all terms and conditions of a procurement contract by discussion with one or more prospective contractors.

5. The term "purchase" as used in this chapter shall include the rental or leasing of any equipment, articles or things.

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.

15 6. The term "supplies" used in this chapter shall be deemed to mean supplies, materials,
16 equipment, contractual services and any and all articles or things, except for utility services
17 regulated under chapter 393, RSMo, or as in this chapter otherwise provided.

18 7. **The term "reverse auction" used in this chapter shall mean a procurement**
19 **method wherein bidders are invited to bid on merchandise, supplies, raw materials, or**
20 **finished goods through real-time electronic bidding with the award being made to the**
21 **lowest responsive and responsible bidder. During the bidding process, bidders' prices but**
22 **not their identity are revealed and bidders shall have the opportunity to modify their bid**
23 **prices for the duration of the time period established for bid opening.**

24 8. The term "value" includes but is not limited to price, performance, and quality. In
25 assessing value, the state purchaser may consider the economic impact to the state of Missouri
26 for Missouri products versus the economic impact of products generated from out of state. This
27 economic impact may include the revenues returned to the state through tax revenue obligations.

 34.031. 1. The commissioner of administration, in consultation with the environmental
2 improvement and energy resources authority of the department of natural resources, shall give
3 full consideration to the purchase of products made from materials recovered from solid waste
4 and to the reduction and ultimate elimination of purchases of products manufactured in whole
5 or in part of thermoformed or other extruded polystyrene foam manufactured using any fully
6 halogenated chlorofluorocarbon (CFC). Products that utilize recovered materials of a price and
7 quality comparable to products made from virgin materials shall be sought and purchased, with
8 particular emphasis on recycled oil, retread tires, compost materials and recycled paper products.
9 The commissioner shall exercise a preference for such products if their use is technically feasible
10 and, where a bid is required, their price is equal to, or less than, the price of items which are
11 manufactured or produced from virgin materials. Products that would be inferior, violate safety
12 standards or violate product warranties if the provisions of this section are followed may be
13 excluded from the provisions of this section.

14 2. The commissioner of administration shall:

15 (1) Review the procurement specifications in order to eliminate discrimination against
16 the procurement of recycled products;

17 (2) Review and modify the contract specifications for paper products and increase the
18 minimum required percentage of recycled paper in each product as follows:

19 (a) Forty percent recovered materials for newsprint;

20 (b) Eighty percent recovered materials for paperboard;

21 (c) Fifty percent waste paper in high grade printing and writing paper;

22 (d) Five to forty percent in tissue products;

23 (3) Support federal incentives and policy guidelines designed to promote these goals;

24 (4) Develop and implement a cooperative procurement policy to facilitate bulk order
25 purchases and to increase availability of recycled products. The policy shall be distributed to all
26 state agencies and shall be made available to political subdivisions of the state[;

27 (5) Conduct a survey using existing staff of those items customarily required by the state
28 that are manufactured in whole or part from polystyrene plastic, and report its findings, together
29 with an analysis of environmentally acceptable alternatives thereto, prepared in collaboration
30 with the department of natural resources, to the general assembly and every state agency within
31 six months of August 28, 1995].

32 3. Notwithstanding the provisions of this section, no state agency may purchase any food
33 or beverage containers or wrapping manufactured from any polystyrene foam manufactured
34 using any fully halogenated chlorofluorocarbon (CFC) found by the United States Environmental
35 Protection Agency (EPA) to be an ozone-depleting chemical.

36 4. No state agency may purchase any items made in whole or part of thermoformed or
37 other extruded polystyrene foam manufactured using any fully halogenated chlorofluorocarbon
38 (CFC) found by the United States Environmental Protection Agency (EPA) to be an
39 ozone-depleting chemical without approval from the commissioner of administration. Approval
40 shall not be granted unless the purchasing agency demonstrates to the satisfaction of the director
41 of the department of natural resources and the commissioner that there is no environmentally
42 more acceptable alternatives or the quality of such alternatives is not adequate for the purpose
43 intended.

44 5. For each paper product type and corresponding recycled paper content standard
45 pursuant to subdivision (2) of subsection 2 of this section, attainment goals for the percentage
46 of paper products to be purchased that utilize post-consumer recovered materials shall be[;

- 47 (1) Ten percent in 1991 and 1992;
48 (2) Twenty-five percent in 1993 and 1994;
49 (3) Forty percent in 1995; and
50 (4)] sixty percent by 2000.

51 6. In the review of capital improvement projects for buildings and facilities of state
52 government, the commissioner of administration shall direct the division of design and
53 construction to give full consideration to alternatives which use solid waste, as defined in section
54 260.200, RSMo, as a fuel for energy production or which use products composed of materials
55 recovered from solid waste.

56 7. The commissioner of administration, in consultation with the environmental
57 improvement and energy resources authority of the department of natural resources, shall prepare
58 and provide by January first of each year an annual report summarizing past activities and
59 accomplishments of the program and proposed goals of the program including projections for

60 each affected agency. The report shall also include a list of products utilizing recovered
61 materials that could substitute for products currently purchased and a schedule of amounts
62 purchased of products utilizing recovered materials compared to purchases of similar products
63 utilizing virgin materials for the period covered by the annual report.

64 8. The office of administration, department of natural resources and department of
65 economic development shall cooperate jointly and share to the greatest extent possible,
66 information and other resources to promote:

67 (1) Producers or potential producers of secondary material goods to expand or develop
68 their product lines;

69 (2) Increased demand for secondary materials recovered in Missouri; and

70 (3) Increased demand by state government for products which contain secondary
71 materials recovered in Missouri.

72 9. The commissioner of administration may increase minimum recycled content
73 percentages for paper products, minimum recycled content percentages for other recycled
74 products and establish minimum post-consumer content as such products become available. The
75 preference provided in subsection 1 of this section shall apply to the minimum standards
76 established by the commissioner.

34.032. 1. The provisions of section 34.040 to the contrary notwithstanding, each
2 department and agency of the state government, including the general assembly, shall purchase,
3 in the manner provided by law, and use recycled paper when recycled paper can be obtained that
4 is comparable to the quality presently used by the department or agency and if the price is
5 competitive. [For the purposes of this section, "competitive" means a price within ten percent
6 of the price of items which are manufactured or produced from virgin materials.] Attainment
7 goals for the percentage of paper products to be purchased that utilize post-consumer recovered
8 materials shall be[:

9 (1) Ten percent in 1991 and 1992;

10 (2) Twenty-five percent in 1993 and 1994;

11 (3) Forty percent in 1995; and

12 (4)] sixty percent by 2000.

13 2. Each department and agency of state government shall also purchase a minimum of
14 fifteen percent recycled motor oil for use in motor vehicles.

15 3. Each department and agency of state government shall cause to be recycled:

16 (1) A minimum of twenty-five percent of paper products used or fifty percent of the
17 paper disposed of, whichever is greater;

18 (2) Seventy-five percent of all used motor oil.

19 4. Each department and state agency shall, to the maximum extent practicable, separate
20 plastics, paper, metals and other recyclable items [by July 1, 1990].

21 5. [By January 1, 1990,] Each department and state agency shall develop, in cooperation
22 with the office of administration, and implement a policy for recycling and waste reduction.
23 Each department and agency shall collect and recycle waste paper and empty aluminum beverage
24 containers generated by employee activity. The office of the governor and the general assembly
25 shall implement a policy for recycling and waste reduction and shall collect and recycle waste
26 paper and aluminum beverage containers generated within its facilities. Recycling programs for
27 agency offices located outside of the city of Jefferson may be coordinated through the office of
28 administration or operated locally provided that the office of administration reviews and
29 approves such programs. Proceeds from the sale of recycled materials may be used to offset
30 costs of the recycling program. Any moneys found by the office of administration to be in excess
31 of costs incurred shall be transferred to the department of social services to be used by the
32 heating assistance program pursuant to sections 660.100 to 660.135, RSMo.

33 6. The department of higher education, in cooperation with the office of administration
34 and state colleges and universities, shall develop and distribute guidelines for waste reduction
35 and the collection of recyclable materials generated in classrooms, administrative offices,
36 dormitories, cafeterias and similar campus locations.

37 7. Bid specifications for solid waste management services issued by any department or
38 agency of state government shall be designed to meet the objectives of sections 260.255 to
39 260.325, RSMo, encourage small businesses to engage and compete in the delivery of waste
40 management services and to minimize the long run cost of managing solid waste. Bid
41 specifications shall enumerate the minimum components and minimum quantities of waste
42 products which shall be recycled by the successful bidder. Bids for solid waste management
43 services to state departments and agencies located within the seat of government shall be issued
44 in units in order to maximize opportunities for small business to provide solid waste
45 management services to the state. Each department and agency shall designate one person in an
46 existing position to serve as a solid waste management coordinator to ensure that the agency and
47 the office of administration cooperate to meet the requirements of this section.

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

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

6 (1) Advertise for bids in at least two daily newspapers of general circulation in such
7 places as are most likely to reach prospective bidders and may advertise in at least two weekly

8 minority newspapers and may provide such information through an electronic medium available
9 to the general public at least five days before bids for such purchases are to be opened. Other
10 methods of advertisement, which may include minority business purchase councils, however,
11 may be adopted by the commissioner of administration when such other methods are deemed
12 more advantageous for the supplies to be purchased;

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

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. The commissioner of administration may authorize the use of reverse auction**
56 **procurement method to procure merchandise, supplies, raw materials, or finished goods**
57 **when price is the primary factor in evaluating bids. The office of administration shall**
58 **promulgate rules regarding the handling of the reverse auction process.**

34.042. 1. When the commissioner of administration determines that the use of
2 competitive bidding is either not practicable or not advantageous to the state, supplies may be
3 procured by competitive proposals. The commissioner shall state the reasons for such
4 determination, and a report containing those reasons shall be maintained with the vouchers or
5 files pertaining to such purchases. All purchases in excess of [five] **ten** thousand dollars to be
6 made under this section shall be based on competitive proposals.

7 2. On any purchase where the estimated expenditure shall be [twenty-five] **one hundred**
8 thousand dollars or over, the commissioner of administration shall:

9 (1) Advertise for proposals in at least two daily newspapers of general circulation in such
10 places as are most likely to reach prospective offerors and may advertise in at least two weekly
11 minority newspapers and may provide such information through an electronic medium available
12 to the general public at least five days before proposals for such purchases are to be opened.
13 Other methods of advertisement, however, may be adopted by the commissioner of
14 administration when such other methods are deemed more advantageous for the supplies to be
15 purchased;

16 (2) Post notice of the proposed purchase; and

17 (3) Solicit proposals by mail or other reasonable method generally available to the public
18 from prospective offerors.

19

20 All proposals for such supplies shall be mailed or delivered to the office of the commissioner of
21 administration so as to reach such office before the time set for opening proposals. Proposals

22 shall be opened in a manner to avoid disclosure of contents to competing offerors during the
23 process of negotiation.

24 3. The contract shall be let to the lowest and best offeror as determined by the evaluation
25 criteria established in the request for proposal and any subsequent negotiations conducted
26 pursuant to this subsection. In determining the lowest and best offeror, as provided in the request
27 for proposals and under rules promulgated by the commissioner of administration, negotiations
28 may be conducted with responsible offerors who submit proposals selected by the commissioner
29 of administration on the basis of reasonable criteria for the purpose of clarifying and assuring full
30 understanding of and responsiveness to the solicitation requirements. Those offerors shall be
31 accorded fair and equal treatment with respect to any opportunity for negotiation and subsequent
32 revision of proposals. Revisions may be permitted after submission and before award for the
33 purpose of obtaining best and final offers. In conducting negotiations there shall be no disclosure
34 of any information derived from proposals submitted by competing offerors. The commissioner
35 of administration shall have the right to reject any or all proposals and advertise for new
36 proposals or purchase the required supplies on the open market if they can be so purchased at a
37 better price.

38 4. The commissioner shall make available, upon request, to any members of the general
39 assembly, information pertaining to competitive proposals, including the names of [bidders]
40 **offerors** and the amount of each [bidder's] **offeror's** offering for each contract.

34.044. 1. The commissioner of administration may waive the requirement of
2 competitive bids or proposals for supplies when the commissioner has determined in writing that
3 there is only a single feasible source for the supplies. Immediately upon discovering that other
4 feasible sources exist, the commissioner shall rescind the waiver and proceed to procure the
5 supplies through the competitive processes as described in this chapter. A single feasible source
6 exists when:

7 (1) Supplies are proprietary and only available from the manufacturer or a single
8 distributor; or

9 (2) Based on past procurement experience, it is determined that only one distributor
10 services the region in which the supplies are needed; or

11 (3) Supplies are available at a discount from a single distributor for a limited period of
12 time.

13 2. **The following categories do not require a written determination of single feasible**
14 **sources:**

15 (1) **Services of visiting speakers, professors, and performing artists;**

16 (2) **Works of art and historical items for museum and public display;**

17 (3) **Published books, maps, periodicals, and technical pamphlets for libraries;**

18 **(4) Regulated utility services;**

19 **(5) Trial use or testing specific items for suitability;**

20 **(6) Print, electronic, broadcast, and other media advertising.**

21 **3.** On any single feasible source purchase where the estimated expenditure shall be [five]
22 **ten** thousand dollars or over, the commissioner of administration shall post notice of the
23 proposed purchase. Where the estimated expenditure is [twenty-five] **one hundred** thousand
24 dollars or over, the commissioner of administration shall also advertise the commissioner's intent
25 to make such purchase in at least two daily newspapers of general circulation in such places as
26 are most likely to reach prospective bidders or offerors and may provide such information
27 through an electronic medium available to the general public at least five days before the contract
28 is to be let. Other methods of advertisement, however, may be adopted by the commissioner of
29 administration when such other methods are deemed more advantageous for the supplies to be
30 purchased. The requirement for advertising may be waived, if not feasible, due to the supplies
31 being available at a discount for only a limited period of time.

2 [34.065. Where, because of the large number of possible bidders for a
3 particular purchase, it is impractical to submit a request for a bid to all possible
4 bidders each time a bid is requested, request shall be made in rotation pursuant
5 to the regulation of the commissioner of administration so as ultimately to
6 include all the possible bidders, except that recognized competitive bidders shall
7 be solicited in each instance.]

2 [34.130. On or before May first of each year, each department shall
3 submit to the commissioner of administration a classified list of its estimated
4 needs for supplies for the following fiscal year. The commissioner of
5 administration shall consolidate these and may purchase the entire amount or
6 such part thereof at one time as he shall deem best. Any contract for such
7 purchases may provide only the price at which the supplies needed during the
8 year shall be purchased and that the supplies shall be delivered in such amounts
9 and at such times as ordered throughout the year and be paid for at such time and
10 for such amounts as delivered. In such case, certification from the commissioner
11 of administration and the auditor shall be required only for the amount ordered
at any time.]

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