

SECOND REGULAR SESSION

# HOUSE BILL NO. 2169

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES PARKINSON (Sponsor), MILLER,  
RHOADS AND KELLEY (127) (Co-sponsors).

6385H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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Section A. Section 34.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 34.040, to read as follows: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

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

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.

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 when the director  
38 of the department determines that urgent action is needed to protect public health, safety, natural  
39 resources or the environment. The department shall follow bidding procedures pursuant to this  
40 section and may promulgate rules necessary to establish such procedures. Any rule or portion  
41 of a rule, as that term is defined in section 536.010, that is created under the authority delegated  
42 in this section shall become effective only if it complies with and is subject to all of the  
43 provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are  
44 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536  
45 to review, to delay the effective date or to disapprove and annul a rule are subsequently held  
46 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after  
47 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. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity

53 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 shall be authorized to hold reverse auctions**  
56 **to procure merchandise, supplies, raw materials, or finished goods if price is the primary**  
57 **factor in evaluating bids. The office of administration shall promulgate rules regarding**  
58 **the handling of the reverse auction process.**

59 **8. Any rule or portion of a rule, as that term is defined in section 536.010, that is**  
60 **created under the authority delegated in this section shall become effective only if it**  
61 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
62 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**  
63 **vested with the general assembly under chapter 536 to review, to delay the effective date,**  
64 **or to disapprove and annul a rule are subsequently held unconstitutional, then the grant**  
65 **of rulemaking authority and any rule proposed or adopted after August 28, 2014, shall be**  
66 **invalid and void.**

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