

FIRST REGULAR SESSION

HOUSE BILL NO. 752

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KNIGHT.

1494H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 8.250, 8.679, 8.690, 34.040, 34.042, and 34.044, RSMo, and to enact in lieu thereof six new sections relating to newspaper advertisements for state bids.

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

Section A. Sections 8.250, 8.679, 8.690, 34.040, 34.042, and 34.044, RSMo, are
2 repealed and six new sections enacted in lieu thereof, to be known as sections 8.250, 8.679,
3 8.690, 34.040, 34.042, and 34.044, to read as follows:

8.250. 1. "Project" for the purposes of this chapter means the labor or material
2 necessary for the construction, renovation, or repair of improvements to real property so that
3 the work, when complete, shall be ready for service for its intended purpose and shall require
4 no other work to be a completed system or component.

5 2. All contracts for projects, the cost of which exceeds twenty-five thousand dollars,
6 entered into by any city containing five hundred thousand inhabitants or more shall be let to
7 the lowest, responsive, responsible bidder or bidders after publication of an advertisement for
8 a period of ten days or more in a newspaper in the county where the work is located, in two
9 daily newspapers in the state which do not have less than fifty thousand daily circulation, and
10 on the website of the city or through an electronic procurement system.

11 3. All contracts for projects, the cost of which exceeds one hundred thousand dollars,
12 entered into by an officer or agency of this state shall be let to the lowest, responsive,
13 responsible bidder or bidders based on preestablished criteria after ~~publication of an~~
14 ~~advertisement for a period of ten days or more in a newspaper in the county where the work is~~
15 ~~located, in one daily newspaper in the state which does not have less than fifty thousand daily~~
16 ~~circulation, and on the website of the officer or agency or through an electronic procurement~~

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 ~~system]~~ **posting an invitation for bid on the website of the officer or agency or**
18 **advertising the invitation for bid through an electronic medium available to the general**
19 **public for a period of at least ten days before bids are to be opened.** For all contracts for
20 projects between twenty-five thousand dollars and one hundred thousand dollars, a minimum
21 of three contractors shall be solicited with the award being made to the lowest responsive,
22 responsible bidder based on preestablished criteria.

23 4. The number of such public bids shall not be restricted or curtailed, but shall be
24 open to all persons complying with the terms upon which the bids are requested or solicited
25 unless debarred for cause. No contract shall be awarded when the amount appropriated for
26 same is not sufficient to complete the work ready for service.

27 5. Dividing a project into component labor or material allocations for the purpose of
28 avoiding bidding or advertising provisions required by this section is specifically prohibited.

8.679. When, in the discretion of the public owner, it is determined that a public
2 works project should be performed with a negotiated contract for construction management
3 services, such public owner shall advertise and solicit proposals from qualified construction
4 managers ~~[in the following manner: If the total cost for the erection or construction of any~~
5 ~~building or structure or the improvement, alteration or repair of a building or structure~~
6 ~~exceeds five hundred thousand dollars, the public owner shall request and solicit proposals by~~
7 ~~advertising for ten days in one newspaper of general circulation in the county where the work~~
8 ~~is located. If the cost of the work contemplated exceeds one million five hundred thousand~~
9 ~~dollars, proposals shall be solicited by advertisement for ten days in two daily newspapers in~~
10 ~~the state which have not less than fifty thousand daily circulation in addition to the~~
11 ~~advertisement in the county where the work is located]~~ **by posting an invitation for bid on**
12 **the website of the officer or agency advertising the invitation for bid through an**
13 **electronic medium available to the general public for a period of at least ten days before**
14 **bids are to be opened.** The number of such proposals shall not be restricted or curtailed, but
15 shall be open to all construction managers complying with the terms upon which the
16 proposals are requested.

8.690. 1. The office of administration shall have the authority to utilize:

2 (1) The construction manager-at-risk delivery method, as provided for in section
3 67.5050; and

4 (2) The design-build delivery method, as provided for in section 67.5060, only as
5 follows:

6 (a) For noncivil works projects, as that term is used in section 67.5060, in excess of
7 seven million dollars; and

8 (b) No more than five noncivil works projects, as that term is used in section 67.5060,
9 may be contracted for in any fiscal year that are less than seven million dollars.

10 2. The office of administration shall not be subject to subsection 15 of section
11 67.5050 and subsection 22 of section 67.5060 in executing contracts pursuant to this section.

12 3. The office of administration shall not be subject to subsection 4 of section 67.5060
13 **or the provisions of subsection 3 of section 67.5050 that require disclosure at a public**
14 **meeting.** The office of administration shall [~~publish its advertisement for proposals in the~~
15 ~~publications, and on the website of the officer or agency or through an electronic procurement~~
16 ~~system]~~ **advertise a request for qualifications or a request for proposals for a design-**
17 **builder or construction manager-at-risk** as set forth in subsection 3 of section 8.250. The
18 selection and award shall follow sections 67.5050 and 67.5060, as applicable.

 34.040. 1. All purchases in excess of 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 one hundred thousand
4 dollars or over, except as provided in subsection 6 of this section, the commissioner of
5 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
9 available to the general public at least five days before bids for such purchases are to be
10 opened. Other methods of advertisement, which may include minority business purchase
11 councils, however, may be adopted by the commissioner of administration when such other
12 methods are deemed 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
15 from prospective suppliers. All bids for such supplies shall be mailed or delivered to the
16 office of the commissioner of administration so as to reach such office before the time set for
17 opening bids.

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

28 received are noncompetitive or the low bid exceeds available funds, the negotiated price shall
29 be lower than the lowest rejected bid of any responsible bidder under the original solicitation.

30 4. The director of the department of revenue shall follow bidding procedures as
31 contained in this chapter and may promulgate rules necessary to establish such procedures.
32 No points shall be awarded on a request for proposal for a contract license office to a bidder
33 for a return-to-the-state provision offer.

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

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

54 7. The commissioner of administration and other agencies to which the state
55 purchasing law applies shall not contract for goods or services with a vendor if the vendor or
56 an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose
57 of storage, use, or consumption in this state but fails to collect and properly pay the tax as
58 provided in chapter 144. For the purposes of this section, "affiliate of the vendor" shall mean
59 any person or entity that is controlled by or is under common control with the vendor, whether
60 through stock ownership or otherwise.

61 8. The commissioner of administration may hold reverse auctions to procure
62 merchandise, supplies, raw materials, or finished goods if price is the primary factor in
63 evaluating bids, excluding items in section 34.047. The office of administration shall
64 promulgate rules regarding the handling of the reverse auction process.

65 9. Any rule or portion of a rule, as that term is defined in section 536.010, that is
66 created under the authority delegated in this section shall become effective only if it complies
67 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
68 This section and chapter 536 are nonseverable and if any of the powers vested with the
69 general assembly pursuant to chapter 536 to review, to delay the effective date, or to
70 disapprove and annul a rule are subsequently held unconstitutional, then the grant of
71 rulemaking authority and any rule proposed or adopted after August 28, 2019, shall be invalid
72 and void.

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 ten thousand dollars to be made
6 under this section shall be based on competitive proposals.

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

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

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

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

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20 All proposals for such supplies shall be mailed or delivered to the office of the commissioner
21 of administration so as to reach such office before the time set for opening proposals.
22 Proposals shall be opened in a manner to avoid disclosure of contents to competing offerors
23 during the process of negotiation.

24 3. The contract shall be let to the lowest and best offeror as determined by the
25 evaluation criteria established in the request for proposal and any subsequent negotiations
26 conducted pursuant to this subsection. In determining the lowest and best offeror, as provided
27 in the request for proposals and under rules promulgated by the commissioner of
28 administration, negotiations may be conducted with responsible offerors who submit
29 proposals selected by the commissioner of administration on the basis of reasonable criteria

30 for the purpose of clarifying and assuring full understanding of and responsiveness to the
31 solicitation requirements. Those offerors shall be accorded fair and equal treatment with
32 respect to any opportunity for negotiation and subsequent revision of proposals; however, a
33 request for proposal may set forth the manner for determining which offerors are eligible for
34 negotiation, including, but not limited to, the use of shortlisting. Revisions may be permitted
35 after submission and before award for the purpose of obtaining best and final offers. In
36 conducting negotiations there shall be no disclosure of any information derived from
37 proposals submitted by competing offerors. The commissioner of administration shall have
38 the right to reject any or all proposals and advertise for new proposals or purchase the
39 required supplies on the open market if they can be so purchased at a better price.

40 4. The commissioner shall make available, upon request, to any members of the
41 general assembly, information pertaining to competitive proposals, including the names of
42 bidders and the amount of each bidder'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
3 that there is only a single feasible source for the supplies. Immediately upon discovering that
4 other feasible sources exist, the commissioner shall rescind the waiver and proceed to procure
5 the supplies through the competitive processes as described in this chapter. A single feasible
6 source 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
12 of time.

13 2. On any single feasible source purchase where the estimated expenditure shall be
14 ten thousand dollars or over, the commissioner of administration shall post notice of the
15 proposed purchase. Where the estimated expenditure is one hundred thousand dollars or over,
16 the commissioner of administration shall also advertise the commissioner's intent to make
17 such purchase ~~[in at least two daily newspapers of general circulation in such places as are
18 most likely to reach prospective bidders or offerors and may provide such information]~~
19 through an electronic medium available to the general public at least five days before the
20 contract is to be let. Other methods of advertisement, however, may be adopted by the
21 commissioner of administration when such other methods are deemed more advantageous for

- 22 the supplies to be purchased. The requirement for advertising may be waived, if not feasible,
23 due to the supplies being available at a discount for only a limited period of time.

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