

FIRST REGULAR SESSION

# HOUSE BILL NO. 1009

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE VOSS.

2194H.011

JOSEPH ENGLER, Chief Clerk

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## AN ACT

To repeal section 34.042, RSMo, and to enact in lieu thereof one new section relating to negotiation of state contract provisions.

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

Section A. Section 34.042, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 34.042, to read as follows:

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

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

(1) Advertise for proposals in at least two daily newspapers of general circulation in such places as are most likely to reach prospective offerors 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 proposals for such purchases are to be opened. Other methods of advertisement, 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 notice of the proposed purchase; 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.

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.

43 **5. If identified in the solicitation, the contract may be awarded to the lowest and**  
44 **best responsive vendor or vendors as determined by the evaluation criteria set out in the**  
45 **solicitation, while reserving certain contract provisions for negotiation after the notice**  
46 **of award. The reserved contract provisions for post-award negotiation shall not be**  
47 **provisions that were part of the evaluation criteria and scoring or provisions that**  
48 **impacted such criteria or scoring. The time frame for post-award negotiations shall be**  
49 **set out in the solicitation itself and, if such negotiations fail, the commissioner may**  
50 **cancel the award and award the contract to the next lowest and best vendor or vendors.**  
51 **If satisfied with the lowest and best responsive vendor's proposal, the commissioner may**  
52 **waive post-award negotiations. For solicitations that provide for contract awards to be**  
53 **made to multiple vendors, including qualified vendor solicitations, post-award**

54 **negotiations may be done separately with all awarded vendors, if needed and if specified**  
55 **in the solicitation. For any provision agreed to by the state in post-award negotiations**  
56 **with a vendor, any other vendor awarded a contract from the same solicitation may**  
57 **request the same negotiated provision for their contract and such provision shall be**  
58 **added through a written contract amendment.**

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