

FIRST REGULAR SESSION

# HOUSE BILL NO. 1570

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BLACK.

3200H.011

JOSEPH ENGLER, 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 purchasing by state departments.

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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Section A. Section 34.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 34.040, to read as follows: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 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 one hundred thousand dollars or over, except as provided in subsection 6 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.

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 state department shall have the authority to conduct its own purchasing**  
66 **according to the procedures and requirements set forth in this chapter. The**  
67 **commissioner of administration shall cooperate with and assist any state department**  
68 **requesting to conduct its own purchasing.**

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

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