

SECOND REGULAR SESSION

HOUSE BILL NO. 2148

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WILSON.

4447H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

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

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Section A. Section 34.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 34.040, to read as follows: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. If any bid issued under this section is canceled, the issuing entity shall, in the**
66 **same manner as otherwise required by this section, publish:**

67 **(1) A justification for the cancellation;**

68 **(2) Available information about any plans to reissue the bid and associated**
69 **timeframes for the reissuance;**

70 **(3) Any plans to include the canceled bid within another bid; and**

71 **(4) Currently available bids that are similar in nature to the canceled bid.**

72 ~~[9-]~~ **10.** Any rule or portion of a rule, as that term is defined in section 536.010, that is
73 created under the authority delegated in this section shall become effective only if it complies
74 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
75 This section and chapter 536 are nonseverable and if any of the powers vested with the
76 general assembly pursuant to chapter 536 to review, to delay the effective date, or to
77 disapprove and annul a rule are subsequently held unconstitutional, then the grant of
78 rulemaking authority and any rule proposed or adopted after August 28, 2019, shall be invalid
79 and void.

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