

## SENATE BILL No. 333

By Legislative Educational Planning Committee

1-5

---

9 AN ACT concerning purchases by state agencies; amending K.S.A. 2005  
10 Supp. 75-3739 and repealing the existing section.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 2005 Supp. 75-3739 is hereby amended to read as  
14 follows: 75-3739. In the manner as provided in this act and rules and  
15 regulations established thereunder:

16 (a) All contracts for construction and repairs, and all purchases of and  
17 contracts for supplies, materials, equipment and contractual services to  
18 be acquired for state agencies shall be based on competitive bids, except  
19 that competitive bids need not be required in the following instances:

20 (1) For contractual services, supplies, materials, or equipment when,  
21 in the judgment of the director of purchases, no competition exists;

22 (2) when, in the judgment of the director of purchases, chemicals  
23 and other material or equipment for use in laboratories or experimental  
24 studies by state agencies are best purchased without competition, or  
25 where rates are fixed by law or ordinance;

26 (3) when, in the judgment of the director of purchases, an agency  
27 emergency requires immediate delivery of supplies, materials or equip-  
28 ment, or immediate performance of services;

29 (4) when any statute authorizes another procedure or provides an  
30 exemption from the provisions of this section;

31 (5) when compatibility with existing contractual services, supplies,  
32 materials or equipment is the overriding consideration;

33 (6) when a used item becomes available and is subject to immediate  
34 sale; or

35 (7) when, in the judgment of the director of purchases and the head  
36 of the acquiring state agency, not seeking competitive bids is in the best  
37 interest of the state.

38 When the director of purchases approves a purchase of or contract for  
39 supplies, materials, equipment, or contractual services in any instance  
40 specified in this subsection, the director may delegate authority to make  
41 the purchase or enter the contract under conditions and procedures pre-  
42 scribed by the director. Except for purchases or contracts entered into  
43 without a competitive bid under subsection (a)(3), (a)(4), (a)(6) or sub-

1 section (h), no purchase or contract entered into without a competitive  
2 bid for an amount in excess of \$100,000 shall be entered into by the head  
3 of any state agency or approved by the director of purchases unless the  
4 director of purchases first posts an on-line notice of the proposed pur-  
5 chase or contract at least seven days before the purchase or contract is  
6 awarded. The director of purchases shall provide notice thereof to mem-  
7 bers of the legislature at the beginning of each calendar year that such  
8 information will be posted and the director of the division of purchases  
9 shall provide the uniform resource locator (URL) and the number of  
10 times such information shall be available. In the event a written protest  
11 of the awarding of such a contract occurs during the seven-day notice  
12 period, the director of purchases shall request from the protestor the  
13 contact information, including name and mailing address, of the person  
14 or entity that has expressed an interest in supplying the goods or services  
15 and provide a copy of the specification to the person or entity that has  
16 expressed an interest in supplying the goods or services and verify that  
17 such person or entity is interested and capable of supplying such goods  
18 or services.

19 Upon satisfaction of the director of purchases regarding the validity of  
20 the protest and the existence of competition, the director of purchases  
21 shall proceed with a competitive procurement. A competitive procure-  
22 ment shall not be required when, in the judgment of the director of  
23 purchases, the validity of the protest cannot be determined or competi-  
24 tion for such goods or services cannot be verified by the director of  
25 purchases.

26 The director of purchases shall prepare a detailed report at least once  
27 in each calendar quarter of all contracts over \$5,000 entered into without  
28 competitive bids under subsection (a)(1), (2), (3), (5), (6) or (7). The  
29 director shall submit the report to the legislative coordinating council, the  
30 chairperson of the committee on ways and means of the senate and the  
31 chairperson of the committee on appropriations of the house of  
32 representatives.

33 (b) (1) If the amount of the purchase is estimated to exceed \$50,000,  
34 sealed bids shall be solicited by notice published once in the Kansas reg-  
35 ister not less than 10 days before the date stated in the notice for the  
36 opening of the bids. The director of purchases may waive this publication  
37 of notice requirement when the director determines that a more timely  
38 procurement is in the best interest of the state. The director of purchases  
39 also may designate a trade journal for the publication. The director of  
40 purchases also shall solicit such bids by sending notices by mail to pro-  
41 spective bidders and by posting the notice on a public bulletin board for  
42 at least 10 business days before the date stated in the notice for the  
43 opening of the bids unless otherwise provided by law. All bids shall be

1 sealed when received and shall be opened in public at the hour stated in  
2 the notice.

3 (2) The director of purchases shall prepare a detailed report at least  
4 once in each calendar quarter of all instances in which the director waived  
5 publication of the notice of bid solicitations in the Kansas register as  
6 provided in this subsection. The director shall submit the report to the  
7 legislative coordinating council, the chairperson of the committee on ways  
8 and means of the senate and the chairperson of the committee on appro-  
9 priations of the house of representatives.

10 (c) All purchases estimated to exceed approximately \$25,000 but not  
11 more than \$50,000, shall be made after receipt of sealed bids following  
12 at least three days' notice posted on a public bulletin board.

13 (d) All purchases estimated to be more than \$5,000, but less than  
14 \$25,000, may be made after the receipt of three or more bid solicitations  
15 by telephone, telephone facsimile or sealed bid, following at least three  
16 days' notice posted on a public bulletin board. Such bids shall be recorded  
17 as provided in subsection (e) of K.S.A. 75-3740 and amendments thereto.  
18 Any purchase that is estimated to be less than \$5,000 may be purchased  
19 under conditions and procedures prescribed by the director of purchases.  
20 Purchases made in compliance with such conditions and procedures shall  
21 be exempt from other provisions of this section.

22 (e) With the approval of the secretary of administration, the director  
23 of purchases may delegate authority to any state agency to make pur-  
24 ~~chases of less than \$25,000~~ purchases under certain prescribed conditions and pro-  
25 cedures. The director of purchases shall prepare a report at least once in  
26 each calendar quarter of all current and existing delegations of authority  
27 to state agencies as provided in this subsection. The director shall submit  
28 the report to the legislative coordinating council, the chairperson of the  
29 committee on ways and means of the senate and the chairperson of the  
30 committee on appropriations of the house of representatives.

31 (f) Subject to the provisions of subsection (e), contracts and purchases  
32 shall be based on specifications approved by the director of purchases.  
33 When deemed applicable and feasible by the director of purchases, such  
34 specifications shall include either energy efficiency standards or appro-  
35 priate life cycle cost formulas, or both, for all supplies, materials, equip-  
36 ment and contractual services to be purchased by the state. The director  
37 of purchases may reject a contract or purchase on the basis that a product  
38 is manufactured or assembled outside the United States. No such speci-  
39 fications shall be fixed in a manner to effectively exclude any responsible  
40 bidder offering comparable supplies, materials, equipment or contractual  
41 services.

42 (g) Notwithstanding anything herein to the contrary, all contracts  
43 with independent construction concerns for the construction, improve-

1 ment, reconstruction and maintenance of the state highway system and  
2 the acquisition of rights-of-way for state highway purposes shall be ad-  
3 vertised and let as now or hereafter provided by law.

4 (h) The director of purchases may authorize state agencies to contract  
5 for services and materials with other state agencies, or with federal agen-  
6 cies, political subdivisions of Kansas, agencies of other states or subdivi-  
7 sions thereof, or private nonprofit educational institutions, without com-  
8 petitive bids.

9 (i) The director of purchases may participate in, sponsor, conduct, or  
10 administer a cooperative purchasing agreement or consortium for pur-  
11 chases of supplies, materials, equipment, and contractual services with  
12 federal agencies or agencies of other states or local units of government.  
13 Cooperative purchasing agreements entered into under this subsection  
14 shall not be subject to K.S.A. 75-3739 through 75-3740a, and amend-  
15 ments thereto.

16 (j) The director of purchases may delegate authority to any state  
17 agency to make purchases under certain prescribed conditions and pro-  
18 cedures when the acquisition is funded, in whole or in part, from a grant.  
19 Except as otherwise provided in subsection (k) of this section, purchases  
20 made in compliance with such conditions and procedures shall be exempt  
21 from other provisions of this section. As used in this subsection the term  
22 “grant” means a disbursement made from federal or private funds, or a  
23 combination of these sources, to a state agency. Nothing in this subsection  
24 shall allow federal grant moneys to be handled differently from any other  
25 moneys of the state unless the requirements of the applicable federal  
26 grant specifically require such federal moneys to be handled differently.

27 (k) The director of purchases shall prepare a detailed report at least  
28 once each calendar quarter of all contracts over \$5,000 for services, sup-  
29 plies, materials or equipment entered into pursuant to subsection (h), (i)  
30 or (j) and submit it to the legislative coordinating council, the chairperson  
31 of the committee on ways and means of the senate and the chairperson  
32 of the committee on appropriations of the house of representatives.

33 (l) Except as otherwise specifically provided by law, no state agency  
34 shall enter into any lease of real property without the prior approval of  
35 the secretary of administration. A state agency shall submit to the sec-  
36 retary of administration such information relating to any proposed lease  
37 of real property as the secretary may require. The secretary of adminis-  
38 tration shall either approve, modify and approve or reject any such pro-  
39 posed lease.

40 (m) The director of purchases shall require all bidders on state con-  
41 tracts to disclose all substantial interests held by the bidder in the state.

42 (n) As used in article 37 of chapter 75 of the Kansas Statutes Anno-  
43 tated, and amendments thereto, and other statutory provisions concern-

1 ing state procurement, “sealed bids,” “bulletin boards” and “mail” shall  
2 include electronic bids, electronic bulletin boards and electronic mail  
3 when such items are utilized in accordance with procedures prescribed  
4 by the director of purchases.

5 Sec. 2. K.S.A. 2005 Supp. 75-3739 is hereby repealed.

6 Sec. 3. This act shall take effect and be in force from and after its  
7 publication in the statute book.