

HOUSE BILL No. 2216

By Committee on Elections

2-3

9 AN ACT concerning contracts with state agencies; amending K.S.A. 75-
10 37,104 and K.S.A. 2008 Supp. 75-3739, 75-3740 and 75-37,132 and
11 repealing the existing sections.
12

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

14 New Section 1. (a) No person shall apply for, negotiate for, seek or
15 enter into a contract in an amount of \$5,000 or more to provide goods or
16 services to a state agency when such goods or services are paid for, in
17 whole or in part, with money deposited in the state treasury unless such
18 person:

19 (1) Has registered as a lobbyist pursuant to K.S.A. 46-265, and
20 amendments thereto;

21 (2) is a registered lobbyist.

22 (b) For the purposes of this section,

23 (1) The term “person” shall have the meaning ascribed to it in K.S.A.
24 17-12a102, and amendments thereto.

25 (2) The term “state agency” shall have the meaning ascribed to it in
26 K.S.A. 75-37,111, and amendments thereto. The term state agency shall
27 also include:

28 (A) The Kansas turnpike authority created by K.S.A. 68-2003, and
29 amendments thereto.

30 (B) The Kansas hospital authority created by K.S.A. 2008 Supp. 76-
31 3304, and amendments thereto.

32 (C) The Kansas bioscience authority created by K.S.A. 2008 Supp.
33 74-99b04, and amendments thereto.

34 Sec. 2. K.S.A. 2008 Supp. 75-3739 is hereby amended to read as
35 follows: 75-3739. In the manner as provided in this act and rules and
36 regulations established thereunder *and as provided in section 1, and*
37 *amendments thereto:*

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

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

- 1 (2) when, in the judgment of the director of purchases, chemicals
2 and other material or equipment for use in laboratories or experimental
3 studies by state agencies are best purchased without competition, or
4 where rates are fixed by law or ordinance;
- 5 (3) when, in the judgment of the director of purchases, an agency
6 emergency requires immediate delivery of supplies, materials or equip-
7 ment, or immediate performance of services;
- 8 (4) when any statute authorizes another procedure or provides an
9 exemption from the provisions of this section;
- 10 (5) when compatibility with existing contractual services, supplies,
11 materials or equipment is the overriding consideration;
- 12 (6) when a used item becomes available and is subject to immediate
13 sale; or
- 14 (7) when, in the judgment of the director of purchases and the head
15 of the acquiring state agency, not seeking competitive bids is in the best
16 interest of the state.

17 When the director of purchases approves a purchase of or contract for
18 supplies, materials, equipment, or contractual services in any instance
19 specified in this subsection, the director may delegate authority to make
20 the purchase or enter the contract under conditions and procedures pre-
21 scribed by the director. Except for purchases or contracts entered into
22 without a competitive bid under subsection (a)(3), (a)(4), (a)(6) or sub-
23 section (h), no purchase or contract entered into without a competitive
24 bid for an amount in excess of \$100,000 shall be entered into by the head
25 of any state agency or approved by the director of purchases unless the
26 director of purchases first posts an on-line notice of the proposed pur-
27 chase or contract at least seven days before the purchase or contract is
28 awarded. The director of purchases shall provide notice thereof to mem-
29 bers of the legislature at the beginning of each calendar year that such
30 information will be posted and the director of the division of purchases
31 shall provide the uniform resource locator (URL) and the number of
32 times such information shall be available. In the event a written protest
33 of the awarding of such a contract occurs during the seven-day notice
34 period, the director of purchases shall request from the protestor the
35 contact information, including name and mailing address, of the person
36 or entity that has expressed an interest in supplying the goods or services
37 and provide a copy of the specification to the person or entity that has
38 expressed an interest in supplying the goods or services and verify that
39 such person or entity is interested and capable of supplying such goods
40 or services.

41 Upon satisfaction of the director of purchases regarding the validity of
42 the protest and the existence of competition, the director of purchases
43 shall proceed with a competitive procurement. A competitive procure-

1 ment shall not be required when, in the judgment of the director of
2 purchases, the validity of the protest cannot be determined or competi-
3 tion for such goods or services cannot be verified by the director of
4 purchases.

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

12 (b) (1) If the amount of the purchase is estimated to exceed \$50,000,
13 sealed bids shall be solicited by notice published once in the Kansas reg-
14 ister not less than 10 days before the date stated in the notice for the
15 opening of the bids. The director of purchases may waive this publication
16 of notice requirement when the director determines that a more timely
17 procurement is in the best interest of the state. The director of purchases
18 also may designate a trade journal for the publication. The director of
19 purchases also shall solicit such bids by sending notices by mail to pro-
20 spective bidders and by posting the notice on a public bulletin board for
21 at least 10 business days before the date stated in the notice for the
22 opening of the bids unless otherwise provided by law. All bids shall be
23 sealed when received and shall be opened in public at the hour stated in
24 the notice.

25 (2) The director of purchases shall prepare a detailed report at least
26 once in each calendar quarter of all instances in which the director waived
27 publication of the notice of bid solicitations in the Kansas register as
28 provided in this subsection. The director shall submit the report to the
29 legislative coordinating council, the chairperson of the committee on ways
30 and means of the senate and the chairperson of the committee on appro-
31 priations of the house of representatives.

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

35 (d) All purchases estimated to be more than \$5,000, but less than
36 \$25,000, may be made after the receipt of three or more bid solicitations
37 by telephone, telephone facsimile or sealed bid, following at least three
38 days' notice posted on a public bulletin board. Such bids shall be recorded
39 as provided in subsection (e) of K.S.A. 75-3740, and amendments thereto.
40 Any purchase that is estimated to be less than \$5,000 may be purchased
41 under conditions and procedures prescribed by the director of purchases.
42 Purchases made in compliance with such conditions and procedures shall
43 be exempt from other provisions of this section.

- 1 (e) With the approval of the secretary of administration, the director
2 of purchases may delegate authority to any state agency to make pur-
3 chases of less than \$25,000 under certain prescribed conditions and pro-
4 cedures. The director of purchases shall prepare a report at least once in
5 each calendar quarter of all current and existing delegations of authority
6 to state agencies as provided in this subsection. The director shall submit
7 the report to the legislative coordinating council, the chairperson of the
8 committee on ways and means of the senate and the chairperson of the
9 committee on appropriations of the house of representatives.
- 10 (f) Subject to the provisions of subsection (e), contracts and purchases
11 shall be based on specifications approved by the director of purchases.
12 When deemed applicable and feasible by the director of purchases, such
13 specifications shall include either energy efficiency standards or appro-
14 priate life cycle cost formulas, or both, for all supplies, materials, equip-
15 ment and contractual services to be purchased by the state. The director
16 of purchases may reject a contract or purchase on the basis that a product
17 is manufactured or assembled outside the United States. No such speci-
18 fications shall be fixed in a manner to effectively exclude any responsible
19 bidder offering comparable supplies, materials, equipment or contractual
20 services.
- 21 (g) Notwithstanding anything herein to the contrary, all contracts
22 with independent construction concerns for the construction, improve-
23 ment, reconstruction and maintenance of the state highway system and
24 the acquisition of rights-of-way for state highway purposes shall be ad-
25 vertised and let as now or hereafter provided by law.
- 26 (h) The director of purchases may authorize state agencies to contract
27 for services and materials with other state agencies, or with federal agen-
28 cies, political subdivisions of Kansas, agencies of other states or subdivi-
29 sions thereof, or private nonprofit educational institutions, without com-
30 petitive bids.
- 31 (i) The director of purchases may participate in, sponsor, conduct, or
32 administer a cooperative purchasing agreement or consortium for pur-
33 chases of supplies, materials, equipment, and contractual services with
34 federal agencies or agencies of other states or local units of government.
35 Cooperative purchasing agreements entered into under this subsection
36 shall not be subject to K.S.A. 75-3739 through 75-3740a, and amend-
37 ments thereto.
- 38 (j) The director of purchases may delegate authority to any state
39 agency to make purchases under certain prescribed conditions and pro-
40 cedures when the acquisition is funded, in whole or in part, from a grant.
41 Except as otherwise provided in subsection (k) of this section, purchases
42 made in compliance with such conditions and procedures shall be exempt
43 from other provisions of this section. As used in this subsection the term

1 “grant” means a disbursement made from federal or private funds, or a
2 combination of these sources, to a state agency. Nothing in this subsection
3 shall allow federal grant moneys to be handled differently from any other
4 moneys of the state unless the requirements of the applicable federal
5 grant specifically require such federal moneys to be handled differently.

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

12 (l) Except as otherwise specifically provided by law, no state agency
13 shall enter into any lease of real property without the prior approval of
14 the secretary of administration. A state agency shall submit to the sec-
15 retary of administration such information relating to any proposed lease
16 of real property as the secretary may require. The secretary of adminis-
17 tration shall either approve, modify and approve or reject any such pro-
18 posed lease.

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

21 (n) As used in article 37 of chapter 75 of the Kansas Statutes Anno-
22 tated, and amendments thereto, and other statutory provisions concern-
23 ing state procurement, “sealed bids,” “bulletin boards” and “mail” shall
24 include electronic bids, electronic bulletin boards and electronic mail
25 when such items are utilized in accordance with procedures prescribed
26 by the director of purchases.

27 Sec. 3. K.S.A. 2008 Supp. 75-3740 is hereby amended to read as
28 follows: 75-3740. (a) ~~Except as provided by K.S.A. 75-3740b,~~ All contracts
29 and purchases made by or under the supervision of the director of pur-
30 chases or any state agency for which competitive bids are required shall
31 be awarded to the lowest responsible bidder *who satisfies the require-*
32 *ments of section 1, and amendments thereto*, taking into consideration
33 conformity with the specifications, terms of delivery, and other conditions
34 imposed in the call for bids.

35 (b) The director of purchases shall have power to decide as to the
36 lowest responsible bidder for all purchases, but if:

37 (1) The dollar amount of the bid received from the lowest responsible
38 bidder from within the state is identical to the dollar amount of the bid
39 received from the lowest responsible bidder from without the state, the
40 contract shall be awarded to the bidder from within the state; and

41 (2) in the case of bids for paper products specified in K.S.A. 75-
42 3740b, *and amendments thereto*, the dollar amounts of the bids received
43 from two or more lowest responsible bidders are identical, the contract

1 shall be awarded to the bidder whose bid is for those paper products
2 containing the highest percentage of recycled materials.

3 (c) Any or all bids may be rejected, and a bid shall be rejected if it
4 contains any material alteration or erasure made after the bid is opened.
5 The director of purchases may reject the bid of any bidder who is in
6 arrears on taxes due the state, who is not properly registered to collect
7 and remit taxes due the state or who has failed to perform satisfactorily
8 on a previous contract with the state. The secretary of revenue is hereby
9 authorized to exchange such information with the director of purchases
10 as is necessary to effectuate the preceding sentence notwithstanding any
11 other provision of law prohibiting disclosure of the contents of taxpayer
12 records or information. Prior to determining the lowest responsible bid-
13 der on contracts for construction of buildings or for major repairs or
14 improvements to buildings for state agencies, the director of purchases
15 shall consider: (1) The criteria and information developed by the secretary
16 of administration, with the advice of the state building advisory commis-
17 sion to rate contractors on the basis of their performance under similar
18 contracts with the state, local governmental entities and private entities,
19 in addition to other criteria and information available, and (2) the rec-
20 ommendations of the project architect, or, if there is no project architect,
21 the recommendations of the secretary of administration or the agency
22 architect for the project as provided in K.S.A. 75-1254, and amendments
23 thereto. In any case where competitive bids are required and where all
24 bids are rejected, new bids shall be called for as in the first instance,
25 unless otherwise expressly provided by law or the state agency elects not
26 to proceed with the procurement.

27 (d) Before the awarding of any contract for construction of a building
28 or the making of repairs or improvements upon any building for a state
29 agency, the director of purchases shall receive written approval from the
30 state agency for which the building construction project has been ap-
31 proved, that the bids generally conform with the plans and specifications
32 prepared by the project architect, by the secretary of administration or
33 by the agency architect for the project, as the case may be, so as to avoid
34 error and mistake on the part of the contractors. In all cases where ma-
35 terial described in a contract can be obtained from any state institution,
36 the director of purchases shall exclude the same from the contract.

37 (e) All bids with the names of the bidders and the amounts thereof,
38 together with all documents pertaining to the award of a contract, shall
39 be made a part of a file or record and retained by the director of purchases
40 for five years, unless reproduced as provided in K.S.A. 75-3737, and
41 amendments thereto, and shall be open to public inspection at all rea-
42 sonable times.

43 (f) As used in this section and in K.S.A. 75-3741, and amendments

1 thereto, “project architect” shall have the meaning ascribed thereto in
2 K.S.A. 75-1251, and amendments thereto.

3 Sec. 4. K.S.A. 75-37,104 is hereby amended to read as follows: 75-
4 37,104. (a) State agencies, in cooperation with the director of purchases,
5 are hereby authorized to develop a list of prequalified vendors of partic-
6 ular goods and services and a set of standards which vendors must meet
7 in order to be qualified. Any prequalification procedure shall be in writing
8 and published sufficiently in advance to permit vendors to comply with
9 the process. Additionally, state agencies may require that any prequalified
10 vendor have sufficient administrative and accounting controls to insure
11 compliance with any contractual requirements. Solicitation mailing lists
12 of potential contractors shall include, but not be limited to prequalified
13 firms.

14 (b) *No vendor shall be prequalified unless such vendor satisfies the*
15 *requirements of section 1, and amendments thereto.*

16 Sec. 5. K.S.A. 2008 Supp. 75-37,132 is hereby amended to read as
17 follows: 75-37,132. (a) Except as provided in this section, all contracts for
18 professional and consultant services, shall be negotiated in accordance
19 with the provisions of K.S.A. 75-37,102, and amendments thereto.

20 (b) The provisions of subsection (a) shall not apply to any contract
21 for professional or consultant services that the director of purchases de-
22 termines meets one or more of the criteria established in subsections (a)
23 and (h) of K.S.A. 75-3739, and amendments thereto. When the director
24 of purchases approves a contract for professional or consultant services
25 under this subsection, the director may delegate authority to the agency
26 to enter into the contract under conditions and procedures prescribed by
27 the director.

28 (c) The provisions of subsection (a) shall not apply to any contract for
29 professional or consultant services that is not anticipated to exceed
30 \$25,000 in any fiscal year. Such a contract shall be entered into by the
31 state agency on the basis of competitive negotiations with at least two
32 individuals or firms unless the head of the agency determines that com-
33 petitive negotiations are not in the best interest of the state. The agency
34 head shall make a report to the director of purchases at least once in each
35 calendar quarter during the term of each contract for professional or
36 consultant services that exceeds \$5,000 and that was entered into without
37 competitive negotiations.

38 (d) The director of purchases shall prepare a detailed report at least
39 once in each calendar quarter during the term of each contract for pro-
40 fessional or consultant services that exceeds \$5,000 that is entered into
41 under subsection (b) and all contracts for professional or consultant serv-
42 ices reported to the director under subsection (c). The director of pur-
43 chases shall submit such report to the legislative coordinating council, the

1 chairperson of the committee on ways and means of the senate, the chair-
2 person of the committee on appropriations of the house of representatives
3 and the chairperson of the Kansas performance review board.

4 (e) All contracts for architectural services, engineering services, con-
5 struction management or ancillary technical services entered into by a
6 state agency shall be entered into in accordance with the provisions of
7 K.S.A. 75-430a, 75-1250 through 75-1266 and 75-5801 through 75-5807,
8 and amendments thereto.

9 (f) All contracts for professional services entered into by the board of
10 governors of the health care stabilization fund shall be entered into in
11 accordance with the provisions of K.S.A. 40-3410 and 40-3411, and
12 amendments thereto.

13 (g) Upon written certification from the commissioner of insurance to
14 the director of purchases and the legislative budget committee that an
15 emergency exists and the best interests of the state would be jeopardized
16 by compliance with subsection (a), the provisions of subsections (a) and
17 (c) shall not apply to contracts for legal services performed under article
18 36 of chapter 40 of the Kansas Statutes Annotated.

19 (h) In the case of any contract for professional services or consultant
20 services for the board of trustees of the Kansas public employees retire-
21 ment system that is negotiated in accordance with the provisions of K.S.A.
22 75-37,102, and amendments thereto:

23 (1) The negotiating committee shall be composed of the members of
24 the board of trustees, notwithstanding the provisions of subsection (b) of
25 K.S.A. 75-37,102, and amendments thereto, to the contrary; and

26 (2) the board of trustees shall report each contract for professional
27 services or consultant services entered pursuant to this subsection to the
28 director of purchases, including the rationale of the board of trustees if
29 the bid or proposal selected by the board of trustees was not the lowest
30 cost bid or proposal submitted and a report of such contract and such
31 rationale shall be included in the report submitted by the director of
32 purchases pursuant to subsection (e) of K.S.A. 75-37,102, and amend-
33 ments thereto.

34 (i) *Notwithstanding any other provision of this section, no contract*
35 *for professional and consultant services negotiated under the professional*
36 *services sunshine act, and any act amendatory thereto or supplemental*
37 *thereof, unless the provisions of section 1, and amendments thereto, are*
38 *met.*

39 Sec. 6. K.S.A. 75-37,104 and K.S.A. 2008 Supp. 75-3739, 75-3740
40 and 75-37,132 are hereby repealed.

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