

HOUSE BILL No. 2372

By Committee on Appropriations

3-9

9 AN ACT concerning contracts with state agencies for certain professional
10 services; relating to competitive bidding procedures; amending K.S.A.
11 75-37,102 and K.S.A. 2008 Supp. 75-1253, 75-1254, 75-3738, 75-3739,
12 75-37,132 and 76-786 and repealing the existing sections.
13

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

15 New Section 1. (a) Notwithstanding any other provisions of the law,
16 whenever professional services are required by a state agency for any
17 purpose for a project, the contract for such professional services shall be
18 let to the lowest responsible bidder pursuant to the provisions of K.S.A.
19 75-3739, and amendments thereto, based on plans and specifications for
20 the project prepared and approved by the secretary of administration and
21 administrative head of the state agency concerned.

22 (b) For the purposes of this section:

23 (1) "State agency" has the meaning ascribed to it in K.S.A. 75-37,111,
24 and amendments thereto, and specifically includes any state educational
25 institution;

26 (2) "state educational institution" means Fort Hays state university,
27 Kansas state university of agriculture and applied science, Kansas state
28 university veterinary medical center, Emporia state university, Pittsburg
29 state university, university of Kansas, university of Kansas medical center,
30 Wichita state university and Kansas state university, college of technology
31 at Salina; and

32 (3) "professional services" means any contractual professional and
33 consultant services including architectural, engineering, medical, finan-
34 cial, consulting or other professional services in relation to a project; and

35 (4) "project" means a capital improvement project for the construc-
36 tion of a building or for major repairs or improvements to a building, and
37 such project's estimated cost exceeds \$2,500,000 in the aggregate.

38 (c) This section does not apply to any contracts which have been
39 already entered into by the state agency before or on the effective date
40 of this act.

41 (d) On July 1, 2014, the provisions of this section are hereby repealed.

42 Sec. 2. K.S.A. 2008 Supp. 75-1253 is hereby amended to read as
43 follows: 75-1253. (a) Whenever it becomes necessary in the judgment of

1 the secretary of administration or in any case when the total cost of a
2 project for the construction of a building or for major repairs or improve-
3 ments to a building for a state agency is expected to exceed \$750,000
4 when architectural services are desired for the project or to exceed
5 \$500,000 when engineering services or land surveying services are desired
6 for the project, the secretary of administration shall convene a negotiating
7 committee, *except that the secretary of administration shall not convene*
8 *a negotiating committee when professional services as defined by section*
9 *1, and amendments thereto, are required to be procured pursuant to sec-*
10 *tion 1, and amendments thereto.* The state building advisory commission
11 shall prepare a list of at least three and not more than five firms which
12 are, in the opinion of the state building advisory commission, qualified to
13 serve as project architect, engineer or land surveyor for the project. Such
14 list shall be submitted to the negotiating committee, without any rec-
15 ommendation of preference or other recommendation.

16 (b) The secretary of administration may combine two or more sepa-
17 rate projects for the construction of buildings or for major repairs or
18 improvements to buildings for state agencies, for the purpose of procuring
19 architectural, engineering or land surveying services for all such projects
20 from a single firm. In each case, the combined projects shall be construed
21 to be a single project for all purposes under the provisions of K.S.A. 75-
22 1250 to 75-1267, inclusive, and amendments thereto.

23 (c) (1) This section shall not apply to any repetitive project with a
24 standard plan that was originally designed by the secretary of administra-
25 tion or an agency architect pursuant to paragraphs (2) and (3) of subsec-
26 tion (a) of K.S.A. 75-1254, and amendments thereto. In such a case, the
27 secretary of administration or the agency architect may provide architec-
28 tural services for the repetitive project.

29 (2) "Repetitive project" means a project which uses the same stan-
30 dard design as was used for a project constructed previously, including,
31 but not limited to, sub-area shops and salt domes of the department of
32 transportation and showers and toilet buildings of the department of wild-
33 life and parks. The plans for the project may be modified as required for
34 current codes, operational needs or cost control. The total floor area of
35 the project may be increased by an area of not more than 25% of the
36 floor area of the originally constructed project, except that not more than
37 25% of the linear feet of the exterior and interior walls may be moved
38 for such increase. A project shall not be considered to be repetitive if it
39 has been over four years between the substantial completion of the last
40 project using the design plans and the appropriation of funds for the
41 proposed project.

42 Sec. 3. K.S.A. 2008 Supp. 75-1254 is hereby amended to read as
43 follows: 75-1254. (a) Whenever a negotiating committee is not convened

1 in accordance with K.S.A. 75-1253 and amendments thereto for a pro-
2 posed project for the construction of a building or for major repairs or
3 improvements to a building for a state agency, the secretary of adminis-
4 tration shall:

5 (1) Conduct discussions with at least three firms regarding the pro-
6 posed project, determine the architectural, engineering or land surveying
7 services desired for such project, and negotiate a contract with one of
8 such firms as project architect, engineer or land surveyor for the desired
9 services for all phases of the project which are authorized by appropri-
10 ations therefor at a rate of compensation in accordance with the provisions
11 of K.S.A. 75-1263, and amendments thereto;

12 (2) undertake to provide all or part of the architectural, engineering
13 or land surveying services for such project, including the construction
14 administration services as described in K.S.A. 75-1260 and amendments
15 thereto; ~~or~~

16 (3) designate a qualified employee of the state agency or institution
17 for which the project is being constructed, or of the state agency which
18 controls and supervises the operation and management of such institu-
19 tion, to provide all or part of such services for the project; for the purposes
20 of providing such architectural, engineering or land surveying services,
21 such employee shall be known as the agency architect, engineer or land
22 surveyor, as the case may be, for the project; *or*

23 (4) *The provisions of subsection (a) shall not apply to professional*
24 *services required to be procured for construction contracts entered into*
25 *pursuant to section 1, and amendments thereto.*

26 (b) The employee of such agency designated as the agency architect,
27 engineer or land surveyor, as the case may be, for the project shall be a
28 licensed architect, engineer or land surveyor under the provisions of
29 K.S.A. 74-7001 to 74-7046, inclusive, and amendments thereto and shall
30 be found by the secretary of administration to be qualified to perform all
31 of the architectural, engineering or land surveying services for the partic-
32 ular project, including the construction administration services as de-
33 scribed in K.S.A. 75-1260 and amendments thereto.

34 (c) The secretary of administration or the agency architect, engineer
35 or land surveyor for the project, as the case may be, shall provide the
36 preliminary design services, construction contract documents, bidding
37 services and construction administration services as described in K.S.A.
38 75-1260 and amendments thereto for each phase of the project for which
39 no firm is employed as project architect, engineer or land surveyor.

40 Sec. 4. K.S.A. 2008 Supp. 75-3738 is hereby amended to read as
41 follows: 75-3738. The director of purchases shall:

42 (a) Purchase, rent or otherwise provide for the furnishing of supplies,
43 materials, equipment or contractual services for all state agencies.

- 1 (b) Have power to authorize any state agency to purchase directly
2 certain specified supplies, materials, equipment or contractual services
3 under prescribed conditions and procedures.
- 4 (c) Prescribe the manner in which supplies, materials and equipment
5 shall be purchased, delivered and distributed.
- 6 (d) Prescribe the time, manner and authentication of making requi-
7 sitions for supplies, materials, equipment and contractual services.
- 8 (e) Establish standards of quality and quantity and develop standard
9 specifications in consultation with the several state agencies.
- 10 (f) Prescribe the manner of making chemical and physical tests of
11 samples submitted with bids and samples of deliveries to determine com-
12 pliance with specifications and the manner in which state agencies shall
13 inspect all deliveries of supplies, materials and equipment.
- 14 (g) Prescribe the amounts and form of, accounting for and disposition
15 of any deposit or bond required to be submitted with a bid or a contract
16 and the amount of any such deposit or bond to be given for the faithful
17 performance of a contract.
- 18 (h) *Prescribe the manner of conducting a competitive bidding for pro-*
19 *fessional services procured for construction contracts entered into by a*
20 *state agency or state educational institution, pursuant to section 1, and*
21 *amendments thereto.*
- 22 Sec. 5. K.S.A. 2008 Supp. 75-3739 is hereby amended to read as
23 follows: 75-3739. In the manner as provided in this act and rules and
24 regulations established thereunder:
- 25 (a) All contracts for construction and repairs, and all purchases of and
26 contracts for supplies, materials, equipment and contractual services to
27 be acquired for state agencies shall be based on competitive bids, except
28 that competitive bids need not be required in the following instances:
- 29 (1) For contractual services, supplies, materials, or equipment when,
30 in the judgment of the director of purchases, no competition exists;
- 31 (2) when, in the judgment of the director of purchases, chemicals
32 and other material or equipment for use in laboratories or experimental
33 studies by state agencies are best purchased without competition, or
34 where rates are fixed by law or ordinance;
- 35 (3) when, in the judgment of the director of purchases, an agency
36 emergency requires immediate delivery of supplies, materials or equip-
37 ment, or immediate performance of services;
- 38 (4) when any statute authorizes another procedure or provides an
39 exemption from the provisions of this section;
- 40 (5) when compatibility with existing contractual services, supplies,
41 materials or equipment is the overriding consideration;
- 42 (6) when a used item becomes available and is subject to immediate
43 sale; or

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

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

28 Upon satisfaction of the director of purchases regarding the validity of
29 the protest and the existence of competition, the director of purchases
30 shall proceed with a competitive procurement. A competitive procure-
31 ment shall not be required when, in the judgment of the director of
32 purchases, the validity of the protest cannot be determined or competi-
33 tion for such goods or services cannot be verified by the director of
34 purchases.

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

42 *The provisions of subparagraphs (3) through (5) and (7) shall not apply*
43 *to professional services procured for construction contracts entered into*

1 *by a state agency or state educational institution, defined in and pursuant*
2 *to section 1, and amendments thereto.*

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

16 (2) The director of purchases shall prepare a detailed report at least
17 once in each calendar quarter of all instances in which the director waived
18 publication of the notice of bid solicitations in the Kansas register as
19 provided in this subsection. The director shall submit the report to the
20 legislative coordinating council, the chairperson of the committee on ways
21 and means of the senate and the chairperson of the committee on appro-
22 priations of the house of representatives.

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

26 (d) All purchases estimated to be more than \$5,000, but less than
27 \$25,000, may be made after the receipt of three or more bid solicitations
28 by telephone, telephone facsimile or sealed bid, following at least three
29 days' notice posted on a public bulletin board. Such bids shall be recorded
30 as provided in subsection (e) of K.S.A. 75-3740 and amendments thereto.
31 Any purchase that is estimated to be less than \$5,000 may be purchased
32 under conditions and procedures prescribed by the director of purchases.
33 Purchases made in compliance with such conditions and procedures shall
34 be exempt from other provisions of this section.

35 (e) With the approval of the secretary of administration, the director
36 of purchases may delegate authority to any state agency to make pur-
37 chases of less than \$25,000 under certain prescribed conditions and pro-
38 cedures. The director of purchases shall prepare a report at least once in
39 each calendar quarter of all current and existing delegations of authority
40 to state agencies as provided in this subsection. The director shall submit
41 the report to the legislative coordinating council, the chairperson of the
42 committee on ways and means of the senate and the chairperson of the
43 committee on appropriations of the house of representatives.

1 (f) Subject to the provisions of subsection (e), contracts and purchases
2 shall be based on specifications approved by the director of purchases.
3 When deemed applicable and feasible by the director of purchases, such
4 specifications shall include either energy efficiency standards or appro-
5 priate life cycle cost formulas, or both, for all supplies, materials, equip-
6 ment and contractual services to be purchased by the state. The director
7 of purchases may reject a contract or purchase on the basis that a product
8 is manufactured or assembled outside the United States. No such speci-
9 fications shall be fixed in a manner to effectively exclude any responsible
10 bidder offering comparable supplies, materials, equipment or contractual
11 services.

12 (g) Notwithstanding anything herein to the contrary, all contracts
13 with independent construction concerns for the construction, improve-
14 ment, reconstruction and maintenance of the state highway system and
15 the acquisition of rights-of-way for state highway purposes shall be ad-
16 vertised and let as now or hereafter provided by law.

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

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

29 (j) The director of purchases may delegate authority to any state
30 agency to make purchases under certain prescribed conditions and pro-
31 cedures when the acquisition is funded, in whole or in part, from a grant.
32 Except as otherwise provided in subsection (k) of this section, purchases
33 made in compliance with such conditions and procedures shall be exempt
34 from other provisions of this section. As used in this subsection the term
35 "grant" means a disbursement made from federal or private funds, or a
36 combination of these sources, to a state agency. Nothing in this subsection
37 shall allow federal grant moneys to be handled differently from any other
38 moneys of the state unless the requirements of the applicable federal
39 grant specifically require such federal moneys to be handled differently.

40 (k) The director of purchases shall prepare a detailed report at least
41 once each calendar quarter of all contracts over \$5,000 for services, sup-
42 plies, materials or equipment entered into pursuant to subsection (h), (i)
43 or (j) and submit it to the legislative coordinating council, the chairperson

1 of the committee on ways and means of the senate and the chairperson
2 of the committee on appropriations of the house of representatives.

3 (l) Except as otherwise specifically provided by law, no state agency
4 shall enter into any lease of real property without the prior approval of
5 the secretary of administration. A state agency shall submit to the sec-
6 retary of administration such information relating to any proposed lease
7 of real property as the secretary may require. The secretary of adminis-
8 tration shall either approve, modify and approve or reject any such pro-
9 posed lease.

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

12 (n) As used in article 37 of chapter 75 of the Kansas Statutes Anno-
13 tated, and amendments thereto, and other statutory provisions concern-
14 ing state procurement, "sealed bids," "bulletin boards" and "mail" shall
15 include electronic bids, electronic bulletin boards and electronic mail
16 when such items are utilized in accordance with procedures prescribed
17 by the director of purchases.

18 Sec. 6. K.S.A. 75-37,102 is hereby amended to read as follows: 75-
19 37,102. (a) Upon request of the chief administrative officer of a state
20 agency and subject to the approval of the secretary of administration, the
21 director of purchases may convene a procurement negotiating committee
22 to obtain services or technical products for the state agency.

23 (b) Each procurement negotiating committee shall be composed of:
24 (1) The director of purchases, or a person designated by the director; (2)
25 the chief administrative officer of the state agency desiring to make the
26 procurement, or a person designated by the officer; and (3) the secretary
27 of administration, or a person designated by the secretary.

28 (c) The negotiating committee is authorized to negotiate for the pro-
29 curing state agency contracts with qualified parties to provide services or
30 technical products needed by the state agency.

31 (d) Prior to negotiating for the procurement, a notice to bidders first
32 shall be published in the Kansas register. Upon receipt of bids or pro-
33 posals, the committee may negotiate with one or more of the firms sub-
34 mitting bids or proposals and select from among those submitting such
35 bids or proposals the party to contract with to provide the services or
36 technical products.

37 (e) Contracts entered into pursuant to this section shall not be subject
38 to the provisions of K.S.A. 75-3738 through 75-3740a and amendments
39 thereto. Meetings to conduct negotiations pursuant to this section shall
40 not be subject to the provisions of K.S.A. 75-4317 through 75-4320a and
41 amendments thereto. The director of purchases shall submit a report at
42 least once in each calendar quarter to the legislative coordinating council
43 and the chairpersons of the senate committee on ways and means and

1 the house of representatives committee on appropriations of all contracts
2 entered into pursuant to this section. In the event that the negotiating
3 committee selects a bid which is not the lowest bid on a given contract,
4 the directors report shall contain a rationale explaining why the lowest
5 bidder was not awarded the contract.

6 (f) Nothing in this section shall be construed as requiring either ne-
7 gotiations pursuant to this section or bids pursuant to K.S.A. 75-3739 and
8 amendments thereto for the procurement of professional services or serv-
9 ices for which, in the judgment of the director of purchases, meaningful
10 specifications cannot be determined.

11 (g) *Nothing in this section shall be construed as requiring either ne-*
12 *gotiations pursuant to this section or bids pursuant to K.S.A. 75-3739,*
13 *and amendments thereto, for the procurement of professional services*
14 *provided under section 1, and amendments thereto.*

15 Sec. 7. K.S.A. 2008 Supp. 75-37,132 is hereby amended to read as
16 follows: 75-37,132. (a) Except as provided in this section, all contracts for
17 professional and consultant services, shall be negotiated in accordance
18 with the provisions of K.S.A. 75-37,102, and amendments thereto.

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

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

37 (d) *The provisions of subsection (a) shall not apply to any contract*
38 *for professional services entered into by a state agency under section 1,*
39 *and amendments thereto.*

40 ~~(e)~~ (e) The director of purchases shall prepare a detailed report at
41 least once in each calendar quarter during the term of each contract for
42 professional or consultant services that exceeds \$5,000 that is entered into
43 under subsection (b) and all contracts for professional or consultant serv-

1 ices reported to the director under subsection (c). The director of pur-
2 chases shall submit such report to the legislative coordinating council, the
3 chairperson of the committee on ways and means of the senate, the chair-
4 person of the committee on appropriations of the house of representatives
5 and the chairperson of the Kansas performance review board.

6 ~~(e)~~ (f) All contracts for architectural services, engineering services,
7 construction management or ancillary technical services entered into by
8 a state agency shall be entered into in accordance with the provisions of
9 K.S.A. 75-430a, 75-1250 through 75-1266 and 75-5801 through 75-5807,
10 and amendments thereto, *except the provisions of these statutes shall not*
11 *apply to professional services contracted under section 1, and amend-*
12 *ments thereto.*

13 ~~(f)~~ (g) All contracts for professional services entered into by the board
14 of governors of the health care stabilization fund shall be entered into in
15 accordance with the provisions of K.S.A. 40-3410 and 40-3411, and
16 amendments thereto.

17 ~~(g)~~ (h) Upon written certification from the commissioner of insurance
18 to the director of purchases and the legislative budget committee that an
19 emergency exists and the best interests of the state would be jeopardized
20 by compliance with subsection (a), the provisions of subsections (a) and
21 (c) shall not apply to contracts for legal services performed under article
22 36 of chapter 40 of the Kansas Statutes Annotated.

23 ~~(h)~~ (i) In the case of any contract for professional services or con-
24 sultant services for the board of trustees of the Kansas public employees
25 retirement system that is negotiated in accordance with the provisions of
26 K.S.A. 75-37,102, and amendments thereto:

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

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

38 Sec. 8. K.S.A. 2008 Supp. 76-786 is hereby amended to read as fol-
39 lows: 76-786. (a) As used in this section, unless the context expressly
40 provides otherwise:

41 (1) "Ancillary technical services" include, but shall not be limited to,
42 geology services and other soil or subsurface investigation and testing
43 services, surveying, adjusting and balancing of air conditioning, ventilat-

1 ing, heating and other mechanical building systems, testing and consultant
2 services that are determined by the board of regents to be required for
3 a project;

4 (2) “architectural services” means those services described by sub-
5 section (e) of K.S.A. 74-7003, and amendments thereto;

6 (3) “construction services” means the work performed by a construc-
7 tion contractor to commence and complete a project;

8 (4) “construction management at-risk services” means the services
9 provided by a firm which has entered into a contract with the board of
10 regents to be the construction manager at risk for the value and schedule
11 of the contract for a project, which is to hold the trade contracts and
12 execute the work for a project in a manner similar to a general contractor
13 and which is required to solicit competitive bids for the trade packages
14 developed for a project and to enter into the trade contracts for a project
15 with the lowest responsible bidder therefor, and may include, but are not
16 limited to, such services as scheduling, value analysis, systems analysis,
17 constructability reviews, progress document reviews, subcontractor in-
18 volvement and prequalification, subcontractor bonding policy, budgeting
19 and price guarantees, and construction coordination;

20 (5) “division of facilities management” means the division of facilities
21 management of the department of administration;

22 (6) “engineering services” means those services described by subsec-
23 tion (i) of K.S.A. 74-7003, and amendments thereto;

24 (7) “firm” means (A) with respect to architectural services, an indi-
25 vidual, firm, partnership, corporation, association or other legal entity
26 which is: (i) permitted by law to practice the profession of architecture;
27 and (ii) maintaining an office in Kansas staffed by one or more architects
28 who are licensed by the board of technical professions; or (iii) not main-
29 taining an office in Kansas, but which is qualified to perform special ar-
30 chitectural services that are required in special cases where in the judg-
31 ment of the board of regents it is necessary to go outside the state to
32 obtain such services; (B) with respect to engineering services or land
33 surveying, an individual, firm, partnership, corporation, association or
34 other legal entity permitted by law to practice the profession of engi-
35 neering and provide engineering services or practice the profession of
36 land surveying and provide land surveying services, respectively; (C) with
37 respect to construction management at-risk services, a qualified individ-
38 ual, firm, partnership, corporation, association or other legal entity per-
39 mitted by law to perform construction management at-risk services; (D)
40 with respect to ancillary technical services or other services that are de-
41 termined by the board of regents to be required for a project, a qualified
42 individual, firm, partnership, corporation, association or other legal entity
43 permitted by law to practice the required profession or perform the other

- 1 required services, as determined by the board of regents; and (E) with
2 respect to construction services, a qualified individual, firm, partnership,
3 corporation, association, or other legal entity permitted by law to perform
4 construction services for a project;
- 5 (8) “land surveying” means those services described in subsection (j)
6 of K.S.A. 74-7003, and amendments thereto;
- 7 (9) “negotiating committee” means the board of directors of the sub-
8 subsidiary corporation formed under K.S.A. 2008 Supp. 76-781, and amend-
9 ments thereto;
- 10 (10) “project” means (A) the project for the KSU food safety and
11 security research facility, (B) the project for the KUMC biomedical re-
12 search facility, (C) the project for the WSU engineering complex expan-
13 sion and research laboratory, or (D) the project for the acquisition and
14 installation of equipment for the KU biosciences research building, which
15 are funded from the proceeds of the bonds authorized to be issued under
16 K.S.A. 2008 Supp. 76-783, and amendments thereto, within the limitation
17 of \$120,000,000, in the aggregate, plus all amounts required for costs of
18 any bond issuance, costs of interest on any bond issued or obtained for
19 such scientific research and development facilities and any required re-
20 serves for payment of principal and interest on any such bond, and from
21 any moneys received as gifts, grants or otherwise from any public or pri-
22 vate nonstate source;
- 23 (11) “project services” means architectural services, engineering
24 services, land surveying, construction management at-risk services, con-
25 struction services, ancillary technical services or other construction-re-
26 lated services determined by the board of regents to be required for a
27 project; and
- 28 (12) “state building advisory commission” means the state building
29 advisory commission created by K.S.A. 75-3780, and amendments
30 thereto.
- 31 (b) The board of regents, when acting under authority of this act, and
32 each project authorized by the board of regents under this act are exempt
33 from the provisions of K.S.A. 75-1269, 75-3738 through 75-3741b, 75-
34 3742 through 75-3744, and 75-3783, and amendments thereto, except as
35 otherwise specifically provided by this act.
- 36 (c) Notwithstanding the provisions of K.S.A. 75-3738 through 75-
37 3744, and amendments thereto, or the provisions of any other statute to
38 the contrary, all contracts for any supplies, materials or equipment for a
39 project authorized by the board of regents under this act, shall be entered
40 into in accordance with procurement procedures determined by the
41 board of regents, subject to the provisions of this section, except that, in
42 the discretion of the board of regents, any such contract may be entered
43 into in the manner provided in and subject to the provisions of any such

1 statute otherwise applicable thereto. Notwithstanding the provisions of
2 K.S.A. 75-3738 through 75-3744, and amendments thereto, if the board
3 of regents does not obtain construction management at-risk services for
4 a project, the construction services for such project shall be obtained
5 pursuant to competitive bids and all contracts for construction services
6 for such project shall be awarded to the lowest responsible bidder in
7 accordance with procurement procedures determined and administered
8 by the board of regents which shall be consistent with the provisions of
9 K.S.A. 75-3738 through 75-3744, and amendments thereto.

10 (d) When it is necessary in the judgment of the board of regents to
11 obtain project services for a particular project by conducting negotiations
12 therefor, the board of regents shall publish a notice of the commence-
13 ment of negotiations for the required project services at least 15 days
14 prior to the commencement of such negotiations in the Kansas register
15 in accordance with K.S.A. 75-430a, and amendments thereto, and in such
16 other appropriate manner as may be determined by the board of regents.

17 (e) (1) Notwithstanding the provisions of subsection (b) of K.S.A. 75-
18 1251, and amendments thereto, or the provisions of any other statute to
19 the contrary, as used in K.S.A. 75-1250 through 75-1270, and amend-
20 ments thereto, with respect to the procurement of architectural services
21 for a project authorized by the board of regents under this act, “negoti-
22 ating committee” shall mean the board of directors of the subsidiary cor-
23 poration formed under K.S.A. 2008 Supp. 76-781, and amendments
24 thereto, and such board of directors shall negotiate a contract with a firm
25 to provide any required architectural services for the project in accord-
26 ance with the provisions of K.S.A. 75-1250 through 75-1270, and amend-
27 ments thereto, except that no limitation on the fees for architectural serv-
28 ices for the project shall apply to the fees negotiated by the board of
29 directors for such architectural services.

30 (2) Notwithstanding the provisions of subsection (e) of K.S.A. 75-
31 5802, and amendments thereto, or the provisions of any other statute to
32 the contrary, as used in K.S.A. 75-5801 through 75-5807, and amend-
33 ments thereto, with respect to the procurement of engineering services
34 or land surveying services for a project authorized by the board of regents
35 under this act, “negotiating committee” shall mean the board of directors
36 of the subsidiary corporation formed under K.S.A. 2008 Supp. 76-781,
37 and amendments thereto, and such board of directors shall negotiate a
38 contract with a firm to provide any required engineering services or land
39 surveying services for the project in accordance with the provisions of
40 K.S.A. 75-5801 through 75-5807, and amendments thereto.

41 (3) In any case of a conflict between the provisions of this section and
42 the provisions of K.S.A. 75-1250 through 75-1270, or 75-5801 through
43 75-5807, and amendments thereto, with respect to a project authorized

1 by the board of regents under this act, the provisions of this section shall
2 govern.

3 (4) *In any case of a conflict between the provisions of this section and*
4 *the provisions of section 1, and amendments thereto, with respect to pro-*
5 *fessional services for contracts authorized by the board of regents, the*
6 *provisions of section 1, and amendments thereto, shall govern.*

7 (f) (1) For the procurement of construction management at-risk
8 services for projects under this act, the secretary of administration shall
9 encourage firms engaged in the performance of construction manage-
10 ment at-risk services to submit annually to the secretary of administration
11 and to the state building advisory commission a statement of qualifications
12 and performance data. Each statement shall include data relating to (A)
13 the firm's capacity and experience, including experience on similar or
14 related projects, (B) the capabilities and other qualifications of the firm's
15 personnel, and (C) performance data of all consultants the firm proposes
16 to use.

17 (2) Whenever the board of regents determines that a construction
18 manager at risk is required for a project under this act, the board of
19 regents shall notify the state building advisory commission and the state
20 building advisory commission shall prepare a list of at least three and not
21 more than five firms which are, in the opinion of the state building ad-
22 visory commission, qualified to serve as construction manager at risk for
23 the project. Such list shall be submitted to the negotiating committee,
24 without any recommendation of preference or other recommendation.
25 The negotiating committee shall have access to statements of qualifica-
26 tions of and performance data on the firms listed by the state building
27 advisory commission and all information and evaluations regarding such
28 firms gathered and developed by the secretary of administration under
29 K.S.A. 75-3783, and amendments thereto.

30 (3) The negotiating committee shall conduct discussions with each of
31 the firms so listed regarding the project. The negotiating committee shall
32 determine which construction management at-risk services are desired
33 and then shall proceed to negotiate with and attempt to enter into a
34 contract with the firm considered to be most qualified to serve as con-
35 struction manager at risk for the project. The negotiating committee shall
36 proceed in accordance with the same process with which negotiations are
37 undertaken to contract with a firm to be a project architect under K.S.A.
38 75-1257, and amendments thereto, to the extent that such provisions can
39 be made to apply. Should the negotiating committee be unable to ne-
40 gotiate a satisfactory contract with the firm considered to be most qual-
41 ified, negotiations with that firm shall be terminated and shall undertake
42 negotiations with the second most qualified firm, and so forth, in accord-
43 ance with that statute.

1 (4) The contract to perform construction management at-risk services
2 for a project shall be prepared by the division of facilities management
3 and entered into by the board of regents with the firm contracting to
4 perform such construction management at-risk services.

5 (g) (1) To assist in the procurement of construction services for pro-
6 jects under this act, the secretary of administration shall encourage firms
7 engaged in the performance of construction services to submit annually
8 to the secretary of administration and to the state building advisory com-
9 mission a statement of qualifications and performance data. Each state-
10 ment shall include data relating to (A) the firm's capacity and experience,
11 including experience on similar or related projects, (B) the capabilities
12 and other qualifications of the firm's personnel, (C) performance data of
13 all subcontractors the firm proposes to use, and (D) such other infor-
14 mation related to the qualifications and capability of the firm to perform
15 construction services for projects as may be prescribed by the secretary
16 of administration.

17 (2) The construction manager at risk shall publish a construction serv-
18 ices bid notice in the Kansas register and in such other appropriate man-
19 ner as may be determined by the board of regents. Each construction
20 services bid notice shall include the request for bids and other bidding
21 information prepared by the construction manager at risk and the state
22 board of regents with the assistance of the division of facilities manage-
23 ment. The current statements of qualifications of and performance data
24 on the firms submitting bid proposals shall be made available to the con-
25 struction manager at risk and the board of regents by the state building
26 advisory commission along with all information and evaluations developed
27 regarding such firms by the secretary of administration under K.S.A. 75-
28 3783, and amendments thereto. Each firm submitting a bid proposal shall
29 be bonded in accordance with K.S.A. 60-1111, and amendments thereto,
30 and shall present evidence of such bond to the construction manager at
31 risk prior to submitting a bid proposal. If a firm submitting a bid proposal
32 fails to present such evidence, such firm shall be deemed unqualified for
33 selection under this subsection. At the time for opening the bids, the
34 construction manager at risk shall evaluate the bids and shall determine
35 the lowest responsible bidder. The construction manager at risk shall
36 enter into contracts with each firm performing the construction services
37 for the project and make a public announcement of each firm selected
38 in accordance with this subsection.

39 (h) The division of facilities management shall provide such infor-
40 mation and assistance as may be requested by the board of regents or the
41 negotiating committee for a project, including all or part of any project
42 services as requested by the board of regents, and (1) shall prepare the
43 request for proposals and publication information for each publication of

1 notice under this section, subject to the provisions of this section, (2) shall
2 prepare each contract for project services for a project, including each
3 contract for construction services for a project, (3) shall conduct design
4 development reviews for each project, (4) shall review and approve all
5 construction documents for a project prior to soliciting bids or otherwise
6 soliciting proposals from construction contractors or construction service
7 providers for a project, (5) shall obtain and maintain copies of construc-
8 tion documents for each project, and (6) shall conduct periodic inspec-
9 tions of each project, including jointly conducting the final inspection of
10 each project.

11 (i) Notwithstanding the provisions of any other statute, the board of
12 regents shall enter into one or more contracts with the division of facilities
13 management for each project for the services performed by the division
14 of facilities management for the project as required by this section or at
15 the request of the board of regents. The division of facilities management
16 shall receive fees from the board of regents to recover the costs incurred
17 to provide such services pursuant to such contracts.

18 (j) Design development reviews and construction document reviews
19 conducted by the division of facilities management shall be limited to
20 ensuring only that the construction documents do not change the project
21 description and that the construction documents comply with the stan-
22 dards established under K.S.A. 75-3783, and amendments thereto, by the
23 secretary of administration for the planning, design and construction of
24 buildings and major repairs and improvements to buildings for state agen-
25 cies, including applicable building and life safety codes and appropriate
26 and practical energy conservation and efficiency standards.

27 (k) Each project for a state educational institution shall receive a final
28 joint inspection by the division of facilities management and the board of
29 regents. Each such project shall be officially accepted by the board of
30 regents before such project is occupied or utilized by the state educational
31 institution, unless otherwise agreed to in writing by the contractor and
32 the board of regents as to the satisfactory completion of the work on part
33 of the project that is to be occupied and utilized, including any corrections
34 of the work thereon.

35 (l) (1) The board of regents shall issue monthly reports of progress
36 on each project and shall advise and consult with the joint committee on
37 state building construction regarding each project. Change orders and
38 changes of plans for a project shall be authorized or approved by the
39 board of regents.

40 (2) No change order or change of plans for a project involving either
41 cost increases of \$75,000 or more or involving a change in the proposed
42 use of a project shall be authorized or approved by the board of regents
43 without having first advised and consulted with the joint committee on

1 state building construction.

2 (3) Change orders or changes in plans for a project involving a cost
3 increase of less than \$75,000 and any change order involving a cost re-
4 duction, other than a change in the proposed use of the project, may be
5 authorized or approved by the board of regents without prior consultation
6 with the joint committee on state building construction. The board of
7 regents shall report to the joint committee on state building construction
8 all action relating to such change orders or changes in plans.

9 (4) If the board of regents determines that it is in the best interest
10 of the state to authorize or approve a change order, a change in plans or
11 a change in the proposed use of any project that the board of regents is
12 required to first advise and consult with the joint committee on state
13 building construction prior to issuing such approval and if no meeting of
14 the joint committee is scheduled to take place within the next 10 business
15 days, then the board of regents may use the procedure authorized by
16 subsection (d) of K.S.A. 75-1264, and amendments thereto, in lieu of
17 advising and consulting with the joint committee at a meeting. In any
18 such case, the board of regents shall mail a summary description of the
19 proposed change order, change in plans or change in the proposed use
20 of any project to each member of the joint committee on state building
21 construction and to the director of the legislative research department.
22 If the board of regents provides notice and information to the members
23 of the joint committee and to such director in the manner required and
24 subject to the same provisions and conditions that apply to the secretary
25 of administration under such statute, and if less than two members of the
26 joint committee contact the director of the legislative research depart-
27 ment within seven business days of the date the summary description was
28 mailed and request a presentation and review of any such proposed
29 change order, change in plans or change in use at a meeting of the joint
30 committee, then the board of regents shall be deemed to have advised
31 and consulted with the joint committee about such proposed change or-
32 der, change in plans or change in proposed use and may authorize or
33 approve such proposed change order, change in plans or change in pro-
34 posed use.

35 (m) The provisions of this section shall apply to each project author-
36 ized by the board of regents under this act and shall not apply to any
37 other capital improvement project of the board of regents or of any state
38 educational institution that is specifically authorized by any other statute.

39 Sec. 9. K.S.A. 75-37,102 and K.S.A. 2008 Supp. 75-1253, 75-1254,
40 75-3738, 75-3739, 75-37,132 and 76-786 are hereby repealed.

41 Sec. 10. This act shall take effect and be in force from and after its
42 publication in the statute book.