

SENATE BILL NO. 362

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

1467S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 8.250, 8.679, 8.690, 34.040, 34.042, and 34.044, RSMo, and to enact in lieu thereof six new sections relating to public notice requirements for public contracts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 8.250, 8.679, 8.690, 34.040, 34.042,
2 and 34.044, RSMo, are repealed and six new sections enacted in
3 lieu thereof, to be known as sections 8.250, 8.679, 8.690,
4 34.040, 34.042, and 34.044, to read as follows:

8.250. 1. "Project" for the purposes of this chapter
2 means the labor or material necessary for the construction,
3 renovation, or repair of improvements to real property so
4 that the work, when complete, shall be ready for service for
5 its intended purpose and shall require no other work to be a
6 completed system or component.

7 2. All contracts for projects, the cost of which
8 exceeds twenty-five thousand dollars, entered into by any
9 city containing five hundred thousand inhabitants or more
10 shall be let to the lowest, responsive, responsible bidder
11 or bidders after publication of an advertisement for a
12 period of ten days or more in a newspaper in the county
13 where the work is located, in two daily newspapers in the
14 state which do not have less than fifty thousand daily
15 circulation, and on the website of the city or through an
16 electronic procurement system.

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 3. All contracts for projects, the cost of which
18 exceeds one hundred thousand dollars, entered into by an
19 officer or agency of this state shall be let to the lowest,
20 responsive, responsible bidder or bidders based on
21 preestablished criteria after [publication of an
22 advertisement for a period of ten days or more in a
23 newspaper in the county where the work is located, in one
24 daily newspaper in the state which does not have less than
25 fifty thousand daily circulation, and on the website of the
26 officer or agency or through an electronic procurement
27 system] **posting an invitation for bid on the website of the**
28 **officer or agency or advertising the invitation for bid**
29 **through an electronic medium available to the general public**
30 **for a period of at least ten days before bids are to be**
31 **opened.** For all contracts for projects between twenty-five
32 thousand dollars and one hundred thousand dollars, a minimum
33 of three contractors shall be solicited with the award being
34 made to the lowest responsive, responsible bidder based on
35 preestablished criteria.

36 4. The number of such public bids shall not be
37 restricted or curtailed, but shall be open to all persons
38 complying with the terms upon which the bids are requested
39 or solicited unless debarred for cause. No contract shall
40 be awarded when the amount appropriated for same is not
41 sufficient to complete the work ready for service.

42 5. Dividing a project into component labor or material
43 allocations for the purpose of avoiding bidding or
44 advertising provisions required by this section is
45 specifically prohibited.

 8.679. When, in the discretion of the public owner, it
2 is determined that a public works project should be
3 performed with a negotiated contract for construction

4 management services, such public owner shall advertise and
5 solicit proposals from qualified construction managers [in
6 the following manner: If the total cost for the erection or
7 construction of any building or structure or the
8 improvement, alteration or repair of a building or structure
9 exceeds five hundred thousand dollars, the public owner
10 shall request and solicit proposals by advertising for ten
11 days in one newspaper of general circulation in the county
12 where the work is located. If the cost of the work
13 contemplated exceeds one million five hundred thousand
14 dollars, proposals shall be solicited by advertisement for
15 ten days in two daily newspapers in the state which have not
16 less than fifty thousand daily circulation in addition to
17 the advertisement in the county where the work is located]
18 **by posting an invitation for bid on the website of the**
19 **public owner or advertising the invitation for bid through**
20 **an electronic medium available to the general public for a**
21 **period of at least ten days before bids are to be opened.**
22 The number of such proposals shall not be restricted or
23 curtailed, but shall be open to all construction managers
24 complying with the terms upon which the proposals are
25 requested.

8.690. 1. The office of administration shall have the
2 authority to utilize:

3 (1) The construction manager-at-risk delivery method,
4 as provided for in section 67.5050; and

5 (2) The design-build delivery method, as provided for
6 in section 67.5060, only as follows:

7 (a) For noncivil works projects, as that term is used
8 in section 67.5060, in excess of seven million dollars; and

9 (b) No more than five noncivil works projects, as that
10 term is used in section 67.5060, may be contracted for in
11 any fiscal year that are less than seven million dollars.

12 2. The office of administration shall not be subject
13 to subsection 15 of section 67.5050 and subsection 22 of
14 section 67.5060 in executing contracts pursuant to this
15 section.

16 3. The office of administration shall not be subject
17 to subsection 4 of section 67.5060 **or the first sentence of**
18 **subsection 3 of section 67.5050 requiring disclosure of a**
19 **public meeting.** The office of administration shall [publish
20 its advertisement for proposals in the publications, and on
21 the website of the officer or agency or through an
22 electronic procurement system] **advertise a request for**
23 **qualifications or request for proposals for a design-builder**
24 **or construction manager-at-risk** as set forth in subsection 3
25 of section 8.250. The selection and award shall follow
26 sections 67.5050 and 67.5060, as applicable.

34.040. 1. All purchases in excess of ten thousand
2 dollars shall be based on competitive bids, except as
3 otherwise provided in this chapter.

4 2. On any purchase where the estimated expenditure
5 shall be one hundred thousand dollars or over, except as
6 provided in subsection 6 of this section, the commissioner
7 of administration shall:

8 (1) Advertise for bids [in at least two daily
9 newspapers of general circulation in such places as are most
10 likely to reach prospective bidders and may advertise in at
11 least two weekly minority newspapers and may provide such
12 information] through an electronic medium available to the
13 general public at least five days before bids for such
14 purchases are to be opened. Other methods of advertisement,

15 which may include minority business purchase councils,
16 however, may be adopted by the commissioner of
17 administration when such other methods are deemed more
18 advantageous for the supplies to be purchased;

19 (2) Post a notice of the proposed purchase in his or
20 her office; and

21 (3) Solicit bids by mail or other reasonable method
22 generally available to the public from prospective
23 suppliers. All bids for such supplies shall be mailed or
24 delivered to the office of the commissioner of
25 administration so as to reach such office before the time
26 set for opening bids.

27 3. The contract shall be let to the lowest and best
28 bidder. The commissioner of administration shall have the
29 right to reject any or all bids and advertise for new bids,
30 or purchase the required supplies on the open market if they
31 can be so purchased at a better price. When bids received
32 pursuant to this section are unreasonable or unacceptable as
33 to terms and conditions, noncompetitive, or the low bid
34 exceeds available funds and it is determined in writing by
35 the commissioner of administration that time or other
36 circumstances will not permit the delay required to
37 resolicit competitive bids, a contract may be negotiated
38 pursuant to this section, provided that each responsible
39 bidder who submitted such bid under the original
40 solicitation is notified of the determination and is given a
41 reasonable opportunity to modify their bid and submit a best
42 and final bid to the state. In cases where the bids
43 received are noncompetitive or the low bid exceeds available
44 funds, the negotiated price shall be lower than the lowest
45 rejected bid of any responsible bidder under the original
46 solicitation.

47 4. The director of the department of revenue shall
48 follow bidding procedures as contained in this chapter and
49 may promulgate rules necessary to establish such
50 procedures. No points shall be awarded on a request for
51 proposal for a contract license office to a bidder for a
52 return-to-the-state provision offer.

53 5. All bids shall be based on standard specifications
54 wherever such specifications have been approved by the
55 commissioner of administration. The commissioner of
56 administration shall make rules governing the delivery,
57 inspection, storage and distribution of all supplies so
58 purchased and governing the manner in which all claims for
59 supplies delivered shall be submitted, examined, approved
60 and paid. The commissioner shall determine the amount of
61 bond or deposit and the character thereof which shall
62 accompany bids or contracts.

63 6. The department of natural resources may, without
64 the approval of the commissioner of administration required
65 pursuant to this section, enter into contracts of up to five
66 hundred thousand dollars to abate illegal waste tire sites
67 pursuant to section 260.276 when the director of the
68 department determines that urgent action is needed to
69 protect public health, safety, natural resources or the
70 environment. The department shall follow bidding procedures
71 pursuant to this section and may promulgate rules necessary
72 to establish such procedures. Any rule or portion of a
73 rule, as that term is defined in section 536.010, that is
74 created under the authority delegated in this section shall
75 become effective only if it complies with and is subject to
76 all of the provisions of chapter 536 and, if applicable,
77 section 536.028. This section and chapter 536 are
78 nonseverable and if any of the powers vested with the

79 general assembly pursuant to chapter 536 to review, to delay
80 the effective date or to disapprove and annul a rule are
81 subsequently held unconstitutional, then the grant of
82 rulemaking authority and any rule proposed or adopted after
83 August 28, 1999, shall be invalid and void.

84 7. The commissioner of administration and other
85 agencies to which the state purchasing law applies shall not
86 contract for goods or services with a vendor if the vendor
87 or an affiliate of the vendor makes sales at retail of
88 tangible personal property or for the purpose of storage,
89 use, or consumption in this state but fails to collect and
90 properly pay the tax as provided in chapter 144. For the
91 purposes of this section, "affiliate of the vendor" shall
92 mean any person or entity that is controlled by or is under
93 common control with the vendor, whether through stock
94 ownership or otherwise.

95 8. The commissioner of administration may hold reverse
96 auctions to procure merchandise, supplies, raw materials, or
97 finished goods if price is the primary factor in evaluating
98 bids, excluding items in section 34.047. The office of
99 administration shall promulgate rules regarding the handling
100 of the reverse auction process.

101 9. Any rule or portion of a rule, as that term is
102 defined in section 536.010, that is created under the
103 authority delegated in this section shall become effective
104 only if it complies with and is subject to all of the
105 provisions of chapter 536 and, if applicable, section
106 536.028. This section and chapter 536 are nonseverable and
107 if any of the powers vested with the general assembly
108 pursuant to chapter 536 to review, to delay the effective
109 date, or to disapprove and annul a rule are subsequently
110 held unconstitutional, then the grant of rulemaking

111 authority and any rule proposed or adopted after August 28,
112 2019, shall be invalid and void.

34.042. 1. When the commissioner of administration
2 determines that the use of competitive bidding is either not
3 practicable or not advantageous to the state, supplies may
4 be procured by competitive proposals. The commissioner
5 shall state the reasons for such determination, and a report
6 containing those reasons shall be maintained with the
7 vouchers or files pertaining to such purchases. All
8 purchases in excess of ten thousand dollars to be made under
9 this section shall be based on competitive proposals.

10 2. On any purchase where the estimated expenditure
11 shall be one hundred thousand dollars or over, the
12 commissioner of administration shall:

13 (1) Advertise for proposals [in at least two daily
14 newspapers of general circulation in such places as are most
15 likely to reach prospective offerors and may advertise in at
16 least two weekly minority newspapers and may provide such
17 information] through an electronic medium available to the
18 general public at least five days before proposals for such
19 purchases are to be opened. Other methods of advertisement,
20 however, may be adopted by the commissioner of
21 administration when such other methods are deemed more
22 advantageous for the supplies to be purchased;

23 (2) Post notice of the proposed purchase; and

24 (3) Solicit proposals by mail or other reasonable
25 method generally available to the public from prospective
26 offerors.

27 All proposals for such supplies shall be mailed or delivered
28 to the office of the commissioner of administration so as to
29 reach such office before the time set for opening

30 proposals. Proposals shall be opened in a manner to avoid
31 disclosure of contents to competing offerors during the
32 process of negotiation.

33 3. The contract shall be let to the lowest and best
34 offeror as determined by the evaluation criteria established
35 in the request for proposal and any subsequent negotiations
36 conducted pursuant to this subsection. In determining the
37 lowest and best offeror, as provided in the request for
38 proposals and under rules promulgated by the commissioner of
39 administration, negotiations may be conducted with
40 responsible offerors who submit proposals selected by the
41 commissioner of administration on the basis of reasonable
42 criteria for the purpose of clarifying and assuring full
43 understanding of and responsiveness to the solicitation
44 requirements. Those offerors shall be accorded fair and
45 equal treatment with respect to any opportunity for
46 negotiation and subsequent revision of proposals; however, a
47 request for proposal may set forth the manner for
48 determining which offerors are eligible for negotiation,
49 including, but not limited to, the use of shortlisting.
50 Revisions may be permitted after submission and before award
51 for the purpose of obtaining best and final offers. In
52 conducting negotiations there shall be no disclosure of any
53 information derived from proposals submitted by competing
54 offerors. The commissioner of administration shall have the
55 right to reject any or all proposals and advertise for new
56 proposals or purchase the required supplies on the open
57 market if they can be so purchased at a better price.

58 4. The commissioner shall make available, upon
59 request, to any members of the general assembly, information
60 pertaining to competitive proposals, including the names of

61 bidders and the amount of each bidder's offering for each
62 contract.

34.044. 1. The commissioner of administration may
2 waive the requirement of competitive bids or proposals for
3 supplies when the commissioner has determined in writing
4 that there is only a single feasible source for the
5 supplies. Immediately upon discovering that other feasible
6 sources exist, the commissioner shall rescind the waiver and
7 proceed to procure the supplies through the competitive
8 processes as described in this chapter. A single feasible
9 source exists when:

10 (1) Supplies are proprietary and only available from
11 the manufacturer or a single distributor; or

12 (2) Based on past procurement experience, it is
13 determined that only one distributor services the region in
14 which the supplies are needed; or

15 (3) Supplies are available at a discount from a single
16 distributor for a limited period of time.

17 2. On any single feasible source purchase where the
18 estimated expenditure shall be ten thousand dollars or over,
19 the commissioner of administration shall post notice of the
20 proposed purchase. Where the estimated expenditure is one
21 hundred thousand dollars or over, the commissioner of
22 administration shall also advertise the commissioner's
23 intent to make such purchase [in at least two daily
24 newspapers of general circulation in such places as are most
25 likely to reach prospective bidders or offerors and may
26 provide such information] through an electronic medium
27 available to the general public at least five days before
28 the contract is to be let. Other methods of advertisement,
29 however, may be adopted by the commissioner of
30 administration when such other methods are deemed more

31 advantageous for the supplies to be purchased. The
32 requirement for advertising may be waived, if not feasible,
33 due to the supplies being available at a discount for only a
34 limited period of time.

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