

# 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2 and 34.044, RSMo, are repealed and six new sections enacted in  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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