

As Amended by House Committee

Session of 2014

HOUSE BILL No. 2675

By Committee on Appropriations

2-13

1 AN ACT concerning the department of administration; relating to
2 procurement negotiating committees; certified businesses; amending
3 K.S.A. 2013 Supp. 75-3740 and 75-37,102 and repealing the existing
4 sections.
5

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

7 Section 1. K.S.A. 2013 Supp. 75-3740 is hereby amended to read as
8 follows: 75-3740.(a) Except as provided by K.S.A. 75-3740b, and
9 amendments thereto, and subsections (b) and (k), all contracts and
10 purchases made by or under the supervision of the director of purchases or
11 any state agency for which competitive bids are required shall be awarded
12 to the lowest responsible bidder, taking into consideration conformity with
13 the specifications, terms of delivery, and other conditions imposed in the
14 call for bids.

15 (b) A contract shall be awarded to a certified business which is also a
16 responsible bidder, whose total bid cost is not more than 10% higher than
17 the lowest competitive bid. Such contract shall contain a promise by the
18 certified business that the percentage of employees that are individuals
19 with disabilities will be maintained throughout the contract term and a
20 condition that the certified business shall not subcontract for goods or
21 services in an aggregate amount of more than 25% of the total bid cost.

22 (c) The director of purchases shall have power to decide as to the
23 lowest responsible bidder for all purchases, but if:

24 (1) (A) A responsible bidder purchases from a qualified vendor goods
25 or services on the list certified by the director of purchases pursuant to
26 K.S.A. 75-3317 et seq., and amendments thereto, the dollar amount of
27 such purchases made during the previous fiscal year shall be deducted
28 from the original bid received from such bidder for the purpose of
29 determining the lowest responsible bid, except that such deduction shall
30 not exceed 10% of the original bid received from such bidder; or

31 (B) a responsible bidder purchases from a certified business the dollar
32 amount of such purchases made during the previous fiscal year shall be
33 deducted from the original bid received from such bidder for the purpose
34 of determining the lowest responsible bid, except that such deduction shall
35 not exceed 10% of the original bid received from such bidder;

36 (2) the dollar amount of the bid received from the lowest responsible

1 bidder from within the state is identical to the dollar amount of the bid
2 received from the lowest responsible bidder from without the state, the
3 contract shall be awarded to the bidder from within the state; and

4 (3) in the case of bids for paper products specified in K.S.A. 75-
5 3740b, and amendments thereto, the dollar amounts of the bids received
6 from two or more lowest responsible bidders are identical, the contract
7 shall be awarded to the bidder whose bid is for those paper products
8 containing the highest percentage of recycled materials.

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

33 (e) Before the awarding of any contract for construction of a building
34 or the making of repairs or improvements upon any building for a state
35 agency, the director of purchases shall receive written approval from the
36 state agency for which the building construction project has been
37 approved, that the bids generally conform with the plans and specifications
38 prepared by the project architect, by the secretary of administration or by
39 the agency architect for the project, as the case may be, so as to avoid error
40 and mistake on the part of the contractors. In all cases where material
41 described in a contract can be obtained from any state institution, the
42 director of purchases shall exclude the same from the contract.

43 (f) All bids with the names of the bidders and the amounts thereof,

1 together with all documents pertaining to the award of a contract, shall be
2 made a part of a file or record and retained by the director of purchases for
3 five years, unless reproduced as provided in K.S.A. 75-3737, and
4 amendments thereto, and shall be open to public inspection at all
5 reasonable times.

6 (g) As used in this section:

7 (1) "Certified business" means any business certified annually by the
8 department of administration that is a sole proprietorship, partnership,
9 association or corporation domiciled in Kansas, or any corporation, even if
10 a wholly owned subsidiary of a foreign corporation, ~~or a wholesaler~~ that:

11 (A) Does business primarily in Kansas or substantially all of its
12 production in Kansas;

13 (B) employs at least ~~20%~~ 10% of its employees who are individuals
14 with disabilities and reside in Kansas;

15 (C) offers to contribute at least 75% of the premium cost for
16 individual health insurance coverage for each employee. ~~The level of such~~
17 ~~coverage shall be at least equal to the level of benefits offered by the state~~
18 ~~employee benefit program established by K.S.A. 75-6501 et seq., and~~
19 ~~amendments thereto.~~ The department of administration shall require a
20 certification of these facts as a condition to the certified business being
21 awarded a contract pursuant to subsection (b); and

22 (D) does not employ individuals under a certificate issued by the
23 United States secretary of labor under subsection (c) of 29 U.S.C. § 214;

24 (2) "individuals with disabilities" or "individual with a disability"
25 means any individual who:

26 (A) Is certified by the Kansas department for aging and disability
27 services as having a physical or mental impairment which constitutes a
28 substantial barrier to employment;

29 (B) works a minimum number of hours per week for a certified
30 business necessary to qualify for health insurance coverage offered
31 pursuant to subsection (g)(1); and

32 (C) (i) is receiving services, has received services or is eligible to
33 receive services under a home and community based services program, as
34 defined by K.S.A. 39-7,100, and amendments thereto;

35 (ii) is employed by a charitable organization domiciled in the state of
36 Kansas and exempt from federal income taxation pursuant to section
37 501(c)(3) of the federal internal revenue code of 1986, as amended; or

38 (iii) is an individual with a severe and persistent mental illness, as
39 determined by a clinical or functional assessment approved by the Kansas
40 department for aging and disability services;

41 (3) "physical or mental impairment" means:

42 (A) Any physiological disorder or condition, cosmetic disfigurement
43 or anatomical loss substantially affecting one or more of the following

1 body systems: Neurological; musculoskeletal; special sense organs;
2 respiratory, including speech organs; cardiovascular; reproductive;
3 digestive; genitourinary; hemic and lymphatic; skin; or endocrine; or

4 (B) any mental or psychological disorder, such as intellectual
5 disability, organic brain syndrome, mental illness and specific learning
6 disabilities. The term "physical or mental impairment" includes, but is not
7 limited to, such diseases and conditions as orthopedic, visual, speech and
8 hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple
9 sclerosis and intellectual disability; ~~and~~ **and**

10 (4) "project architect" shall have the meaning ascribed thereto in
11 K.S.A. 75-1251, and amendments thereto; ~~and~~

12 ~~(5) "wholesaler" means any sole proprietorship, partnership,~~
13 ~~association or corporation domiciled in Kansas, or any corporation, even~~
14 ~~if a wholly owned subsidiary of a foreign corporation, engaged in the~~
15 ~~business of selling goods or services for resale, but not for resale to the~~
16 ~~ultimate purchaser of such goods or services.~~

17 (h) Any state agency authorized by the director of purchases to make
18 purchases pursuant to subsection (e) of K.S.A. 75-3739, and amendments
19 thereto, shall consider any unsolicited proposal for goods or services under
20 this section.

21 (i) The secretary of administration and the secretary for aging and
22 disability services, jointly, shall adopt rules and regulations as necessary to
23 effectuate the purpose of this section.

24 (j) On and after January 13, 2014, at the beginning of each regular
25 session of the legislature, the secretary of administration and the secretary
26 for aging and disability services shall submit to the social services budget
27 committee of the house of representatives and the appropriate
28 subcommittee of the committee on ways and means of the senate, a written
29 report on:

30 (1) The number of certified businesses certified by the department of
31 administration during the previous fiscal year;

32 (2) the number of certified businesses awarded contracts pursuant to
33 subsection (b) during the previous fiscal year;

34 (3) the number of contracts awarded pursuant to subsection (b) to
35 each certified business during the previous fiscal year;

36 (4) the number of individuals with disabilities removed from,
37 reinstated to or not reinstated to home and community based services or
38 other medicaid program services during the previous fiscal year as a result
39 of employment with a certified business;

40 (5) the number of individuals employed by each certified business
41 during the previous fiscal year; and

42 (6) the number of individuals with disabilities employed by each
43 certified business during the previous fiscal year.

1 (k) When a state agency is receiving bids to purchase passenger
2 motor vehicles, such agency shall follow the procedures prescribed in
3 subsection (c)(2), except in the case where one of the responsible bidders
4 offers motor vehicles which are assembled in Kansas. In such a case, 3%
5 of the bid of the responsible bidder which offers motor vehicles assembled
6 in Kansas shall be subtracted from the bid amount, and that amount shall
7 be used to determine the lowest bid pursuant to subsection (c)(2). This
8 subsection shall only apply to bids which match the exact motor vehicle
9 specifications of the agency purchasing passenger motor vehicles.

10 Sec. 2. K.S.A. 2013 Supp. 75-37,102 is hereby amended to read as
11 follows: 75-37,102. (a) Upon request of the chief administrative officer of
12 a state agency and subject to the approval of the secretary of
13 administration, the director of purchases may convene a procurement
14 negotiating committee to obtain services or technical products for the state
15 agency.

16 (b) Each procurement negotiating committee shall be composed of:
17 (1) The director of purchases, or a person designated by the director; (2)
18 the chief administrative officer of the state agency desiring to make the
19 procurement, or a person designated by the officer; and (3) the secretary of
20 administration, or a person designated by the secretary or, if a procurement
21 involves information technology or services, the executive chief
22 information technology officer or a person designated by the executive
23 chief information technology officer.

24 (c) The negotiating committee is authorized to negotiate for the
25 procuring state agency contracts with qualified parties to provide services
26 or technical products needed by the state agency.

27 (d) Prior to negotiating for the procurement, a notice to bidders first
28 shall be published in the Kansas register. Upon receipt of bids or
29 proposals, the committee may negotiate with one or more of the firms *or*
30 *certified businesses* submitting bids or proposals and select from among
31 those submitting such bids or proposals the party to contract with to
32 provide the services or technical products. *In selecting the party to*
33 *contract with to provide services or technical products under this section,*
34 *the committee shall consider whether such party is a certified business or*
35 *purchased goods or services from a qualified vendor on the list certified*
36 *by the director of purchases pursuant to K.S.A. 75-3317 et seq., and*
37 *amendments thereto.*

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

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

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

12 (g) *As used in this section, "certified business" shall mean the same as*
13 *in K.S.A. 75-3740, and amendments thereto.*

14 Sec. 3. K.S.A. 2013 Supp. 75-3740 and 75-37,102 are hereby
15 repealed.

16 Sec. 4. This act shall take effect and be in force from and after its
17 publication in the statute book.