

SECOND REGULAR SESSION

# HOUSE BILL NO. 1846

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GREEN.

4236H.011

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To repeal sections 34.040, 34.042, 34.044, and 34.047, RSMo, and to enact in lieu thereof four new sections relating to purchases to be made on competitive bids.

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

Section A. Sections 34.040, 34.042, 34.044, and 34.047, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 34.040, 34.042, 34.044, and 34.047, to read as follows:

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

2. On any purchase where the estimated expenditure shall be ~~twenty-five~~ **one hundred** thousand dollars or over, except as provided in subsection 6 of this section, the commissioner of administration shall:

(1) Advertise for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders and may advertise in at least two weekly minority newspapers and may provide such information through an electronic medium available to the general public at least five days before bids for such purchases are to be opened. Other methods of advertisement, which may include minority business purchase councils, however, may be adopted by the commissioner of administration when such other methods are deemed more advantageous for the supplies to be purchased;

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17           3. The contract shall be let to the lowest and best bidder. The commissioner of  
18 administration shall have the right to reject any or all bids and advertise for new bids, or purchase  
19 the required supplies on the open market if they can be so purchased at a better price. When bids  
20 received pursuant to this section are unreasonable or unacceptable as to terms and conditions,  
21 noncompetitive, or the low bid exceeds available funds and it is determined in writing by the  
22 commissioner of administration that time or other circumstances will not permit the delay  
23 required to resolicit competitive bids, a contract may be negotiated pursuant to this section,  
24 provided that each responsible bidder who submitted such bid under the original solicitation is  
25 notified of the determination and is given a reasonable opportunity to modify their bid and  
26 submit a best and final bid to the state. In cases where the bids received are noncompetitive or  
27 the low bid exceeds available funds, the negotiated price shall be lower than the lowest rejected  
28 bid of any responsible bidder under the original solicitation.

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

33           5. All bids shall be based on standard specifications wherever such specifications have  
34 been approved by the commissioner of administration. The commissioner of administration shall  
35 make rules governing the delivery, inspection, storage and distribution of all supplies so  
36 purchased and governing the manner in which all claims for supplies delivered shall be  
37 submitted, examined, approved and paid. The commissioner shall determine the amount of bond  
38 or deposit and the character thereof which shall accompany bids or contracts.

39           6. The department of natural resources may, without the approval of the commissioner  
40 of administration required pursuant to this section, enter into contracts of up to five hundred  
41 thousand dollars to abate illegal waste tire sites pursuant to section 260.276 when the director  
42 of the department determines that urgent action is needed to protect public health, safety, natural  
43 resources or the environment. The department shall follow bidding procedures pursuant to this  
44 section and may promulgate rules necessary to establish such procedures. Any rule or portion  
45 of a rule, as that term is defined in section 536.010, that is created under the authority delegated  
46 in this section shall become effective only if it complies with and is subject to all of the  
47 provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are  
48 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536  
49 to review, to delay the effective date or to disapprove and annul a rule are subsequently held  
50 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after  
51 August 28, 1999, shall be invalid and void.

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

59           **8. The commissioner of administration shall be authorized to hold reverse auctions**  
60 **to procure merchandise, supplies, raw materials, or finished goods if price is the primary**  
61 **factor in evaluating bids. The office of administration shall promulgate rules regarding**  
62 **the handling of the reverse auction process. Any rule or portion of a rule, as that term is**  
63 **defined in section 536.010, that is created under the authority delegated in this section shall**  
64 **become effective only if it complies with and is subject to all the provisions of chapter 536**  
65 **and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if**  
66 **any of the powers vested with the general assembly under chapter 536 to review, to delay**  
67 **the effective date, or to disapprove and annul a rule are subsequently held**  
68 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**  
69 **after August 28, 2020, shall be invalid and void.**

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

7           2. On any purchase where the estimated expenditure shall be ~~twenty-five~~ **one hundred**  
8 thousand dollars or over, the commissioner of administration shall:

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

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

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

19 All proposals for such supplies shall be mailed or delivered to the office of the commissioner of  
20 administration so as to reach such office before the time set for opening proposals. Proposals  
21 shall be opened in a manner to avoid disclosure of contents to competing offerors during the  
22 process of negotiation.

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

38 4. The commissioner shall make available, upon request, to any members of the general  
39 assembly, information pertaining to competitive proposals, including the names of bidders and  
40 the amount of each bidder's offering for each contract.

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

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

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

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

13 2. On any single feasible source purchase where the estimated expenditure shall be ~~five~~  
14 **ten** thousand dollars or over, the commissioner of administration shall post notice of the

15 proposed purchase. Where the estimated expenditure is ~~[twenty-five]~~ **one hundred** thousand  
16 dollars or over, the commissioner of administration shall also advertise the commissioner's intent  
17 to make such purchase in at least two daily newspapers of general circulation in such places as  
18 are most likely to reach prospective bidders or offerors and may provide such information  
19 through an electronic medium available to the general public at least five days before the contract  
20 is to be let. Other methods of advertisement, however, may be adopted by the commissioner of  
21 administration when such other methods are deemed more advantageous for the supplies to be  
22 purchased. The requirement for advertising may be waived, if not feasible, due to the supplies  
23 being available at a discount for only a limited period of time.

34.047. Notwithstanding any provision in section 34.040, section 34.100, or any other  
2 law to the contrary, departments shall have the authority to purchase products and services  
3 related to information technology when the estimated expenditure of such purchase shall not  
4 exceed ~~[seventy-five]~~ **one hundred** thousand dollars, the length of any contract or agreement  
5 does not exceed twelve months, the department complies with the informal methods of  
6 procurement established in section 34.040, and 1 CSR 40-1.050(1) for expenditures of less than  
7 ~~[twenty-five]~~ **one hundred** thousand dollars, and the department posts notice of such proposed  
8 purchase on the online bidding/vendor registration system maintained by the office of  
9 administration. For the purposes of this section, "information technology" shall mean any  
10 computer or electronic information equipment or interconnected system that is used in the  
11 acquisition, storage, manipulation, management, movement, control, display, switching,  
12 interchange, transmission, or reception of information, including audio, graphic, and text.

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