

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2140

AN ACT

To repeal sections 34.010, 34.040, 34.042, 34.044, 34.047, 34.048, 34.353, 37.007, and 37.020, RSMo, and to enact in lieu thereof ten new sections relating to public contracts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 34.010, 34.040, 34.042, 34.044, 34.047,
2 34.048, 34.353, 37.007, and 37.020, RSMo, are repealed and ten
3 new sections enacted in lieu thereof, to be known as sections
4 34.010, 34.040, 34.042, 34.044, 34.047, 34.048, 34.353, 37.007,
5 37.020, and 1, to read as follows:

6 34.010. 1. The term "department" as used in this chapter
7 shall be deemed to mean department, office, board, commission,
8 bureau, institution, or any other agency of the state, except the
9 legislative and judicial departments. The term "department"
10 shall not include public institutions of higher education.

11 2. The term "lowest and best" in determining the lowest and
12 best award, cost, and other factors are to be considered in the
13 evaluation process. Factors may include, but are not limited to,

1 value, performance, and quality of a product.

2 3. The term "Missouri product" refers to goods or
3 commodities which are manufactured, mined, produced, or grown by
4 companies in Missouri, or services provided by such companies.

5 4. The term "negotiation" as used in this chapter means the
6 process of selecting a contractor by the competitive methods
7 described in this chapter, whereby the commissioner of
8 administration can establish any and all terms and conditions of
9 a procurement contract by discussion with one or more prospective
10 contractors.

11 5. The term "purchase" as used in this chapter shall
12 include the rental or leasing of any equipment, articles or
13 things.

14 6. The term "supplies" used in this chapter shall be deemed
15 to mean supplies, materials, equipment, contractual services and
16 any and all articles or things, except for utility services
17 regulated under chapter 393 or as in this chapter otherwise
18 provided.

19 7. The term "value" includes but is not limited to price,
20 performance, and quality. In assessing value, the state
21 purchaser may consider the economic impact to the state of
22 Missouri for Missouri products versus the economic impact of
23 products generated from out of state. This economic impact may
24 include the revenues returned to the state through tax revenue
25 obligations.

26 34.040. 1. All purchases in excess of [three] ten thousand
27 dollars shall be based on competitive bids, except as otherwise
28 provided in this chapter.

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

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

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

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

22 3. The contract shall be let to the lowest and best bidder.
23 The commissioner of administration shall have the right to reject
24 any or all bids and advertise for new bids, or purchase the
25 required supplies on the open market if they can be so purchased
26 at a better price. When bids received pursuant to this section
27 are unreasonable or unacceptable as to terms and conditions,
28 noncompetitive, or the low bid exceeds available funds and it is

1 determined in writing by the commissioner of administration that
2 time or other circumstances will not permit the delay required to
3 resolicit competitive bids, a contract may be negotiated pursuant
4 to this section, provided that each responsible bidder who
5 submitted such bid under the original solicitation is notified of
6 the determination and is given a reasonable opportunity to modify
7 their bid and submit a best and final bid to the state. In cases
8 where the bids received are noncompetitive or the low bid exceeds
9 available funds, the negotiated price shall be lower than the
10 lowest rejected bid of any responsible bidder under the original
11 solicitation.

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

18 5. All bids shall be based on standard specifications
19 wherever such specifications have been approved by the
20 commissioner of administration. The commissioner of
21 administration shall make rules governing the delivery,
22 inspection, storage and distribution of all supplies so purchased
23 and governing the manner in which all claims for supplies
24 delivered shall be submitted, examined, approved and paid. The
25 commissioner shall determine the amount of bond or deposit and
26 the character thereof which shall accompany bids or contracts.

27 6. The department of natural resources may, without the
28 approval of the commissioner of administration required pursuant

1 to this section, enter into contracts of up to five hundred
2 thousand dollars to abate illegal waste tire sites pursuant to
3 section 260.276 when the director of the department determines
4 that urgent action is needed to protect public health, safety,
5 natural resources or the environment. The department shall
6 follow bidding procedures pursuant to this section and may
7 promulgate rules necessary to establish such procedures. Any
8 rule or portion of a rule, as that term is defined in section
9 536.010, that is created under the authority delegated in this
10 section shall become effective only if it complies with and is
11 subject to all of the provisions of chapter 536 and, if
12 applicable, section 536.028. This section and chapter 536 are
13 nonseverable and if any of the powers vested with the general
14 assembly pursuant to chapter 536 to review, to delay the
15 effective date or to disapprove and annul a rule are subsequently
16 held unconstitutional, then the grant of rulemaking authority and
17 any rule proposed or adopted after August 28, 1999, shall be
18 invalid and void.

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

1 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 be
4 procured by competitive proposals. The commissioner shall state
5 the reasons for such determination, and a report containing those
6 reasons shall be maintained with the vouchers or files pertaining
7 to such purchases. All purchases in excess of [~~five~~] ten
8 thousand dollars to be made under this section shall be based on
9 competitive proposals.

10 2. On any purchase where the estimated expenditure shall be
11 [~~twenty-five~~] 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 general
18 public at least five days before proposals for such purchases are
19 to be opened. Other methods of advertisement, however, may be
20 adopted by the commissioner of administration when such other
21 methods are deemed more advantageous for the supplies to be
22 purchased;

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

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

26
27 All proposals for such supplies shall be mailed or delivered to
28 the office of the commissioner of administration so as to reach

1 such office before the time set for opening proposals. Proposals
2 shall be opened in a manner to avoid disclosure of contents to
3 competing offerors during the process of negotiation.

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

27 4. The commissioner shall make available, upon request, to
28 any members of the general assembly, information pertaining to

1 competitive proposals, including the names of bidders and the
2 amount of each bidder's offering for each contract.

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

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

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

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

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

1 of advertisement, however, may be adopted by the commissioner of
2 administration when such other methods are deemed more
3 advantageous for the supplies to be purchased. The requirement
4 for advertising may be waived, if not feasible, due to the
5 supplies being available at a discount for only a limited period
6 of time.

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

25 34.048. 1. In any contract for purchasing supplies as
26 defined in section 34.010 [not exceeding the threshold for
27 competitive bids set forth under section 34.040], the office of
28 administration [~~shall not prevent~~] may, for any department,

1 office, board, commission, bureau, institution, political
2 subdivision, or any other agency of the state [from purchasing
3 supplies from an authorized], participate in a cooperative
4 purchasing agreement whereby supplies are procured pursuant to a
5 contract that is open to state entities and established by the
6 General Services Administration [vendor] including "GSA
7 Advantage", "GSA e-Buy", or successor sources. The office of
8 administration may utilize such cooperative purchasing when such
9 participation is determined to be advantageous to the state.

10 2. Beginning January 1, 2019, the office of administration
11 shall produce a report of all cooperative purchasing agreements
12 entered into under subsection 1 of this section and shall
13 annually provide such report to the president pro tempore of the
14 senate and the speaker of the house of representatives.

15 3. Pursuant to section 23.253, RSMo, of the Missouri Sunset
16 Act:

17 (1) The provisions of the new cooperative purchasing
18 program authorized under this section shall automatically sunset
19 6 years after the effective date of this section unless
20 reauthorized by an act of the general assembly; and

21 (2) If such program is reauthorized, the program authorized
22 under this section shall automatically sunset 12 years after the
23 effective date of the reauthorization of this section; and

24 (3) This section shall terminate on September first of the
25 calendar year immediately following the calendar year in which
26 the program authorized under this section is sunset.

27 34.353. 1. Each contract for the purchase or lease of
28 manufactured goods or commodities by any public agency, and each

1 contract made by a public agency for construction, alteration,
2 repair, or maintenance of any public works shall contain a
3 provision that any manufactured goods or commodities used or
4 supplied in the performance of that contract or any subcontract
5 thereto shall be manufactured or produced in the United States.

6 2. This section shall not apply where the purchase, lease,
7 or contract involves an expenditure of less than [twenty-five]
8 one hundred thousand dollars. This section shall not apply when
9 only one line of a particular good or product is manufactured or
10 produced in the United States.

11 3. This section shall not apply where the executive head of
12 the public agency certifies in writing that:

13 (1) The specified products are not manufactured or produced
14 in the United States in sufficient quantities to meet the
15 agency's requirements or cannot be manufactured or produced in
16 the United States within the necessary time in sufficient
17 quantities to meet the agency's requirements;

18 (2) Obtaining the specified products manufactured or
19 produced in the United States would increase the cost of the
20 contract by more than ten percent;

21 (3) The specified products are to be purchased or leased by
22 a state-supported four-year institute of higher education and
23 such certification as required by subdivision (1) or (2) of this
24 subsection has been made within the last three years;

25 (4) The specified products are to be purchased or leased by
26 a publicly supported institution and such certification as
27 required by subdivision (1) or (2) of this subsection has been
28 made within the last three years; or

1 (5) The political subdivision has adopted a formal written
2 policy to encourage the purchase of products manufactured or
3 produced in the United States.

4 4. The certificate required by this section shall specify
5 the nature of the contract, the product being purchased or
6 leased, the names and addresses of the United States
7 manufacturers and producers contacted by the public agency or the
8 project architect or engineer, and an indication that such
9 manufacturers or producers could not supply sufficient quantities
10 or that the price of the products would increase the cost of the
11 contract by more than ten percent.

12 5. Certificates required by this section shall be
13 maintained by the public agency for a period of three years.

14 37.007. Within six months of August 28, 2012, the
15 commissioner of the office of administration shall develop and
16 implement a statewide system or contract with any third party to
17 allow all state agencies and departments to accept payments made
18 by a credit card, debit card, or other electronic method
19 designated by the commissioner. State agencies and departments
20 shall not incur any additional fees for utilizing such payment
21 methods, unless authorized by the commissioner of administration
22 upon a finding that the payment of such fees would result in a
23 positive fiscal impact to the state.

24 37.020. 1. As used in this section, the following words
25 and phrases mean:

26 (1) "Certification", the determination, through whatever
27 procedure is used by the office of administration, that a legal
28 entity is a socially and economically disadvantaged small

1 business concern for purposes of this section;

2 (2) "Department", the office of administration and any
3 public institution of higher learning in the state of Missouri;

4 (3) "Minority business enterprise", a business that is:

5 (a) A sole proprietorship owned and controlled by a
6 minority;

7 (b) A partnership or joint venture owned and controlled by
8 minorities in which at least fifty-one percent of the ownership
9 interest is held by minorities and the management and daily
10 business operations of which are controlled by one or more of the
11 minorities who own it; or

12 (c) A corporation or other entity whose management and
13 daily business operations are controlled by one or more
14 minorities who own it, and which is at least fifty-one percent
15 owned by one or more minorities, or if stock is issued, at least
16 fifty-one percent of the stock is owned by one or more
17 minorities;

18 (4) "Socially and economically disadvantaged individuals",
19 individuals, regardless of gender, who have been subjected to
20 racial, ethnic, or sexual prejudice or cultural bias because of
21 their identity as a member of a group without regard to their
22 individual qualities and whose ability to compete in the free
23 enterprise system has been impaired due to diminished capital and
24 credit opportunities as compared to others in the same business
25 area. In determining the degree of diminished credit and capital
26 opportunities the office of administration shall consider, but
27 not be limited to, the assets and net worth of such individual;

28 (5) "Socially and economically disadvantaged small business

1 concern", any small business concern:

2 (a) Which is at least fifty-one percentum owned by one or
3 more socially and economically disadvantaged individuals; or, in
4 the case of any publicly owned business, at least fifty-one
5 percentum of the stock of which is owned by one or more socially
6 and economically disadvantaged individuals; and

7 (b) Whose management and daily business operations are
8 controlled by one or more of such individuals;

9 (6) "Women's business enterprise", a business that is:

10 (a) A sole proprietorship owned and controlled by a woman;

11 (b) A partnership or joint venture owned and controlled by
12 women in which at least fifty-one percent of the ownership
13 interest is held by women and the management and daily business
14 operations of which are controlled by one or more of the women
15 who own it; or

16 (c) A corporation or other entity whose management and
17 daily business operations are controlled by one or more women who
18 own it, and which is at least fifty-one percent owned by women,
19 or if stock is issued, at least fifty-one percent of the stock is
20 owned by one or more women.

21 2. The office of administration, in consultation with each
22 department, shall establish and implement a plan to increase and
23 maintain the participation of certified socially and economically
24 disadvantaged small business concerns or minority business
25 enterprises, directly or indirectly, in contracts for supplies,
26 services, and construction contracts, consistent with goals
27 determined after an appropriate study conducted to determine the
28 availability of socially and economically disadvantaged small

1 business concerns and minority business enterprises in the
2 marketplace. The commissioner of administration shall appoint an
3 oversight review committee to oversee and review the results of
4 such study. The committee shall be composed of nine members,
5 four of whom shall be members of business, three of whom shall be
6 from staff of selected departments, one of whom shall be a member
7 of the house of representatives, and one of whom shall be a
8 member of the senate.

9 3. The goals to be pursued by each department under the
10 provisions of this section shall be construed to overlap with
11 those imposed by federal law or regulation, if any, shall run
12 concurrently therewith and shall be in addition to the amount
13 required by federal law only to the extent the percentage set by
14 this section exceeds those required by federal law or
15 regulations.

16 4. The commissioner of administration may designate a
17 nonprofit organization as a minority business enterprise or
18 women's business enterprise for the exclusive purpose of
19 competing in other states, provided that the organization is
20 headquartered in Missouri and the collective majority of the
21 organization's board of directors and executive management in
22 charge of daily business operations are minorities or women.

23 Section 1. Any request for proposals for the purchase of
24 technology by the state shall not exceed twenty-five percent of
25 the total points available in scoring the request for proposals.
26 The office of administration shall promulgate rules to implement
27 reasonable commercially-required provisions that assure that the
28 state maximizes value for the dollar and not the lowest price.

1 Any rule or portion of a rule, as that term is defined in section
2 536.010 that is created under the authority delegated in this
3 section shall become effective only if it complies with and is
4 subject to all of the provisions of chapter 536, and, if
5 applicable, section 536.028. This section and chapter 536 are
6 nonseverable and if any of the powers vested with the general
7 assembly pursuant to chapter 536, to review, to delay the
8 effective date, or to disapprove and annul a rule are
9 subsequently held unconstitutional, then the grant of rulemaking
10 authority and any rule proposed or adopted after August 28, 2018,
11 shall be invalid and void.

12