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MEMORANDUM

To: Chairperson McGinn and Members of the Committee on Ways and Means
From: Katherine McBride, Assistant Revisor of Statutes
Date: March 9, 2012
Subject: 2012 Senate Bill 444

SB 444 concerns the state competitive bidding procedure, which affords the director of purchases the power to decide the lowest responsible bidder for all purchases, subject to certain exceptions. K.S.A. 75-3739 *et seq.*

SB 444 affects state competitive bidding procedure by imposing the following changes:

- (1) Two new exceptions to the director's purchasing power: (A) A bidding preference for a "certified business"; and (B) bidder purchasing deductions.
- (2) Requirement that certain state agencies consider unsolicited proposals for goods or services.
- (3) Reporting requirements to the legislature and the director of purchases regarding certified business contract awards and the employment of individuals with disabilities.
- (4) Clarifies the reinstatement eligibility of an individual with a disability to home and community based services if such services were terminated due to employment for a certified business.

EXCEPTIONS TO THE DIRECTOR OF PURCHASES POWER

Two new exceptions to the director's purchasing power are created by the bill, a bidding preference and bidder purchasing deductions.

Bidding preference. The bidding preference was established for a "certified business," a responsible bidder whose total bid cost is not more than 10% higher than the lowest competitive bid. Section 2(b), page 5, lines 12-14. Therefore, if a certified business meets such preference requirements, the director of purchases is required to award the state contract to the certified business.

However, in order to be certified by the department of administration as a "certified business," a business must meet the following requirements:

- (1) Organized as a sole proprietorship, partnership, association or corporation;
- (2) does business primarily in Kansas or substantially all of its production in Kansas;
- (3) employs at least 20% full-time employees in Kansas that are individuals with disabilities;
- (4) offers to contribute at least 70% of the premium cost for individual health insurance coverage for each employee; and
- (5) does not employ individuals under a certificate issued by the United States secretary of labor which allows an employer to pay certain individuals with disabilities wages below federal minimum wage requirements. Section 2(g)(1), page 6, lines 41-43; page 7, lines 1-14.

The bill defines “individual with a disability” to mean an individual who is certified by the department of social and rehabilitation services as having a physical or mental impairment which constitutes a substantial barrier to employment, and (1) receives, has received or is eligible to receive services under a home and community based services program, (2) is employed by a Kansas charitable organization, or (3) is an individual with a severe or persistent mental illness. Section 2(g)(3), page 7, lines 18-30. “Physical and mental impairment” is defined as any physiological, mental or psychological disorder. Section 2(g)(4), page 7, lines 31-42. A contract that is awarded to a certified business shall contain a promise by the certified business that the percentage of employees that are individuals with disabilities will be maintained throughout the contract term, as well as a condition that the certified business shall not subcontract for goods or services in an aggregate amount of more than 25% of the total bid cost. Section 2(b), page 5, lines 14-18.

Bidder purchasing deductions. The bill also establishes two types of bidder purchasing deductions, which circumvents the director of purchases’ power only for purposes of determining the lowest responsible bidder. The first bidder purchasing deduction allows a responsible bidder to deduct the dollar amount of purchases made from a state use law vendor during the previous calendar year from the bidder’s original bid, subject to the requirement that the deduction not exceed 10% of the original bid. Section 2(c)(1)(A), page 5, lines 21-27. The second bidder purchasing deduction allows a responsible bidder to deduct the dollar amount of purchases made from a certified business during the previous calendar year from the bidder’s original bid, subject to the requirement that the deduction not exceed 10% of the original bid. Section 2(c)(1)(B), page 5, lines 28-33.

The two new bidder purchasing deductions do not create bid preferences automatically awarding state contracts. Rather, the bidder purchasing deductions provide bidders with an opportunity to reduce original bids based upon purchases made from state use law vendors or certified

businesses.

CONSIDERATION OF UNSOLICITED PROPOSALS FOR GOODS OR SERVICES

Certain state agencies are authorized by the director of purchases to make purchases. K.S.A. 75-3739(e). SB 444 requires such agencies to *consider* any unsolicited proposals for goods or services received under the section amending state competitive bidding procedure (emphasis added). Section 2(h), page 8, lines 3-6.

REPORTING REQUIREMENTS TO THE LEGISLATURE AND THE DIRECTOR OF PURCHASES

SB 444 imposes certain reporting requirements to the legislature and the director of purchases. Specifically, the secretary of administration and the secretary of social and rehabilitation services are required to submit a yearly report to certain legislative committees on:

- (1) The number of certified businesses certified by the department of administration during the previous calendar year;
- (2) the number of certified businesses awarded contracts during the previous calendar year;
- (3) the number of individuals with disabilities removed from or reinstated to state medicaid program services during the previous calendar year as a result of full-time employment with a certified business; and
- (4) savings resulting from the removal of individuals with disabilities from state medicaid program services during the previous calendar year as a result of full-time employment with a certified business. Section 2(j), page 8, lines 10-27.

Secondly, each certified business awarded a contract during the previous calendar year is required to submit a report twice a year to the director of purchases on:

- (1) The number of contracts awarded to the certified business during the previous six months;
- (2) the number of full-time individuals employed by the certified business during the previous six months;
- (3) the number of full-time individuals with disabilities employed by the certified business during the previous six months; and
- (4) any other matters relating to certified businesses deemed appropriate for reporting by

the secretary of administration. Section 2(k), page 8, lines 28-39.

CLARIFIES MEDICAID REINSTATEMENT ELIGIBILITY OF INDIVIDUALS WITH DISABILITIES

The last section of SB 444 concerns the reinstatement eligibility of an individual with a disability to state medicaid program services if such services were terminated due to employment for a certified business. There is a rebuttable presumption that an individual with a disability is eligible for reinstatement to the level of state medicaid program services the individual was entitled to prior to the day such individual stopped receiving services if (1) the entitlement to receive services terminated due to full-time employment for a certified business, not medical recovery or any other reason, and (2) the individual with a disability is currently under a physical or mental impairment that gave rise for the initial entitlement for services. Section 3(b), page 9, lines 16-33.

OTHER PROVISIONS

SB 444 provides rule and regulation authority for the secretary of administration and the secretary of social and rehabilitation services. Section 2(i), page 8, lines 7-9; section 3(c), page 9, lines 34-35.

Additionally, the bill has a delayed effective date of January 1, 2013. Section 5, page 9, lines 37-38.