

**SENATE BILL No. 2**

By Joint Committee on Legislative Post Audit

12-10

1 AN ACT concerning the department of administration; relating to competitive  
2 bids; bidding procedures; requiring bidders to sign a statement certifying  
3 they will not hire former state employees except as otherwise allowed by  
4 law; amending K.S.A. 2010 Supp. 75-3739 and repealing the existing  
5 section.

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

8 Section 1. K.S.A. 2010 Supp. 75-3739 is hereby amended to read as  
9 follows: 75-3739. In the manner as provided in this act and rules and  
10 regulations established thereunder:

11 (a) All contracts for construction and repairs, and all purchases of and  
12 contracts for supplies, materials, equipment and contractual services to be  
13 acquired for state agencies shall be based on competitive bids, except that  
14 competitive bids need not be required in the following instances:

15 (1) For contractual services, supplies, materials, or equipment when, in  
16 the judgment of the director of purchases, no competition exists;

17 (2) when, in the judgment of the director of purchases, chemicals and  
18 other material or equipment for use in laboratories or experimental studies by  
19 state agencies are best purchased without competition, or where rates are fixed  
20 by law or ordinance;

21 (3) when, in the judgment of the director of purchases, an agency  
22 emergency requires immediate delivery of supplies, materials or equipment, or  
23 immediate performance of services;

24 (4) when any statute authorizes another procedure or provides an  
25 exemption from the provisions of this section;

26 (5) when compatibility with existing contractual services, supplies,  
27 materials or equipment is the overriding consideration;

28 (6) when a used item becomes available and is subject to immediate sale;  
29 or

30 (7) when, in the judgment of the director of purchases and the head of the  
31 acquiring state agency, not seeking competitive bids is in the best interest of  
32 the state.

33 When the director of purchases approves a purchase of or contract for  
34 supplies, materials, equipment, or contractual services in any instance  
35 specified in this subsection, the director may delegate authority to make the  
36 purchase or enter the contract under conditions and procedures prescribed by

1 the director. Except for purchases or contracts entered into without a  
2 competitive bid under subsection (a)(3), (a)(4), (a)(6) or subsection (h), no  
3 purchase or contract entered into without a competitive bid for an amount in  
4 excess of \$100,000 shall be entered into by the head of any state agency or  
5 approved by the director of purchases unless the director of purchases first  
6 posts an on-line notice of the proposed purchase or contract at least seven days  
7 before the purchase or contract is awarded. The director of purchases shall  
8 provide notice thereof to members of the legislature at the beginning of each  
9 calendar year that such information will be posted and the director of the  
10 division of purchases shall provide the uniform resource locator (URL) and the  
11 number of times such information shall be available. In the event a written  
12 protest of the awarding of such a contract occurs during the seven-day notice  
13 period, the director of purchases shall request from the protestor the contact  
14 information, including name and mailing address, of the person or entity that  
15 has expressed an interest in supplying the goods or services and provide a  
16 copy of the specification to the person or entity that has expressed an interest  
17 in supplying the goods or services and verify that such person or entity is  
18 interested and capable of supplying such goods or services.

19 Upon satisfaction of the director of purchases regarding the validity of the  
20 protest and the existence of competition, the director of purchases shall  
21 proceed with a competitive procurement. A competitive procurement shall not  
22 be required when, in the judgment of the director of purchases, the validity of  
23 the protest cannot be determined or competition for such goods or services  
24 cannot be verified by the director of purchases.

25 The director of purchases shall prepare a detailed report at least once in  
26 each calendar quarter of all contracts over \$5,000 entered into without  
27 competitive bids under subsection (a)(1), (2), (3), (5), (6) or (7). The director  
28 shall submit the report to the legislative coordinating council, the chairperson  
29 of the committee on ways and means of the senate and the chairperson of the  
30 committee on appropriations of the house of representatives.

31 (b) (1) If the amount of the purchase is estimated to exceed \$50,000,  
32 sealed bids shall be solicited by notice published once in the Kansas register  
33 not less than 10 days before the date stated in the notice for the opening of the  
34 bids. The director of purchases may waive this publication of notice  
35 requirement when the director determines that a more timely procurement is in  
36 the best interest of the state. The director of purchases also may designate a  
37 trade journal for the publication. The director of purchases also shall solicit  
38 such bids by sending notices by mail to prospective bidders and by posting the  
39 notice on a public bulletin board for at least 10 business days before the date  
40 stated in the notice for the opening of the bids unless otherwise provided by  
41 law. All bids shall be sealed when received and shall be opened in public at the  
42 hour stated in the notice.

43 (2) The director of purchases shall prepare a detailed report at least once

1 in each calendar quarter of all instances in which the director waived  
2 publication of the notice of bid solicitations in the Kansas register as provided  
3 in this subsection. The director shall submit the report to the legislative  
4 coordinating council, the chairperson of the committee on ways and means of  
5 the senate and the chairperson of the committee on appropriations of the house  
6 of representatives.

7 (c) All purchases estimated to exceed approximately \$25,000 but not  
8 more than \$50,000, shall be made after receipt of sealed bids following at least  
9 three days' notice posted on a public bulletin board.

10 (d) All purchases estimated to be more than \$5,000, but less than  
11 \$25,000, may be made after the receipt of three or more bid solicitations by  
12 telephone, telephone facsimile or sealed bid, following at least three days'  
13 notice posted on a public bulletin board. Such bids shall be recorded as  
14 provided in subsection (e) of K.S.A. 75-3740 and amendments thereto. Any  
15 purchase that is estimated to be less than \$5,000 may be purchased under  
16 conditions and procedures prescribed by the director of purchases. Purchases  
17 made in compliance with such conditions and procedures shall be exempt from  
18 other provisions of this section.

19 (e) With the approval of the secretary of administration, the director of  
20 purchases may delegate authority to any state agency to make purchases of  
21 less than \$25,000 under certain prescribed conditions and procedures. The  
22 director of purchases shall prepare a report at least once in each calendar  
23 quarter of all current and existing delegations of authority to state agencies as  
24 provided in this subsection. The director shall submit the report to the  
25 legislative coordinating council, the chairperson of the committee on ways and  
26 means of the senate and the chairperson of the committee on appropriations of  
27 the house of representatives.

28 (f) Subject to the provisions of subsection (e), contracts and purchases  
29 shall be based on specifications approved by the director of purchases. When  
30 deemed applicable and feasible by the director of purchases, such  
31 specifications shall include either energy efficiency standards or appropriate  
32 life cycle cost formulas, or both, for all supplies, materials, equipment and  
33 contractual services to be purchased by the state. The director of purchases  
34 may reject a contract or purchase on the basis that a product is manufactured  
35 or assembled outside the United States. No such specifications shall be fixed in  
36 a manner to effectively exclude any responsible bidder offering comparable  
37 supplies, materials, equipment or contractual services.

38 (g) Notwithstanding anything herein to the contrary, all contracts with  
39 independent construction concerns for the construction, improvement,  
40 reconstruction and maintenance of the state highway system and the  
41 acquisition of rights-of-way for state highway purposes shall be advertised and  
42 let as now or hereafter provided by law.

43 (h) The director of purchases may authorize state agencies to contract for

1 services and materials with other state agencies, or with federal agencies,  
2 political subdivisions of Kansas, agencies of other states or subdivisions  
3 thereof, or private nonprofit educational institutions, without competitive bids.

4 (i) The director of purchases may participate in, sponsor, conduct, or  
5 administer a cooperative purchasing agreement or consortium for purchases of  
6 supplies, materials, equipment, and contractual services with federal agencies  
7 or agencies of other states or local units of government. Cooperative  
8 purchasing agreements entered into under this subsection shall not be subject  
9 to K.S.A. 75-3739 through 75-3740a, and amendments thereto.

10 (j) The director of purchases may delegate authority to any state agency  
11 to make purchases under certain prescribed conditions and procedures when  
12 the acquisition is funded, in whole or in part, from a grant. Except as otherwise  
13 provided in subsection (k) of this section, purchases made in compliance with  
14 such conditions and procedures shall be exempt from other provisions of this  
15 section. As used in this subsection the term "grant" means a disbursement  
16 made from federal or private funds, or a combination of these sources, to a  
17 state agency. Nothing in this subsection shall allow federal grant moneys to be  
18 handled differently from any other moneys of the state unless the requirements  
19 of the applicable federal grant specifically require such federal moneys to be  
20 handled differently.

21 (k) The director of purchases shall prepare a detailed report at least once  
22 each calendar quarter of all contracts over \$5,000 for services, supplies,  
23 materials or equipment entered into pursuant to subsection (h), (i) or (j) and  
24 submit it to the legislative coordinating council, the chairperson of the  
25 committee on ways and means of the senate and the chairperson of the  
26 committee on appropriations of the house of representatives.

27 (l) Except as otherwise specifically provided by law, no state agency shall  
28 enter into any lease of real property without the prior approval of the secretary  
29 of administration. A state agency shall submit to the secretary of  
30 administration such information relating to any proposed lease of real property  
31 as the secretary may require. The secretary of administration shall either  
32 approve, modify and approve or reject any such proposed lease.

33 (m) The director of purchases shall require all bidders on state contracts  
34 to ~~disclose all substantial interests held by the bidder in the state~~ *sign a*  
35 *statement certifying that such bidder will not hire as an employee, independent*  
36 *contractor or subcontractor, any individual that participates as a state officer*  
37 *or employee in the making of a contract with the bidder unless such individual*  
38 *is in compliance with subsection (a)(2) of K.S.A. 46-233, and amendments*  
39 *thereto. The director of purchases shall disqualify any bidder that refuses to*  
40 *sign a statement as described in this paragraph.*

41 (n) As used in article 37 of chapter 75 of the Kansas Statutes Annotated,  
42 and amendments thereto, and other statutory provisions concerning state  
43 procurement, "sealed bids," "bulletin boards" and "mail" shall include

1 electronic bids, electronic bulletin boards and electronic mail when such items  
2 are utilized in accordance with procedures prescribed by the director of  
3 purchases.

4 Sec. 2. K.S.A. 2010 Supp. 75-3739 is hereby repealed.

5 Sec. 3. This act shall take effect and be in force from and after its  
6 publication in the statute book.