

Senate Substitute for HOUSE BILL No. 2157

AN ACT concerning competitive bidding; relating to purchase of motor vehicles by state agencies; enacting the competitive bid protection act; amending K.S.A. 2011 Supp. 75-3740 and repealing the existing section.

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

New Section 1. Sections 1 through 5, and amendments thereto, shall be known and may be cited as the competitive bid protection act.

New Sec. 2. The purposes of the competitive bid protection act are to: (a) Provide for the efficient procurement of goods and services by governmental entities;

(b) promote the economical, nondiscriminatory and efficient administration and completion of state and state-funded or state-assisted construction projects by governmental entities;

(c) provide for fair and open competition for construction contracts, awarded by governmental entities;

(d) prohibit requirements for certain terms in construction contracts awarded by governmental entities;

(e) prohibit the expenditure of public funds under certain conditions;

(f) prohibit certain terms in procurement documents by governmental entities for public facilities; and

(g) provide powers and duties for certain public officers, employees and contractors.

New Sec. 3. (a) Unless otherwise required by law, each governmental entity within this state that contracts for public works construction shall ensure that neither the awarding governmental entity nor any agent responsible for procuring a contract directly between the governmental entity and a contractor shall not:

(1) Require any bidder, contractor, subcontractor or material supplier to enter into or agree to enter into any prehire agreement, project labor agreement, collective bargaining agreement or any other similar agreement with one or more labor organizations on the same or other related construction projects; or

(2) discriminate against or treat differently any bidder, contractor, subcontractor or material supplier for becoming, refusing to become or remaining signatories or otherwise to agree to enter into any prehire agreement, project labor agreement, collective bargaining agreement or any other similar agreement with one or more labor organizations on the same or other related construction projects.

(b) Nothing in this section shall prohibit:

(1) Any bidder, contractor, subcontractor, construction manager, design-builder or material supplier of any tier from voluntarily entering into agreements described in paragraph (1) of subsection (a); or

(2) any contractor, construction manager or design builder from requiring its subcontractors or material suppliers of any tier to enter into a collective bargaining agreement.

New Sec. 4. No provision of this act shall be construed to:

(a) Prohibit any employer or other party from entering into any agreement or engaging in any other activity protected by the national labor relations act, 29 U.S.C. §§ 151 to 169; and

(b) interfere with labor relations of any party that is protected under the national labor relations act, 29 U.S.C. §§ 151 to 169.

New Sec. 5. For the purposes of this act:

(a) “Governmental entity” means a state agency or a municipality as the context requires.

(b) “Municipality” means the same as specified in K.S.A. 12-105a, and amendments thereto.

(c) “State agency” means the same as specified in K.S.A. 75-3728a, and amendments thereto.

Sec. 6. K.S.A. 2011 Supp. 75-3740 is hereby amended to read as follows: 75-3740. (a) Except as provided by K.S.A. 75-3740b, *and amendments thereto, and subsection (g)*, all contracts and purchases made by or under the supervision of the director of purchases or any state agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids.

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

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

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

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

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

(e) All bids with the names of the bidders and the amounts thereof, together with all documents pertaining to the award of a contract, shall be made a part of a file or record and retained by the director of purchases for five years, unless reproduced as provided in K.S.A. 75-3737, and amendments thereto, and shall be open to public inspection at all reasonable times.

(f) As used in this section and in K.S.A. 75-3741, and amendments thereto, “project architect” shall have the meaning ascribed thereto in K.S.A. 75-1251, and amendments thereto.

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

Sec. 7. K.S.A. 2011 Supp. 75-3740 is hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.