

HOUSE BILL No. 2675

By Committee on Appropriations

2-13

1 AN ACT concerning the department of administration; ~~relating to~~
2 ~~procurement negotiating committees; certified {contracting with~~
3 **certain}** businesses; amending K.S.A. 2013 Supp. 75-3740 and 75-
4 37,102 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 **{New Section 1. (a) In awarding any contract for the performance**
8 **of any job or service for which moneys appropriated are to be**
9 **expended, the secretary of administration, or the secretary's designee,**
10 **shall give a preference to disabled veteran businesses doing business as**
11 **Kansas firms, corporations or individuals, or which maintain Kansas**
12 **offices or places of business and shall have the goal of awarding at**
13 **least 3% of all such contracts to disabled veteran businesses.**

14 **(b) On or before October 1, 2015}{, the secretary of**
15 **administration shall file with the Kansas commission on veterans**
16 **affairs a report of the number of contracts awarded to disabled**
17 **veteran businesses during the fiscal year ending June 30, 2015, and the**
18 **number of such businesses that responded to solicitations of bids or**
19 **proposals issued by the department of administration during such**
20 **fiscal year.**

21 **(c) As used in this section:**

22 **(1) "Disabled veteran" means a person who has served in the**
23 **armed forces of the United States and who is entitled to compensation**
24 **for a service-connected disability, according to the laws administered**
25 **by the veterans administration, or who is entitled to compensation for**
26 **the loss, or permanent loss of use, of one or both feet or one or both**
27 **hands, or for permanent visual impairment of both eyes to a**
28 **prescribed degree.**

29 **(2) "Disabled veteran business" means a business: (A) Not less**
30 **than 51% of which is owned by one or more disabled veterans or, in**
31 **the case of a publicly owned business, not less than 51% of the stock of**
32 **which is owned by one or more disabled veterans; and (B) the**
33 **management and daily business operations of which are controlled by**
34 **one or more disabled veterans.**

1 ~~Section 1.~~ **{Sec. 2.}** K.S.A. 2013 Supp. 75-3740 is hereby amended to
2 read as follows: 75-3740.(a) Except as provided by K.S.A. 75-3740b, and
3 amendments thereto, and subsections (b) and (k), all contracts and
4 purchases made by or under the supervision of the director of purchases or
5 any state agency for which competitive bids are required shall be awarded
6 to the lowest responsible bidder, taking into consideration conformity with
7 the specifications, terms of delivery, and other conditions imposed in the
8 call for bids.

9 (b) A contract shall be awarded to a certified business which is also a
10 responsible bidder, whose total bid cost is not more than 10% higher than
11 the lowest competitive bid. Such contract shall contain a promise by the
12 certified business that the percentage of employees that are individuals
13 with disabilities will be maintained throughout the contract term and a
14 condition that the certified business shall not subcontract for goods or
15 services in an aggregate amount of more than 25% of the total bid cost.

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

18 (1) (A) A responsible bidder purchases from a qualified vendor goods
19 or services on the list certified by the director of purchases pursuant to
20 K.S.A. 75-3317 et seq., and amendments thereto, the dollar amount of
21 such purchases made during the previous fiscal year shall be deducted
22 from the original bid received from such bidder for the purpose of
23 determining the lowest responsible bid, except that such deduction shall
24 not exceed 10% of the original bid received from such bidder; or

25 (B) a responsible bidder purchases from a certified business the dollar
26 amount of such purchases made during the previous fiscal year shall be
27 deducted from the original bid received from such bidder for the purpose
28 of determining the lowest responsible bid, except that such deduction shall
29 not exceed 10% of the original bid received from such bidder;

30 (2) the dollar amount of the bid received from the lowest responsible
31 bidder from within the state is identical to the dollar amount of the bid
32 received from the lowest responsible bidder from without the state, the
33 contract shall be awarded to the bidder from within the state; and

34 (3) in the case of bids for paper products specified in K.S.A. 75-
35 3740b, and amendments thereto, the dollar amounts of the bids received
36 from two or more lowest responsible bidders are identical, the contract
37 shall be awarded to the bidder whose bid is for those paper products
38 containing the highest percentage of recycled materials.

39 (d) Any or all bids may be rejected, and a bid shall be rejected if it
40 contains any material alteration or erasure made after the bid is opened.
41 The director of purchases may reject the bid of any bidder who is in
42 arrears on taxes due the state, who is not properly registered to collect and
43 remit taxes due the state or who has failed to perform satisfactorily on a

1 previous contract with the state. The secretary of revenue is hereby
2 authorized to exchange such information with the director of purchases as
3 is necessary to effectuate the preceding sentence notwithstanding any other
4 provision of law prohibiting disclosure of the contents of taxpayer records
5 or information. Prior to determining the lowest responsible bidder on
6 contracts for construction of buildings or for major repairs or
7 improvements to buildings for state agencies, the director of purchases
8 shall consider: (1) The criteria and information developed by the secretary
9 of administration, with the advice of the state building advisory
10 commission to rate contractors on the basis of their performance under
11 similar contracts with the state, local governmental entities and private
12 entities, in addition to other criteria and information available; and (2) the
13 recommendations of the project architect, or, if there is no project
14 architect, the recommendations of the secretary of administration or the
15 agency architect for the project as provided in K.S.A. 75-1254, and
16 amendments thereto. In any case where competitive bids are required and
17 where all bids are rejected, new bids shall be called for as in the first
18 instance, unless otherwise expressly provided by law or the state agency
19 elects not to proceed with the procurement.

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

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

36 (g) As used in this section:

37 (1) "Certified business" means any business certified annually by the
38 department of administration that is a sole proprietorship, partnership,
39 association or corporation domiciled in Kansas, or any corporation, even if
40 a wholly owned subsidiary of a foreign corporation, ~~or a wholesaler~~ that:

41 (A) Does business primarily in Kansas or substantially all of its
42 production in Kansas;

43 (B) employs at least ~~20%~~ 10% of its employees who are individuals

1 with disabilities and reside in Kansas;

2 (C) offers to contribute at least 75% of the premium cost for
3 individual health insurance coverage for each employee. ~~The level of such~~
4 ~~coverage shall be at least equal to the level of benefits offered by the state~~
5 ~~employee benefit program established by K.S.A. 75-6501 et seq., and~~
6 ~~amendments thereto.~~ The department of administration shall require a
7 certification of these facts as a condition to the certified business being
8 awarded a contract pursuant to subsection (b); and

9 (D) does not employ individuals under a certificate issued by the
10 United States secretary of labor under subsection (c) of 29 U.S.C. § 214;

11 (2) "individuals with disabilities" or "individual with a disability"
12 means any individual who:

13 (A) Is certified by the Kansas department for aging and disability
14 services as having a physical or mental impairment which constitutes a
15 substantial barrier to employment;

16 (B) works a minimum number of hours per week for a certified
17 business necessary to qualify for health insurance coverage offered
18 pursuant to subsection (g)(1); and

19 (C) (i) is receiving services, has received services or is eligible to
20 receive services under a home and community based services program, as
21 defined by K.S.A. 39-7,100, and amendments thereto;

22 (ii) is employed by a charitable organization domiciled in the state of
23 Kansas and exempt from federal income taxation pursuant to section
24 501(c)(3) of the federal internal revenue code of 1986, as amended; or

25 (iii) is an individual with a severe and persistent mental illness, as
26 determined by a clinical or functional assessment approved by the Kansas
27 department for aging and disability services;

28 (3) "physical or mental impairment" means:

29 (A) Any physiological disorder or condition, cosmetic disfigurement
30 or anatomical loss substantially affecting one or more of the following
31 body systems: Neurological; musculoskeletal; special sense organs;
32 respiratory, including speech organs; cardiovascular; reproductive;
33 digestive; genitourinary; hemic and lymphatic; skin; or endocrine; or

34 (B) any mental or psychological disorder, such as intellectual
35 disability, organic brain syndrome, mental illness and specific learning
36 disabilities. The term "physical or mental impairment" includes, but is not
37 limited to, such diseases and conditions as orthopedic, visual, speech and
38 hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple
39 sclerosis and intellectual disability; ~~and~~ **and**

40 (4) "project architect" shall have the meaning ascribed thereto in
41 K.S.A. 75-1251, and amendments thereto; ~~and~~

42 ~~(5) "wholesaler" means any sole proprietorship, partnership,~~
43 ~~association or corporation domiciled in Kansas, or any corporation, even~~

1 ~~if a wholly owned subsidiary of a foreign corporation, engaged in the~~
2 ~~business of selling goods or services for resale, but not for resale to the~~
3 ~~ultimate purchaser of such goods or services.~~

4 (h) Any state agency authorized by the director of purchases to make
5 purchases pursuant to subsection (e) of K.S.A. 75-3739, and amendments
6 thereto, shall consider any unsolicited proposal for goods or services under
7 this section.

8 (i) The secretary of administration and the secretary for aging and
9 disability services, jointly, shall adopt rules and regulations as necessary to
10 effectuate the purpose of this section.

11 (j) On and after January 13, 2014, at the beginning of each regular
12 session of the legislature, the secretary of administration and the secretary
13 for aging and disability services shall submit to the social services budget
14 committee of the house of representatives and the appropriate
15 subcommittee of the committee on ways and means of the senate, a written
16 report on:

17 (1) The number of certified businesses certified by the department of
18 administration during the previous fiscal year;

19 (2) the number of certified businesses awarded contracts pursuant to
20 subsection (b) during the previous fiscal year;

21 (3) the number of contracts awarded pursuant to subsection (b) to
22 each certified business during the previous fiscal year;

23 (4) the number of individuals with disabilities removed from,
24 reinstated to or not reinstated to home and community based services or
25 other medicaid program services during the previous fiscal year as a result
26 of employment with a certified business;

27 (5) the number of individuals employed by each certified business
28 during the previous fiscal year; and

29 (6) the number of individuals with disabilities employed by each
30 certified business during the previous fiscal year.

31 (k) When a state agency is receiving bids to purchase passenger
32 motor vehicles, such agency shall follow the procedures prescribed in
33 subsection (c)(2), except in the case where one of the responsible bidders
34 offers motor vehicles which are assembled in Kansas. In such a case, 3%
35 of the bid of the responsible bidder which offers motor vehicles assembled
36 in Kansas shall be subtracted from the bid amount, and that amount shall
37 be used to determine the lowest bid pursuant to subsection (c)(2). This
38 subsection shall only apply to bids which match the exact motor vehicle
39 specifications of the agency purchasing passenger motor vehicles.

40 Sec. 2. ~~{3.}~~ K.S.A. 2013 Supp. 75-37,102 is hereby amended to read
41 as follows: 75-37,102. (a) Upon request of the chief administrative officer
42 of a state agency and subject to the approval of the secretary of
43 administration, the director of purchases may convene a procurement

1 negotiating committee to obtain services or technical products for the state
2 agency.

3 (b) Each procurement negotiating committee shall be composed of:
4 (1) The director of purchases, or a person designated by the director; (2)
5 the chief administrative officer of the state agency desiring to make the
6 procurement, or a person designated by the officer; and (3) the secretary of
7 administration, or a person designated by the secretary or, if a procurement
8 involves information technology or services, the executive chief
9 information technology officer or a person designated by the executive
10 chief information technology officer.

11 (c) The negotiating committee is authorized to negotiate for the
12 procuring state agency contracts with qualified parties to provide services
13 or technical products needed by the state agency.

14 (d) Prior to negotiating for the procurement, a notice to bidders first
15 shall be published in the Kansas register. Upon receipt of bids or
16 proposals, the committee may negotiate with one or more of the firms *or*
17 *certified businesses* submitting bids or proposals and select from among
18 those submitting such bids or proposals the party to contract with to
19 provide the services or technical products. *In selecting the party to*
20 *contract with to provide services or technical products under this section,*
21 *the committee shall consider whether such party is a certified business or*
22 *purchased goods or services from a qualified vendor on the list certified*
23 *by the director of purchases pursuant to K.S.A. 75-3317 et seq., and*
24 *amendments thereto.*

25 (e) Contracts entered into pursuant to this section shall not be subject
26 to the provisions of K.S.A. 75-3738 through 75-3740a, and amendments
27 thereto. Meetings to conduct negotiations pursuant to this section shall not
28 be subject to the provisions of K.S.A. 75-4317 through 75-4320a, and
29 amendments thereto. The director of purchases shall submit a report at
30 least once in each calendar quarter to the legislative coordinating council
31 and the chairpersons of the senate committee on ways and means and the
32 house of representatives committee on appropriations of all contracts
33 entered into pursuant to this section. In the event that the negotiating
34 committee selects a bid which is not the lowest bid on a given contract, the
35 directors report shall contain a rationale explaining why the lowest bidder
36 was not awarded the contract.

37 (f) Nothing in this section shall be construed as requiring either
38 negotiations pursuant to this section or bids pursuant to K.S.A. 75-3739,
39 and amendments thereto, for the procurement of professional services or
40 services for which, in the judgment of the director of purchases,
41 meaningful specifications cannot be determined.

42 (g) *As used in this section, "certified business" shall mean the same as*
43 *in K.S.A. 75-3740, and amendments thereto.*

1 Sec.-~~3.~~ {**4.**} K.S.A. 2013 Supp. 75-3740 and 75-37,102 are hereby
2 repealed.

3 Sec.-~~4.~~ {**5.**} This act shall take effect and be in force from and after its
4 publication in the statute book.