

HOUSE BILL No. 2455

By Committee on Commerce, Labor and Economic Development

1-16

1 AN ACT concerning state contracts; relating to bid preferences for
2 business partnerships with the federal job corps program; amending
3 K.S.A. 75-3740 and repealing the existing section.
4

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

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

14 (b) (1) A contract shall be awarded to a certified business or disabled
15 veteran business ~~which~~ that is also a responsible bidder, whose total bid
16 cost is not more than 10% higher than the lowest competitive bid. Such
17 contract shall contain a promise by the certified business that the
18 percentage of employees that are individuals with disabilities will be
19 maintained throughout the contract term and a condition that the certified
20 business shall not subcontract for goods or services in an aggregate
21 amount of more than 25% of the total bid cost.

22 (2) *Except when a contract is awarded as provided by subsection (b)*
23 *(1), a contract shall be awarded to a job corps-aligned business that is*
24 *also a responsible bidder; whose total bid cost is not more than 10%*
25 *higher than the lowest competitive bid. Such contract shall contain:*

26 (A) *A promise by the job corps-aligned business that at least 5% of*
27 *its employees are job corps work-based learning program graduates and*
28 *the percentage of its employees that are job corps work-based learning*
29 *program graduates will not decrease throughout the contract term, or that*
30 *the business has entered into a memorandum of understanding with job*
31 *corps for a work-based learning program that will be maintained*
32 *throughout the contract term, whereby at least 5% of its employees are job*
33 *corps work-based learning program students; and*

34 (B) *a condition that the job corps-aligned business shall not*
35 *subcontract for goods or services in an aggregate amount of more than*
36 *25% of the total bid cost.*

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

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

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

15 (2) the dollar amount of the bid received from the lowest responsible
16 bidder from within the state is identical to the dollar amount of the bid
17 received from the lowest responsible bidder from without the state, the
18 contract shall be awarded to the bidder from within the state; and

19 (3) in the case of bids for paper products specified in K.S.A. 75-
20 3740b, and amendments thereto, the dollar amounts of the bids received
21 from two or more lowest responsible bidders are identical, the contract
22 shall be awarded to the bidder whose bid is for those paper products
23 containing the highest percentage of recycled materials.

24 (d) Any or all bids may be rejected, and a bid shall be rejected if it
25 contains any material alteration or erasure made after the bid is opened.
26 The director of purchases may reject the bid of any bidder who is in
27 arrears on taxes due the state, who is not properly registered to collect and
28 remit taxes due the state or who has failed to perform satisfactorily on a
29 previous contract with the state. The secretary of revenue is hereby
30 authorized to exchange such information with the director of purchases as
31 is necessary to effectuate the preceding sentence notwithstanding any other
32 provision of law prohibiting disclosure of the contents of taxpayer records
33 or information. Prior to determining the lowest responsible bidder on
34 contracts for construction of buildings or for major repairs or
35 improvements to buildings for state agencies, the director of purchases
36 shall consider: (1) The criteria and information developed by the secretary
37 of administration, with the advice of the state building advisory
38 commission to rate contractors on the basis of their performance under
39 similar contracts with the state, local governmental entities and private
40 entities, in addition to other criteria and information available; and (2) the
41 recommendations of the project architect, or, if there is no project
42 architect, the recommendations of the secretary of administration or the
43 agency architect for the project as provided in K.S.A. 75-1254, and

1 amendments thereto. In any case where competitive bids are required and
2 where all bids are rejected, new bids shall be called for as in the first
3 instance, unless otherwise expressly provided by law or the state agency
4 elects not to proceed with the procurement.

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

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

21 (g) As used in this section:

22 (1) "Certified business" means any business certified as provided by
23 subsection ~~(h)~~ (m) by the department of administration that is a sole
24 proprietorship, partnership, association or corporation domiciled in
25 Kansas, or any corporation, even if a wholly owned subsidiary of a foreign
26 corporation, that:

27 (A) Does business primarily in Kansas or substantially all of its
28 production in Kansas;

29 (B) employs at least 10% of its employees who are individuals with
30 disabilities and reside in Kansas;

31 (C) offers to contribute at least 75% of the premium cost for
32 individual health insurance coverage for each employee. The department
33 of administration shall require a certification of these facts as a condition
34 to the certified business being awarded a contract pursuant to subsection
35 (b)(1); and

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

38 (2) "individuals with disabilities" or "individual with a disability"
39 means any individual who:

40 (A) Is certified by the Kansas department for aging and disability
41 services or by the Kansas department for children and families which
42 administers the rehabilitation services program as having a physical or
43 mental impairment which constitutes a substantial barrier to employment;

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

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

7 (ii) is employed by a charitable organization domiciled in the state of
8 Kansas and exempt from federal income taxation pursuant to section
9 501(c)(3) of the federal internal revenue code of 1986, as amended; or

10 (iii) is an individual with a disability pursuant to the disability
11 standards established by the social security administration as determined
12 by the Kansas disability determination services under the Kansas
13 department for children and families;

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

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

20 (B) any mental or psychological disorder, such as intellectual
21 disability, organic brain syndrome, mental illness and specific learning
22 disabilities. The term "physical or mental impairment" includes, but is not
23 limited to, such diseases and conditions as orthopedic, visual, speech and
24 hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple
25 sclerosis and intellectual disability; and

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

28 (5) "disabled veteran" means a person verified by the Kansas
29 commission on veterans affairs office to have served in the armed forces of
30 the United States and who is entitled to compensation for a service-
31 connected disability, according to the laws administered by the veterans
32 administration, or who is entitled to compensation for the loss, or
33 permanent loss of use, of one or both feet or one or both hands, or for
34 permanent visual impairment of both eyes to a prescribed degree;

35 (6) "disabled veteran business" means a business certified annually
36 by the department of administration that is a sole proprietorship,
37 partnership, association or corporation domiciled in Kansas, or any
38 corporation, even if a wholly owned subsidiary of a foreign corporation,
39 and is verified by the commission on veterans affairs office that:

40 (A) Not less than 51% is owned by one or more disabled veterans or,
41 in the case of a publicly owned business, not less than 51% of the stock
42 owned by one or more disabled veterans;

43 (B) the management and daily business operations are controlled by

1 one or more disabled veterans; and

2 (C) such business maintains the requirements of subparagraphs (A)
3 and (B) during the entire contract term;

4 (7) *"job corps-aligned business" means a business that is a sole*
5 *proprietorship, partnership, association or corporation domiciled in*
6 *Kansas, or any corporation, even if a wholly owned subsidiary of a*
7 *foreign corporation, that:*

8 (A) *Does business primarily in Kansas or substantially all of its*
9 *production in Kansas;*

10 (B) *employs at least 5% of its employees who are graduates of a job*
11 *corps work-based learning program or has entered into and is*
12 *maintaining a memorandum of understanding with the job corps for a*
13 *work-based learning program, whereby at least 5% of its employees are*
14 *job corps work-based learning program students; and*

15 (C) *offers to contribute at least 75% of the premium cost for*
16 *individual health insurance coverage for each employee, except for job*
17 *corps work-based learning program students who are considered*
18 *employees of the federal government under federal law. The department of*
19 *administration shall require a certification of these facts as a condition to*
20 *the job corps-aligned business being awarded a contract pursuant to*
21 *subsection (b)(2); and*

22 (D) *maintains the requirements of subparagraphs (A), (B) and (C)*
23 *during the entire contract term;*

24 (8) *"job corps" means the federal job corps program authorized*
25 *under the workforce innovation and opportunities act of 2014;*

26 (9) *"work-based learning program" means a job corps-established*
27 *program for on-the-job training and education of individuals who are*
28 *enrolled with job corps that is conducted pursuant to a memorandum of*
29 *understanding between job corps and a private employer.*

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

33 (i) The secretary of administration and the secretary for aging and
34 disability services, jointly, shall adopt rules and regulations as necessary to
35 effectuate the ~~purpose~~ purposes of this section, including rules and
36 regulations pertaining to the awarding of contracts to certified businesses
37 or disabled veteran businesses.

38 ~~(j) On and after January 13, 2014,~~ At the beginning of each regular
39 session of the legislature, the secretary of administration and the secretary
40 for aging and disability services shall submit to the social services budget
41 committee of the house of representatives and the appropriate
42 subcommittee of the committee on ways and means of the senate, a written
43 report on:

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

3 (2) the number of certified businesses awarded contracts pursuant to
4 subsection (b)(1) during the previous fiscal year;

5 (3) the number of contracts awarded pursuant to subsection (b)(1) to
6 each certified business during the previous fiscal year;

7 (4) the number of individuals with disabilities removed from,
8 reinstated to or not reinstated to home and community-based services or
9 other medicaid program services during the previous fiscal year as a result
10 of employment with a certified business;

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

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

15 (k) *On and after January 13, 2020, at the beginning of each regular
16 session of the legislature, the secretary of administration and the secretary
17 of labor shall jointly submit to the commerce, labor and economic
18 development committee of the house of representatives, the committee on
19 commerce of the senate and the appropriate subcommittee of the
20 committee on ways and means of the senate a written report on the job
21 corps-aligned business contract preference program that includes the
22 following information:*

23 (1) *The number of job corps-aligned businesses certified by the
24 department of administration as eligible for the award of a contract
25 pursuant to subsection (b)(2) during the previous fiscal year;*

26 (2) *the number of certified job corps-aligned businesses awarded
27 contracts pursuant to subsection (b)(2) during the previous fiscal year;
28 and*

29 (3) *the number of contracts awarded pursuant to subsection (b)(2) to
30 each certified job corps-aligned business during the previous fiscal year.*

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

40 (m) The secretary of administration shall certify that a business
41 meets the requirements for a certified business as defined in subsection
42 (g), and shall recertify such business as having met such requirements
43 every three years thereafter. Businesses already certified for 2017 as

1 provided in this section on July 1, 2017, shall be recertified every three
2 years thereafter.

3 Sec. 2. K.S.A. 75-3740 is hereby repealed.

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