

HOUSE BILL No. 2356

By Committee on Commerce, Labor and Economic Development

2-10

1 AN ACT concerning state contracts and purchases; relating to competitive
2 bids; bid preferences to certified businesses; recertification; amending
3 K.S.A. 2016 Supp. 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. 2016 Supp. 75-3740 is hereby amended to read as
7 follows: 75-3740. (a) Except as provided by K.S.A. 75-3740b, and
8 amendments thereto, and subsections (b) and (k), all contracts and
9 purchases made by or under the supervision of the director of purchases or
10 any state agency for which competitive bids are required shall be awarded
11 to the lowest responsible bidder, taking into consideration conformity with
12 the specifications, terms of delivery, and other conditions imposed in the
13 call for bids.

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

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

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

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

36 (2) the dollar amount of the bid received from the lowest responsible

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

4 (3) in the case of bids for paper products specified in K.S.A. 75-
5 3740b, and amendments thereto, the dollar amounts of the bids received
6 from two or more lowest responsible bidders are identical, the contract
7 shall be awarded to the bidder whose bid is for those paper products
8 containing the highest percentage of recycled materials.

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

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

43 (f) All bids with the names of the bidders and the amounts thereof,

1 together with all documents pertaining to the award of a contract, shall be
 2 made a part of a file or record and retained by the director of purchases for
 3 five years, unless reproduced as provided in K.S.A. 75-3737, and
 4 amendments thereto, and shall be open to public inspection at all
 5 reasonable times.

6 (g) As used in this section:

7 (1) "Certified business" means any business certified ~~annually as~~
 8 *provided by subsection (l)* by the department of administration that is a
 9 sole proprietorship, partnership, association or corporation domiciled in
 10 Kansas, or any corporation, even if a wholly owned subsidiary of a foreign
 11 corporation, that:

12 (A) Does business primarily in Kansas or substantially all of its
 13 production in Kansas;

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

16 (C) offers to contribute at least 75% of the premium cost for
 17 individual health insurance coverage for each employee. The department
 18 of administration shall require a certification of these facts as a condition
 19 to the certified business being awarded a contract pursuant to subsection
 20 (b); and

21 (D) does not employ individuals under a certificate issued by the
 22 United States secretary of labor under ~~subsection (e)~~ of 29 U.S.C. §
 23 214(c);

24 (2) "individuals with disabilities" or "individual with a disability"
 25 means any individual who:

26 (A) Is certified by the Kansas department for aging and disability
 27 services *or by the Kansas department for children and families which*
 28 *administers the rehabilitation services program* as having a physical or
 29 mental impairment which constitutes a substantial barrier to employment;

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

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

36 (ii) is employed by a charitable organization domiciled in the state of
 37 Kansas and exempt from federal income taxation pursuant to section
 38 501(c)(3) of the federal internal revenue code of 1986, as amended; or

39 (iii) is an individual with a severe and persistent mental illness, as
 40 determined by a clinical or functional assessment approved by the Kansas
 41 department for aging and disability services *or by the Kansas department*
 42 *for children and families which administers the rehabilitation services*
 43 *program*;

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

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

7 (B) any mental or psychological disorder, such as intellectual
8 disability, organic brain syndrome, mental illness and specific learning
9 disabilities. The term "physical or mental impairment" includes, but is not
10 limited to, such diseases and conditions as orthopedic, visual, speech and
11 hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple
12 sclerosis and intellectual disability; and

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

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

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

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

30 (B) the management and daily business operations are controlled by
31 one or more disabled veterans; and

32 (C) such business maintains the requirements of subparagraphs (A)
33 and (B) during the entire contract term.

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

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

41 (j) On and after January 13, 2014, at the beginning of each regular
42 session of the legislature, the secretary of administration and the secretary
43 for aging and disability services shall submit to the social services budget

1 committee of the house of representatives and the appropriate
2 subcommittee of the committee on ways and means of the senate, a written
3 report on:

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

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

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

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

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

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

18 (k) When a state agency is receiving bids to purchase passenger
19 motor vehicles, such agency shall follow the procedures prescribed in
20 subsection (c)(2), except in the case where one of the responsible bidders
21 offers motor vehicles which are assembled in Kansas. In such a case, 3%
22 of the bid of the responsible bidder which offers motor vehicles assembled
23 in Kansas shall be subtracted from the bid amount, and that amount shall
24 be used to determine the lowest bid pursuant to subsection (c)(2). This
25 subsection shall only apply to bids which match the exact motor vehicle
26 specifications of the agency purchasing passenger motor vehicles.

27 *(l) The secretary of administration shall certify that a business meets*
28 *the requirements for a certified business as defined in subsection (g), and*
29 *shall recertify such business as having met such requirements every three*
30 *years thereafter. Businesses already certified for 2017 as provided in this*
31 *section on July 1, 2017, shall be recertified every three years thereafter.*

32 Sec. 2. K.S.A. 2016 Supp. 75-3740 is hereby repealed.

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