

HOUSE BILL No. 2356

AN ACT concerning state contracts and purchases; relating to competitive bids; bid preferences to certified businesses; recertification; amending K.S.A. 2016 Supp. 75-3740 and repealing the existing section.

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

Section 1. K.S.A. 2016 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 subsections (b) and (k), 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) A contract shall be awarded to a certified business or disabled veteran business which is also a responsible bidder, whose total bid cost is not more than 10% higher than the lowest competitive bid. Such contract shall contain a promise by the certified business that the percentage of employees that are individuals with disabilities will be maintained throughout the contract term and a condition that the certified business shall not subcontract for goods or services in an aggregate amount of more than 25% of the total bid cost.

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

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

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

(2) 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

(3) 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.

(d) 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.

(e) 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.

(f) 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.

(g) As used in this section:

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

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

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

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

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

(2) “individuals with disabilities” or “individual with a disability” means any individual who:

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

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

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

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

(iii) is an individual with ~~a severe and persistent mental illness, as determined by a clinical or functional assessment approved by the Kansas department for aging and disability services~~ *disability pursuant to the disability standards established by the social security administration as determined by the Kansas disability determination services under the Kansas department for children and families;*

(3) “physical or mental impairment” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) When a state agency is receiving bids to purchase passenger motor vehicles, such agency shall follow the procedures prescribed in subsection (c)(2), 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 (c)(2). This subsection shall only apply to bids which match the exact motor vehicle specifications of the agency purchasing passenger motor vehicles.

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

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

Sec. 3. 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 passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.