

**CHAPTER 162****(SB 45)**

AN ACT relating to state contracting practices.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 3 of this Act:*

- (1) *"Contract" means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and*
- (2) *"Public agency" has the same meaning as in KRS 61.805.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

*The General Assembly declares:*

- (1) *A public purpose of the Commonwealth is served by providing preference to Kentucky residents in contracts by public agencies; and*
- (2) *Providing preference to Kentucky residents equalizes the competition with other states that provide preference to their residents.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

- (1) *Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.*
- (2) *A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:*
  - (a) *Is authorized to transact business in the Commonwealth; and*
  - (b) *Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.*
- (3) *A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.*
- (4) *If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.*
- (5) *This section shall apply to all contracts funded or controlled in whole or in part by a public agency.*
- (6) *The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.*
- (7) *The preference for resident bidders shall not be given if the preference conflicts with federal law.*
- (8) *Any public agency soliciting or advertising for bids for contracts shall make the provisions of Sections 1 to 3 of this Act part of the solicitation or advertisement for bids.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*As used in this section:*

- (1) *"Local government" means city, county, urban-county, consolidated local government, charter county, unified county, or special district.*

- (2) *For all contracts awarded by a local government, the local government shall apply the reciprocal preference for resident bidders described in Section 3 of this Act.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 176 IS CREATED TO READ AS FOLLOWS:

- (1) *Prior to a contract being awarded for the construction phase of a project, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder and shall be applied after the opening of the bids.*
- (2) *A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the department advertises for bids:*
- (a) *Is authorized to transact business in the Commonwealth; and*
- (b) *Has for one (1) year prior to and through the date of advertisement, filed Kentucky corporate or other business income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.*
- (3) *A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.*
- (4) *The department shall use the list and administrative regulations described in subsection (6) of Section 3 of this Act to determine the preferences to be given in awarding a contract.*
- (5) *The preference shall not be given if the preference conflicts with federal law.*

➔Section 6. KRS 45A.050 is amended to read as follows:

- (1) Except as provided in KRS 45A.800 to 45A.835 and KRS Chapters 175, 176, 177, and 180, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction now vested in or exercised by any state agency under the several statutes relating thereto, are hereby transferred to the secretary of the Finance and Administration Cabinet as provided in this code, subject to the provisions of subsection (2) of this section.
- (2) Unless otherwise ordered by the secretary of the Finance and Administration Cabinet, the acquisition of the following shall not be required through the Finance and Administration Cabinet:
- (a) Works of art for museum and public display;
- (b) Published books, maps, periodicals, and technical pamphlets; and
- (c) Services of visiting speakers, professors, and performing artists.
- (3) The Finance and Administration Cabinet shall include in all state agency price contracts for the purchase of materials or supplies a provision that, as approved by the secretary of the Finance and Administration Cabinet, any political subdivision, including cities of all classes, counties, school districts, or special districts, may participate in these contracts to the same extent as the Commonwealth. Any political subdivision may purchase materials and supplies in accordance with a contract for supplies and materials entered into by the Finance and Administration Cabinet for the Commonwealth, including those contracts negotiated by the cabinet with vendors who maintain a General Services Administration price agreement as provided in KRS 45A.045(8). Political subdivisions of the Commonwealth must comply with other provisions of the Kentucky Revised Statutes which require purchase by competitive bidding, before participating in the contract, unless the state contract has been let by competitive bidding, or the contract was negotiated as provided in KRS 45A.045(8).
- (4) The Finance and Administration Cabinet shall inform the Governor's Office for Local Development, which shall then inform the appropriate purchasing agent of each political subdivision interested in participating under this section, of all state agency contracts in effect between the Commonwealth and vendors.
- (5) The secretary of the Finance and Administration Cabinet shall promulgate administrative regulations necessary for the implementation of this section and necessary to provide that the Commonwealth be reimbursed for any additional expenses incurred by the Commonwealth in allowing political subdivisions to participate in contracts with vendors.

- (6) The Finance and Administration Cabinet shall comply with all provisions relating to the methods of purchasing in the Kentucky Revised Statutes. This section is not intended to repeal or otherwise affect any provision of the Kentucky Revised Statutes regarding purchasing methods of the Finance and Administration Cabinet.
- (7) *Notwithstanding any other statute to the contrary, all public agencies as defined in Section 1 of this Act shall comply with the provisions for reciprocal preference for resident bidders in Sections 1 to 3 of this Act.*

➔Section 7. KRS 45A.070 is amended to read as follows:

As used in KRS 45A.070 to 45A.180, unless the context in which they are used clearly requires a different meaning:

- (1) *"Best value" means a procurement in which the decision is based on the primary objective of meeting the specific business requirements and best interests of the Commonwealth. These decisions shall be based on objective and quantifiable criteria that shall include price and the reciprocal preference for a resident bidder required under Section 3 of this Act that have been communicated to the offerors as set forth in the invitation for bids.*
- (2) "Cost-reimbursement contract" means a contract under which the Commonwealth reimburses the contractor for those contract costs, within a stated ceiling, which are allowable and allocable in accordance with cost principles as provided in KRS 45A.215, and a fee, if any.
- (3)~~(2)~~ "Established catalogue price" means the price included in the most current catalogue, price list, schedule, or other form that:
- (a) Is regularly maintained by the manufacturer or vendor of an item;
  - (b) Is either published or otherwise available for inspection by customers; and
  - (c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.

~~{(3) "Best value" means a procurement in which the decision is based on the primary objective of meeting the specific business requirements and best interests of the Commonwealth. These decisions shall be based on objective and quantifiable criteria that shall include price and that have been communicated to the offerors as set forth in the invitation for bids.}~~

- (4) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.080 of this code.
- (5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.085, 45A.090, 45A.095, 45A.100, or 45A.180.
- (6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (7) "Responsive bidder" means a person who has submitted a bid under KRS 45A.080 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

➔Section 8. KRS 45A.085 is amended to read as follows:

- (1) When, under administrative regulations promulgated by the secretary or under KRS 45A.180, the purchasing officer determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in KRS 45A.095 and 45A.100, a contract may be awarded by competitive negotiation.
- (2) Adequate public notice of the request for proposals shall be given in the same manner and circumstances as provided in KRS 45A.080(3).
- (3) Contracts other than contracts for projects utilizing an alternative project delivery method under KRS 45A.180 may be competitively negotiated when it is determined in writing by the purchasing officer that the bids received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate.

- (4) Contracts for projects utilizing an alternative project delivery method shall be processed in accordance with KRS 45A.180.
- (5) The request for proposals shall indicate the relative importance of price and other evaluation factors.
- (6) Award shall be made to the responsible *and responsive* offeror whose proposal is determined in writing to be the most advantageous to the Commonwealth, taking into consideration price and the evaluation factors set forth in the request for proposals *and the reciprocal preference for resident bidders required under Section 3 of this Act*.
- (7) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
  - (a) With respect to prices, where the prices are fixed by law or administrative regulation, except that consideration shall be given to competitive terms and conditions;
  - (b) Where time of delivery or performance will not permit discussions; or
  - (c) Where it can be clearly demonstrated and documented from the existence of adequate competition or prior experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable best value procurement, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

➔Section 9. KRS 45A.090 is amended to read as follows:

- (1) In the event that all bids submitted pursuant to competitive sealed bidding under KRS 45A.080 result in bid prices in excess of the funds available for the purchase, and the chief purchasing officer determines in writing:
  - (a) That there are no additional funds available from any source so as to permit an award to the responsive and responsible bidder whose bid offers the best value; and
  - (b) The best interest of the state will not permit the delay attendant to a resolicitation under revised specifications, or for revised quantities, under competitive sealed bidding as provided in KRS 45A.080, then a negotiated award may be made as set forth in subsections (2) or (3) of this section.
- (2) Where there is more than one (1) bidder, competitive negotiations pursuant to KRS 45A.085(3) shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined in writing to be the most responsive and responsible bidders, based on criteria contained in the bid invitation *and the reciprocal preference for resident bidders under Section 3 of this Act*. Such competitive negotiations shall be conducted under the following restrictions:
  - (a) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and
  - (b) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of best value.
- (3) Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with KRS 45A.095.

➔Section 10. KRS 45A.180 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet shall promulgate administrative regulations by October 15, 2003, providing for as many alternative methods of management of construction contracting as he *or she* may determine to be feasible; setting forth criteria to be used in determining which method of management of construction is to be used for a particular project; establishing a model process parallel to the selection committee procedures established in 45A.810 for the procurement of alternative project services of "construction management-at-risk" and "design-build," and for a "construction manager-agency;" and providing that the chief purchasing officer shall execute and include in the contract file a written statement setting forth the facts recommending that a particular method of management of construction contracting be used. The administrative regulations shall include the establishment of:

- (a) The relative weighing between qualifications and price, *including the reciprocal preference for resident bidders required under Section 3 of this Act*; and
  - (b) The level of stipend, if any, available for the various types of projects.
- (2) When a request for proposal for a project utilizing an alternative project delivery method is issued, the contracting body shall transmit a copy of the request for proposal to the Capital Projects and Bond Oversight Committee staff.
  - (3) Upon issuance of the contract for a project utilizing an alternative project delivery method, the contracting body shall submit the contract to the Government Contract Review Committee for review in accordance with KRS 45A.690 to 45A.725. The contracting body shall insure the contract clearly identifies to the committee that an alternative project delivery method is being utilized. Upon disapproval of or objection to the contract by the committee, the contracting body shall determine whether the contract shall be revised to comply with the objections of the committee, be canceled, or remain in effect. Subsequent contract amendments relating to change orders shall not be required to be submitted to the Government Contract Review Committee.
  - (4) A request for proposal for a project utilizing an alternative project delivery method under this section shall specifically state the evaluation factors and the relative weight of each to be used in the scoring of awards.
  - (5) Any governing body of a postsecondary institution that manages its capital construction program under KRS 164A.580 shall adhere to the regulations promulgated under this section when utilizing an alternative project delivery method for capital projects, and shall report to legislative committees as specified in this section.
  - (6) Any corporation as described by KRS 45.750(2)(c) or as created under the Kentucky Revised Statutes as a governmental agency and instrumentality of the Commonwealth that manages its capital construction program shall adhere to the regulations promulgated under this section when utilizing an alternative project delivery method for capital projects, and shall report to legislative committees as specified in this section.

➔Section 11. KRS 45A.182 is amended to read as follows:

- (1) When a capital project is to be constructed utilizing the design-build method in accordance with KRS 45A.180, a process parallel to the selection committee procedures established in KRS 45A.810 shall apply when procuring a design-build team and shall incorporate the following:
  - (a) The evaluation process may include a multiple phased proposal that is based on qualifications, experience, technical requirements, guaranteed maximum price, and other criteria as set forth in the request for proposal. The guaranteed maximum price component shall be submitted by the offeror independently of other documents and shall be held by the executive director of the Office of Facility Development and Efficiency.
  - (b) Each evaluator shall independently score each phase and indicate a total score for all evaluation factors as set forth in the request for proposal.
  - (c) Final phase proposals from the offerors on the short list shall be evaluated and scored by the evaluation committee members who shall not have knowledge of the guaranteed maximum price component. Each evaluator shall independently score the final phase proposals and indicate a total score. A total average score shall be calculated for each offeror. Then each offeror's respective score for the guaranteed maximum price *and any reciprocal preference for resident bidders required under Section 3 of this Act* shall be added. The offeror with the highest point total in the final phase shall receive the contract award unless the guaranteed maximum price proposal is in excess of the authorized budget. If two (2) or more of the offerors achieve the same highest point total at the end of the final phase scoring, the purchasing officer shall request best-and-final proposals from each offeror.
  - (d) If the guaranteed maximum price of the offeror with the highest point total in the final phase is greater than the amount of funds identified in the request for proposal, then competitive negotiations may be conducted with the offerors under the following restrictions:
    - 1. If discussion pertaining to the revision of the specifications or quantities are held, the offerors shall be afforded an opportunity to take part in such discussions.
    - 2. Written revisions of the specifications shall be made available to each of the offerors and shall provide for an expeditious response.

3. Information derived from revised maximum guaranteed price proposals shall not be disclosed to competing offerors.
- (2) A request for proposal or other solicitation may be canceled, or all proposals may be rejected, if it is determined in writing that such action is taken in the best interest of the Commonwealth and approved by the purchasing officer.

➔Section 12. KRS 45A.365 is amended to read as follows:

- (1) All contracts or purchases shall be awarded by competitive sealed bidding, except as otherwise provided by KRS 45A.370 to 45A.385 and for the purchase of wholesale electric power by municipal utilities as provided in KRS 96.901(1).
- (2) The invitation for bids shall state that the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids. ***The invitation for bids shall include the reciprocal preference for resident bidders described in Section 3 of this Act.***
- (3) Adequate public notice of the invitation for bids shall be given prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication in a newspaper of general circulation in the local jurisdiction not less than seven (7) days before the date set for the opening of the bids. The public notice shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.
- (4) The bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.
- (5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price ***after the application of any reciprocal preference for resident bidders required by Section 3 of this Act.***
- (6) The local public agency may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

➔Section 13. KRS 45A.370 is amended to read as follows:

- (1) A local public agency may contract or purchase through competitive negotiation upon a written finding that:
- Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or
  - Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or
  - The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsible bidder is notified of the intention to negotiate and is given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsible bidder.
- (2) Proposals shall be solicited through public notice pursuant to KRS 45A.365(3) or any other means which can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The request for proposals shall indicate the factors to be considered in the evaluation, ***including the reciprocal preference for resident bidders required by Section 3 of this Act,*** and the relative importance of each factor.
- (3) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
- With respect to prices, where such prices are fixed by law or regulation except that consideration shall be given to competitive terms and conditions; or

- (b) Where time of delivery or performance will not permit discussions; or
  - (c) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular supply, service, or construction item that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of the possibility that award may be made on the basis of initial offers.
- (4) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions. A request for proposals based on revised specifications or quantities shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price *after application of the reciprocal preference for resident bidders required by Section 3 of this Act* submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that an award is to be made without discussion except as herein provided.
- (5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the local public agency based upon the evaluation factors set forth in the request for proposals *and the reciprocal preference for resident bidders required by Section 3 of this Act*.

➔Section 14. KRS 45A.375 is amended to read as follows:

- (1) In the event that all bids submitted pursuant to competitive sealed bidding under KRS 45A.365 result in bid prices in excess of the funds available for the purchase, and the local public agency determines in writing:
- (a) That there are no additional funds then available from any source so as to permit an award to the lowest responsive and responsible bidder; and
  - (b) The best interest of the local public agency will not permit the delay attendant to a resolicitation under revised specifications or revised quantities under competitive sealed bidding as provided in KRS 45A.365; then a negotiated award may be made as set forth in subsections (2) or (3) of this section.
- (2) Where there is more than one (1) bidder, competitive negotiations pursuant to KRS 45A.370 shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined in writing by the local public agency to be the lowest responsive and responsible bidders to the competitive sealed bid invitation *after application of the reciprocal preference for resident bidders required in Section 3 of this Act*. Such competitive negotiations shall be conducted under the following restrictions:
- (a) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and
  - (b) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror *after application of the reciprocal preference for resident bidders required in Section 3 of this Act*. No discussion shall be conducted with offerors after submission of proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that award is to be made without discussions except as herein provided.
- (3) Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with KRS 45A.380.
- (4) Where, after invitation for bids has been made in accordance with KRS 45A.365 and no bids have been received from responsive and responsible bidders, the local public agency may proceed to acquire the supplies, services, or construction by noncompetitive negotiations in accordance with KRS 45A.380.

➔Section 15. KRS 45A.695 is amended to read as follows:

- (1) Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract entered into by any contracting body or incur expenditures under a tax incentive agreement until notification of

the personal service contract or tax incentive agreement is filed with the committee. Each personal service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.

- (2) Each personal service contract, tax incentive agreement, and memorandum of agreement shall be filed with the committee prior to the effective date and shall be accompanied by a completed proof of necessity form as established by the committee by promulgation of an administrative regulation, or equivalent information if submitted electronically. The proof of necessity form shall document:
  - (a) The need for the service or benefit to the Commonwealth of the tax incentive agreement;
  - (b) For personal service contracts and memoranda of agreement, the unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service;
  - (c) The total projected cost of the contract or agreement and source of funding;
  - (d) The total projected duration of the contract or tax incentive agreement;
  - (e) Payment information, in detail;
  - (f) In the case of memoranda of agreement or similar device, the reason for exchanging resources or responsibilities; and
  - (g) Such other information as the committee deems appropriate.
- (3) Adequate notice of the need for a personal service contract shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, ~~and~~ state the relative importance of particular qualifications, **and include the reciprocal preference for resident bidders required by Section 3 of this Act.**
- (4) The head of the contracting body or his or her designee may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (5) Award shall be made to the offeror determined by the head of the contracting body, or his or her designee, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.
- (6) The committee shall maintain a record or have readily accessible records of the date on which each personal service contract, tax incentive agreement, and memorandum of agreement was received and shall maintain or have access to electronic or paper files on all personal service contracts, tax incentive agreements, and memoranda of agreement. Except for records exempt from inspection under KRS 61.870 to 61.884, all personal service contracts, tax incentive agreements, and memoranda of agreement shall be made available for public inspection.
- (7) Payment on personal service contracts, tax incentive agreements, and memoranda of agreement submitted to the committee for approval shall not be made for services rendered or projects undertaken after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary of the Finance and Administration Cabinet. All personal service contracts, tax incentive agreements, and memoranda of agreement shall contain a provision that stipulates that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.
- (8) In the event of a governmental emergency as defined under KRS 45A.690, work may begin prior to filing notification of the personal service contract with the committee, if the secretary of the Finance and Administration Cabinet or his designee determines that the time involved in the normal review process would be detrimental to the Commonwealth's ability to act or procure the services and the normal process will not



accommodate the governmental emergency. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the committee.

- (9) If a governmental emergency exists as defined under KRS 45A.690 and work is authorized to begin on a personal service contract immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet or his designee, setting forth in detail the nature of the emergency shall be filed with the committee, along with a copy of the personal service contract.

➔Section 16. KRS 45A.745 is amended to read as follows:

- (1) A local public agency shall evaluate those firms submitting statements of interest in a proposed project according to the following criteria:
- (a) Qualifications;
  - (b) Ability of professional personnel;
  - (c) Past record and experience;
  - (d) Performance data on file;
  - (e) Willingness to meet time and budget requirements;
  - (f) Location;
  - (g) Workload; and
  - (h) Any other factors that the local public agency has set forth in writing, *including the reciprocal preference for resident bidders required by Section 3 of this Act.*
- (2) The local public agency may then conduct discussions and require interviews with firms deemed to be the most qualified according to the criteria in subsection (1) of this section. Bids for the cost of the proposed project shall not be a factor in the evaluation of firms until negotiations are begun in accordance with KRS 45A.750.
- (3) The local public agency shall select, on the basis of the evaluations done in subsections (1) and (2) of this section, at least three (3) firms that are judged to be the most qualified and rank them accordingly. If fewer than three (3) firms are judged to be qualified, then those firms that remain shall be ranked in like manner.

➔Section 17. KRS 45A.825 is amended to read as follows:

- (1) (a) A firm shall not be considered for providing architectural, engineering, or engineering-related services to the Finance and Administration Cabinet or engineering or engineering-related services to the Transportation Cabinet unless the relevant procuring agency has prequalified the firm prior to notice of a request for proposals to which that firm intends to respond.
- (b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.
- (2) (a) The procuring agency shall consult with the user agency or user division before arriving at a request for proposals.
- (b) The request for proposals:
- 1. Shall include as an evaluation factor whether the work tasks are to be performed in Kentucky or outside Kentucky;
  - 2. Shall indicate the relative weight of evaluation factors, *including the reciprocal preference for resident bidders required by Section 3 of this Act*; and
  - 3. Shall establish a timetable for:
    - a. The selection committee's first meeting held pursuant to subsection (6) of this section; and
    - b. The selection committee's activities conducted pursuant to subsection (7)(b) of this section or subsection (8)(b), (d), and (e) of this section, as appropriate.
- (c) The procuring agency shall provide adequate public notice of a request for proposals and notice of the materials that the procuring agency will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the

project evaluation sheet to be used by the relevant selection committee. The notice shall also set a deadline for filing responses to a request for proposals with the procuring agency. It shall be the intent of this subsection that firms in all regions of the Commonwealth are given an equal opportunity to be selected.

- (3) A firm shall respond to a request for proposals by submitting before the deadline, a completed form, devised by the procuring agency, which states the firm's experience and its qualifications for the project as described in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.
- (4) The employees of a procuring agency and the members of the selection committee shall keep all responses to a request for proposals confidential until the procuring agency has awarded a contract.
- (5) The secretary of the procuring agency shall designate a procuring agency employee to determine which firms have prequalified pursuant to subsection (1) of this section and have filed, in a timely fashion, responses to a request for proposals. He shall create a list of the firms which have done so and certify the list.
- (6) The procuring agency shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:
  - (a) Elect from among the voting members of the committee a chairman and a vice chairman who shall hold their positions for the duration of the selection committee's participation in the project;
  - (b) Be provided with:
    1. The certified list created pursuant to subsection (5) of this section;
    2. The firms' responses to the request for proposals;
    3. The request for proposals;
    4. The notice of request for proposals; and
    5. The project evaluation sheets; and
  - (c) Discuss the future conduct of its affairs.
- (7)
  - (a) When the Transportation Cabinet procures any engineering or engineering-related services, or when the Finance and Administration Cabinet procures architectural services for an estimated fee of less than fifty thousand dollars (\$50,000) or engineering or engineering-related services for an estimated fee of less than one hundred thousand dollars (\$100,000), this subsection and subsection (9) of this section shall govern the procurement process.
  - (b) The selection committee shall meet in executive session to:
    1. Evaluate the materials with which it has been provided;
    2. Select the three (3) most qualified firms and rank them in order of preference, based upon the weighted evaluation factors established in the request for proposals; and
    3. Notify the procuring agency of the ranking.
  - (c) The procuring agency shall notify each firm which responded to the request for proposals, informing the firm of:
    1. The three (3) finalists;
    2. Their ranking; and
    3. The rest of the procedure that will be followed in the awarding of the contract.
  - (d) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.
- (8)
  - (a) When the Finance and Administration Cabinet is procuring architectural services for an estimated fee of fifty thousand dollars (\$50,000) or more or engineering or engineering-related services for an estimated fee of one hundred thousand dollars (\$100,000) or more, this subsection and subsection (9) of this section shall govern the procurement process.

- (b) The selection committee shall meet in executive session to:
    - 1. Evaluate the materials with which it has been provided;
    - 2. Select, but not rank, the three (3) most qualified firms, based upon the weighted evaluation factors established in the request for proposals; and
    - 3. Notify the procuring agency of the three (3) finalists.
  - (c) The procuring agency shall notify each firm which responded to the request for proposals, informing the firm of:
    - 1. The three (3) finalists; and
    - 2. The rest of the procedure that will be followed in the awarding of the contract.
  - (d) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the procuring agency has awarded a contract.
  - (e) The selection committee shall meet in executive session to:
    - 1. Rank the three (3) finalists based upon the weighted evaluation factors established in the request for proposals; and
    - 2. Forward the ranking to the procuring agency.
  - (f) The procuring agency shall notify each finalist, informing the finalist of:
    - 1. His ranking; and
    - 2. The rest of the procedure that will be followed in the awarding of the contract.
  - (g) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.
- (9) The secretary of the procuring agency shall designate a procuring agency employee as the procuring officer in charge of negotiating a contract with the top-ranked firm, as determined by the selection committee, at compensation which the procuring officer determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the employee shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the procuring officer be unable to negotiate a satisfactory contract with the top-ranked firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The procuring officer shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, the purchasing officer shall formally terminate negotiations. The purchasing officer shall then undertake negotiations with the third-ranked firm. Should the purchasing officer be unable to negotiate a satisfactory contract with any of the selected firms, he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to KRS 45A.810.
- (10) Once a procuring officer has negotiated a contract, the procuring agency shall notify the other finalists, informing them of:
- (a) Which firm has successfully negotiated a contract; and
  - (b) The rest of the procedure that will be followed in the awarding of the contract.
- (11) Notwithstanding the provisions of KRS 45A.045, when the Transportation Cabinet is the procuring agency, the negotiated contract shall take effect without the approval of the secretary of the Finance and Administration Cabinet.
- (12) The provisions of this section shall not apply to the procurement of architectural, engineering, or engineering-related services under KRS 45A.837 and 45A.838.

➔Section 18. KRS 45A.853 is amended to read as follows:

- (1)
  - (a) A firm shall not be considered for providing underwriting or bond counsel services unless the office has prequalified the firm prior to the date of issuance of the request for proposals.
  - (b) A firm's prequalification shall remain in effect for twenty-four (24) months from the date of prequalification.
- (2)
  - (a) The office shall consult with the bond issuing agency before arriving at a request for proposals. The request for proposals shall include, but not be limited to:
    1. The deadline for posing written questions about the request for proposals to the selection committee chairman elected pursuant to subsection (7)(b) of this section. This deadline shall occur before the deadline for filing a written response to a request for proposals;
    2. The deadline for filing a written response;
    3. A description of the services sought;
    4. A description of the skills required to perform the services;
    5. A description of evaluation factors and their relative weight, ***including the reciprocal preference for resident bidders required by Section 3 of this Act***; and
    6. In the case of a request for proposals from bond counsel firms, a requirement to submit proposed fees and expenses.
  - (b) The office shall provide materials to the firms which have prequalified pursuant to subsection (1) of this section. The materials shall include, but not be limited to, the request for proposals and the evaluation sheet to be used by the relevant selection committee.
- (3) Prior to the deadline for posing questions established in the request for proposals, a firm may pose written questions about the request for proposals to the selection committee chairman. The chairman shall respond in writing. If, in the discretion of the chairman, an answer could have a material effect on other respondents' proposals, then both the question and the answer shall be distributed to all firms at the same time prior to the deadline for the filing of responses to the request for proposals.
- (4) A firm shall file a written response to the request for proposals prior to the deadline for filing a written response established in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.
- (5) The employees of the office and the members of the selection committee shall keep all responses to a request for proposals confidential until the contract to the winning firm has been awarded.
- (6) The executive director of the office shall designate an office employee to identify which firms prequalified pursuant to subsection (1) of this section and filed, in a timely fashion, a written response to a request for proposals. He shall create a list of firms which have done so and certify the list.
- (7) The office shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:
  - (a) Determine whether a majority of the voting members are merit employees of the Commonwealth. If a majority are not merit employees, the selection committee shall disband, and another selection committee shall be selected pursuant to KRS 45A.843. A majority of its voting members shall be merit employees of the Commonwealth;
  - (b) Elect from among the voting members of the committee a chairman and vice chairman who shall hold their positions for the duration of the selection committee's involvement in the bond issuance;
  - (c) Be provided with:
    1. The certified list created pursuant to subsection (6) of this section;
    2. If applicable, an out-of-state firm's preference handicap created pursuant to KRS 45A.873(1);
    3. The request for proposals;
    4. Forms for keeping a log of all contacts with firms which have responded to the request for proposals as well as contacts with persons acting on behalf of those firms. Each committee

member shall keep a log which shall summarize the subject of any contact and state the date and place of the contact; and

5. The selection evaluation sheets; and
  - (d) Discuss the future conduct of its affairs.
- (8) At the second meeting of a selection committee, the committee shall:
- (a) Be provided with the following:
    1. Written questions and answers produced pursuant to subsection (3) of this section; and
    2. The firms' responses to the request for proposals; and
  - (b) Discuss the future conduct of its affairs.

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

***For all contracts awarded by a local board of education, the board shall apply the reciprocal preference for resident bidders described in Section 3 of this Act.***

➔Section 20. KRS 162.070 is amended to read as follows:

The contracts for the erection of new school buildings, additions and repairs to old buildings, except additions or repairs not exceeding seven thousand five hundred dollars (\$7,500), shall be made by the board of education with the lowest and best responsible bidder complying with the terms of the letting, after advertisement for competitive bids pursuant to KRS Chapter 424, but the board may reject any or all bids. All necessary specifications and drawings shall be prepared for all such work. The board shall advertise for bids on all supplies and equipment that it desires to purchase, except where the amount of the purchase does not exceed seven thousand five hundred dollars (\$7,500), and shall accept the bid of the lowest and best bidder ***taking into consideration the price and the reciprocal preference for resident bidders under Section 3 of this Act***, but the board may reject any and all bids.

➔Section 21. KRS 164A.575 is amended to read as follows:

- (1) The governing boards of each institution may elect to purchase interest in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services, except that competitive bids may not be required for:
  - (a) Contractual services where no competition exists;
  - (b) Food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies;
  - (c) Instructional materials available from only one (1) source;
  - (d) Where rates are fixed by law or ordinance;
  - (e) Library books;
  - (f) Commercial items that are purchased for resale;
  - (g) Professional, technical, scientific, or artistic services, but contracts shall be submitted in accordance with KRS 45A.690 to 45A.725;
  - (h) All other commodities, equipment, and services which, in the reasonable discretion of the board, are available from only one (1) source; and
  - (i) Interests in real property.
- (2) Nothing in this section shall deprive the boards from negotiating with vendors who maintain a General Services Administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Services Administration and the vendor affected.
- (3) The governing board shall require the institution to take and maintain inventories of plant and equipment.

- (4) The governing board shall establish procedures to identify items of common general usage among all departments to foster volume purchasing. It shall establish and enforce schedules for purchasing supplies, materials, and equipment.
- (5) The governing board shall have power to salvage, to exchange, and to condemn supplies, equipment, and real property.
- (6) Upon the approval of the secretary of the Finance and Administration Cabinet, the governing board may purchase or otherwise acquire all real property determined to be needed for the institution's use. The amount paid shall not exceed the appraised value as determined by a qualified appraiser or the value set by the eminent domain procedure. Any real property acquired under this section shall be in name of the Commonwealth for the use and benefit of the institution.
- (7) The governing board shall sell or otherwise dispose of all real or personal property of the institution which is not needed or has become unsuitable for public use, or would be more suitable consistent with the public interest for some other use, as determined by the board. The determination of the board shall be set forth in an order, and shall be reached only after review of a written request by the institution desiring to dispose of the property. Such request shall describe the property and state the reasons why the institution believes disposal should be effected. All instruments required by law to be recorded which convey any interest in any such real property so disposed of shall be executed and signed by the appropriate officer of the board. Unless the board deems it in the best interest of the institution to proceed otherwise, all such real or personal property shall be sold either by invitation of sealed bids or by public auction; provided, however, that the selling price of any interest in real property shall not be less than the appraised value thereof as determined by the Finance and Administration Cabinet or the Transportation Cabinet for such requirements of that department.
- (8) Real property or any interest therein may, subject to the provisions of KRS Chapter 45A, be purchased, leased, or otherwise acquired from any officer or employee of any board of the institution, based upon a written application by the grantor or lessor approved by the board, that the employee has not either himself or through any other person influenced or attempted to influence either the board requesting the purchase of the property. In any case in which such an acquisition is consummated, the said request and finding shall be recorded and kept by the Secretary of State along with the other documents recorded pursuant to the provisions of KRS Chapter 56.
- (9)
  - (a) As used in this section, "construction manager-agency," "construction management-at-risk," "design-bid-build," and "design-build" shall have the same meaning as in KRS 45A.030.
  - (b) For capital construction projects, the procurement may be on a total design-bid-build basis, a design-build basis, or construction management-at-risk basis, whichever in the judgment of the board offers the best value to the taxpayer. ***Best value shall be determined in accordance with Section 7 of this Act.*** Proposals shall be reviewed by the institution's engineering staff to assure quality and value, and compliance with procurement procedures. All specifications shall be written to promote competition. Services for projects delivered on the design-build basis or construction management-at-risk basis shall be procured in accordance with KRS 45A.180 and the regulations promulgated in accordance with KRS 45A.180. Nothing in this section shall prohibit the procurement of construction manager-agency services.
- (10) The governing board shall attempt in every practicable way to insure the institution's supplying its real needs at the lowest possible cost. To accomplish this the board may enter into cooperative agreements with other public or private institutions of education or health care.
- (11) The governing board shall have control and supervision over all purchases of energy consuming equipment, supplies, and related equipment purchased or acquired by the institution, and shall designate by regulation the manner in which an energy consuming item will be purchased so as to promote energy conservation and acquisition of energy efficient products.
- (12) The governing board may negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency must be fully explained, in writing, by the vice president responsible for business affairs and such explanation must be approved by the university president. The letter and approval shall be filed with the record of all such purchases. Where practical, standard specifications shall be followed in making emergency purchases. A good faith effort shall be made to effect a competitively established price for emergency purchases.

- (13) (a) All governing boards that purchase agricultural products, as defined by KRS 45A.630, shall, on or before January 1 of each year, provide a report to the Legislative Research Commission and to the Department of Agriculture describing the types, quantities, and costs of each product purchased. The report shall be completed on a form provided by the department.
- (b) If purchasing agricultural products, a governing board shall encourage the purchase of Kentucky-grown agricultural products in accordance with KRS 45A.645. If a governing board purchases agricultural products through a contract with a vendor or food service provider, the contract shall require that if Kentucky-grown agricultural products are purchased, the products shall be purchased in accordance with KRS 45A.645. Only contracts entered into or renewed after July 15, 2008, shall be required to comply with the provisions of this subsection.
- (c) All governing boards that purchase Kentucky-grown agricultural products shall, on or before January 1 of each year, provide a report to the Legislative Research Commission and to the Department of Agriculture describing the types, quantities, and costs of each product purchased. The report shall be completed on a form provided by the department.
- (14) ***Governing boards shall apply the reciprocal resident bidder preference described in Section 3 of this Act prior to the award of any contract.***

➔Section 22. KRS 164A.590 is amended to read as follows:

- (1) In the procurement of architectural and engineering services, the governing board of the institution shall encourage firms engaged in the lawful practice of their profession to submit an annual statement of qualifications and performance data.
- (2) When the need for architectural and engineering services arise for specific projects, the governing board shall evaluate current statements of qualifications and performance data on file with the Commonwealth, together with those that may be submitted by other firms and shall conduct discussions with no less than three (3) firms regarding anticipated design concepts and the relative utility of alternative methods of approach for furnishing the required services, and ***after applying the reciprocal preference for resident bidders under Section 3 of this Act***, shall then select therefrom, in order of preference, based upon criteria established and published, no less than three (3) of the firms deemed to be the most highly qualified to provide the services required.
- (3) The governing board shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the governing board determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the governing board shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof. Should the governing board be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price it determines to be fair and reasonable to the institution, negotiations with that firm shall be formally terminated. The governing board shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the governing board shall formally terminate negotiations with that firm. The governing board shall then undertake negotiations with the third most qualified firm. Should the governing board be unable to negotiate a satisfactory contract with any of the selected firms, it shall select additional firms in order of their competence and qualification and the governing board shall continue negotiations in accordance with this section until an agreement is reached.

➔Section 23. KRS 176.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Biennial highway construction plan" means the specifically identified individual transportation projects or portions thereof identified for funding during the upcoming biennium, which correspond to the first two (2) years of the six (6) year road plan;
- (2) "Department" means Department of Highways;
- (3) ***"Lowest and best bidder" includes the reciprocal resident bidder preference described in Section 5 of this Act;***
- (4) "Project" means the design, right-of-way, utility, or construction phase of a highway construction project;
- (5){(4)} "Roads" includes highways, bridges, and bridge approaches; and

(6)~~(5)~~ "Six (6) year road plan" means the plan developed under KRS 176.430.

➔Section 24. KRS 45A.470 is amended to read as follows:

- (1) ***Notwithstanding any provision of this chapter to the contrary***, all governmental bodies and political subdivisions of this state shall, when purchasing commodities or services, give first preference to the products made by the Department of Corrections, Division of Prison Industries, as required by KRS 197.210. Second preference shall be given to ~~the Kentucky industries for the blind as described in KRS 163.450 to 163.470 through June 30, 2000, and thereafter to~~ any products produced by Kentucky Industries for the Blind, Incorporated, or any other nonprofit corporation ***that furthers*** ~~[with which the Office for the Blind contracts under KRS 163.480(2) to further]~~ the purposes of KRS Chapter 163, and agencies of individuals with severe disabilities as described in KRS 45A.465.
- (2) The Finance and Administration Cabinet shall make a list of commodities and services provided by these agencies and organizations available to all governmental bodies and political subdivisions. The list shall identify in detail the commodity or service the agency or organization may supply and the price.
- (3) The Finance and Administration Cabinet shall annually determine the current price range for the commodities and services offered from its experience in purchasing these commodities or services on the open market. The prices quoted by these agencies or organizations shall not exceed the current price range.
- (4) The Office for the Blind within the Education and Workforce Development Cabinet and qualified agencies for individuals with severe disabilities shall annually cause to be made available to the Finance and Administration Cabinet, lists of the products or services available.
- (5) If two (2) or more of the agencies or qualified nonprofit organizations wish to supply identical commodities or services, the Finance and Administration Cabinet shall conduct negotiations with the parties to determine which shall be awarded the contract. The decision of the Finance and Administration Cabinet shall be based upon quality of the commodity or service and the ability of the respective agencies to supply the commodity or service within the requested delivery time.

➔Section 25. The following KRS section is repealed:

45A.873 Preference for Kentucky firms.

**Signed by Governor April 26, 2010.**