

## CHAPTER 63

## ( HB 393 )

AN ACT relating to governmental transactions.

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

➔Section 1. KRS 45A.490 is amended to read as follows:

As used in KRS 45A.490 to 45A.494:

- (1) "Contract" means any agreement of a **governmental body**~~{public agency}~~, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and
- (2) "**Governmental body**" *has the same meaning as in KRS 45A.030*~~{ "Public agency" has the same meaning as in KRS 61.805}~~.

➔Section 2. KRS 45A.492 is amended 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 *its governmental bodies*~~{public agencies}~~; and
- (2) Providing preference to Kentucky residents equalizes the competition with other states that provide preference to their residents.

➔Section 3. KRS 45A.494 is amended to read as follows:

- (1) Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a **governmental body**~~{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 **governmental body**~~{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 **governmental bodies**~~{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 **governmental body**~~{public agency}~~ soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

➔Section 4. KRS 82.083 is amended to read as follows:

- (1) As used in this section, "independent appraisal" means an appraisal made by:

- (a) An individual or organization not affiliated with the city or its officers or employees, using a generally accepted national or professional standard; or
  - (b) A city's officers or employees using a nationally published valuation of property based on the most recent edition of the publication.
- (2) A city may sell or otherwise dispose of any of its real or personal property.
- (3) Before selling or otherwise disposing of any real or personal property *that has any value*, the city shall make a written determination setting forth and fully describing:
- (a) The real or personal property;
  - (b) Its intended use at the time of acquisition;
  - (c) The reasons why it is in the public interest to dispose of it; and
  - (d) The method of disposition to be used.
- (4) Real or personal property may be:
- (a) Transferred, with or without compensation, to another governmental agency;
  - (b) Transferred, with or without compensation, for economic development purposes, which shall include but not be limited to real property transfers for the elimination of blight;
  - (c) Sold at public auction following publication of the auction in accordance with KRS 424.130(1)(b);
  - (d) Sold by electronic auction following publication of the auction, including the uniform resource link (URL) for the site of the electronic auction, in accordance with KRS 424.130(1)(b);
  - (e) Sold by sealed bids in accordance with the procedure for sealed bids under KRS 45A.365(3) and (4);
  - (f) Traded towards the purchase of the same or similar type of property, if the trade-in value received equals or exceeds the actual fair market value of the property as determined using an independent appraisal as defined in subsection (1) of this section;
  - (g) Sold for its appraised fair market value or a greater amount if the property is valued at **ten thousand dollars (\$10,000)**~~five thousand dollars (\$5,000)~~ or less in an independent appraisal. Property sold under this paragraph may not be sold to a city officer or employee or family member of a city officer or employee as defined in the city's ethics ordinance adopted under KRS 65.003;
  - (h) **Notwithstanding subsection (3) of this section**, sold for scrap or disposed of as garbage in a manner consistent with the public interest if the property has no value, or is of **negligible**~~nominal~~ value as determined by an independent appraisal;~~or~~
  - (i) Sold by the Finance and Administration Cabinet under an agreement with the city; **or**
  - (j) **Notwithstanding subsection (3) of this section, when the property is an animal used in service by the city, given to the animal's primary handler or trainer, without the payment of compensation, when the animal is retired or is no longer capable of performing service to the city.**
- (5) If a city receives no bids for the real or personal property, either at public or electronic auction or by sealed bid, the property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the city. In those instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made.
- (6) Any compensation resulting from the disposal of this real or personal property shall be transferred to the general fund of the city.

➔Section 5. KRS 424.260 is amended to read as follows:

- (1) Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, or district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for:
- (a) Materials;
  - (b) Supplies, except perishable foods such as meat, poultry, fish, egg products, fresh vegetables, and fresh fruits;

- (c) Equipment; or
- (d) Contractual services other than professional;

involving an expenditure of more than thirty thousand dollars (\$30,000) without first making newspaper advertisement for bids. This subsection shall not apply to the transfer of property between governmental agencies as authorized in KRS 82.083(4)(a).

- (2) If the fiscal court requires that the sheriff or county clerk advertise for bids on expenditures of less than thirty thousand dollars (\$30,000), the fiscal court requirement shall prevail.
- (3) (a) Nothing in this statute shall limit or restrict the ability of a local school district to acquire supplies and equipment outside of the bidding procedure if those supplies and equipment meet the specifications of the contracts awarded by the Office of Material and Procurement Services in the Office of the Controller within the Finance and Administration Cabinet or a federal, local, or cooperative agency and are available for purchase elsewhere at a lower price. A board of education may purchase those supplies and equipment without advertising for bids if, prior to making the purchases, the board of education obtains certification from the district's finance or purchasing officer that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the various price contract agreements or available through the bid of another school district whose bid specifications would allow the district to utilize their bid.
- (b) The procedures set forth in paragraph (a) of this subsection shall not be available to the district for any specific item once the bidding procedure has been initiated by an invitation to bid and a publication of specifications for that specific item has been published. In the event that all bids are rejected, the district may again avail itself of the provisions of paragraph (a) of this subsection.
- (4) This requirement shall not apply in an emergency if the chief executive officer of the city, county, or district has duly certified that an emergency exists, and has filed a copy of the certificate with the chief financial officer of the city, county, or district, or if the sheriff or the county clerk has certified that an emergency exists, and has filed a copy of the certificate with the clerk of the court where his necessary office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the superintendent of the board of education has duly certified that an emergency exists, and has filed a copy of the certificate with the chief state school officer.
- (5) The provisions of subsection (1) of this section shall not apply for the purchase of wholesale electric power for resale to the ultimate customers of a municipal utility organized under KRS 96.550 to 96.900.
- (6) *Subsection (1) of this section shall not apply to purchases for products or services made pursuant to Section 6 of this Act.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 82 IS CREATED TO READ AS FOLLOWS:

*KRS 45A.345 to 45A.460 and 424.260 shall not apply to city governments, urban-county governments, or consolidated local governments for the purchase of:*

- (1) *Products or services when there is a single source of the product or service to be procured within a reasonable geographic area;*
- (2) *Products needed as replacement parts for personal property or equipment where the need cannot be reasonably anticipated and maintaining an inventory of replacement parts is not feasible; and*
- (3) *Products or services that are provided by:*
  - (a) *Entities recognized by the Office of Vocational Rehabilitation under KRS Chapter 163 that operate programs for the rehabilitation of individuals who are blind or visually impaired;*
  - (b) *Agencies for individuals with severe disabilities as described in KRS 45A.465;*
  - (c) *A qualified veterans' workshop providing job and employment-skill training to veterans where such a workshop is operated by the United States Department of Veterans Affairs;*
  - (d) *Nonprofit organizations, employment services organizations, or other private business organizations with established operations within the jurisdiction of the city, urban-county government, or consolidated local government with the main mission or business purpose of serving individuals with disabilities by offering transitional or supported employment services or other rehabilitative*

*programs and services, including but not limited to serving individuals with severe mental or physical disabilities or those recovering from substance abuse disorders; or*

- (e) *Nonprofit community service organizations operating within the jurisdiction of the city, urban-county government, or consolidated local government when there is a determination in the official record of the legislative body that the purchase of the products or services would serve a mutual benefit to the government and the organization by:*

1. *Furthering the purposes of the organization;*
2. *Providing a service or product needed by the government;*
3. *Advancing a specific public purpose; and*
4. *Serving the best interest of the public.*

*If two (2) or more organizations meet the qualifications set out in this paragraph, then the government shall award the contract to one (1) of the qualifying organizations using the selection criteria of its adopted competitive bidding process.*

➔ Section 7. KRS 160.160 is amended to read as follows:

- (1) Each school district shall be under the management and control of a board of education consisting of five (5) members, except in counties containing a city of the first class wherein a merger pursuant to KRS 160.041 shall have been accomplished which shall have seven (7) members elected from the divisions and in the manner prescribed by KRS 160.210(5), to be known as the "Board of Education of ....., Kentucky." Each board of education shall be a body politic and corporate with perpetual succession. It may sue and be sued; make contracts; expend funds necessary for liability insurance premiums and for the defense of any civil action brought against an individual board member in his official or individual capacity, or both, on account of an act made in the scope and course of his performance of legal duties as a board member; purchase, receive, hold, and sell property; issue its bonds to build and construct improvements; and do all things necessary to accomplish the purposes for which it is created. Each board of education shall elect a chairman and vice chairman from its membership in a manner and for a term prescribed by the board not to exceed two (2) years.
- (2) No board of education shall participate in any financing of school buildings, school improvements, appurtenances thereto, or furnishing and equipment, including education technology equipment without:
  - (a) First establishing the cost of the project in advance of financing, based on the receipt of advertised, public, and competitive bids for such project, in accordance with KRS Chapter 424; and
  - (b) Establishing the cost of financing in advance of the sale of any bonds, certificates of participation in any leases, or other evidences of financial commitments issued by or on behalf of such board. Any bonds, leases, participations, or other financial arrangements shall not involve a final commitment of the board until the purchaser or lender involved shall have been determined by public advertising in accordance with KRS Chapter 424.
- (3) No board of education shall make a mortgage, lien, or other encumbrance upon any school building owned by the board, or transfer title to any such school building as part of any financing arrangement, without the specific approval of the Department of Education, and without the transaction being entered into pursuant to a detailed plan or procedure specifically authorized by Kentucky statute.
- (4) Without the approval of the Department of Education, no board may lease, as lessee, a building or public facility that has been or is to be financed at the request of the board or on its behalf through the issuance of bonds by another public body or by a nonprofit corporation serving as an agency and instrumentality of the board, or by a leasing corporation. Any lease, participation, or other financial arrangement shall not involve a final commitment of the board unless and until the purchaser or lender involved in same shall have been determined by public advertising in accordance with KRS Chapter 424. No transaction shall be entered into by the board except upon the basis of public advertising and competitive bidding in accordance with KRS Chapter 424.
- (5) Rental payments due by a board under a lease approved by the Department of Education in accordance with subsection (4) of this section shall be due and payable not less than ten (10) days prior to the interest due date for the bonds, notes, or other debt obligations issued to finance the building or public facility. If a board fails to make a rental payment when due under a lease, upon notification to the Department of Education by the paying agent, bond registrar, or trustee for the bonds not less than three (3) days prior to the interest due date, the Department of Education shall withhold or intercept any funds then due the board to the extent of the

amount of the required payment on the bonds and remit the amount to the paying agent, bond registrar, or trustee as appropriate. Thereafter, the Department of Education shall resolve the matter with the board and adjust remittances to the board to the extent of the amount paid by the Department of Education on the board's behalf.

- (6) Bonds, notes or leases negotiated to provide education technology shall not be sold for longer than seven (7) years or the useful life of the equipment as established by the state technology master plan, whichever is less.
- (7) *Notwithstanding any requirements of public advertising, competitive bidding, or approval by the Department of Education, or any administrative regulation promulgated pursuant to KRS 156.160(1)(o), a local board may authorize the transfer or sale of the district's real or personal property to another governmental or quasi-governmental agency in exchange for money or a similar type of property that equals or exceeds the fair market value of the district property as determined by an independent appraisal conducted by:*
  - (a) *An individual or organization not affiliated with the district or its officers or employees, using a generally accepted national or professional standard; or*
  - (b) *A district's officers or employees using a nationally published valuation of property based on the most recent edition of the publication.*

**Signed by Governor March 22, 2023.**