

65.025 Prohibitions relating to employment of entities providing architectural services and construction management services on capital construction projects -- Effect of violation -- Best value procurement criteria -- Exception.

- (1) As used in this section:
- (a) "Employ" means to hire, retain, or otherwise contract with an individual or entity for goods or services;
 - (b) "Local government" means a city, county, charter county government, urban-county government, consolidated local government, or a special district;
 - (c) "Construction manager" means a person who coordinates and communicates the entire project process, clarifying cost and time consequences of design decisions as well as clarifying construction feasibility, and who manages the bidding, awarding, and construction phases of the project;
 - (d) "Design-build" means a system of contracting under which one (1) entity performs both architecture/engineering and construction under one (1) single contract;
 - (e) "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 local government. 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 or request for proposals. Every invitation for bids or request for proposals shall provide that an item equal to that named or described in the specifications may be furnished. The specification may identify a sole brand in cases where, in the written opinion of the chief procurement officer, documented unique and valid conditions require compatibility, continuity, or conformity with established standards. An item shall be considered equal to the item named or described if, in the opinion of the owner and the design professional responsible for the specifications:
 - 1. It is at least equal in quality, durability, appearance, strength, design, and other criteria deemed appropriate;
 - 2. It will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased; and
 - 3. It conforms substantially to the detailed requirements for the item in the specifications;
 - (f) "Capital project" means the construction, reconstruction, acquisition, installation, and improvement of public infrastructure that is owned by a local government and that serves a public purpose of the local government;
 - (g) "Private partner" means any entity that is a partner in a public-private partnership other than:
 - 1. The Commonwealth of Kentucky, or any agency or department thereof;

2. The federal government;
 3. Any other local government;
 4. Any other state government; or
 5. Any agency of a state, federal, or local government; and
- (h) 1. "Public-private partnership" means a project delivery method for construction or financing of capital projects, or procurement of services, pursuant to a written public-private partnership agreement entered into pursuant to KRS 65.028 and administrative regulations promulgated thereunder, between:
- a. At least one (1) private partner; and
 - b. A local government.
2. "Public-private partnership" does not include any traditional delivery method or method of procurement of goods or services entered into by a short-term contractual agreement between a local government and a private seller that terminates when the good or service is delivered, whether governed by the provisions of KRS 45A.343 to 45A.460 or 424.260.
- (2) A local government shall not employ the same entity to provide both architectural services and construction management services on the same capital construction project. No local government shall knowingly employ an officer, employee, or agent of, or an immediate family member of an officer, employee, or agent of:
- (a) The architectural firm that provided the architectural services to also provide construction management services for the same capital construction project for which the architectural firm provided architectural services; or
 - (b) The construction management firm that provided the construction management services to also provide architectural services for the same capital construction project for which the construction management firm provided construction management services.
- (3) A violation of subsection (2) of this section shall suspend the local government from receiving any financial assistance from the state, or any state agency, with respect to the project for which the architectural or construction management firm was employed until the matter is resolved.
- (4) Local governments initiating a capital construction project shall incorporate, or shall require architects or construction managers in the employment of the local government to incorporate, best value procurement criteria in all invitations for bids or requests for proposals as provided for in subsection (1) of this section.
- (5) Nothing in this section shall prohibit a local government from using:
- (a) Design-build as a method of providing for capital construction services as long as best value contracting principles are followed as specified in subsection (1) of this section; or
 - (b) A public-private partnership as long as the provisions of KRS 65.028 are followed.

Effective: April 8, 2016

History: Amended 2016 Ky. Acts ch. 67, sec. 4, effective April 8, 2016. -- Amended 2008 Ky. Acts ch. 47, sec. 4, effective July 15, 2008. -- Created 2001 Ky. Acts ch. 154, sec. 1, effective June 21, 2001.