

AN ACT relating to procurement.

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

➔Section 1. KRS 45A.343 is amended to read as follows:

- (1) Any local public agency may adopt the provisions of KRS 45A.345 to 45A.460. No other statutes governing purchasing shall apply to a local public agency upon adoption of these provisions ***unless expressly allowed***.
- (2) After July 15, 1994, any contract entered into by a local public agency, whether under KRS 45A.345 to 45A.460 or any other authority, shall require the contractor and all subcontractors performing work under the contract to:
 - (a) Reveal any final determination of a violation by the contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor; and
 - (b) Be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor for the duration of the contract.
- (3) A contractor's failure to reveal a final determination of a violation by the contractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public agency's:
 - (a) Cancellation of the contract; and
 - (b) Disqualification of the contractor from eligibility for future contracts awarded by the local public agency for a period of two (2) years.
- (4) A subcontractor's failure to reveal a final determination of a violation by the subcontractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public agency's disqualification of the subcontractor from eligibility for future

contracts for a period of two (2) years.

➔Section 2. KRS 45A.380 is amended to read as follows:

A local public agency may contract or purchase through noncompetitive negotiation only when a written determination is made that competition is not feasible and it is further determined in writing by a designee of the local public agency that:

- (1) An emergency exists which will cause public harm as a result of the delay in competitive procedures; or
- (2) There is a single source within a reasonable geographical area of the product or service to be procured; or
- (3) The contract is for the services of a licensed professional, such as attorney, physician, psychiatrist, psychologist, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; or an artist such as a sculptor, aesthetic painter, or musician, provided, however, that this provision shall not apply to architects or engineers providing construction management services rather than professional architect or engineer services; or
- (4) The contract is for the purchase of perishable items purchased on a weekly or more frequent basis, such as fresh fruits, vegetables, fish or meat;
- (5) The contract is for replacement parts where the need cannot be reasonably anticipated and stockpiling is not feasible;
- (6) The contract is for proprietary items for resale;
- (7) In school districts the contract relates to an enterprise in which the buying or selling by students is a part of the educational experience;
- (8) The contract or purchase is for expenditures made on authorized trips outside of the boundaries of the local public agency;
- (9) The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids;

(10) The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, and unemployment insurance; or

(11) The contract is for a sale of supplies, **materials, or equipment** at reduced prices that will afford a purchase at savings to the local public agency.

➔Section 3. KRS 45A.420 is amended to read as follows:

(1) Any local public agency may enter into an agreement for cooperative purchasing with any other local public agency. When the contracting local public agency contracts for supplies, services or construction pursuant to KRS 45A.365, 45A.370, 45A.375, or 45A.380, all other parties to the agreement shall be deemed to have complied with the provisions of those sections.

(2) Nothing in KRS 45A.345 to 45A.990 shall deprive a local public agency from negotiating with vendors for supplies **or materials** where such supplies **or materials** are the subject of a price agreement with the Commonwealth of Kentucky, **another local public agency, a public university, or a foreign purchasing activity as defined in KRS 45A.295 if there is no vendor located in the Commonwealth of Kentucky**; provided, however, that no contract executed under this section would authorize a price higher than is contained in the price agreement ~~[with the Commonwealth of Kentucky]~~ for such specific supplies **or materials**.

(3) Nothing in KRS 45A.345 to 45A.990 shall deprive a local school district from acquiring supplies outside of price agreements with the Commonwealth of Kentucky if the supplies meet the same specifications as the contract items and the supplies are purchased at a lower price than is contained in the price agreement with the Commonwealth of Kentucky for such specific supplies and the purchase does not exceed two thousand five hundred dollars (\$2,500).

➔Section 4. KRS 45A.425 is amended to read as follows:

(1) A local public agency may sell or otherwise dispose of any personal property which

is not needed or has become unsuitable for public use, or which would be suitable, consistent with the public interest, for some other use.

- (2) A written determination as to need of suitability of any personal property of the local public agency shall be made; and such determination shall fully describe the personal property; its intended use at the time of acquisition; the reasons why it is in the public interest to dispose of the item; and the method of disposition to be used.
- (3) Surplus or excess personal property as described in this section may be transferred, with or without compensation, to another governmental agency; or it may be sold at public auction or by sealed bids in accordance with KRS 45A.365.
- (4) In the event that a local public agency receives no bids for surplus or excess personal property, either at public auction or by sealed bid, such property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the local public agency. In such instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made. Any compensation resulting from the disposal of surplus or excess personal property shall be transferred to the general fund of the local public agency.
- (5) A local board of education may dispose of its surplus technology in accordance with KRS 160.335.

(6) A city may dispose of its surplus property in accordance with KRS 82.083.

➔Section 5. 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 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 KRS 45A.490 to 45A.494 part of the solicitation ~~for advertisement~~ for bids.

➔Section 6. 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)~~(2)~~ Before selling or otherwise disposing of any real or personal property, 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)~~(3)~~ 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;
- (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);~~or~~
- (e) Sold by sealed bids in accordance with the procedure for sealed bids under KRS 45A.365(3) and (4);

(f) Sold for its appraised fair market value or greater if the property is valued at 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;

(g) Sold for scrap or disposed of as garbage in a manner consistent with public interest if the property has no value or nominal value as determined by an independent appraisal; or

(h) Sold by the Finance and Administration Cabinet under an agreement with the city that allows the cabinet to charge a reasonable fee for its services with the city receiving the remaining proceeds.

~~(5)~~~~(4)~~ 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)~~~~(5)~~ Any compensation resulting from the disposal of this real or personal property shall be transferred to the general fund of the city.

➔Section 7. 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 materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than twenty thousand dollars (\$20,000) without first making newspaper advertisement for bids. **This subsection shall not apply to the purchase of materials, supplies, equipment, or professional services from another public agency or political subdivision of the state.**
- (2) If the fiscal court requires that the sheriff or county clerk advertise for bids on expenditures of less than twenty thousand dollars (\$20,000), 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.