

AN ACT relating to procurement.

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

➔Section 1. KRS 45A.030 is amended to read as follows:

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

- (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted;
- (2) "Change order" means a written order signed by the purchasing officer, directing the contractor to make changes that the changes clause of the contract authorizes the purchasing officer to order without the consent of the contractor;
- (3) "Chief purchasing officer" means the secretary of the Finance and Administration Cabinet, who shall be responsible for all procurement of the Commonwealth except as provided by KRS Chapters 175, 176, 177, and 180;
- (4) "Construction" means the process of building, altering, repairing, improving, or demolishing any public structures or buildings, or other public improvements of any kind to any public real property. It does not include the routine maintenance of existing structures, buildings, or real property;
- (5) "Construction manager-agency" means services to assist the purchasing agency manage construction that are procured through a contract that is qualifications-based;
- (6) "Construction management-at-risk" means a project delivery method in which the purchasing officer enters into a single contract with an offeror that assumes the risk for construction at a contracted guaranteed maximum price as a general contractor, and provides consultation and collaboration regarding the construction during and after design of a capital project. The contract shall be subject to the bonding requirements of KRS 45A.190;
- (7) **"Construction manager-general contractor" means a project delivery method in**

which the purchasing officer enters into a single contract with an offeror to provide preconstruction and construction services. During the preconstruction phase, the successful offeror provides design consulting services. During the construction phase, the successful offeror acts as general contractor by:

(a) Contracting with subcontractors; and

(b) Providing for management and construction at a fixed price with a completion deadline;

(8) "Contract" means all types of state agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; purchase orders; and insurance contracts except as provided in KRS 45A.022. It includes supplemental agreements with respect to any of the foregoing;

~~(9)~~~~(8)~~ "Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It includes bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option;

~~(10)~~~~(9)~~ "Contractor" means any person having a contract with a governmental body;

~~(11)~~~~(10)~~ "Data" means recorded information, regardless of form or characteristic;

~~(12)~~~~(11)~~ "Design-bid-build" means a project delivery method in which the purchasing officer sequentially awards separate contracts, the first for architectural, engineering, or engineering-related services to design the project and the second for construction of the capital project according to the design. The contract shall be subject to the bonding requirements of KRS 45A.185;

~~(13)~~~~(12)~~ "Design-build" means a project delivery method in which the purchasing officer enters into a single contract for design and construction of a capital project.

The contract shall be subject to the bonding requirements of KRS 45A.190;

~~(14)~~~~(13)~~ "Designee" means a duly authorized representative of a person holding a superior position;

~~(15)~~~~(14)~~ "Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof;

~~(16)~~~~(15)~~ "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body;

~~(17)~~~~(16)~~ "Governmental body" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment of the executive or legislative branch of the state government;

~~(18)~~~~(17)~~ "Meeting" means all gatherings of every kind, including video teleconferences;

~~(19)~~~~(18)~~ "Negotiation" means contracting by either the method set forth in KRS 45A.085, 45A.090, or 45A.095;

~~(20)~~~~(19)~~ "Person" means any business, individual, organization, or group of individuals;

~~(21)~~~~(20)~~ "Procurement" means the purchasing, buying, renting, leasing, or otherwise obtaining of any supplies, services, or construction. It includes all functions that pertain to the procurement of any supply, service, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration;

~~(22)~~~~(21)~~ "Purchase request" or "purchase requisition" means that document whereby a using agency requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested item,

delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any written determination and finding required by KRS 45A.025;

(23)~~(22)~~ "Purchasing agency" means any governmental body that is authorized by this code or its implementing administrative regulations or by way of delegation from the chief purchasing officer to contract on its own behalf rather than through the central contracting authority of the chief purchasing officer;

(24)~~(23)~~ "Purchasing officer" means any person authorized by a governmental body in accordance with procedures prescribed by administrative regulations to enter into and administer contracts and make written determinations and findings with respect thereto. The term includes an authorized representative acting within the limits of authority;

(25)~~(24)~~ "Services" means the rendering by a contractor of its time and effort rather than the furnishing of a specific end product, other than reports that are merely incidental to the required performance of services;

(26)~~(25)~~ "Supplemental agreement" means any contract modification that is accomplished by the mutual action of the parties;

(27)~~(26)~~ "Supplies" means all property, including but not limited to leases of real property, printing, and insurance, except land or a permanent interest in land;

(28)~~(27)~~ "Using agency" means any governmental body of the state that utilizes any supplies, services, or construction purchased under this code;

(29)~~(28)~~ "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment; and

(30)~~(29)~~ "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data

compilation.

➔Section 2. 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-general contractor" and 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 KRS 45A.494; 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 3. KRS 45A.183 is amended to read as follows:

(1) When a capital project is to be constructed using~~[utilizing]~~ the construction management-at-risk method, a process parallel to the selection committee procedures established in KRS 45A.810 shall apply when procuring a construction management-at-risk firm and regulations promulgated in accordance with KRS 45A.180 shall apply that set forth requirements for:

(a)~~(1)~~ Description of the bond, insurance, and other security provisions that apply to a project;

(b)~~(2)~~ Description of appropriate contract clauses and fiscal responsibility

requirements that apply to each project; and

~~(c)(3)~~ Restrictions relating to conflicts of interest, including a provision that a construction management-at-risk entity shall be eligible to become an offeror of goods or services on a project it manages only when a subcontractor fails to perform and upon prior approval by the contracting body.

(2) (a) When a construction project is to be constructed using the construction manager-general contractor method, a competitive process consistent with this code established by administrative regulations promulgated under paragraph (f) of this subsection shall apply.

(b) The procurement process shall set forth the requirements for:

1. Description of the bond, insurance, and other security provisions that apply to the project;
2. Description of appropriate contract clauses and fiscal responsibility requirements that apply to the project; and
3. Restrictions relating to conflicts of interest, including a provision that a construction manager-general contractor shall be eligible to become an offeror of goods or services on a project it manages only when a subcontractor fails to perform and upon prior approval by the contracting body.

(c) The selection of the construction manager-general contractor shall be based on:

1. Qualifications; and
2. Price, including preconstruction consulting services, overhead, and profit.

(d) Prior to the construction phase, the construction manager-general contractor shall competitively bid the subcontracts by public notice and award each subcontract to the lowest responsive and responsible bidder.

(e) The final construction cost and completion date for the project shall be established by change order after the construction manager-general contractor enters into all applicable subcontracts.

➔Section 4. KRS 45A.837 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 45A.800 to 45A.835, the Finance and Administration Cabinet and the Transportation Cabinet may enter into price contracts for architectural, engineering, and engineering-related services. If the agencies choose to enter into a price contract, subsection (2) of this section shall apply.
- (2) Price contracts shall be awarded to firms qualified by the Finance and Administration Cabinet, Department of Facilities Management or by the Transportation Cabinet, Department of Highways. The Finance and Administration Cabinet selection committee established by KRS 45A.810 shall meet at least quarterly during each fiscal year to review and make recommendations to the commissioner of the Department for Facilities Management for qualification of interested firms. The Transportation Cabinet selection committee established by KRS 45A.810 shall meet at least quarterly during each fiscal year to review and make recommendations to the commissioner of the Department of Highways for qualification of interested firms.
 - (a) The respective committees shall evaluate those firms submitting statements of interest in obtaining a price contract. The submitting firms shall be reviewed according to the following criteria:
 1. Qualifications;
 2. Ability of professional personnel; and
 3. Past record and experience.
 - (b) Firms qualified by the commissioner of the Department for Facilities Management or by the commissioner of the Department of Highways shall be

awarded price contracts by the respective departments for the type of work for which they have been qualified.

- (c) The commissioner of the Department for Facilities Management or the commissioner of the Department of Highways may select firms to perform work under price contract for small projects for which the architectural, engineering, or engineering-related fees do not exceed seventy-five thousand dollars (\$75,000)~~[fifty thousand dollars (\$50,000)]~~. However, no firm that has received more than one hundred fifty thousand dollars (\$150,000)~~[one hundred thousand dollars (\$100,000)]~~ in price contract fees in any one (1) fiscal year in the contract discipline being awarded shall be selected to work under a price contract unless the secretary of finance and administration or the secretary of transportation makes a written determination that the selection is in the best interest of the Commonwealth and the determination is confirmed by the appropriate cabinet's selection committee established by KRS 45A.810.
- (3) Notwithstanding any provision of the Kentucky Revised Statutes, no price contract shall be awarded under the provisions of this section before completion of the review procedure provided for in KRS 45A.695 and 45A.705.

➔Section 5. 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," and "construction manager-general contractor" 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, construction manager-general

contractor 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 KRS 45A.070. 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, construction manager-general contractor basis, or construction management-at-risk basis shall be procured in accordance with KRS 45A.180, Section 3 of this Act, 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 KRS 45A.494 prior to the award of any contract.
- (15) Governing boards may authorize the use of reverse auctions as defined in KRS 45A.070 for the procurement of goods and leases.

➔Section 6. KRS 164A.580 is amended to read as follows:

Subject to the provisions of KRS 45.750 through 45.800, 45A.180, **Section 3 of this Act**, and 56.870 to 56.874, the governing board of each institution may provide for the management and administration of capital construction projects authorized for such

institution including, but not limited to:

- (1) The procurement of necessary consulting services;
- (2) The supervision and control of the making of all contracts for building projects, renovation projects, repair projects, and supervision of same;
- (3) The prescription of the amount and form of evidences of indebtedness submitted in connection with bids and contracts when not otherwise provided by law;
- (4) The preparation of plans and specifications for any construction, alteration, or enlargement of buildings, structures, and other improvements;
- (5) The advertisement of bids and the awarding of contracts in connection with such projects;
- (6) The supervision and inspection of all related work;
- (7) The approval of changes in plans or specifications; and
- (8) The acceptance of such improvements when completed according to such plans and specifications.

➔Section 7. KRS 164A.595 is amended to read as follows:

Capital construction projects shall be carried out as follows:

- (1) Subject to the provisions of KRS 45.750 through 45.800, ~~and~~ 45A.180, **and Section 3 of this Act**, the governing boards of the institutions may acquire, erect, construct, reconstruct, improve, rehabilitate, remodel, repair, complete, extend, enlarge, equip, furnish, and operate any buildings, structures, improvements, or facilities, including any utilities, other related services and appurtenances and land required as the respective governing boards shall deem necessary for carrying on the educational, research or public service programs or discharging the statutory responsibilities of the universities and colleges and various divisions under the jurisdiction of the boards, or for the management, operation, or servicing of the universities and colleges.
- (2) The governing boards may acquire real or personal property, by purchase, lease,

sublease, condemnation, trade or exchange, gift, devise, or otherwise, and improve such property whenever in the judgment of the governing board it shall be necessary. The title to any real estate acquired under this section shall vest in the Commonwealth for the use and benefit of the appropriate institution.