

1 AN ACT relating to government contracts.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 45A.690 TO 45A.725 IS CREATED
4 TO READ AS FOLLOWS:

5 *(1) The Attorney General shall not award a personal service contract for legal*
6 *services that provides for payment by contingency fee unless, prior to the award,*
7 *the Attorney General determines in writing:*

8 *(a) The contingency fee is both cost-effective and in the public interest;*

9 *(b) Sufficient and appropriate legal and financial resources do not exist within*
10 *the Attorney General's office;*

11 *(c) The amount of time and labor required to perform the requested services;*

12 *(d) The novelty, complexity, and difficulty of the matter;*

13 *(e) The skill required to perform the requested services properly;*

14 *(f) The geographic area where the legal services are to be provided; and*

15 *(g) The experience desired for the particular kind of legal services to be*
16 *provided.*

17 *(2) The Attorney General or his or her designee shall participate in reviewing and*
18 *evaluating the responses to the requests for proposals and discussions with*
19 *offerors, as required in Section 2 of this Act.*

20 *(3) A contingency fee shall not exceed:*

21 *(a) Twenty percent (20%) of the amount recovered up to ten million dollars*
22 *(\$10,000,000);*

23 *(b) Fifteen percent (15%) of the amount recovered between ten million dollars*
24 *(\$10,000,000) and fifteen million dollars (\$15,000,000);*

25 *(c) Ten percent (10%) of the amount recovered between fifteen million dollars*
26 *(\$15,000,000) and twenty million dollars (\$20,000,000); and*

27 *(d) Five percent (5%) of the amount recovered of twenty million dollars*

1 (\$20,000,000) or more.

2 (4) A contingency fee shall not exceed twenty million dollars (\$20,000,000),
3 regardless of the number of actions or proceedings or the number of attorneys or
4 law firms involved in the matter, and exclusive of any costs and expenses
5 provided for by the contract and actually incurred by the legal services
6 contractor.

7 (5) A contingency fee shall be payable only from money that is actually received
8 pursuant to a judgment or settlement agreement, and any judgment or settlement
9 funds shall be disbursed in accordance with KRS 48.005.

10 (6) During the contract period and any extension:

11 (a) Attorneys appointed by the Attorney General under subsection (1) or (2) of
12 Section 3 of this Act shall retain control over the course and conduct of the
13 case and shall retain veto authority over any decision made by the contract
14 attorney;

15 (b) An attorney appointed by the Attorney General under subsection (1) or (2)
16 of Section 3 of this Act and who has authority over the contract shall:

17 1. Attend all settlement conferences;

18 2. Be personally involved in overseeing the litigation; and

19 3. Have exclusive decision-making power regarding any settlement of the
20 matter for which the contract was entered; and

21 (c) Any opposing party to the matter for which the contract was entered into
22 may directly contact the attorney with authority over the contract, without
23 having to notify the contract attorney.

24 (7) The Finance and Administration Cabinet shall develop a standard addendum to
25 be added to each personal service contract for legal services issued by the Office
26 of the Attorney General that will include the terms of this section.

27 (8) (a) Within five (5) business days after the contract award, the Finance and

1 Administration Cabinet shall post on its Web site each personal service
2 contract for legal services that provides for payment by contingency fee and
3 the accompanying written determinations by the Attorney General described
4 in subsection (1) of this section. The contract and accompanying
5 determinations shall remain on the Web site during the duration of the
6 contract and any extension.

7 (b) Any payment of contingency fees shall be posted on the Attorney General's
8 Web site within fifteen (15) days after the payment of such contingency fees
9 to the legal services contractor and shall remain posted on the Web site for
10 at least three hundred sixty-five (365) days.

11 (9) (a) In addition to the information described in subsection (10) (d) of Section 2
12 of this Act, a contractor awarded a personal service contract for legal
13 services that provides for payment by contingency fee shall maintain
14 detailed current records, including documentation of:

15 1. Expenses;

16 2. Disbursements;

17 3. Charges and credits;

18 4. Underlying receipts and invoices; and

19 5. Any other financial transactions that concern the attorney services
20 rendered under the contract.

21 (b) All records described in this subsection shall become public records subject
22 to KRS 61.870 to 61.884 after a judgment or agreement is entered in the
23 case and all appeals have been exhausted.

24 (10) (a) The Finance and Administration Cabinet and the Attorney General shall
25 submit a joint report to the Government Contract Review Committee by
26 September 1 of each year identifying all contingency fee contracts for legal
27 services:

1 1. Awarded in the previous fiscal year;

2 2. Active in the previous fiscal year, but awarded in prior fiscal years; or

3 3. Concluded in the previous fiscal year.

4 (b) For each contract, the report shall include:

5 1. The written determinations made by the Attorney General under
6 subsection (1) of this section;

7 2. Any determination made that the contract was not to be procured
8 through the request for proposal process; and

9 3. Any determination made that the contract may be entered into despite
10 a finding of disapproval by the committee.

11 (c) In addition, the report shall describe:

12 1. The name of the attorney or law firm with whom the contract was
13 made;

14 2. The nature and status of the legal matter that is the subject of the
15 contract;

16 3. The name of the parties to the legal matter that is the subject of the
17 contract;

18 4. The amount of recovery, if any; and

19 5. The amount of the contingency fee paid, if any.

20 ➔Section 2. KRS 45A.695 is amended to read as follows:

21 (1) Except as provided in subsection (8) of this section, no one shall begin work on a
22 personal service contract entered into by any contracting body or incur expenditures
23 under a tax incentive agreement until notification of the personal service contract or
24 tax incentive agreement is filed with the committee. Each personal service contract
25 shall have a cancellation clause not to exceed thirty (30) days notice to the
26 contractee.

27 (2) Each personal service contract, tax incentive agreement, and memorandum of

- 1 agreement shall be filed with the committee prior to the effective date and shall be
2 accompanied by a completed proof of necessity form as established by the
3 committee by promulgation of an administrative regulation, or equivalent
4 information if submitted electronically. The proof of necessity form shall document:
- 5 (a) The need for the service or benefit to the Commonwealth of the tax incentive
6 agreement;
 - 7 (b) For personal service contracts and memoranda of agreement, the
8 unavailability of state personnel or the nonfeasibility of utilizing state
9 personnel to perform the service;
 - 10 (c) The total projected cost of the contract or agreement and source of funding;
 - 11 (d) The total projected duration of the contract or tax incentive agreement;
 - 12 (e) Payment information, in detail;
 - 13 (f) In the case of memoranda of agreement or similar device, the reason for
14 exchanging resources or responsibilities; and
 - 15 (g) Such other information as the committee deems appropriate.
- 16 (3) Adequate notice of the need for a personal service contract shall be given by the
17 contracting body through a request for proposals. The request for proposals shall
18 describe the services required, list the type of information and data required of each
19 offeror, state the relative importance of particular qualifications, and include the
20 reciprocal preference for resident bidders required by KRS 45A.494.
- 21 (4) (a) The head of the contracting body or his or her designee may conduct
22 discussions with any offeror who has submitted a proposal to determine the
23 offeror's qualifications for further consideration.
- 24 (b) *The Attorney General or his or her designee shall participate in discussions*
25 *with offerors for a personal service contract for legal services that provides*
26 *for payment by contingency fee in order to:*
- 27 *1. Evaluate the offeror's experience with similar issues or cases; and*

1 2. Determine in writing the factors required under subsection (1) of
2 Section 1 of this Act.

3 (c) Discussions shall not disclose any information derived from proposals
4 submitted by other offerors.

5 (5) Award shall be made to the offeror determined by the head of the contracting body,
6 or his or her designee, to be the best qualified of all offerors based on the evaluation
7 factors set forth in the request for proposals and the negotiation of fair and
8 reasonable compensation. If compensation cannot be agreed upon with the best
9 qualified offeror and if proposals were submitted by one (1) or more other offerors
10 determined to be qualified, negotiations may be conducted with the other offeror or
11 offerors in the order of their respective qualification ranking. In this case, the
12 contract may be awarded to the next best ranked offeror for a fair and reasonable
13 compensation. All determinations of the qualification rankings of offerors by the
14 head of the contracting body or a designee of the officer based on evaluation factors
15 set forth in the request for proposals shall be made in writing. Written
16 documentation shall be maintained concerning the final results of negotiation with
17 each vendor and reasoning as to why each vendor was chosen.

18 (6) The committee shall maintain a record or have readily accessible records of the date
19 on which each personal service contract, tax incentive agreement, and memorandum
20 of agreement was received and shall maintain or have access to electronic or paper
21 files on all personal service contracts, tax incentive agreements, and memoranda of
22 agreement. Except for records exempt from inspection under KRS 61.870 to
23 61.884, all personal service contracts, tax incentive agreements, and memoranda of
24 agreement shall be made available for public inspection.

25 (7) Payment on personal service contracts, tax incentive agreements, and memoranda of
26 agreement submitted to the committee for approval shall not be made for services
27 rendered or projects undertaken after committee disapproval, unless the decision of

1 the committee is overridden by the secretary of the Finance and Administration
2 Cabinet or agency head, if the agency has been granted delegation authority by the
3 secretary of the Finance and Administration Cabinet. All personal service contracts,
4 tax incentive agreements, and memoranda of agreement shall contain a provision
5 that stipulates that payments on personal service contracts and memoranda of
6 agreement shall not be authorized for services rendered after committee
7 disapproval, unless the decision of the committee is overridden by the secretary of
8 the Finance and Administration Cabinet or agency head, if the agency has been
9 granted delegation authority.

10 (8) In the event of a governmental emergency as defined under KRS 45A.690, work
11 may begin prior to filing notification of the personal service contract with the
12 committee, if the secretary of the Finance and Administration Cabinet or his
13 designee determines that the time involved in the normal review process would be
14 detrimental to the Commonwealth's ability to act or procure the services and the
15 normal process will not accommodate the governmental emergency. Payment shall
16 not be made until written notification and explanation of the reasons for this action
17 are forwarded to the committee.

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

23 (10) (a) No payment shall be made on any personal service contract unless the
24 individual, firm, partnership, or corporation awarded the personal service
25 contract submits its invoice for payment on a form established by the
26 committee.

27 (b) Invoices shall be submitted every ninety (90) days, unless the personal service

1 contract specifies a different submission time period.

2 (c) Separate invoices shall be submitted for each distinct matter covered by the
3 personal service contract, and shall be signed by the individual responsible for
4 that matter.

5 (d) Each invoice shall contain the following information:

- 6 1. A description of the matter covered by the invoice;
- 7 2. The date each service was performed;
- 8 3. A full description of each service;
- 9 4. The name and title of each individual who worked on the matter, and the
10 time the individual spent on the matter;
- 11 5. The subject matter and recipient of any correspondence;
- 12 6. A full description of any work product produced, designating the way in
13 which the work product is associated with the matter being invoiced;
- 14 7. The hourly rate for each individual working on the matter, and the total
15 charge for that individual for each matter invoiced;
- 16 8. An itemized list of all disbursements to be reimbursed by the state for
17 each matter invoiced;
- 18 9. The total charge for each matter;
- 19 10. The combined total for services and disbursements for the billing period;
- 20 11. The tax identification number of the entity awarded the personal service
21 contract; and
- 22 12. An indication on each invoice of whether or not the invoice is final.

23 (e) The issuance of an invoice to the Commonwealth constitutes an affirmation
24 by the individual, firm, partnership, or corporation awarded the personal
25 service contract that the invoice truly and accurately represents work actually
26 performed and expenses actually incurred.

27 (f) The head of the contracting body shall approve the invoice, indicating that the

1 charges in the invoice reflect the value of the work performed, and all
2 recorded costs and disbursements were reasonably and necessarily incurred in
3 connection with the matter invoiced.

4 ➔Section 3. KRS 15.100 is amended to read as follows:

- 5 (1) The Attorney General shall appoint a deputy attorney general, who shall have the
6 same qualifications required of a Circuit Judge except for residence in a district and
7 who shall receive the same salary as a Circuit Judge, to serve at the pleasure of the
8 Attorney General and to perform the duties he may designate. The Attorney General
9 may appoint two (2) assistant deputy attorneys general, who shall have the same
10 qualifications required of a District Judge except for residence in a district and who
11 shall receive the same salary as a District Judge, to serve at the pleasure of the
12 Attorney General and to perform the duties he may designate. In addition thereto, he
13 may appoint another assistant deputy attorney general to function as administrator
14 and shall set his salary.
- 15 (2) In addition to the deputy attorney general, the Attorney General shall appoint such
16 assistants and special attorneys as he deems necessary to transact the business of the
17 Department of Law, and to perform the duties he may designate. The deputy
18 attorney general, assistant deputy attorneys general, assistants, and special attorneys
19 shall have full power, as authorized and under the direction of the Attorney General,
20 to perform such duties as may be performed by the Attorney General. The Attorney
21 General shall be responsible for the official acts of his deputy, assistant deputy
22 attorneys general, assistants, and special attorneys.
- 23 (3) (a) In addition to the appointment and designation of a deputy, assistant deputy
24 attorneys general, assistants and special attorneys pursuant to subsections (1)
25 and (2) of this section, the Attorney General may enter into such contracts for
26 legal services as he deems necessary and advisable subject to the
27 requirements of KRS 12.210.

1 **(b) Any contract for legal services that provides for payment by contingency fee**
 2 **shall be governed by Section 1 of this Act.**

3 **(c) Any contract for legal services that does not provide for payment by**
 4 **contingency fee shall be submitted to the Government Contract Review**
 5 **Committee for review in accordance with KRS 45A.690 to 45A.725.**

6 (4) Each assistant or special attorney so appointed or designated shall be a person
 7 admitted to the practice of law by the Supreme Court of this Commonwealth and
 8 shall qualify by taking the oath of office.

9 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO
 10 READ AS FOLLOWS:

11 **The Governor, through an attorney or attorneys designated by the Governor, shall**
 12 **have exclusive authority to file amicus briefs in the name of the Commonwealth, but a**
 13 **member of the General Assembly or a state constitutional officer referred to in Section**
 14 **91 of the Kentucky Constitution may seek leave to file amicus briefs in his or her own**
 15 **name or on behalf of his or her office.**

16 ➔Section 5. KRS 418.075 is amended to read as follows:

17 **(1)** When declaratory relief is sought, all persons shall be made parties who have or
 18 claim any interest which would be affected by the declaration, and no declaration
 19 shall prejudice the rights of persons not parties to the proceeding.

20 **(2)**~~**(1)**~~ In any proceeding which involves the validity of a statute, the Attorney
 21 General of the state shall, before judgment is entered, be served with a copy of the
 22 petition, and shall be entitled to be heard, and if the ordinance or franchise is
 23 alleged to be unconstitutional, the Attorney General of the state shall also be served
 24 with a copy of the petition and be entitled to be heard.

25 **(3)**~~**(2)**~~ In any appeal to the Kentucky Court of Appeals or Supreme Court or the
 26 federal appellate courts in any forum which involves the constitutional validity of a
 27 statute, the Attorney General shall, before the filing of the appellant's brief, be

1 served with a copy of the pleading, paper, or other documents which initiate the
 2 appeal in the appellate forum. This notice shall specify the challenged statute and
 3 the nature of the alleged constitutional defect.

4 ~~(4)~~~~(3)~~ The Attorney General shall notify the Legislative Research Commission and
 5 the Office of the Governor of:

6 (a) The receipt of a petition and the nature of any proceedings involving the
 7 validity of a statute;~~and~~

8 (b) Whether the Attorney General intends to enter an appearance and
 9 participate in the proceeding; and

10 (c) The entering of a final judgment in those proceedings, if the Attorney General
 11 is a party to that action.

12 ~~(5)~~~~(4)~~ Pursuant to Sections 43 and 231 of the Constitution of Kentucky, members of
 13 the General Assembly, organizations within the legislative branch of state
 14 government, or officers or employees of the legislative branch shall not be made
 15 parties to any action challenging the constitutionality or validity of any statute or
 16 regulation, without the consent of the member, organization, or officer or employee.

17 ➔Section 6. KRS 15.020 is amended to read as follows:

18 The Attorney General is the chief law officer of the Commonwealth of Kentucky and all
 19 of its departments, commissions, agencies, and political subdivisions, and the legal
 20 adviser of all state officers, departments, commissions, and agencies, and when requested
 21 in writing shall furnish to them his written opinion touching any of their official duties,
 22 and shall prepare proper drafts of all instruments of writing required for public use, and
 23 shall exercise all common law duties and authority pertaining to the office of the Attorney
 24 General under the common law, except when modified by statutory enactment. He shall
 25 communicate with the Legislative Research Commission and the Office of the Governor
 26 as required by KRS 418.075. Except as otherwise provided in KRS 48.005 and 2000 Ky.
 27 Acts ch. 483, sec. 8, he shall appear for the Commonwealth in all cases in the Supreme

1 Court or Court of Appeals wherein the Commonwealth is interested, and shall also
2 commence all actions or enter his appearance in all cases, hearings, and proceedings in
3 and before all other courts, tribunals, or commissions in or out of the state, and attend to
4 all litigation and legal business in or out of the state required of him by law, or in which
5 the Commonwealth has an interest, and any litigation or legal business that any state
6 officer, department, commission, or agency may have in connection with, or growing out
7 of, his or its official duties, except where it is made the duty of the Commonwealth's
8 attorney or county attorney to represent the Commonwealth. When any attorney is
9 employed for any said agency, the same shall have the approval of such agency before
10 such employment. If any funds of any kind or nature whatsoever are recovered by or on
11 behalf of the Commonwealth, in any action, including an ex rel. action where the
12 Attorney General has entered an appearance or is a party according to statutory or
13 common law authority, those funds shall be handled under KRS 48.005.

14 ➔Section 7. Sections 1 to 3 of this Act shall not apply to contracts which were
15 entered into before the effective date of this Act, nor to extensions of those contracts.
16 Sections 1 to 3 of this Act shall not apply to any litigation started before the effective date
17 of this Act, nor to litigation stemming from that litigation.

18 ➔Section 8. Whereas the prompt and efficient handling of legal actions involving
19 the Commonwealth is critical to citizens of the Commonwealth, an emergency is declared
20 to exist, and Sections 4 to 6 of this Act take effect upon its passage and approval by the
21 Governor or upon its otherwise becoming a law.