

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;*

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

17 *(h) The legal services contractor is not presently engaged in private litigation*  
18 *against the same defendant involving the same or substantially related*  
19 *subject matter.*

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

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

24 *(a) Twenty percent (20%) of the amount recovered up to ten million dollars*  
25 *(\$10,000,000);*

26 *(b) Fifteen percent (15%) of the amount recovered between ten million dollars*  
27 *(\$10,000,000) and fifteen million dollars (\$15,000,000);*

1        (c) Ten percent (10%) of the amount recovered between fifteen million dollars  
2                    (\$15,000,000) and twenty million dollars (\$20,000,000); and

3        (d) Five percent (5%) of the amount recovered of twenty million dollars  
4                    (\$20,000,000) or more.

5        (4) A contingency fee shall not:

6                    (a) Exceed ten million dollars (\$10,000,000), regardless of the number of  
7                    actions or proceedings or the number of attorneys or law firms involved in  
8                    the matter, and exclusive of any costs and expenses provided for by the  
9                    contract and actually incurred by the legal services contractor; or

10                   (b) Be based on penalties or fines awarded, or amounts attributable to penalties  
11                   or fines.

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

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

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

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

22                   1. Attend all settlement conferences;

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

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

26                   (c) Any opposing party to the matter for which the contract was entered into  
27                   may directly contact the attorney with authority over the contract, without

1 having to notify the contract attorney.

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

5 (8) Within five (5) business days after the contract award, the Finance and  
6 Administration Cabinet shall post on its Web site each personal service contract  
7 for legal services that provides for payment by contingency fee and the  
8 accompanying written determinations by the Attorney General described in  
9 subsection (1) of this section. The contract and accompanying determinations  
10 shall remain on the Web site during the duration of the contract and any  
11 extension.

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

16 1. Expenses;

17 2. Disbursements;

18 3. Charges and credits;

19 4. Underlying receipts and invoices; and

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

22 (b) All records described in this subsection shall be public records subject to  
23 KRS 61.872 to 61.884.

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) In addition to the appointment and designation of a deputy, assistant deputy  
24 attorneys general, assistants and special attorneys pursuant to subsections (1) and  
25 (2) of this section, the Attorney General may enter into such contracts for legal  
26 services as he deems necessary and advisable. **Any contract for legal services that**  
27 **provides for payment by contingency fee shall be governed by Section 1 of this**

1        Act.

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

5        ➔Section 4. This Act shall not apply to contracts which were entered into before  
6        the effective date of this Act, nor to extensions of those contracts. This Act shall not  
7        apply to any litigation started before the effective date of this Act, nor to litigation  
8        stemming from that litigation.