

1 AN ACT relating to procurement.

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

3 ➔Section 1. KRS 61.810 is amended to read as follows:

- 4 (1) All meetings of a quorum of the members of any public agency at which any public
5 business is discussed or at which any action is taken by the agency, shall be public
6 meetings, open to the public at all times, except for the following:
- 7 (a) Deliberations for decisions of the Kentucky Parole Board;
 - 8 (b) Deliberations on the future acquisition or sale of real property by a public
9 agency, but only when publicity would be likely to affect the value of a
10 specific piece of property to be acquired for public use or sold by a public
11 agency;
 - 12 (c) Discussions of proposed or pending litigation against or on behalf of the
13 public agency;
 - 14 (d) Grand and petit jury sessions;
 - 15 (e) Collective bargaining negotiations between public employers and their
16 employees or their representatives;
 - 17 (f) Discussions or hearings which might lead to the appointment, discipline, or
18 dismissal of an individual employee, member, or student without restricting
19 that employee's, member's, or student's right to a public hearing if requested.
20 This exception shall not be interpreted to permit discussion of general
21 personnel matters in secret;
 - 22 (g) Discussions between a public agency and a representative of a business entity
23 and discussions concerning a specific proposal, if open discussions would
24 jeopardize the siting, retention, expansion, or upgrading of the business;
 - 25 (h) State and local cabinet meetings and executive cabinet meetings;
 - 26 (i) Committees of the General Assembly other than standing committees;
 - 27 (j) Deliberations of judicial or quasi-judicial bodies regarding individual

1 adjudications or appointments, at which neither the person involved, his
2 representatives, nor any other individual not a member of the agency's
3 governing body or staff is present, but not including any meetings of planning
4 commissions, zoning commissions, or boards of adjustment;

5 (k) Meetings which federal or state law specifically require to be conducted in
6 privacy;

7 (l) Meetings which the Constitution provides shall be held in secret;~~and~~

8 (m) That portion of a meeting devoted to a discussion of a specific public record
9 exempted from disclosure under KRS 61.878(1)(m). However, that portion of
10 any public agency meeting shall not be closed to a member of the Kentucky
11 General Assembly; and

12 (n) Meetings of any selection committee, evaluation committee, or other similar
13 group established under KRS Chapter 45A or 56 to select a successful
14 bidder for award of a state contract.

15 (2) Any series of less than quorum meetings, where the members attending one (1) or
16 more of the meetings collectively constitute at least a quorum of the members of the
17 public agency and where the meetings are held for the purpose of avoiding the
18 requirements of subsection (1) of this section, shall be subject to the requirements
19 of subsection (1) of this section. Nothing in this subsection shall be construed to
20 prohibit discussions between individual members where the purpose of the
21 discussions is to educate the members on specific issues.

22 ➔Section 2. KRS 61.878 is amended to read as follows:

23 (1) The following public records are excluded from the application of KRS 61.870 to
24 61.884 and shall be subject to inspection only upon order of a court of competent
25 jurisdiction, except that no court shall authorize the inspection by any party of any
26 materials pertaining to civil litigation beyond that which is provided by the Rules of
27 Civil Procedure governing pretrial discovery:

- 1 (a) Public records containing information of a personal nature where the public
2 disclosure thereof would constitute a clearly unwarranted invasion of personal
3 privacy;
- 4 (b) Records confidentially disclosed to an agency and compiled and maintained
5 for scientific research. This exemption shall not, however, apply to records the
6 disclosure or publication of which is directed by another statute;
- 7 (c) 1. Upon and after July 15, 1992, records confidentially disclosed to an
8 agency or required by an agency to be disclosed to it, generally
9 recognized as confidential or proprietary, which if openly disclosed
10 would permit an unfair commercial advantage to competitors of the
11 entity that disclosed the records;
- 12 2. Upon and after July 15, 1992, records confidentially disclosed to an
13 agency or required by an agency to be disclosed to it, generally
14 recognized as confidential or proprietary, which are compiled and
15 maintained:
- 16 a. In conjunction with an application for or the administration of a
17 loan or grant;
- 18 b. In conjunction with an application for or the administration of
19 assessments, incentives, inducements, and tax credits as described
20 in KRS Chapter 154;
- 21 c. In conjunction with the regulation of commercial enterprise,
22 including mineral exploration records, unpatented, secret
23 commercially valuable plans, appliances, formulae, or processes,
24 which are used for the making, preparing, compounding, treating,
25 or processing of articles or materials which are trade commodities
26 obtained from a person; or
- 27 d. For the grant or review of a license to do business.

- 1 3. The exemptions provided for in subparagraphs 1. and 2. of this
2 paragraph shall not apply to records the disclosure or publication of
3 which is directed by another statute;
- 4 (d) Public records pertaining to a prospective location of a business or industry
5 where no previous public disclosure has been made of the business' or
6 industry's interest in locating in, relocating within or expanding within the
7 Commonwealth. This exemption shall not include those records pertaining to
8 application to agencies for permits or licenses necessary to do business or to
9 expand business operations within the state, except as provided in paragraph
10 (c) of this subsection;
- 11 (e) Public records which are developed by an agency in conjunction with the
12 regulation or supervision of financial institutions, including but not limited to,
13 banks, savings and loan associations, and credit unions, which disclose the
14 agency's internal examining or audit criteria and related analytical methods;
- 15 (f) The contents of real estate appraisals, engineering or feasibility estimates and
16 evaluations made by or for a public agency relative to acquisition of property,
17 until such time as all of the property has been acquired. The law of eminent
18 domain shall not be affected by this provision;
- 19 (g) Test questions, scoring keys, and other examination data used to administer a
20 licensing examination, examination for employment, or academic examination
21 before the exam is given or if it is to be given again;
- 22 (h) Records of law enforcement agencies or agencies involved in administrative
23 adjudication that were compiled in the process of detecting and investigating
24 statutory or regulatory violations if the disclosure of the information would
25 harm the agency by revealing the identity of informants not otherwise known
26 or by premature release of information to be used in a prospective law
27 enforcement action or administrative adjudication. Unless exempted by other

1 provisions of KRS 61.870 to 61.884, public records exempted under this
2 provision shall be open after enforcement action is completed or a decision is
3 made to take no action; however, records or information compiled and
4 maintained by county attorneys or Commonwealth's attorneys pertaining to
5 criminal investigations or criminal litigation shall be exempted from the
6 provisions of KRS 61.870 to 61.884 and shall remain exempted after
7 enforcement action, including litigation, is completed or a decision is made to
8 take no action. The exemptions provided by this subsection shall not be used
9 by the custodian of the records to delay or impede the exercise of rights
10 granted by KRS 61.870 to 61.884;

- 11 (i) Preliminary drafts, notes, correspondence with private individuals, other than
12 correspondence which is intended to give notice of final action of a public
13 agency;
- 14 (j) Preliminary recommendations, and preliminary memoranda in which opinions
15 are expressed or policies formulated or recommended;
- 16 (k) All public records or information the disclosure of which is prohibited by
17 federal law or regulation;
- 18 (l) Public records or information the disclosure of which is prohibited or
19 restricted or otherwise made confidential by enactment of the General
20 Assembly;
- 21 (m) 1. Public records the disclosure of which would have a reasonable
22 likelihood of threatening the public safety by exposing a vulnerability in
23 preventing, protecting against, mitigating, or responding to a terrorist act
24 and limited to:
- 25 a. Criticality lists resulting from consequence assessments;
- 26 b. Vulnerability assessments;
- 27 c. Antiterrorism protective measures and plans;

- 1 d. Counterterrorism measures and plans;
- 2 e. Security and response needs assessments;
- 3 f. Infrastructure records that expose a vulnerability referred to in this
- 4 subparagraph through the disclosure of the location, configuration,
- 5 or security of critical systems, including public utility critical
- 6 systems. These critical systems shall include but not be limited to
- 7 information technology, communication, electrical, fire
- 8 suppression, ventilation, water, wastewater, sewage, and gas
- 9 systems;
- 10 g. The following records when their disclosure will expose a
- 11 vulnerability referred to in this subparagraph: detailed drawings,
- 12 schematics, maps, or specifications of structural elements, floor
- 13 plans, and operating, utility, or security systems of any building or
- 14 facility owned, occupied, leased, or maintained by a public agency;
- 15 and
- 16 h. Records when their disclosure will expose a vulnerability referred
- 17 to in this subparagraph and that describe the exact physical
- 18 location of hazardous chemical, radiological, or biological
- 19 materials.
- 20 2. As used in this paragraph, "terrorist act" means a criminal act intended
- 21 to:
- 22 a. Intimidate or coerce a public agency or all or part of the civilian
- 23 population;
- 24 b. Disrupt a system identified in subparagraph 1.f. of this paragraph;
- 25 or
- 26 c. Cause massive destruction to a building or facility owned,
- 27 occupied, leased, or maintained by a public agency.

- 1 3. On the same day that a public agency denies a request to inspect a public
2 record for a reason identified in this paragraph, that public agency shall
3 forward a copy of the written denial of the request, referred to in KRS
4 61.880(1), to the executive director of the Kentucky Office of Homeland
5 Security and the Attorney General.
- 6 4. Nothing in this paragraph shall affect the obligations of a public agency
7 with respect to disclosure and availability of public records under state
8 environmental, health, and safety programs.
- 9 5. The exemption established in this paragraph shall not apply when a
10 member of the Kentucky General Assembly seeks to inspect a public
11 record identified in this paragraph under the Open Records Law;~~and~~
- 12 (n) Public or private records, including books, papers, maps, photographs, cards,
13 tapes, discs, diskettes, recordings, software, or other documentation regardless
14 of physical form or characteristics, having historic, literary, artistic, or
15 commemorative value accepted by the archivist of a public university,
16 museum, or government depository from a donor or depositor other than a
17 public agency. This exemption shall apply to the extent that nondisclosure is
18 requested in writing by the donor or depositor of such records, but shall not
19 apply to records the disclosure or publication of which is mandated by another
20 statute or by federal law; and
- 21 (o) Records of a procurement process under KRS Chapter 45A or 56. This
22 exemption shall not apply after:
- 23 1. A contract is awarded; or
- 24 2. The procurement process is canceled without award of a contract and
25 there is a determination that the contract will not be resolicited.
- 26 (2) No exemption in this section shall be construed to prohibit disclosure of statistical
27 information not descriptive of any readily identifiable person.

1 (3) No exemption in this section shall be construed to deny, abridge, or impede the
2 right of a public agency employee, including university employees, an applicant for
3 employment, or an eligible on a register to inspect and to copy any record including
4 preliminary and other supporting documentation that relates to him. The records
5 shall include, but not be limited to, work plans, job performance, demotions,
6 evaluations, promotions, compensation, classification, reallocation, transfers, lay-
7 offs, disciplinary actions, examination scores, and preliminary and other supporting
8 documentation. A public agency employee, including university employees,
9 applicant, or eligible shall not have the right to inspect or to copy any examination
10 or any documents relating to ongoing criminal or administrative investigations by
11 an agency.

12 (4) If any public record contains material which is not excepted under this section, the
13 public agency shall separate the excepted and make the nonexcepted material
14 available for examination.

15 (5) The provisions of this section shall in no way prohibit or limit the exchange of
16 public records or the sharing of information between public agencies when the
17 exchange is serving a legitimate governmental need or is necessary in the
18 performance of a legitimate government function.

19 ➔Section 3. KRS 56.8169 is amended to read as follows:

20 (1) In conducting the built-to-suit process, the commissioner of the Department for
21 Facilities Management, after consultation with the agency or agencies for whose use
22 the space is sought, shall arrive at a request for proposals.

23 (2) The request for proposals shall indicate the relative importance of evaluation
24 factors.

25 (3) A request for proposals may be amended at any time prior to the deadline for the
26 submission of proposals.

27 (4) In soliciting the interest of firms to carry out a built-to-suit, the department shall

- 1 comply with the procedures established in this subsection.
- 2 (a) The department shall provide adequate public notice of a request for proposals
3 and notice of the materials that the department will provide to a firm to assist
4 that firm in responding to a request for proposals. Those materials shall
5 include, but not be limited to, the request for proposals and the proposal
6 evaluation sheet to be used by the selection committee. The notice shall also
7 set a time and date for a written response to the notice.
- 8 (b) The Department for Facilities Management may use any means available to
9 notify firms that a notice has been given.
- 10 (5) To respond to a notice, a firm, or its representative, shall respond on or before the
11 time and date designated in the notice. The response shall be in a form determined
12 by the department and shall provide the firm's name and address.
- 13 (6) All written responses submitted on or before the time and date designated shall be
14 opened or downloaded at the same time, publicly read or posted, and kept on file by
15 the department. A firm which fails to meet the deadline shall be barred from the
16 procurement process.
- 17 (7) The department shall transmit to all firms that responded in time a request for
18 proposals.
- 19 (8) After the request for proposals have been transmitted, but before written proposals
20 are submitted, the commissioner, and his staff, may hold any meetings, discussions,
21 or negotiations that they deem appropriate with the firms.
- 22 (9) (a) The commissioner shall invite each firm to submit a written proposal, on a
23 form created by the department, on or before the time and date set forth in the
24 invitation. A form shall be provided to each firm.
- 25 (b) A firm that does not submit a written proposal, on a form created by this
26 department, on or before the deadline shall be barred from the procurement
27 process.

- 1 (c) Employees of the department and the members of the selection committee
2 shall keep the written proposals confidential until the lease is awarded.
- 3 (10) The commissioner shall designate a department employee to determine which firms
4 have filed, in a timely fashion, both a response to the public notice and a written
5 proposal on a form created by the department. The designated employee shall create
6 a list of the firms which have done so and certify the list.
- 7 (11) The department shall organize the selection committee's first meeting. At that
8 meeting, the selection committee shall:
- 9 (a) Elect from its members a chairman and a vice chairman who shall hold their
10 positions for the duration of the selection process;
- 11 (b) Be provided with:
- 12 1. The certified list of firms;
- 13 2. The firms' written proposals submitted in response to a request for
14 proposals;
- 15 3. The request for proposals;
- 16 4. The notice of request for proposals;
- 17 5. The proposal evaluation sheets; and
- 18 6. A notice from the commissioner informing the committee that the
19 selection process is governed by KRS 56.800 to 56.823 and 56.990; and
- 20 (c) Discuss the future conduct of its affairs.
- 21 (12) The selection committee shall meet ~~in executive session~~ to:
- 22 (a) Evaluate the materials with which it has been provided;
- 23 (b) Select, but not rank, the three (3) most qualified firms, based upon the
24 evaluation factors set forth in the request for proposals; and
- 25 (c) Notify the department of the three (3) finalists.
- 26 (13) The department shall notify each firm which responded to the request for proposals,
27 informing the firm of:

- 1 (a) The three (3) finalists; and
- 2 (b) The rest of the procedure that will be followed in the awarding of the built-to-
- 3 suit lease.
- 4 (14) The selection committee shall interview the three (3) finalists, preferably on the
- 5 same day. The finalists shall be interviewed one (1) at a time, and each interview
- 6 shall be attended only by representatives of the finalist and members of the selection
- 7 committee. Members of the selection committee shall keep confidential the
- 8 substance of an interview.
- 9 (15) The selection committee shall meet ~~in executive session~~ to:
- 10 (a) Rank the three (3) finalists based on the weighted evaluation factors in the
- 11 request for proposals; and
- 12 (b) Forward the ranking to the department.
- 13 (16) (a) The commissioner shall:
- 14 1. Award the built-to-suit lease to the top ranked finalist; or
- 15 2. Request best-and-final offers.
- 16 (b) The commissioner shall request best-and-final offers only of the three (3)
- 17 finalists. The commissioner's written request shall include his reason for
- 18 requesting best-and-final offers, and shall state a time and date by which all
- 19 best-and-final offers will have to be received. A firm that does not submit a
- 20 best-and-final offer by the deadline shall not be awarded the built-to-suit
- 21 lease.
- 22 (c) Employees of the department and the members of the selection committee
- 23 shall keep the best-and-final offers confidential until the lease is awarded.
- 24 (d) The selection committee shall meet ~~in executive session~~ to assess all the
- 25 materials with which it was provided pursuant to subsection (11)(b) of this
- 26 section, as well as the request for best-and-final offers and best-and-final
- 27 offers. The committee shall rank the best-and-final offers of the three (3)

1 finalists based on the weighted evaluation factors in the request for proposals.
2 If the committee determines that the top ranked best-and-final offer is
3 adequate, the committee shall forward the name of the firm that submitted the
4 top ranked best-and-final offer to the department. If the committee determines
5 that the top ranked firm's best-and-final offer is inadequate, the process shall
6 end.

7 (e) The commissioner shall award the built-to-suit lease to the firm chosen by the
8 selection committee.

9 (17) After the best firm has been selected, the department shall notify the finalists,
10 informing them of:

11 (a) Which firm has been selected for the proposed lease; and

12 (b) The rest of the procedure that will be followed in the awarding of the lease.

13 **(18) Sections 1 and 2 of this Act shall govern the procurement process set out in this**
14 **section.**