

1 AN ACT relating to contracting of public works projects and declaring an
2 emergency.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO
5 READ AS FOLLOWS:

6 *(1) As used in this section:*

7 *(a) "Public agency" has the same meaning as in KRS 61.870; and*

8 *(b) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches,*
9 *sewage disposal plants, waterworks, and all other structures or work,*
10 *including "adult correctional facilities", as defined in KRS 197.500,*
11 *constructed under contract with any public authority.*

12 *(2) A public agency shall not impose by rule, ordinance, or any other action relating*
13 *to contracts for public works projects for which competitive bids are required any*
14 *requirement that directly or indirectly restricts potential bidders to any*
15 *predetermined class of bidders defined by experience on similar projects, size of*
16 *company, union membership, or any other criteria.*

17 *(3) A public agency awarding a contract for a public works project shall not in the*
18 *bid specifications, project agreements, or other contract documents:*

19 *(a) Require a bidder, offeror, or contractor in any contractor tier to enter into*
20 *or adhere to an agreement with a labor organization relating to the public*
21 *works contract or any other public works project;*

22 *(b) Prohibit a bidder, offeror, or contractor in any contractor tier from entering*
23 *into or adhering to an agreement with a labor organization relating to the*
24 *public works project or any other public works project; or*

25 *(c) Discriminate against a bidder, offeror, or contractor in any contractor tier*
26 *for any of the following:*

27 *1. Becoming or remaining a signatory to an agreement with a labor*

1 organization relating to the public works project or any other public
2 works project; or

3 2. Refusing to become or remain a signatory to an agreement with a
4 labor organization relating to the public works project or any other
5 public works project; or

6 3. Adhering to or refusing to adhere to an agreement with a labor
7 organization relating to the public works project or any other public
8 works project.

9 (4) A public agency shall not award a grant, tax abatement, or tax credit that is
10 conditioned upon a requirement that a person awarded the grant, tax abatement,
11 or tax credit include a term described in subsection (3) of this section in a
12 contract document for any public works project that is the subject of the grant,
13 tax abatement, or tax credit.

14 (5) This section does not do any of the following:

15 (a) Prohibit a public agency from awarding a contract, grant, tax abatement, or
16 tax credit to a private owner, bidder, or contractor in any contractor tier
17 who is party to an agreement with a labor organization if:

18 1. Being or becoming a party or adhering to an agreement with a labor
19 organization is not a condition for award of the contract, grant, tax
20 abatement, or tax credit; and

21 2. The public agency does not discriminate against a private owner,
22 bidder, or contractor in awarding of the contract, grant, tax
23 abatement, or tax credit based upon that status of the private owner,
24 bidder, or contractor as being or becoming, or the willingness or
25 refusal to become, a party to an agreement with a labor organization;

26 (b) Prohibit a contractor in any contractor tier from voluntarily entering into or
27 complying with an agreement entered into with a labor organization in

1 regard to a contract with a public agency or funded in whole or in part from
2 a grant, tax abatement, or tax credit from a public agency;

3 (c) Prohibit employers or other parties from entering into agreements or
4 engaging in any other activity protected by the National Labor Relations
5 Act, 29 U.S.C. secs. 151 et. seq; or

6 (d) Interfere with labor relations of parties that are not regulated under the
7 National Labor Relations Act, 29 U.S.C. secs. 151 et. seq.

8 (6) A public agency may exempt a particular project, contract in any contractor tier,
9 grant, tax abatement, or tax credit from the requirements of any or all of the
10 provisions of this section if the public agency finds, after public notice and
11 hearing, that special circumstances require an exemption to avert an imminent
12 threat to public health or safety. A finding of special circumstances under this
13 subsection may not be based on the possibility or presence of a labor dispute
14 concerning:

15 (a) The use of contractors at any contractor tier who are not signatories to, or
16 otherwise do not adhere to, agreements with one (1) or more labor
17 organizations; or

18 (b) Employees on the project who are not members of, or affiliated with, a labor
19 organization.

20 ➔Section 2. Whereas immediate steps need to be undertaken to control the costs
21 of public construction projects, and to promote and ensure fair competition on all public
22 construction projects, and to ensure more economical, nondiscriminatory, and efficient
23 contracts for public works projects, an emergency is declared to exist, and this Act takes
24 effect upon its passage and approval by the Governor or upon its otherwise becoming a
25 law.