

1 AN ACT relating to government procurement.

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

3 ➔Section 1. KRS 45A.085 is amended to read as follows:

- 4 (1) When, under administrative regulations promulgated by the secretary or under KRS
5 45A.180, the purchasing officer determines in writing that the use of competitive
6 sealed bidding is not practicable, and except as provided in KRS 45A.095 and
7 45A.100, a contract may be awarded by competitive negotiation, which may include
8 the use of a reverse auction.
- 9 (2) Adequate public notice of the request for proposals and any reverse auction shall be
10 given in the same manner and circumstances as provided in KRS 45A.080(3).
- 11 (3) Contracts other than contracts for projects utilizing an alternative project delivery
12 method under KRS 45A.180 may be competitively negotiated when it is determined
13 in writing by the purchasing officer that the bids received by competitive sealed
14 bidding either are unreasonable as to all or part of the requirements, or were not
15 independently reached in open competition, and for which each competitive bidder
16 has been notified of the intention to negotiate and is given reasonable opportunity to
17 negotiate.
- 18 (4) Contracts for projects utilizing an alternative project delivery method shall be
19 processed in accordance with KRS 45A.180.
- 20 (5) The request for proposals shall indicate the relative importance of price and other
21 evaluation factors, and any reverse auction procedures.
- 22 (6) Award shall be made to the responsible and responsive offeror whose proposal is
23 determined in writing to be the most advantageous to the Commonwealth, taking
24 into consideration price and the evaluation factors set forth in the request for
25 proposals and the reciprocal preference for resident bidders required under KRS
26 45A.494.
- 27 **(7) Any governmental body that accepts a proposal shall be limited to increasing the**

1 *project price with the winning bidder by no more than ten percent (10%) or a new*
 2 *request for proposals shall be initiated.*

3 (~~8~~7) Written or oral discussions shall be conducted with all responsible offerors
 4 who submit proposals determined in writing to be reasonably susceptible of being
 5 selected for award. Discussions shall not disclose any information derived from
 6 proposals submitted by competing offerors. Discussions need not be conducted:

- 7 (a) With respect to prices, where the prices are fixed by law, reverse auction, or
 8 administrative regulation, except that consideration shall be given to
 9 competitive terms and conditions;
- 10 (b) Where time of delivery or performance will not permit discussions; or
- 11 (c) Where it can be clearly demonstrated and documented from the existence of
 12 adequate competition or prior experience with the particular supply, service,
 13 or construction item, that acceptance of an initial offer without discussion
 14 would result in fair and reasonable best value procurement, and the request for
 15 proposals notifies all offerors of the possibility that award may be made on the
 16 basis of the initial offers.

17 ➔Section 2. KRS 45A.097 is amended to read as follows:

- 18 (1) A governmental body may accept donations and gifts from persons or businesses to
 19 further the governmental body's mission or to benefit the Commonwealth.
 20 Donations and gifts shall not be from a prohibited source.
- 21 (2) In exchange for a donation or gift, a governmental body may consider an
 22 accompanying request for a commemoration or memorial, but all such requests
 23 involving state property shall be subject to approval by the secretary.
- 24 (3) Except as provided in KRS 45A.095(2)(d), naming rights of structures, buildings, or
 25 any other physical property owned or operated by the Commonwealth of Kentucky
 26 shall be competitively awarded pursuant to KRS Chapter 45A and subject to review
 27 and approval by the secretary. Naming rights shall not constitute an endorsement of

1 a particular business by the Commonwealth.

2 (4) Notwithstanding KRS Chapter 11A, a governmental body may accept and solicit
3 sponsorships from persons and businesses in the following manner:

4 (a) A sponsorship shall be for a defined period of time, a specific event, or a
5 particular governmental body purchase or need;

6 (b) A governmental body seeking to solicit a sponsorship shall advertise the
7 sponsorship opportunity on its Web site, newsletter, or other written media for
8 a minimum of seven (7) calendar days. A sponsorship opportunity shall
9 describe the number of potential sponsorships available, the relative
10 importance of price and other evaluation factors used to ensure "best value" as
11 defined in KRS 45A.070, and the advertising or similar commercial
12 considerations available from the Commonwealth for a particular sponsorship
13 opportunity;

14 (c) The governmental body shall notify the Office of Material and Procurement
15 Services in the Office of the Controller of the Finance and Administration
16 Cabinet by providing copies of its sponsorship opportunity advertisements to
17 the office. If the Office of Procurement Services approves or does not respond
18 to the governmental body within one (1) business day of notification, the
19 governmental body may proceed under this subsection;

20 (d) At the end of the advertising period for a sponsorship, all responses shall be
21 evaluated in accordance with the evaluation factors set forth in the
22 sponsorship opportunity;

23 (e) Written or oral discussions may be conducted with responsible bidders in
24 accordance with KRS 45A.085(8)~~(7)~~;

25 (f) A sponsorship shall be awarded to the responsible bidder determined in
26 writing to be most advantageous to the Commonwealth, taking into
27 consideration the evaluation factors set forth in the sponsorship opportunity.

1 All evaluation documentation, scoring, and summary conclusions of the award
2 shall be made a part of the file or governmental body record;

3 (g) If insufficient eligible responses are received in response to the advertising of
4 a sponsorship opportunity, and the purchasing officer determines in writing
5 that further bidding would not likely result in additional responsive proposals
6 being received by the Commonwealth, then noncompetitive negotiations with
7 nonprohibited sources may be used to award contracts for the remaining
8 number of sponsorships available;

9 (h) A sponsorship shall not constitute an endorsement of a particular business by
10 the Commonwealth as the sole vendor of choice; and

11 (i) An entity that is a prohibited source may be considered for a sponsorship
12 opportunity only if there is a written finding by the purchasing officer that:

13 1. The entity is not lobbying or attempting to influence matters of the
14 governmental body; and

15 2. The sponsorship will provide:

16 a. A public benefit to the Commonwealth; or

17 b. Economic development or enhanced tourism in the
18 Commonwealth.

19 (5) An entity that is a prohibited source due to its current contractual relationship with a
20 governmental body may provide conferences or training events for the benefit of the
21 governmental body only:

22 (a) When the entity does not have any interests that might be affected by the
23 performance or nonperformance of the governmental body's official duties;
24 and

25 (b) The conference or training promotes safety, economic development, or
26 tourism in the Commonwealth, or there is otherwise a public benefit to the
27 Commonwealth.

1 (6) Governmental body employees whose official duties include acceptance or
2 solicitation of donations, gifts, or sponsorships shall not be involved with:

3 (a) The solicitation or award of contracts by the governmental body; or

4 (b) The noncompetitive negotiation of naming rights of structures, buildings, or
5 any physical property owned or operated by the Commonwealth.

6 ➔Section 3. KRS 45A.155 is amended to read as follows:

7 The determinations required by KRS 45A.085(1), (3), (6), and ~~(8)~~~~(7)~~; 45A.090(1), (2)
8 and (3); 45A.095; 45A.105; 45A.110(1); 45A.120(3); and 45A.130(1) shall be final and
9 conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.