

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2022 REGULAR SESSION
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Amend printed copy of **HB 388/GA**

On page 3, between lines 23 and 24, insert the following:

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) Grounds for debarment include:

- (a) A conviction or civil judgment involving fraud or any criminal offense in connection with obtaining, attempting to obtain, or performing a contract;**
- (b) A violation of federal or state antitrust statutes relating to the submission of offers;**
- (c) A commission or attempted commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, state or federal tax evasion, or receiving stolen property;**
- (d) A violation of KRS Chapter 11A or the similar ethics statutes of any state or of the federal government;**
- (e) A willful failure to perform the terms of the contract;**
- (f) A commission or attempted commission of an unfair trade practice under KRS Chapter 367 or the similar statutes of any state or the federal government;**
- (g) An intentional affixing of a label bearing "Made in America" or a similar inscription to a product sold in or shipped to the United States or its outlying areas when the product was not made in the United States or its outlying areas;**

Amendment No. SFA 2

Rep. Sen. Stephen Meredith

Committee Amendment

Floor Amendment

Adopted: _____

Rejected: _____

Signed: _____

LRC Drafter: _____

Date: _____

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- (h) A history of failure to perform or of unsatisfactory performance of one (1) or more contracts; and
- (i) Any other commission of an offense indicating a lack of business integrity or business honesty that seriously and directly affects the responsibilities of a government contractor.
- (2) Proceedings for the investigation and hearing of suspected improper conduct constituting grounds for debarment shall be as follows:
- (a) Executive branch employees shall report any suspected conduct for which a contractor may be debarred to the secretary of the Finance and Administration Cabinet within fourteen (14) days of learning of the suspected conduct.
- (b) The secretary of the Finance and Administration Cabinet shall investigate suspected violations as soon as is reasonably practicable.
- (c) If the investigation finds potential grounds for debarment, the secretary of the Finance and Administration Cabinet shall initiate debarment proceedings under KRS Chapter 13B.
- (d) If the conduct of any public servant or lobbyist, as defined in KRS 11A.010, forms the basis of the investigation, the secretary of the Finance and Administration Cabinet shall also notify the Executive Branch Ethics Commission and include a copy of the notice of debarment proceedings issued as part of the initiation described in paragraph (c) of this subsection.
- (e) If the secretary of the Finance and Administration Cabinet has reasonable cause to believe that a crime has been committed, he or she shall promptly notify the Attorney General and include a copy of the notice of debarment proceedings issued as part of the initiation described in paragraph (c) of this subsection.
- (f) Upon issuing notice of an administrative hearing to a contractor, the secretary of

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- the Finance and Administration Cabinet shall suspend the contractor for a period of one hundred eighty (180) days or until the administrative hearing is concluded, whichever is shorter. If one hundred eighty (180) days pass without a final decision in the hearing, the suspension shall be lifted. If criminal or civil actions are filed, or if an appeal is taken from the final decision of the secretary of the Finance and Administration Cabinet or the Attorney General, the contractor shall remain suspended or, if the suspension was previously lifted, be suspended again until those actions are concluded.*
- (g) *Debarment proceedings under KRS Chapter 13B shall be conducted by a hearing officer employed by the Attorney General's Division of Administrative Hearings. If, during the hearing, the hearing officer receives evidence of a violation of KRS Chapter 11A, he or she shall promptly notify the Executive Branch Ethics Commission. If, during the hearing, the hearing officer receives evidence that a crime may have been committed, he or she shall notify the Attorney General upon the conclusion of the administrative proceedings.*
- (h) *The hearing officer shall forward recommended findings of fact, conclusions of law, and a recommended disposition as provided in KRS 13B.110 to the secretary of the Finance and Administration Cabinet, who shall make the final decision as provided in KRS Chapter 13B unless the conduct of any officer, as defined in KRS 11A.010, is at issue during the proceedings before the hearing officer, in which case the hearing officer shall provide the recommended findings of fact, conclusions of law, and a recommended disposition to the Attorney General, who shall render the final decision in the matter.*
- (3) *Debarment of a bidder constitutes debarment of all divisions or other organizational elements of a contractor unless the debarment decision is limited by its terms to a*

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specific division or organizational element.

(4) (a) Fraudulent, criminal, or other seriously improper conduct of a contractor, officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed when a party knows of, approves of, or acquiesces to the improper conduct from the:

1. Officer, director, shareholder, partner, employee, or other individual to the contractor;
2. Contractor to the officer, director, shareholder, partner, employee, or other individual; and
3. Contractor to another participating contractor in a joint venture or similar arrangement.

(b) Acceptance of the benefits derived from fraudulent, criminal, or other seriously improper conduct shall be evidence of knowledge, approval, or acquiescence of the improper conduct.

(5) (a) For debarment decisions made on the grounds of subsection (1)(a) to (e) of this section, a contractor and any entity or individual to which the contractor's conduct is imputed may be debarred for no more than five (5) years.

(b) For debarment decisions made on the grounds of subsection (1)(f) to (i) of this section, a contractor and any entity or individual to which the contractor's conduct is imputed may be debarred for no more than three (3) years.

➔Section 3. KRS 45A.030 is amended to read as follows:

As used in this code, unless the context requires otherwise:

- (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted;
- (2) "Change order" means a written order signed by the purchasing officer, directing the

contractor to make changes that the changes clause of the contract authorizes the purchasing officer to order without the consent of the contractor;

- (3) "Chief purchasing officer" means the secretary of the Finance and Administration Cabinet, who shall be responsible for all procurement of the Commonwealth except as provided by KRS Chapters 175, 175B, 176, 177, and 180;
- (4) "Construction" means the process of building, altering, repairing, improving, or demolishing any public structures or buildings, or other public improvements of any kind to any public real property. It does not include the routine maintenance of existing structures, buildings, or real property;
- (5) "Construction manager-agency" means services to assist the purchasing agency manage construction that are procured through a contract that is qualifications-based;
- (6) "Construction management-at-risk" means a project delivery method in which the purchasing officer enters into a single contract with an offeror that assumes the risk for construction at a contracted guaranteed maximum price as a general contractor, and provides consultation and collaboration regarding the construction during and after design of a capital project. The contract shall be subject to the bonding requirements of KRS 45A.190;
- (7) "Construction manager-general contractor" means a project delivery method in which the purchasing officer enters into a single contract with an offeror to provide preconstruction and construction services. During the preconstruction phase, the successful offeror provides design consulting services. During the construction phase, the successful offeror acts as general contractor by:
 - (a) Contracting with subcontractors; and
 - (b) Providing for management and construction at a fixed price with a completion deadline;

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- (8) "Contract" means all types of state agreements, including grants and orders, for the acquisition, purchase, or disposal of supplies, services, construction, or any other item. It includes: awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, contingency fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; purchase orders; public-private partnership agreements; and insurance contracts except as provided in KRS 45A.022. It includes supplemental agreements with respect to any of the foregoing;
- (9) "Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It includes bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option;
- (10) "Contractor" means any person having a contract with a governmental body;
- (11) "Data" means recorded information, regardless of form or characteristic;
- (12) **"Debarment" shall mean the disqualification of a person to receive invitations for bids or requests for proposals, or the award of a contract by the local public agency for a specified period of time under the provisions of Section 2 of this Act.**
- (13)** "Design-bid-build" means a project delivery method in which the purchasing officer sequentially awards separate contracts, the first for architectural, engineering, or engineering-related services to design the project and the second for construction of the capital project according to the design. The contract shall be subject to the bonding requirements of KRS 45A.185;
- ~~(14)~~~~(13)~~ "Design-build" means a project delivery method in which the purchasing officer enters into a single contract for design and construction of a capital project. The contract

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shall be subject to the bonding requirements of KRS 45A.190;

~~(15)~~~~(14)~~ "Designee" means a duly authorized representative of a person holding a superior position;

~~(16)~~~~(15)~~ "Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof;

~~(17)~~~~(16)~~ "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body;

~~(18)~~~~(17)~~ "Governmental body" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment of the executive or legislative branch of the state government;

~~(19)~~~~(18)~~ "Meeting" means all gatherings of every kind, including video teleconferences;

~~(20)~~~~(19)~~ "Negotiation" means contracting by either the method set forth in KRS 45A.085, 45A.090, or 45A.095;

~~(21)~~~~(20)~~ "Person" means any business, individual, organization, or group of individuals;

~~(22)~~~~(21)~~ "Private partner" means any entity that is a partner in a public-private partnership other than:

- (a) The Commonwealth of Kentucky, or any agency or department thereof;
- (b) The federal government;
- (c) Any other state government; or
- (d) Any agency of a state, federal, or local government;

~~(23)~~~~(22)~~ "Procurement" means the purchasing, buying, renting, leasing, or otherwise obtaining of any supplies, services, or construction. It includes all functions that pertain to the procurement of any supply, service, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and

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all phases of contract administration;

~~(24)~~~~(23)~~ "Public-private partnership" means a project delivery method for construction or financing of capital projects, as defined in KRS 45.750, or procurement of services, pursuant to a written public-private partnership agreement entered into pursuant to KRS 45A.077 and administrative regulations promulgated thereunder, between:

- (a) At least one (1) private partner; and
- (b) The Commonwealth of Kentucky, or any agency or department thereof;

~~(25)~~~~(24)~~ "Purchase request" or "purchase requisition" means that document whereby a using agency requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any written determination and finding required by KRS 45A.025;

~~(26)~~~~(25)~~ "Purchasing agency" means any governmental body that is authorized by this code or its implementing administrative regulations or by way of delegation from the chief purchasing officer to contract on its own behalf rather than through the central contracting authority of the chief purchasing officer;

~~(27)~~~~(26)~~ "Purchasing officer" means any person authorized by a governmental body in accordance with procedures prescribed by administrative regulations to enter into and administer contracts and make written determinations and findings with respect thereto. The term includes an authorized representative acting within the limits of authority;

~~(28)~~~~(27)~~ "Services" means the rendering by a contractor of its time and effort rather than the furnishing of a specific end product, other than reports that are merely incidental to the required performance of services;

~~(29)~~~~(28)~~ "Supplemental agreement" means any contract modification that is accomplished by the mutual action of the parties;

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~~(30)~~~~(29)~~ "Supplies" means all property, including but not limited to leases of real property, printing, and insurance, except land or a permanent interest in land;

~~(31)~~~~(30)~~ "Using agency" means any governmental body of the state that utilizes any supplies, services, or construction purchased under this code;

~~(32)~~~~(31)~~ "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment; and

~~(33)~~~~(32)~~ "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

➔Section 4. KRS 45A.035 is amended to read as follows:

(1) The secretary of the Finance and Administration Cabinet shall have power and authority over, and may, except as otherwise expressly provided in this code, adopt regulations pursuant to KRS Chapter 13A and consistent with this code governing the purchasing, management, and control of any and all supplies, services, and construction, and other items required to be purchased by the Commonwealth. The secretary shall consider and decide matters of policy with regard to state procurement. The secretary shall have the power of review with respect to the implementation of regulations and policy determinations.

(2) Regulations shall be adopted governing the following:

- (a) Conditions and procedures for delegations of purchasing authority;
- (b) Prequalification, suspension, debarment ***in accordance with Section 2 of this Act,*** and reinstatement of prospective bidders;
- (c) Small purchase procedures;
- (d) Conditions and procedures for the purchase of items for resale;

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- (e) Conditions and procedures for the purchase of agricultural products in accordance with KRS 45A.645;
- (f) Conditions and procedures for the use of source selection methods authorized by this code, including emergency purchases;
- (g) Opening and rejection of bids or offers, consideration of alternate bids, and waiver of informalities in offers;
- (h) Confidentiality of technical data and trade secrets information submitted by actual or prospective bidders or offerors;
- (i) Partial, progressive, and multiple awards;
- (j) Supervision of storerooms and inventories, including determination of appropriate stock levels and the management, transfer, sale, or other disposal of state-owned property;
- (k) Definitions and classes of contractual services and procedures for acquiring them;
- (l) An appeals process to resolve disputes arising from specifications requiring items deemed to be equivalent or a sole brand as specified in KRS 45A.170; and
- (m) Use of reverse auctions as defined in KRS 45A.070.

The secretary may adopt such other regulations as deemed advisable to carry out the purposes of this code.

➔Section 5. KRS 45A.445 is amended to read as follows:

As used in KRS 45A.445 to 45A.460, unless the context indicates otherwise:

- (1) "Conspicuously" shall mean written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.
- (2) "Confidential information" shall mean any information which is available to an employee only because of his status as an employee of the local public agency and is not a matter of public knowledge or available to the public on request.

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~~(3)~~ "Debarment" shall mean the disqualification of a person to receive invitations for bids or requests for proposals, or the award of a contract by the local public agency for a specified period of time.

~~(4)~~ "Financial interest" shall mean:

- (a) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person has, within the past three (3) years, received or is presently or in the future entitled to receive more than one thousand dollars (\$1,000) per year, or its equivalent; or
- (b) Ownership of more than a ten percent (10%) interest in any business; or
- (c) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

~~(4)~~~~(5)~~ "Gratuity" shall mean a payment, loan, subscription, advance, deposit of money, services, or anything of more than fifty dollars (\$50) value, present or promised, unless consideration of substantially equal or greater value is received.

~~(5)~~~~(6)~~ "Immediate family" shall mean a spouse, children, grandchildren, parents, grandparents, brothers and sisters, and such other relatives as designated by the local public agency.

~~(6)~~~~(7)~~ "Official responsibility" shall mean direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct local public agency actions.

~~(7)~~~~(8)~~ "Suspension" shall mean the disqualification of any person to receive invitations for bids or requests for proposals, or to be awarded a contract by a local public agency for a temporary period, pending the completion of an investigation and any legal proceedings that may ensue."; and

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Renumber subsequent sections.