

1 AN ACT relating to public contracts.

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

3 ➔Section 1. KRS 45A.183 is amended to read as follows:

4 (1) *For the purposes of this section, "self-perform" or "self-performance" means*
5 *work performed by direct employees of a construction management-at-risk entity*
6 *or a construction manager-general contractor and not by direct employees of a*
7 *subcontractor that does not exceed twenty percent (20%) of the total cost of the*
8 *project.*

9 (2) When a capital project is to be constructed using the construction management-at-
10 risk method, a process parallel to the selection committee procedures established in
11 KRS 45A.810 shall apply when procuring a construction management-at-risk firm
12 and regulations promulgated in accordance with KRS 45A.180 shall apply that set
13 forth requirements for:

- 14 (a) Description of the bond, insurance, and other security provisions that apply to
15 a project;
- 16 (b) Description of appropriate contract clauses and fiscal responsibility
17 requirements that apply to each project; and
- 18 (c) Restrictions relating to conflicts of interest~~[, including a provision that a~~
19 ~~construction management at risk entity shall be eligible to become an offeror~~
20 ~~of goods or services on a project it manages only when a subcontractor fails to~~
21 ~~perform and upon prior approval by the contracting body].~~

22 (3) *A construction management-at-risk entity shall be eligible to become an offeror*
23 *of goods or services on a project it manages when a subcontractor fails to*
24 *perform and upon prior approval by the contracting body, or when a construction*
25 *management-at-risk entity meets the following conditions:*

- 26 (a) *The construction management-at-risk entity shall only be eligible to*
27 *competitively bid on a part of a project that the entity or its parent, affiliate,*

1 or subsidiary performs in its ordinary course of business;

2 (b) The construction management-at-risk entity shall publicly declare in its
3 advertisement for bids or addenda thereto which parts of the project it plans
4 to competitively bid. The scope of work for those parts of the project shall be
5 reviewed and approved by the contracting body. The advertisement for bids
6 or addenda thereto shall be issued at least two (2) weeks prior to the bid
7 date;

8 (c) The construction management-at-risk entity shall submit a sealed bid for
9 the parts of the project it plans to competitively bid to the contracting body.
10 Other entities who plan to submit bids on the parts of the project submitted
11 by the construction management-at-risk entity shall also submit their bids to
12 the contracting body;

13 (d) The staffing, equipment, and materials that a construction management-at-
14 risk entity uses for the management part of the project shall be separate
15 from the staffing, equipment, and materials required for the self-
16 performance part of the project;

17 (e) The construction management-at-risk entity shall not be eligible to utilize
18 any of the construction contingency it may be carrying on the project for
19 any part of the project it competitively bids to self-perform unless approved
20 to do so by the contracting body; and

21 (f) Electrical, mechanical, fire suppression, or plumbing work shall not be self-
22 performed.

23 (4) To execute its self-performance bid, a construction management-at-risk entity
24 may use:

25 (a) Materials or supplies from a supplier or subcontractor; or

26 (b) Tools or equipment leased from a subcontractor.

27 ~~(5)(2)~~ (a) When a construction project is to be constructed using the construction

1 manager-general contractor method, a competitive process consistent with this
2 code established by administrative regulations promulgated under KRS
3 45A.180 shall apply.

- 4 (b) The procurement process shall set forth the requirements for:
- 5 1. Description of the bond, insurance, and other security provisions that
6 apply to the project;
 - 7 2. Description of appropriate contract clauses and fiscal responsibility
8 requirements that apply to the project; and
 - 9 3. Restrictions relating to conflicts of interest~~], including a provision that a
10 construction manager-general contractor shall be eligible to become an
11 offeror of goods or services on a project it manages only when a
12 subcontractor fails to perform and upon prior approval by the
13 contracting body].~~

- 14 (c) The selection of the construction manager-general contractor shall be based
15 on:
- 16 1. Qualifications; and
 - 17 2. Price, including preconstruction consulting services, overhead, and
18 profit.

19 (d) Prior to the construction phase, the construction manager-general contractor
20 shall competitively bid the subcontracts by public notice and award each
21 subcontract to the lowest responsive and responsible bidder.

22 (e) The final construction cost and completion date for the project shall be
23 established by change order after the construction manager-general contractor
24 enters into all applicable subcontracts.

25 **(6) A construction manager-general contractor shall be eligible to become an offeror**
26 **of goods or services on a project it manages when a subcontractor fails to**
27 **perform and upon prior approval by the contracting body, or when the**

1 construction manager-general contractor meets the following conditions:

2 (a) The construction manager-general contractor shall only be eligible to
3 competitively bid on part or parts of a project that the construction
4 manager-general contractor or its parent, affiliate, or subsidiary performs
5 in its ordinary course of business;

6 (b) The construction manager-general contractor shall publicly declare in its
7 advertisement for bids or addenda thereto which parts of the project it plans
8 to competitively bid. The scope of work for those parts of the project shall be
9 reviewed and approved by the contracting body. The advertisement for bids
10 or addenda thereto shall be issued at least two (2) weeks prior to the bid
11 date;

12 (c) The construction manager-general contractor shall submit a sealed bid for
13 the parts of the project it seeks to self-perform no later than thirty (30)
14 minutes prior to the date and time established for other entities to submit
15 sealed bids for the same project parts. The construction manager-general
16 contractor shall publicly open and read all bid amounts aloud. All bidders
17 shall be granted access to view the bid amounts submitted. All bids for
18 portions of the project the construction manager-general contractor
19 submitted a bid to self-perform shall be submitted to the contracting body
20 for recordkeeping purposes;

21 (d) The staffing, equipment, and materials that a construction manager-general
22 contractor uses for the management part of the project shall be separate
23 from any staffing, equipment, and materials required for the self-
24 performance part of the project;

25 (e) The construction manager-general contractor shall not be eligible to utilize
26 any of the construction contingency it may be carrying on the project for
27 any part of the project it competitively bids to self-perform unless approved

- 1 to do so by the contracting body; and
- 2 (f) Electrical, mechanical, fire suppression, or plumbing work shall not be self-
- 3 performed.
- 4 (7) To execute its self-performance bid, a construction manager-general contractor
- 5 may use:
- 6 (a) Materials or supplies from a supplier or subcontractor; or
- 7 (b) Tools or equipment leased from a subcontractor.
- 8 (8) The provisions of this section shall not apply to any project, contract, proposal,
- 9 bid, or other submission or engagement entered into by the Transportation
- 10 Cabinet, including but not limited to procurement of architectural or engineering
- 11 services.