

1 AN ACT relating to government contracts and declaring an emergency.

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

3 ➔Section 1. KRS 45A.030 is amended to read as follows:

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

- 5 (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint  
6 stock company, joint venture, or any other legal entity through which business is  
7 conducted;
- 8 (2) "Change order" means a written order signed by the purchasing officer, directing  
9 the contractor to make changes that the changes clause of the contract authorizes  
10 the purchasing officer to order without the consent of the contractor;
- 11 (3) "Chief purchasing officer" means the secretary of the Finance and Administration  
12 Cabinet, who shall be responsible for all procurement of the Commonwealth except  
13 as provided by KRS Chapters 150, 175, 175B, 176, 177, and 180;
- 14 (4) "Construction" means the process of building, altering, repairing, improving, or  
15 demolishing any public structures or buildings, or other public improvements of any  
16 kind to any public real property. It does not include the routine maintenance of  
17 existing structures, buildings, or real property;
- 18 (5) "Construction manager-agency" means services to assist the purchasing agency  
19 manage construction that are procured through a contract that is qualifications-  
20 based;
- 21 (6) "Construction management-at-risk" means a project delivery method in which the  
22 purchasing officer enters into a single contract with an offeror that assumes the risk  
23 for construction at a contracted guaranteed maximum price as a general contractor,  
24 and provides consultation and collaboration regarding the construction during and  
25 after design of a capital project. The contract shall be subject to the bonding  
26 requirements of KRS 45A.190;
- 27 (7) "Construction manager-general contractor" means a project delivery method in

1 which the purchasing officer enters into a single contract with an offeror to provide  
2 preconstruction and construction services. During the preconstruction phase, the  
3 successful offeror provides design consulting services. During the construction  
4 phase, the successful offeror acts as general contractor by:

5 (a) Contracting with subcontractors; and

6 (b) Providing for management and construction at a fixed price with a completion  
7 deadline;

8 (8) "Contract" means all types of state agreements, including memorandums of  
9 agreement, grants and orders, for the acquisition, purchase, or disposal of supplies,  
10 services, construction, or any other item. It includes: awards; contracts of a fixed-  
11 price, cost, cost-plus-a-fixed-fee, contingency fee, or incentive type; contracts  
12 providing for the issuance of job or task orders; leases; letter contracts; purchase  
13 orders; public-private partnership agreements; program administration contracts;  
14 personal service contracts; and insurance contracts except as provided in KRS  
15 45A.022. It includes supplemental agreements with respect to any of the foregoing;

16 (9) "Contract modification" means any written alteration in the specifications, delivery  
17 point, rate of delivery, contract period, price, quantity, or other contract provisions  
18 of any existing contract, whether accomplished by unilateral action in accordance  
19 with a contract provision or by mutual action of the parties to the contract. It  
20 includes bilateral actions, such as supplemental agreements, and unilateral actions,  
21 such as change orders, administrative changes, notices of termination, and notices  
22 of the exercise of a contract option;

23 (10) "Contractor" means any person having a contract with a governmental body;

24 (11) "Data" means recorded information, regardless of form or characteristic;

25 (12) "Design-bid-build" means a project delivery method in which the purchasing officer  
26 sequentially awards separate contracts, the first for architectural, engineering, or  
27 engineering-related services to design the project and the second for construction of

- 1 the capital project according to the design. The contract shall be subject to the  
2 bonding requirements of KRS 45A.185;
- 3 (13) "Design-build" means a project delivery method in which the purchasing officer  
4 enters into a single contract for design and construction of a capital project. The  
5 contract shall be subject to the bonding requirements of KRS 45A.190;
- 6 (14) "Designee" means a duly authorized representative of a person holding a superior  
7 position;
- 8 (15) "Document" means any physical embodiment of information or ideas, regardless of  
9 form or characteristic, including electronic versions thereof;
- 10 (16) "Employee" means an individual drawing a salary from a governmental body,  
11 whether elected or not, and any nonsalaried individual performing personal services  
12 for any governmental body;
- 13 (17) "Governmental body" means any department, commission, council, board, bureau,  
14 committee, institution, legislative body, agency, government corporation, or other  
15 establishment of the executive or legislative branch of the state government;
- 16 (18) "Meeting" means all gatherings of every kind, including video teleconferences;
- 17 (19) "Negotiation" means contracting by either the method set forth in KRS 45A.085,  
18 45A.090, or 45A.095;
- 19 (20) "Person" means any business, individual, organization, or group of individuals;
- 20 (21) "Private partner" means any entity that is a partner in a public-private partnership  
21 other than:
- 22 (a) The Commonwealth of Kentucky, or any agency or department thereof;
- 23 (b) The federal government;
- 24 (c) Any other state government; or
- 25 (d) Any agency of a state, federal, or local government;
- 26 (22) "Procurement" means the purchasing, buying, renting, leasing, or otherwise  
27 obtaining of any supplies, services, or construction. It includes all functions that

- 1       pertain to the procurement of any supply, service, or construction item, including  
2       description of requirements, selection and solicitation of sources, preparation and  
3       award of contract, and all phases of contract administration;
- 4       (23) "Public-private partnership" means a project delivery method for construction or  
5       financing of capital projects, as defined in KRS 45.750, or procurement of services,  
6       pursuant to a written public-private partnership agreement entered into pursuant to  
7       KRS 45A.077 and administrative regulations promulgated thereunder, between:
- 8       (a)   At least one (1) private partner; and  
9       (b)   The Commonwealth of Kentucky, or any agency or department thereof;
- 10      (24) "Purchase request" or "purchase requisition" means that document whereby a using  
11      agency requests that a contract be obtained for a specified need, and may include,  
12      but is not limited to, the technical description of the requested item, delivery  
13      schedule, transportation, criteria for evaluation of solicitees, suggested sources of  
14      supply, and information supplied for the making of any written determination and  
15      finding required by KRS 45A.025;
- 16      (25) "Purchasing agency" means any governmental body that is authorized by this code  
17      or its implementing administrative regulations or by way of delegation from the  
18      chief purchasing officer to contract on its own behalf rather than through the central  
19      contracting authority of the chief purchasing officer;
- 20      (26) "Purchasing officer" means any person authorized by a governmental body in  
21      accordance with procedures prescribed by administrative regulations to enter into  
22      and administer contracts and make written determinations and findings with respect  
23      thereto. The term includes an authorized representative acting within the limits of  
24      authority;
- 25      (27) "Services" means the rendering by a contractor of its time and effort rather than the  
26      furnishing of a specific end product, other than reports that are merely incidental to  
27      the required performance of services;

- 1 (28) "Supplemental agreement" means any contract modification that is accomplished  
2 by the mutual action of the parties;
- 3 (29) "Supplies" means all property, including but not limited to leases of real property,  
4 printing, and insurance, except land or a permanent interest in land;
- 5 (30) "Using agency" means any governmental body of the state that utilizes any  
6 supplies, services, or construction purchased under this code;
- 7 (31) "Video teleconference" means one (1) meeting, occurring in two (2) or more  
8 locations, where individuals can see and hear each other by means of video and  
9 audio equipment; and
- 10 (32) "Writing" or "written" means letters, words, or numbers, or their equivalent, set  
11 down by handwriting, typewriting, printing, photostating, photographing, magnetic  
12 impulse, mechanical or electronic recording, or other form of data compilation.

13 ➔Section 2. KRS 45A.035 is amended to read as follows:

- 14 (1) The secretary of the Finance and Administration Cabinet shall have power and  
15 authority over, and may, except as otherwise expressly provided in this code, adopt  
16 regulations pursuant to KRS Chapter 13A and consistent with this code governing  
17 the purchasing, management, and control of any and all supplies, services, and  
18 construction, and other items required to be purchased by the Commonwealth. The  
19 secretary shall consider and decide matters of policy with regard to state  
20 procurement. The secretary shall have the power of review with respect to the  
21 implementation of administrative regulations and policy determinations.
- 22 (2) Administrative regulations shall be promulgated~~[adopted]~~ governing the following:
- 23 (a) Conditions and procedures for delegations of purchasing authority;
- 24 (b) Prequalification, suspension, debarment, and reinstatement of prospective  
25 bidders;
- 26 (c) Small purchase procedures;
- 27 (d) Conditions and procedures for the purchase of items for resale;

- 1 (e) Conditions and procedures for the purchase of agricultural products in  
2 accordance with KRS 45A.645;
- 3 (f) Conditions and procedures for the use of source selection methods authorized  
4 by this code, including emergency purchases;
- 5 (g) Opening and rejection of bids or offers, consideration of alternate bids, and  
6 waiver of informalities in offers;
- 7 (h) Confidentiality of technical data and trade secrets information submitted by  
8 actual or prospective bidders or offerors;
- 9 (i) Partial, progressive, and multiple awards;
- 10 (j) Supervision of storerooms and inventories, including determination of  
11 appropriate stock levels and the management, transfer, sale, or other disposal  
12 of state-owned property;
- 13 (k) Definitions and classes of contractual services and procedures for acquiring  
14 them;
- 15 (l) An appeals process to resolve disputes arising from specifications requiring  
16 items deemed to be equivalent or a sole brand as specified in KRS 45A.170;  
17 ~~and~~
- 18 (m) Use of reverse auctions as defined in KRS 45A.070; and
- 19 (n) Policies and procedures governing timely payments, reimbursement, and  
20 dispute resolution for contract payments in violation of KRS 45.453 and  
21 Section 3 of this Act.

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

24 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO  
25 READ AS FOLLOWS:

26 (1) For any contract awarded under this chapter, all payments shall be timely made  
27 pursuant to KRS 45.451 and 45.453, the terms of the contract, and as required in

1 this section.

2 (2) All contracts shall include provisions for:

3 (a) Timely payments;

4 (b) Penalties for payment not received:

5 1. Within thirty (30) business days after the person or contractor has  
6 submitted a timely and properly completed request for payment; or

7 2. In accordance with the payment terms of the contract; and

8 (c) A payment dispute and resolution process.

9 (3) If the purchasing agency fails to remit payment to the person or contractor within  
10 thirty (30) business days following the receipt of a timely and properly completed  
11 request for payment, or in accordance with the payment terms of the contract, the  
12 purchasing agency shall pay a penalty to the contractor or person, as follows:

13 (a) In accordance with KRS 45.454, beginning on the thirty-first business day  
14 after the receipt of the request for payment or failure of the purchasing  
15 agency to remit payment in accordance with the terms of the contract, a  
16 penalty of one percent (1%) per month or twelve percent (12%) per annum  
17 of the unpaid amount for each thirty (30) days or fraction thereof that the  
18 payment is outstanding;

19 (b) Twenty-five (25) business days following the submission of a timely and  
20 properly completed request for payment or failure of remittance of the  
21 payment in accordance with the terms of the contract, the person or  
22 contractor shall notify the purchasing agency if the payment has not been  
23 received. The notice for requirement of timely payment shall include the  
24 date on which interest shall be anticipated to accrue;

25 (c) If a payment has not been made within thirty (30) business days, and the  
26 person or contractor must utilize a loan, line of credit, revolving credit or  
27 other financial instrument in order to fulfill the obligations and continue

1           performance of the contract, the interest and costs of credit borne by the  
2           person or contractor shall be eligible for reimbursement until the date  
3           payment has been issued; and

4           (d) Notwithstanding KRS 45.458, the interest penalty and reimbursement  
5           payments shall not be deducted and modifications shall not made to the  
6           budget of the contract, the total award of the contract, funds encumbered or  
7           obligated for the contract, or total amount available to fulfill the contract  
8           agreement as awarded by the purchasing agency.

9           (4) The secretary shall promulgate administrative regulations in accordance with  
10           KRS Chapter 13A no later than December 31, 2024, to implement this section.

11           ➔Section 4. Whereas the timely payment to organizations and businesses that are  
12 entering into contracts with the Commonwealth to provide essential goods and services to  
13 the citizens of the Commonwealth is important for economic growth, an emergency is  
14 declared to exist, and this Act takes effect upon its passage and approval by the Governor  
15 or upon its otherwise becoming a law.