

HOUSE OF REPRESENTATIVES

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2025 REGULAR SESSION
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Amend printed copy of **HB 491/HCS 1**

On page 17, after line 19, insert the following:

"➔Section 7. KRS 45A.345 is amended to read as follows:

As used in KRS 45A.343 to 45A.460, unless the context indicates otherwise:

- (1) "Aggregate amount" means the total dollar amount during a fiscal year of items of a like nature, function, and use the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which could not reasonably be established in advance or which were unavailable because of a failure of delivery need not be included in the aggregate amount.
- (2) "Capital cost avoidance" means moneys expended by a local public agency *or state-operated school* to pay for an energy conservation measure identified as a permanent equipment replacement and whose cost has been discounted by any additional energy and operation savings generated from other energy conservation measures identified in the guaranteed energy savings contract, except that for school districts capital cost avoidance shall also mean moneys expended by the district from one (1) or more of the following sources:
 - (a) General fund;
 - (b) Capital outlay allotment under KRS 157.420; and
 - (c) State and local funds from the Facilities Support Program of Kentucky under KRS

Amendment No. HFA 1

Rep. Rep. James Tipton

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRC Drafter: _____

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXX

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157.440.

- (3) "Chief executive officer" means the mayor, county judge/executive, superintendent of schools, or the principal administrative officer of a local public agency *or state-operated school*, or the person designated by the chief executive officer or legislative body of the local public agency *or state-operated school* to perform the procurement function.
- (4) "Construction" means the process of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (5) "Contract" means all types of local public agency *or state-operated school* agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing. It does not include labor contracts with employees of local public agencies *or state-operated school*.
- (6) "Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.
- (7) "Established catalogue price" means the price included in the most current catalogue, price list, schedule, or other form that:
 - (a) Is regularly maintained by the manufacturer or vendor of an item; and
 - (b) Is either published or otherwise available for inspection by customers; and
 - (c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.
- (8) "Evaluated bid price" means the dollar amount of a bid after bid price adjustments are

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made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion.

- (9) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.365.
- (10) "The legislative body or governing board" means a council, commission, or other legislative body of a city, consolidated local government, or urban-county; a county fiscal court; board of education of a county or independent school district; board of directors of an area development district or special district; or board of any other local public agency *or state-operated school.*
- (11) "Local public agency" means a city, county, urban-county, consolidated local government, school district, special district, or an agency formed by a combination of such agencies under KRS Chapter 79, or any department, board, commission, authority, office, or other sub-unit of a political subdivision which shall include the offices of the county clerk, county sheriff, county attorney, coroner, and jailer.
- (12) "May" means permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.
- (13) "Negotiation" means contracting by either the method set forth in KRS 45A.370, 45A.375, or 45A.380.
- (14) "Noncompetitive negotiation" means informal negotiation with one (1) or more vendor, contractor, or individual without advertisement or notice.
- (15) "Objective measurable criteria" means sufficient information in the invitation to bid as to weight and method of evaluation so that the evaluation may be determined with reasonable mathematical certainty. Criteria which are otherwise subjective, such as taste and

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appearance, may be established when appropriate.

- (16) "Person" means any business, individual, union, committee, club, or other organization or group of individuals.
- (17) "Procurement" means the purchasing, buying, renting, leasing, or otherwise obtaining any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (18) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.370, 45A.375, 45A.380, or 45A.385.
- (19) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (20) "Responsive bidder" means a person who has submitted a bid under KRS 45A.365 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.
- (21) "Reverse auction" means a real-time, structured bidding process, usually lasting less than one (1) hour, and taking place at a previously scheduled time and internet location, during which multiple bidders, anonymous to each other, submit revised, lower bids to provide the solicited good or leased space.
- (22) "Services" means the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product other than reports which are merely incidental to the required performance of service. It does not include labor contracts with employees of local

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public agencies *or state-operated schools*.

- (23) "Shall" means imperative.
- (24) "Specifications" means any description of a physical or functional characteristic of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (25) "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.
- (26) "Supplies" means all property, including but not limited to leases on real property, printing, and insurance, except land or a permanent interest in land.
- (27) "Energy conservation measure" means a training program or facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:
- (a) Insulation of the building structure or systems within the building;
 - (b) Storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;
 - (c) Automated or computerized energy control systems;
 - (d) Heating, ventilating, or air conditioning system modifications or replacements;
 - (e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;
 - (f) Energy recovery systems;
 - (g) Cogeneration systems that produce steam or forms of energy such as heat, as well as

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- electricity, for use primarily within a building or complex of buildings;
- (h) Energy, water, or wastewater conservation measures that provide long-term operating cost reductions or billable revenue increases;
 - (i) Any life safety measures that provide long-term operating cost reductions;
 - (j) Water and wastewater conservation measures, including plumbing fixtures and infrastructure;
 - (k) Equipment upgrades that improve the accuracy of billable revenue generating systems; or
 - (l) Automated, electronic, or remotely controlled systems or measures that reduce direct personnel costs.
- (28) "Guaranteed energy savings contract" means a contract for the evaluation and recommendation of energy, water, and wastewater conservation measures and for implementation of one (1) or more of those measures. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make payments for the cost of the design, installation, and maintenance of energy, water, and wastewater conservation measures.
- (29) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy, water, and wastewater conservation measures and is determined to be qualified by the local public agency *or state-operated school*. The qualified provider shall be responsible for and shall provide the local public agency *or state-operated school* with the following information regarding guaranteed energy, water, and wastewater savings contracts:
- (a) Project design and specifications;
 - (b) Construction management;

- (c) Construction;
- (d) Commissioning;
- (e) On-going services as required;
- (f) Measurement and verification of savings for guaranteed energy, water, and wastewater savings contracts; and
- (g) Annual reconciliation statements as provided in KRS 45A.352(8).

(30) "State-operated school" means the Kentucky School for the Blind, the Kentucky School for the Deaf, and state-operated secondary area vocational education and technology centers.

➔Section 8. KRS 45A.343 is amended to read as follows:

- (1) Any local public agency **or state-operated school** may adopt the provisions of KRS 45A.345 to 45A.460. No other statutes governing purchasing shall apply to a local public agency **or state-operated school** upon adoption of these provisions.
- (2) After July 15, 1994, any contract entered into by a local public agency **or state-operated school**, whether under KRS 45A.345 to 45A.460 or any other authority, shall require the contractor and all subcontractors performing work under the contract to:
 - (a) Reveal any final determination of a violation by the contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor; and
 - (b) Be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor for the duration of the contract.
- (3) A contractor's failure to reveal a final determination of a violation by the contractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public **agency or state-operated**

school's^[agency's]:

- (a) Cancellation of the contract; and
 - (b) Disqualification of the contractor from eligibility for future contracts awarded by the local public agency *or state-operated school* for a period of two (2) years.
- (4) A subcontractor's failure to reveal a final determination of a violation by the subcontractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public *agency or state-operated school's*^[agency's] disqualification of the subcontractor from eligibility for future contracts for a period of two (2) years.

➔Section 9. KRS 45A.353 is amended to read as follows:

- (1) Guaranteed energy savings contracts may extend beyond the fiscal year in which they become effective. The local public agency *or state-operated school* shall include in its annual budget and appropriations act, for each subsequent fiscal year, any accounts payable under guaranteed energy savings contracts during the fiscal year.
- (2) The local public agency *or state-operated school* shall document the operational and energy cost savings and capital cost avoidance specified in the guaranteed energy savings contract and designate and appropriate that amount for an annual payment of the contract. If the annual energy and operational savings are less than projected under the guaranteed savings contract, the qualified provider shall pay the difference as provided for in KRS 45A.352.
- (3) Notwithstanding any other provisions of law to the contrary, a local public agency *or state-operated school* may finance the installation of energy conservation measures for its buildings through a lease-purchase agreement, bonds, or whichever brings the most economic value to the local public agency *or state-operated school*, subject to the local public *agency or state-operated school's*^[agency's] compliance with all other laws

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regarding approval of plans for additions, alterations, or renovations of its buildings.

- (4) The component which is guaranteed as energy savings and as operational savings shall be exempt from current or future debt limitations, except that capital cost avoidance, as defined in KRS 45A.345, shall be limited to current or future debt limitations.

➔Section 10. KRS 45A.365 is amended to read as follows:

- (1) All contracts or purchases shall be awarded by competitive sealed bidding, which may include the use of a reverse auction, except as otherwise provided by KRS 45A.370 to 45A.385 and for the purchase of wholesale electric power by municipal utilities as provided in KRS 96.901(1).
- (2) The invitation for bids shall state that the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids. The invitation for bids shall include the reciprocal preference for resident bidders described in KRS 45A.494.
- (3) Adequate public notice of the invitation for bids and any reverse auction shall be given prior to the date set forth for the opening of bids. The notice may include posting on the internet or publication in a newspaper of general circulation in the local jurisdiction at least seven (7) days before the date set for the opening of the bids and any reverse auction. Nothing in this section shall prohibit additional notice, posting, or publication, nor shall additional notification, posting, or publication extend the required notice period. The public notice shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.
- (4) The bids shall be opened publicly or entered through a reverse auction at the time and place designated in the invitation for bids. Each written or reverse auction bid, together with the name of the bidder, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the

requirements of this subsection.

- (5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price after the application of any reciprocal preference for resident bidders required by KRS 45A.494.
- (6) The local public agency *or state-operated school* may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

➔Section 11. KRS 45A.370 is amended to read as follows:

- (1) A local public agency *or state-operated school* may contract or purchase through competitive negotiation, which may include a reverse auction, upon a written finding that:
 - (a) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or
 - (b) Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or
 - (c) The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsible bidder is notified of the intention to negotiate and is given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsible bidder.

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- (2) Proposals shall be solicited through public notice pursuant to KRS 45A.365(3) or any other means which can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The request for proposals shall indicate the factors to be considered in the evaluation, including the reciprocal preference for resident bidders required by KRS 45A.494, and the relative importance of each factor, and the procedures to be followed if a reverse auction is used in the procurement.
- (3) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
 - (a) With respect to prices, where such prices are fixed by law, regulation, or reverse auction, except that consideration shall be given to competitive terms and conditions;
or
 - (b) Where time of delivery or performance will not permit discussions; or
 - (c) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular supply, service, or construction item that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of the possibility that award may be made on the basis of initial offers.
- (4) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions. A request for proposals based on revised specifications or quantities shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements and shall be awarded upon the basis of the lowest bid price or lowest

evaluated bid price after application of the reciprocal preference for resident bidders required by KRS 45A.494 submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a compelling reason as determined in writing by the local public agency *or state-operated school*. The request for proposals shall state that an award is to be made without discussion except as herein provided.

- (5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the local public agency *or state-operated school* based upon the evaluation factors set forth in the request for proposals and the reciprocal preference for resident bidders required by KRS 45A.494.

➔Section 12. KRS 45A.375 is amended to read as follows:

- (1) In the event that all bids submitted pursuant to competitive sealed bidding under KRS 45A.365 result in bid prices in excess of the funds available for the purchase, and the local public agency *or state-operated school* determines in writing:
 - (a) That there are no additional funds then available from any source so as to permit an award to the lowest responsive and responsible bidder; and
 - (b) The best interest of the local public agency *or state-operated school* will not permit the delay attendant to a resolicitation under revised specifications or revised quantities under competitive sealed bidding as provided in KRS 45A.365; then a negotiated award may be made as set forth in subsections (2) or (3) of this section.
- (2) Where there is more than one (1) bidder, competitive negotiations pursuant to KRS 45A.370 shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined in writing by the local public agency *or state-operated school* to be the lowest responsive and responsible bidders to the competitive sealed bid invitation after application of the reciprocal preference for resident bidders required in KRS 45A.494. Such

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competitive negotiations shall be conducted under the following restrictions:

- (a) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and
- (b) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror after application of the reciprocal preference for resident bidders required in KRS 45A.494. No discussion shall be conducted with offerors after submission of proposals except for a compelling reason as determined in writing by the local public agency or state-operated school. The request for proposals shall state that award is to be made without discussions except as herein provided.
- (3) Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with KRS 45A.380.
- (4) Where, after invitation for bids has been made in accordance with KRS 45A.365 and no bids have been received from responsive and responsible bidders, the local public agency or state-operated school may proceed to acquire the supplies, services, or construction by noncompetitive negotiations in accordance with KRS 45A.380.

➔Section 13. KRS 45A.380 is amended to read as follows:

A local public agency or state-operated school may contract or purchase through noncompetitive negotiation only when a written determination is made that competition is not feasible and it is further determined in writing by a designee of the local public agency or state-operated school that:

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- (1) An emergency exists which will cause public harm as a result of the delay in competitive procedures;
- (2) There is a single source within a reasonable geographical area of the product or service to be procured;
- (3) The contract is for the services of a licensed professional, such as attorney, physician, psychiatrist, psychologist, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; or an artist such as a sculptor, aesthetic painter, or musician, provided, however, that this provision shall not apply to architects or engineers providing construction management services rather than professional architect or engineer services;
- (4) The contract is for the purchase of perishable foods, such as meat, fish, poultry, egg products, fresh vegetables, and fresh fruits;
- (5) The contract is for replacement parts where the need cannot be reasonably anticipated and stockpiling is not feasible;
- (6) The contract is for proprietary items for resale;
- (7) In school districts the contract relates to an enterprise in which the buying or selling by students is a part of the educational experience;
- (8) The contract or purchase is for expenditures made on authorized trips outside of the boundaries of the local public agency *or state-operated school*;
- (9) The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids;
- (10) The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, and unemployment insurance;
- (11) The contract is for a sale of supplies at reduced prices that will afford a purchase at savings

to the local public agency *or state-operated school*; or

(12) The contract is with a private real estate developer and contains a requirement:

- (a) That the developer increase the size or otherwise improve the collection capacity of the sanitary sewer or storm water pipe serving the affected private real estate development; and
- (b) That the local public agency *or state-operated school* pay only the proportional cost of increasing the size, or otherwise improving the collection capacity, of the sanitary sewer or storm water pipe over the original collection capacity.

➔Section 14. KRS 45A.385 is amended to read as follows:

The local public agency *or state-operated school* may use small purchase procedures for any contract for which a determination is made that the aggregate amount of the contract does not exceed forty thousand dollars (\$40,000) if small purchase procedures are in writing and available to the public.

➔Section 15. KRS 45A.390 is amended to read as follows:

An invitation for bid, a request for proposal or other solicitation may be canceled, or all bids or proposals may be rejected, if it is determined in writing that such action is in the best interest of the local public agency *or state-operated school*.

➔Section 16. KRS 45A.400 is amended to read as follows:

Suppliers may be prequalified as responsible prospective contractors for particular types of supplies, services, and construction. No supplier shall be prequalified as a responsible prospective contractor until the supplier provides the local public agency *or state-operated school* with a sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the supplier will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by

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a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists. Solicitation mailing lists of potential contractors of such supplies, services, and construction shall include, but shall not be limited to, such prequalified prospective contractors. Prequalification shall not foreclose a written determination:

- (1) Between the time of bid opening or receipt of offers in the making of an award that a prequalified prospective contractor is not responsible; or
- (2) That a prospective contractor who is not prequalified at the time of bid opening or receipt of offers is responsible.

➔Section 17. KRS 45A.405 is amended to read as follows:

- (1) A contractor shall submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:
 - (a) Pricing of any negotiated contract where the total contract price is expected to exceed fifty thousand dollars (\$50,000), or such lesser amount as may be prescribed by the local public agency *or state-operated school*; or
 - (b) Pricing of any change order or contract modification which is expected to exceed twenty-five thousand dollars (\$25,000), or such lesser amount as may be prescribed by the local public agency *or state-operated school*.
- (2) Any contract, change, or modification thereto under which a certificate is required shall contain a provision that the price to the local public agency *or state-operated school*, including profit or fee, shall be adjusted to exclude any significant sums by which the local public agency *or state-operated school* finds that such price was increased because the contractor-furnished cost or pricing data which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.
- (3) The requirement of this section need not be applied to contracts where the price negotiated

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is based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation, or in exceptional cases where it is determined in writing that the requirements of this section may be waived, and the reasons for such waiver are enumerated in the determination.

➔Section 18. KRS 45A.410 is amended to read as follows:

- (1) The local public agency *or state-operated school* may inspect the plant or place of business of a contractor or any subcontractor under any contract awarded or to be awarded by the local public agency *or state-operated school*.
- (2) The local public agency *or state-operated school* may audit the books and records of any person who has submitted cost or pricing data under KRS 45A.405, at any time until the period of record retention as set forth in subsection (3) of this section shall have expired. The right to audit hereunder shall only extend to those books and records reasonably connected with cost or pricing data submitted under KRS 45A.420, and such books and records shall be maintained by the contractor or subcontractor for the period specified in subsection (3) of this section.
- (3) The local public agency *or state-operated school* shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price type contract, provided, however, that this subparagraph shall not limit the right to audit as set forth in subsection (2) of this section. Such books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment under the prime contract and by the subcontractor for a period of five (5) years from the date of final payment under the subcontract.

➔Section 19. KRS 45A.415 is amended to read as follows:

- (1) The local public agency *or state-operated school* shall use specifications which assure the

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maximum practicable competition to meet the local public agency or state-operated school's[agency's] needs.

- (2) Local public agencies or state-operated school shall ensure that every invitation for bids or request for proposals provides that an item equal to that named or described in the specifications may be furnished. The specifications may identify a sole brand in cases where, in the written opinion of the chief procurement officer, documented unique and valid conditions require compatibility, continuity, or conformity with established standards. An item shall be considered equal to the item named or described if, in the opinion of the owner and the design professional responsible for the specifications:
 - (a) It is at least equal in quality, durability, strength, design, and other criteria deemed appropriate;
 - (b) It will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased; and
 - (c) It conforms substantially to the detailed requirements for the item in the specifications.
- (3) A specification which describes a product which is proprietary to one (1) company may be used only when no other kind of specification is reasonably available to describe requirements.

➔Section 20. KRS 45A.420 is amended to read as follows:

- (1) Any local public agency or state-operated school may enter into an agreement for cooperative purchasing with any other local public agency or state-operated school. When the contracting local public agency or state-operated school contracts for supplies, services or construction pursuant to KRS 45A.365, 45A.370, 45A.375, or 45A.380, all other parties to the agreement shall be deemed to have complied with the provisions of those sections.
- (2) Nothing in KRS 45A.345 to 45A.990 shall deprive a local public agency or state-operated

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school from negotiating with vendors for supplies where such supplies are the subject of a price agreement with the Commonwealth of Kentucky provided, however, that no contract executed under this section would authorize a price higher than is contained in the price agreement with the Commonwealth of Kentucky for such specific supplies.

- (3) Nothing in KRS 45A.345 to 45A.990 shall deprive a local school district from acquiring supplies outside of price agreements with the Commonwealth of Kentucky if the supplies meet the same specifications as the contract items and the supplies are purchased at a lower price than is contained in the price agreement with the Commonwealth of Kentucky for such specific supplies and the purchase does not exceed two thousand five hundred dollars (\$2,500).

➔Section 21. KRS 45A.425 is amended to read as follows:

- (1) A local public agency or state-operated school may sell or otherwise dispose of any personal property which is not needed or has become unsuitable for public use, or which would be suitable, consistent with the public interest, for some other use.
- (2) A written determination as to need of suitability of any personal property of the local public agency or state-operated school shall be made; and such determination shall fully describe the personal property; its intended use at the time of acquisition; the reasons why it is in the public interest to dispose of the item; and the method of disposition to be used.
- (3) Surplus or excess personal property as described in this section may be transferred, with or without compensation, to another governmental agency; or it may be sold at public auction or by sealed bids in accordance with KRS 45A.365.
- (4) In the event that a local public agency or state-operated school receives no bids for surplus or excess personal property, either at public auction or by sealed bid, such property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the local public agency or state-operated school. In such instances, a written description of the

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property, the method of disposal, and the amount of compensation, if any, shall be made. Any compensation resulting from the disposal of surplus or excess personal property shall be transferred to the general fund of the local public agency *or state-operated school*.

- (5) A local board of education may dispose of its surplus technology in accordance with KRS 160.335.
- (6) As an alternative procedure to that set out in this section, a county may dispose of personal property pursuant to KRS 67.0802.
- (7) Notwithstanding subsections (1) to (4) of this section, a city, urban-county government, or consolidated local government that has adopted KRS 45A.345 to 45A.460 may dispose of surplus property using the procedures in KRS 82.083.

➔Section 22. KRS 45A.430 is amended to read as follows:

- (1) Bidder security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the local public agency *or state-operated school* to exceed one hundred thousand dollars (\$100,000). Bidder's security shall be a bond provided by a surety company authorized to do business in this Commonwealth, or the equivalent in cash, in a form satisfactory to the local public agency *or state-operated school*. Nothing herein prevents the requirement of such bonds on construction contracts under one hundred thousand dollars (\$100,000) when the circumstances warrant.
- (2) Bidder's security shall be in an amount equal to at least five percent (5%) of the amount of the bid.
- (3) When the invitation for bids requires that bidder security be provided, noncompliance requires that the bid be rejected, provided, however, that the local public agency *or state-operated school* may set forth by regulation exceptions to this requirement in the event of substantial compliance.
- (4) After the bids are opened, they shall be irrevocable for the period specified in the invitation

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for bids, provided that, if a bidder is permitted to withdraw his bid before award because of a mistake in the bid as allowed by law or regulation, no action shall be had against the bidder or the bidder's security.

➔Section 23. KRS 45A.435 is amended to read as follows:

- (1) When a construction contract is awarded in an amount in excess of one hundred thousand dollars (\$100,000), the following bonds shall be furnished to the local public agency **or state-operated school**, and shall become binding on the parties upon the award of the contract:
 - (a) A performance bond satisfactory to the local public agency **or state-operated school** executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the local public agency **or state-operated school**, in an amount equal to one hundred percent (100%) of the contract price as it may be increased; and
 - (b) A payment bond satisfactory to the local public agency **or state-operated school**, executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the local public agency **or state-operated school**, for the protection of all persons supplying labor and material to the contractor or his subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the original contract price.
- (2) Nothing in this section shall be construed to limit the authority of the local public agency **or state-operated school** to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (1) of this section, including, but not limited to, bonds for the payment of taxes and unemployment insurance premiums.

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➔Section 24. KRS 45A.440 is amended to read as follows:

- (1) The local public agency **or state-operated school** may promulgate by regulation the form of the bonds required by KRS 45A.430 and 45A.435, or it may adopt the form established by the state under KRS 45A.180 to 45A.200.
- (2) The local public agency **or state-operated school** shall furnish a certified copy of a bond to any person who requests such and pays the reasonable fee for that copy. The copy shall be prima facie evidence of the contents, execution, and delivery of the original.

➔Section 25. 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 **or state-operated school** and is not a matter of public knowledge or available to the public on request.
- (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 **or state-operated school** 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.

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- (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.
- (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 *or state-operated school*.
- (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 *or state-operated school* actions.
- (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 *or state-operated school* for a temporary period, pending the completion of an investigation and any legal proceedings that may ensue.

➔Section 26. KRS 45A.450 is amended to read as follows:

- (1) Public employment is a public trust.
- (2) It is the policy and purpose of KRS 45A.345 to 45A.460 to promote and balance the object of protecting government integrity and of facilitating the recruitment and retention of personnel needed by local public agencies *or state-operated schools* by prescribing essential restrictions against conflict of interest without creating unnecessary barriers to public service and by facilitating development of fair and competitive access to local public agency *or state-operated school* purchasing by responsible contractors.
- (3) Employees must discharge their duties and responsibilities fairly and impartially. They should also maintain a standard of conduct that will inspire public confidence in the integrity of the government of all local public agencies *or state-operated schools*.

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➔Section 27. KRS 45A.460 is amended to read as follows:

- (1) The value of anything transferred or received in breach of the ethical standards of KRS 45A.345 to 45A.990 or regulations or rules issued thereunder by an employee or a nonemployee may be recovered from both the employee and the nonemployee.
- (2) Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the local public agency or state-operated school and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one (1) offending party shall not preclude recovery against other offending parties.

➔Section 28. KRS 45A.730 is amended to read as follows:

As used in KRS 45A.730 to 45A.750, unless the context requires otherwise:

- (1) "Architectural services" means any professional service involved in the practice of architecture as defined in KRS 323.010;
- (2) "Engineering services" means any professional service as defined in KRS 322.010(4) and (5);
- (3) "Firm" means any individual, firm, partnership, corporation, or other legal entity permitted by law to practice the profession of architecture or engineering and provide the services defined in subsections (1) and (2) of this section;
- (4) "Local public agency" shall have the same meaning given in KRS 45A.345;
- (5) "Project" means any capital improvement project, study, plan, survey, or new or existing program activity of a political subdivision that requires architectural or professional engineering services;
- (6) "Qualification statement" means federal form SF254 and any other supporting documents

that present a firm's qualifications and performance data; and[-]

(7) "State-operated school" has the same meaning as in Section 7 of this Act.

➔Section 29. KRS 45A.735 is amended to read as follows:

- (1) In the procurement of architectural and engineering services, each local public agency **or state-operated school** may adopt the provisions of KRS 45A.740, 45A.745, and 45A.750. Upon adoption of these provisions, each local public agency **or state-operated school** shall:
 - (a) Establish a monetary limit; and
 - (b) Use the process set out in KRS 45A.740, 45A.745, and 45A.750 to procure architectural or engineering services for projects whose costs exceed this limit.
- (2) If any **local public** agency **or state-operated school** adopts the provisions of KRS 45A.740, 45A.745, and 45A.750, then it shall accept qualification statements from firms engaged in the lawful practice of their professions. These qualification statements shall remain on file for one (1) year from the date they are submitted.

➔Section 30. KRS 45A.740 is amended to read as follows:

- (1) When a project requiring architectural or engineering services is proposed by a local public agency **or state-operated school**, except as provided by subsections (2) and (3) of this section, the **local public** agency **or state-operated school** shall:
 - (a) Transmit a notice requesting a statement of interest in the proposed project from all firms that have a current qualifications statement on file;
 - (b) Give adequate public notice of the proposed project, which may include posting on the internet or newspaper advertisement, requesting firms to submit qualification statements and statements of interest in the proposed project; or
 - (c) Contact an appropriate professional organization for a list of firms capable of providing the necessary services.
- (2) If the regulations of a federal department or agency require a procurement process that is

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different from the process in KRS 45A.730 to 45A.750 in order that financial aid can be granted, then the local government agency *or state-operated school* may exempt itself from the provisions of KRS 45A.730 to 45A.750.

- (3) When a local public agency *or state-operated school* has formed a working relationship with one (1) or more firms based on work previously contracted between them, then the local public agency *or state-operated school* may enter directly into negotiations according to KRS 45A.750. If no contract is successfully negotiated, then the local public agency *or state-operated school* shall comply with this section, KRS 45A.745, and KRS 45A.750.

➔Section 31. KRS 45A.745 is amended to read as follows:

- (1) A local public agency *or state-operated school* shall evaluate those firms submitting statements of interest in a proposed project according to the following criteria:
- (a) Qualifications;
 - (b) Ability of professional personnel;
 - (c) Past record and experience;
 - (d) Performance data on file;
 - (e) Willingness to meet time and budget requirements;
 - (f) Location;
 - (g) Workload; and
 - (h) Any other factors that the local public agency *or state-operated school* has set forth in writing, including the reciprocal preference for resident bidders required by KRS 45A.494.
- (2) The local public agency *or state-operated school* may then conduct discussions and require interviews with firms deemed to be the most qualified according to the criteria in subsection (1) of this section. Bids for the cost of the proposed project shall not be a factor in the evaluation of firms until negotiations are begun in accordance with KRS 45A.750.

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- (3) The local public agency or state-operated school shall select, on the basis of the evaluations done in subsections (1) and (2) of this section, at least three (3) firms that are judged to be the most qualified and rank them accordingly. If fewer than three (3) firms are judged to be qualified, then those firms that remain shall be ranked in like manner.

➔Section 32. KRS 167.015 is amended to read as follows:

- (1) The Kentucky School for the Blind at Louisville, Kentucky, and the Kentucky School for the Deaf at Danville, Kentucky, shall be managed and controlled by the Kentucky Board of Education. The board shall have possession and the responsibility and authority for preservation, repair, and control of the buildings and grounds belonging to the state and dedicated to the schools. The board may~~[-, except as provided in KRS 45A.045,]~~ sell any property held for the use and benefit of the schools, and purchase other property deemed by the board to be suitably and conveniently located, and erect buildings necessary for carrying out the purposes of the schools. The board may promulgate administrative regulations to carry into effect its powers with respect to the schools, and may require from the superintendent of the schools any reports and information it desires as to the condition of the schools.
- (2) In addition to being recognized as a school providing quality, full-time educational services to students who are deaf and hard of hearing or who are blind or visually impaired, the Kentucky School for the Deaf and the Kentucky School for the Blind shall also serve as the Statewide Educational Resource Center on Deafness and as the Statewide Educational Resource Center on Blindness, respectively. They shall provide technical assistance and resource services to local school districts, parents, and other agencies or organizations serving children and youth who are deaf and hard of hearing or who are blind or visually impaired. Depending on the availability of funding, services may include, but not be limited to, assessments; consultations on curriculum; language and communication;

orientation and mobility; classroom devices, including telecommunication devices for the deaf and hard of hearing and Braille for the blind and visually impaired; assistive technology; professional development; and program development and implementation. The Kentucky School for the Deaf and the Kentucky School for the Blind may enter into collaborative agreements with local school districts and other public and private agencies to provide for regional or satellite programs for children and youth who are deaf and hard of hearing or who are blind or visually impaired."