

702 KAR 4:160. Capital construction process.

RELATES TO: KRS Chapter 45A, 156.074, 156.076, 156.496, 156.670, 157.420(4), 157.450, 157.455, 157.620, 160.160, 160.476, 162.070, 322.010, 322.360, 323.010, 323.033, 323A.010, 371.405(7), 371.410, 424.260

STATUTORY AUTHORITY: KRS 156.070, 156.160, 162.060, 162.065, 322.360, 323.033

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky Board of Education to have management and control of the common schools and their programs. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards that school districts shall meet in operational performance, including construction of public school buildings and the use of uniform forms. KRS 162.060 requires that the chief state school officer shall examine or cause to be examined all plans and specifications for public school buildings in accordance with administrative regulations promulgated by the Kentucky Board of Education. KRS 162.065 requires the Kentucky Board of Education to prescribe administrative regulations governing construction managers. KRS 322.360 and 323.033 require a school district, when engaged in the construction of any public work involving architecture or engineering, to utilize an architect or engineer to directly supervise the preparation of plans and specifications, estimates, and the execution of construction. This administrative regulation establishes the procedures and criteria for the construction of public school buildings.

Section 1. Definitions.

- (1) "AIA" means the American Institute of Architects.
- (2) "Board" means the local board of education.
- (3) "Change event" means a contiguous or similar action regarding a change order.
- (4) "Construction documents" means the written and graphic documents prepared or assembled for communicating the project design for construction and for administering the construction contract, consisting of bidding requirements, contract forms, contract conditions, contract modifications, addenda, specifications, and drawings.
- (5) "Construction manager" or "CM" means a qualified and experienced contracting organization which provides the services of construction management and possesses a general trades workforce, staff and equipment, financial base, insurance coverage, bonding capability, a minimum of three (3) years of construction management experience on projects of \$2,000,000 or more, and the ability to provide the services required.
- (6) "Contractor" means an individual, corporation, estate, trust, partnership, limited liability company, association, joint venture, or any other legal entity performing construction and having a contract with a board.
- (7) "Design professional" means a person licensed in the Commonwealth of Kentucky under KRS Chapter 322, 323, or 323A, which includes architects, engineers, and landscape architects providing services within their respective practice areas.
- (8) "Emergency" means a situation which creates a threat or impending threat to public health, welfare, or safety that may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, theft, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar unforeseen events, and which results in the loss of use of the physical facilities.
- (9) "Fixed equipment" means furnishings or equipment that are secured to the wall, floor, or ceiling to operate or function in the manner intended by the product manufacturer, such as bleachers, student lockers, casework with sinks, or plumbing fixtures.
- (10) "Guaranteed energy savings contract" or "GESCC" is defined by KRS 45A.345(28).
- (11) "KBE" means the Kentucky Board of Education.

(12) "Major renovation" means a project at a permanent center including three (3) or more building systems and an estimated cost of twenty (20) percent of the current replacement cost of the building, or portion thereof, and the building or building systems shall be a minimum of thirty (30) years old or thirty (30) years shall have passed since its last major renovation with the exception of:

- (a) The restructuring of an open space school for conventional classrooms; or
- (b) The replacement of one (1) of the following single building systems that is within fifteen (15) years of its original installation, or if required by a change in regulation or code:
 - 1. Heating, ventilation, and air conditioning systems and controls;
 - 2. Systems to provide full use of a facility by the physically handicapped and to bring a facility into compliance with state and federal law;
 - 3. Life safety and security systems; or
 - 4. Roofing systems, flashings, and accessories.

(13) "Minor project" means a project for expansion of a permanent center to include a maximum of four (4) classrooms, campus enlargement, renovation of buildings and building systems with a budget of less than \$25,000, or construction of support space at permanent centers, or renovation not defined as major renovation.

(14) "Owner" means the local board of education or financing corporation established for the purpose of financing school construction.

(15) "Qualified provider" is defined by KRS 45A.345(29).

(16) "Record documents" means a set of reproducible drawings or electronic digital files revised to indicate significant changes in the work during construction, including addenda, change orders, and construction change directives.

(17) "Superintendent" means the superintendent of the local school district or an authorized designee of the superintendent selected to represent the board regarding construction issues.

Section 2. Construction Project Application.

(1) The board shall submit an application on the BG-1 Project Application Form (BG-1 Form), to the department for approval of a proposed construction project.

(2) An application shall be submitted for each project that is:

- (a) Funded by Support Education Excellence in Kentucky (SEEK) capital outlay funds, Facility Support Program of Kentucky (FSPK) funds as provided by KRS 157.620, School Facilities Construction Commission (SFCC) funds, or building funds as provided by KRS 160.476;
- (b) Proposing construction of a new building, addition, or alteration of an existing building that requires design by a design professional for a building or building system;
- (c) Proposing a guaranteed energy savings contract;
- (d) Proposing a minor project; or
- (e) Proposing a major renovation.

(3)

- (a) If SFCC funds are included in the financing plan, projects shall be selected in prioritized order from the District Facility Plan created pursuant to 702 KAR 4:180.
- (b) If restricted funds other than SFCC are included in the financing plan, the board may select any project in any priority used to determine district need.
- (c) Projects not used to determine district need shall only be funded as defined by the General Assembly.

(4) The BG-1 Form shall be approved by the board.

(5) The department shall take action on the BG-1 Form within thirty (30) calendar days of receipt.

- (6) If an emergency occurs, impacting an activity for which a BG-1 Form is required:
- (a) The superintendent shall:
 - 1. Proceed with corrective actions, as needed;
 - 2. Notify the department of the emergency and request approval to continue with the plans and corrective action;
 - 3. Advise the board to declare an emergency in accordance with the district's officially adopted procurement method under KRS 424.260 or 45A.380; and
 - 4. Submit to the department:
 - a. BG-1 Form; and
 - b. The board order declaring the emergency; and
 - (b) The department shall process the emergency BG-1 Form request within seven (7) calendar days of receipt.

Section 3. Local Board Oversight Responsibilities.

- (1) Site acquisition for new sites shall be conducted in compliance with 702 KAR 4:050.
- (2) An easement, property lease, property lease purchase or property lease with an option to purchase by a board for fixed equipment, capital construction, or an alteration to an existing building or building system shall require the submittal of plans and specifications and lease documents to the department for review and approval based on compliance with the requirements in 702 KAR 4:090.
- (3) Construction files and records shall be maintained by the superintendent, organized by project, and accessible for review. Construction files and records shall include:
 - (a) Board orders;
 - (b) Proposals (bids);
 - (c) Contracts, construction documents, and record documents;
 - (d) Copy of each certificate of required liability insurance for the design professional, the design professional's consultants, and CM or qualified provider of GESC services, if used;
 - (e) Correspondence; and
 - (f) Financial documents.
- (4) The board shall provide oversight of the design professional services as established in this subsection.
 - (a) The board's attorney shall review the design professional's proposed contract for compliance with the law.
 - (b) The board shall submit the proposed board-approved design professional contract to the department for approval.
 - (c) The board shall submit to the department for review:
 - 1. Copy of each KDE Non-Collusion Affidavit for the design professional and the design professional's consultants;
 - 2. Copy of each required certificate of liability insurance; and
 - 3. Copy of the signed design professional contract.
- (5) The board shall provide oversight of the CM services as established in this subsection.
 - (a) The board's attorney shall review the CM's proposed contract for compliance with the law.
 - (b) The board shall submit the proposed board-approved CM contract to the department for approval.
 - (c) The board shall submit to the department for review:
 - 1. Copy of the CM's KDE Non-Collusion Affidavit;
 - 2. Copy of each required certificate of liability insurance;
 - 3. Copy of the performance and payment bond; and
 - 4. Copy of the signed CM contract.

(6) The board shall provide oversight of the qualified provider of GESC services as established in this subsection.

(a) The board's attorney shall review the qualified provider's proposed contract for compliance with the law.

(b) The board shall submit the proposed board-approved GESC contract to the department for approval.

(c) The board shall submit to the department for review:

1. Copy of the qualified provider's KDE Non-Collusion Affidavit;

2. Copy of each required certificate of liability insurance;

3. Copy of the performance and payment bond; and

4. Copy of the signed GESC contract.

(7) The board shall prepare an educational specification which complies with 702 KAR 4:170, Facility Programming and Construction Criteria, and 702 KAR 4:180, Implementation Guidelines – Kentucky School Facilities Planning Manual.

(8) During the design phases of a new school building project, areas shall comply with the model program of spaces established in 702 KAR 4:180.

(9) If the design professional for general contractor delivery projects or the design professional and CM for CM delivery projects determine additional funding is justified or a reduction of physical scope of the project is needed and the board concurs, the board shall forward a revised board-approved BG-1 Form to the department for approval.

(10) During the bidding phase of the construction project, the board shall:

(a) Conduct the bid process in accordance with the district's officially adopted procurement method under KRS 424.260 or Chapter 45A;

(b) Prior to advertising, receive written approval from the department of the construction documents;

(c) Hold possession of the construction documents;

(d) Approve and submit each successful bidder's documents to the department for review and approval of each proposed contract and the financial plan;

(e) Submit a revised board-approved BG-1 Form for funding changes after bidding; and

(f) Have in its possession prior to signing the construction contract:

1. Unsigned contractor's performance and payment bond;

2. Certificates of required insurance;

3. Property insurance policy including insurance written on a builder's risk "all-risk" or equivalent policy in the amount of the initial total construction cost, plus the value of subsequent contract modifications and the cost of materials supplied and installed by others, comprising total value for the entire project at the site on a replacement cost basis without optional deductibles;

4. The department's written approval to sign each owner contractor agreement; and

5. Bids accepted for the bond sale.

(11) The board shall provide oversight of construction administration and construction contract closeout and submit a revised board-approved BG-1 Form if construction contingency is exceeded.

(12) If a lien is filed with a court and the board is given notice of the lien, the board shall:

(a) Notify the board attorney;

(b) Notify the department; and

(c) Proceed in accordance with the contract.

Section 4. Architectural Services.

(1) The board shall advertise for architectural services utilizing the KDE Request for Proposals for Architectural/Engineering Services or shall evaluate and select a minimum

of three (3) architectural firms who have submitted a letter of interest. Advertisement and evaluation of three (3) firms shall not be required if:

- (a) The total construction cost of the project is estimated at less than \$1,000,000; or
 - (b) The project is the continuation of phased construction at the same site.
- (2) The board and design professional shall negotiate a contract for services required, using either:
- (a) AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version; or
 - (b) AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version.
- (3) A letter of agreement stating services, terms, and conditions that have been approved by the board shall be acceptable in lieu of AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version for a project with an estimated construction cost of less than \$50,000.
- (4) The design professional shall:
- (a) Provide professional liability insurance;
 - (b) Complete a KDE Non-Collusion Affidavit;
 - (c) Provide construction documents and cost estimates, as required by the contract;
 - (d) If requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request; and
 - (e) Request payment of the construction phase fee at the same proportionate percentage as the construction's completion.
- (5) The department shall review and approve the board-approved design professional's contract based on the following criteria:
- (a) Compliance of the fee to KDE Architect/Engineer Fee Guidelines for Basic Services;
 - (b) Required certificates of liability insurance as stated in the AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version or the AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version;
 - (c) Compliance with applicable laws for modifications to the contract; and
 - (d) Consistency with the scope of work and anticipated cost approved on the BG-1 Form.
- (6) The design professional shall prepare and provide documents and services required by contract, laws, and AIA documents incorporated by reference in this administrative regulation. The department shall request clarification, as needed, on documentation which does not comply.

Section 5. Construction Management Services.

- (1) A CM shall not be employed on a project estimated at less than \$2,000,000 for construction cost. The department may approve exceptions if the:
- (a) Project is a phase of a phased project and the CM is to be employed on all subsequent phases; or
 - (b) Project's complexity or fiscal soundness requires it.
- (2) The board shall advertise for CM services utilizing the KDE Request for Proposals for Construction Management Services or shall evaluate and select a minimum of three (3) CM firms who have submitted a letter of interest.
- (3) The board and CM shall negotiate a contract for services required using AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser - KDE Version.
- (4) The CM shall:

- (a) Prior to the board signing the construction contracts, provide a 100 percent performance and payment bond, AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version, in the amount of the CM fee and in compliance with KRS 45A.435;
 - (b) Provide professional liability insurance;
 - (c) Provide construction cost estimates in conjunction with the design professional's design at the end of each phase for schematic design documents, design development documents, and construction documents;
 - (d) Complete a KDE Non-Collusion Affidavit;
 - (e) Request approval by the owner's representative for reimbursement or an additional service fee prior to the service being rendered or expenditure being made;
 - (f) If requesting reimbursement or an additional service fee, provide a detailed listing of each charge on the payment request; and
 - (g) Request payment of the construction phase fee at the same proportionate percentage as the construction's completion.
- (5) The department shall review and approve the board-approved CM contract based on the following criteria:
- (a) Compliance of the fee to KDE Construction Manager Fee Guidelines for Basic Services;
 - (b) Required certificates of liability insurance as stated in the AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version;
 - (c) Required performance and payment bond as stated in the AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version;
 - (d) Compliance with applicable laws for modifications to the contract; and
 - (e) Consistency with the scope of work and anticipated cost approved on the BG-1 Form.
- (6) The CM shall provide all documents and services required by contract, laws, and AIA documents incorporated by reference in this administrative regulation. The department shall request clarification, as needed, on documentation which does not comply.

Section 6. Project Documents for General Construction and Construction Management.

- (1) After the department has issued written approval of the BG-1 Form, the department shall notify the board of required submissions for the project.
- (a) The design professional shall prepare schematic design documents of the proposed construction from written educational program specifications which are in compliance with 702 KAR 4:170 and 702 KAR 4:180.
 - (b) The board shall submit the board-approved schematic design documents and a copy of the educational program specifications to the department for review and approval.
 - (c) The department shall review and approve the schematic design documents based on:
 - 1. The schematic design documents and a copy of the educational program specifications, approved by board order;
 - 2. The site plan demonstrating compliance with 702 KAR 4:170;
 - 3. Proposed floor elevation which is a minimum of one (1) foot above the 100-year flood plain elevation for new construction and the proposal of no state funds for renovation below the 100-year flood plain elevation;
 - 4. Floor plans demonstrating:
 - a. The number, type, and size of the planned spaces, including support spaces;
 - b. The educational program specifications;
 - c. Maximum gross areas in compliance with 702 KAR 4:170 and 702 KAR 4:180, with:

- (i) An elementary school limited to 115 percent of the total gross area of the model program of spaces; or
 - (ii) A middle or high school limited to 120 percent of the total gross area of the model program of spaces; and
 - d. Building efficiency (the percent of net program area to gross building area) meeting or exceeding the guidelines of 702 KAR 4:180;
 - 5. Functional aspects demonstrating:
 - a. The distribution of functions;
 - b. Program space educational suitability; and
 - c. The appropriateness for the needs of the facility; and
 - 6. The budget documenting the estimated construction cost (gross building area multiplied by the cost per square foot, plus site development costs) in relation to the BG-1 Form total construction cost. If the estimated construction cost exceeds the BG-1 Form total construction cost, the board shall approve either an increase in the budget or a decrease in the physical scope of the project.
- (2) After receiving the department's written approval of the schematic design documents, the design professional shall prepare the design development documents.
- (a) The board shall submit to the department for review and approval:
 - 1. Board-approved design development documents;
 - 2. BG-2 Outline Specifications Energy Design Criteria (BG-2 Form); and
 - 3. BG-3 Statement of Probable Cost (BG-3 Form).
 - (b) The board shall submit to the department a copy of the signed letter of transmittal sent to the Kentucky Transportation Cabinet or other agency having jurisdiction regarding proposed entrance and right-of-way improvements.
 - (c) The department shall review and approve design development documents, which incorporate all previous schematic design documents review comments, based on:
 - 1. Site plan (proper siting of the building with respect to vehicular and pedestrian circulation, separation of bus loading area, student play areas, athletic fields, utility construction, and site drainage, with details appropriately developed);
 - 2. Floor plan (number, type, and size of the planned spaces consistent with each approved schematic plan);
 - 3. Enlarged plans and details (appropriate to describe the design intention);
 - 4. Budget (the total project cost on the BG-3 Form is within the approved BG-1 Form total project cost budget; if the BG-3 Form total project cost exceeds the BG-1 Form total project cost, the board shall approve an increase in the budget or a decrease in the physical scope of the project); and
 - 5. BG-2 Form (properly completed and conforms to the educational program specifications).
- (3) After receiving the department's written approval of design development documents, the design professional, and the CM if utilized, shall prepare the completed construction documents for bidding.
- (a) The board shall submit to the department:
 - 1. Board-approved completed drawings and project manual; and
 - 2. Proof of submission of completed construction documents to other agencies having jurisdiction.
 - (b) The department shall review and approve the completed construction documents based on:
 - 1. Compliance with state laws regarding the seal, signature, and date of the documents by design professionals;
 - 2. Compliance with the requirement that documents be of sufficient detail and complexity that they may be used:
 - a. To obtain a building permit;

- b. As instruments in the competitive bidding process; and
 - c. By contractors to construct the project;
3. Compliance with the requirement that BG-3 Form total project cost be less than or equal to 110 percent of the approved BG-1 Form total project cost;
 4. Compliance with the requirement that documents be appropriate to industry standards for general construction or construction management, including:
 - a. AIA Document A701-1997, Instruction to Bidders - KDE Version;
 - b. KDE Form of Proposal;
 - c. AIA Document A310-2010, Bid Bond;
 - d. KDE Purchase Order;
 - e. AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum - KDE Version;
 - f. AIA Document A201-2007, General Conditions of the Contract for Construction - KDE Version;
 - g. AIA Document A132-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition - KDE Version;
 - h. AIA Document A232-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition - KDE Version;
 - i. AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version;
 - j. AIA Document G702-1992, Application and Certification for Payment;
 - k. AIA Document G732-2009, Application and Certification for Payment, Construction Manager-Adviser Edition;
 - l. AIA Document G701-2001, Change Order;
 - m. AIA Document G701/CMA-1992, Change Order, Construction Manager-Adviser Edition;
 - n. KDE Change Order Supplemental Information Form;
 - o. AIA Document G704-2000, Certificate of Substantial Completion;
 - p. AIA Document G704/CMA-1992, Certificate of Substantial Completion, Construction Manager-Adviser Edition;
 - q. AIA Document G707A-1994, Consent of Surety to Reduction in or Partial Release of Retainage;
 - r. AIA Document G706-1994, Contractor's Affidavit of Payment of Debts and Claims;
 - s. AIA Document G706A-1994, Contractor's Affidavit of Release of Liens; and
 - t. AIA Document G707-1994, Consent of Surety to Final Payment; and
 5. Inclusion of letter of transmittal to state and local agencies having jurisdiction over issues related to construction projects, including:
 - a. Department of Housing, Buildings and Construction;
 - (i) Division of Building Codes Enforcement; and
 - (ii) Division of Plumbing.
 - b. Division of Water;
 - c. Division of Air Quality;
 - d. Local health department; and
 - e. Local building inspector.
- (4) The board shall receive written approval of the completed construction documents and authorization to advertise from the department prior to advertisement for bids.

Section 7. Guaranteed Energy Savings Contracts.

- (1) The board shall submit to the department a letter of intent to issue a request for proposal for a GESC.
- (2) The department shall notify the board of required submissions for the GESC project.

- (3) The board shall advertise for qualified providers to propose energy conservation measures utilizing the KDE Request for Proposals for Guaranteed Energy Savings Contracts in compliance with KRS 45A.352(1) and (5) for a GESC.
- (4) The board and qualified provider shall negotiate a contract for services required using:
 - (a) AIA Document A141-2004, Standard Form of Agreement Between Owner and Design-Builder - KDE Version;
 - (b) AIA Document A141-2004, Exhibit A, Terms and Conditions - KDE Version;
 - (c) AIA Document A141-2004, Exhibit C, Insurance and Bonds - KDE Version; and
 - (d) Other exhibits as required to define the agreement.
- (5) The qualified provider shall:
 - (a) Complete a KDE Non-Collusion Affidavit;
 - (b) Provide each required certificate of liability insurance; and
 - (c) Provide a 100 percent performance and payment bond, AIA Document 312-2010, Performance Bond and Payment Bond - KDE Version, in compliance with KRS 45A.435.
- (6) The board shall submit to the department:
 - (a) A board-approved proposal from the selected provider; and
 - (b) BG-1 Form.
- (7) The department shall review and approve the project based on compliance with KRS 45A.352(9) and (10).
- (8) After written approval of the project is received from the department, the qualified provider shall incorporate review comments and prepare the project scope documents. The board shall submit to the department for review and approval:
 - (a) Board-approved project scope documents;
 - (b) BG-2 Form; and
 - (c) Proposed contract.
- (9) After written approval of the project scope is received from the department, the qualified provider shall incorporate review comments and complete the project documents, including drawings and specifications. The board shall submit to the department:
 - (a) Board-approved project documents, including final drawings and specifications;
 - (b) Proposed board-approved contract with financing documentation;
 - (c) Confirmation that the proposed contract complies with KRS 45A.352(3); and
 - (d) Revised BG-1 Form to conform to the proposed contract and financing.
- (10) The department shall review and provide written approval of the proposed GESC based on:
 - (a) Financing documentation; and
 - (b) KRS 45A.352(9) and (10).

Section 8. Construction Bids, Contracts, and Bond Sales.

- (1) Negotiation of the bid price shall not be allowed, except in accordance with KRS 45A.375 for those districts under the Model Procurement Code.
- (2) The board shall submit to the department for review and approval:
 - (a) Each proposed contract;
 - (b) A completed KDE Purchase Order Summary Form, if owner direct purchase orders are utilized;
 - (c) The revised financial page of the BG-1 Form to coincide with the proposed project costs;
 - (d) Preliminary official statement;
 - (e) Notice of revenue bond sale;
 - (f) Official terms and conditions; and

- (g) Plans of financing.
- (3) The board shall submit to the department for review and approval the following documentation for projects that are bid:
 - (a) Each bid tabulation;
 - (b) Bid security;
 - (c) KDE Form of Proposal for each successful bidder;
 - (d) Written recommendation of the design professional and CM, if utilized, regarding the awarding of the contract; and
 - (e) Written rationale for the additional cost if the accepted bid exceeds the BG-3 Form by ten (10) percent or more.
- (4) If a bond sale is pending, the documents required by subsections (2) and (3) of this section shall be submitted to the department a minimum of ten (10) working days prior to the scheduled bond sale date.
- (5)
 - (a) Discrepancies between the proposed contract and bidding documents shall be remedied prior to approval.
 - (b) Approval of the proposed contract by the department shall not indicate the contract is the best or the most reasonable.
- (6) If the submitted documents are not in an approvable form at least five (5) working days before the scheduled bond sale, the sale date shall be postponed.
- (7) The board shall contract with a fiscal agent to assist in meeting all reporting, filing, and selling requirements for securing the financial approval of the department if school revenue bonds are proposed for sale.
- (8) The department shall issue the written approval for the financing plan, authorize the bond sale, and issue the approval letter for the chief state school officer or a designee.
- (9) The board shall submit to the department:
 - (a) A copy of each signed contract and purchase order;
 - (b) Each contractor's insurance certificate required by law and by contract to hold the board safe from loss until the project is completed or until an occupancy permit is received by the board; and
 - (c) A copy of each 100 percent performance and payment bond in compliance with KRS 45A.435.

Section 9. Contract Change Orders.

- (1) Board-approved contract modifications shall be submitted using forms AIA Document G701-2001, Change Order or AIA Document G701/CMA-1992, Change Order, Construction Manager-Adviser Edition, including the KDE Change Order Supplemental Information Form, to ensure the cumulative cost of the contract and all change orders are within the approved budget.
- (2) Board-approved change orders under \$25,000 per change event and within the construction contingency amount shall be submitted to the department.
- (3) Board-approved change orders which equal or exceed \$25,000 per change event and within the construction contingency amount shall be submitted, prior to execution, to the department for review and approval.
- (4) The department may approve a change order only if the change order amount is less than the available construction contingency amount on the BG-1 Form and is in accordance with subsections (1) and (3) of this section.

Section 10. Construction Contract Retainage and Payments.

- (1)
 - (a) Retainage shall be governed by KRS 371.410(1).
 - (b) Payments shall be governed by KRS 371.405(7).

(2) The investment earnings resulting from an agreement entered by a board involving the construction account, including the construction contract retainage for an approved project, shall be invested in a manner so that additional income from the investment shall accrue only to the construction account.

Section 11. Construction Dispute Resolution. Owners shall utilize the construction dispute resolution processes defined in the signed contracts for the project.

Section 12. Construction Contract Closeout Process.

(1) The applicable design professional, CM, or qualified provider shall furnish the board a completed BG-4 Contract Closeout Form, 2013 (BG-4 Form) and record documents, with applicable information requesting approval of:

- (a) Each contract, including change orders; and
- (b) A reconciliation of the summary of all purchase orders, if utilized, including change orders, for each contract.

(2) If the board agrees the construction contract is complete and all accounts are reconciled, it shall approve the BG-4 Form and forward it to the department for review and approval.

(3) When all construction contracts are complete, if the board agrees the project is complete, it shall approve the BG-5 Project Closeout Form, 2013 (BG-5 Form) and forward it to the department for review and approval.

Section 13. Penalties for Malfeasance or Nonfeasance.

(1) A determination by the board or the department of malfeasance or nonfeasance shall be forwarded to the chief state school officer.

(2) The chief state school officer may make a recommendation to the KBE to determine that the offending firm is ineligible to provide professional services on school construction projects for a period not to exceed five (5) years.

(3) The KBE may affirm, modify, or reverse the chief state school officer's recommendation.

(4) If the principals of the offending firm become associated with another firm during the penalty period, upon recommendation by the chief state school officer, the KBE may determine that the penalty invoked shall also apply to that firm.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version", June 2013;
- (b) "AIA Document A201-2007, General Conditions of the Contract for Construction - KDE Version", June 2013;
- (c) "AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum - KDE Version", June 2013;
- (d) "AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version", June 2013;
- (e) "AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser - KDE Version", June 2013;
- (f) "AIA Document A232-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition - KDE Version", June 2013;
- (g) "AIA Document A132-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition - KDE Version", June 2013;
- (h) "AIA Document A141-2004, Standard Form of Agreement Between Owner and Design-Builder - KDE Version", June 2013;
- (i) "AIA Document A141-2004, Exhibit A, Terms and Conditions - KDE Version", June 2013;

- (j) "AIA Document A141-2004, Exhibit C, Insurance and Bonds - KDE Version", June 2013;
 - (k) "AIA Document A701-1997, Instruction to Bidders - KDE Version", 2013;
 - (l) "AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version", 2013;
 - (m) "AIA Document A310-2010, Bid Bond", 2010;
 - (n) "AIA Document G701-2001, Change Order", 2001;
 - (o) "AIA Document G701/CMa-1992, Change Order, Construction Manager-Adviser edition", 1992;
 - (p) "AIA Document G702-1992, Application and Certification for Payment", 1992;
 - (q) "AIA Document G732-2009, Application and Certification for Payment, Construction Manager-Adviser Edition", 2009;
 - (r) "AIA Document G704-2000, Certificate of Substantial Completion", 2000;
 - (s) "AIA Document G704/CMa-1992, Certificate of Substantial Completion, Construction Manager-Adviser Edition", 1992;
 - (t) "AIA Document G706-1994, Contractor's Affidavit of Payment of Debts and Claims", 1994;
 - (u) "AIA Document G706A-1994, Contractor's Affidavit of Release of Liens", 1994;
 - (v) "AIA Document G707-1994, Consent of Surety to Final Payment", 1994;
 - (w) "AIA Document G707A-1994, Consent of Surety to Reduction in or Partial Release of Retainage", 1994;
 - (x) "BG-1 Project Application Form", 2013;
 - (y) "BG-2 Outline Specifications Energy Design Criteria", 2013;
 - (z) "BG-3 Statement of Probable Cost", 2013;
 - (aa) "BG-4 Contract Closeout Form", 2013;
 - (bb) "BG-5 Project Closeout Form", 2013;
 - (cc) "KDE Architect/Engineer Fee Guidelines for Basic Services", 2013;
 - (dd) "KDE Change Order Supplemental Information Form", 2013;
 - (ee) "KDE Construction Manager Fee Guidelines for Basic Services", 2013;
 - (ff) "KDE Form of Proposal", 2013;
 - (gg) "KDE Non-Collusion Affidavit", 2013;
 - (hh) "KDE Purchase Order", 2013;
 - (ii) "KDE Purchase Order Summary Form", 2013;
 - (jj) "KDE Request for Proposals for Architectural/Engineering Services", 2013;
 - (kk) "KDE Request for Proposals for Construction Management Services", 2013; and
 - (ll) "KDE Request for Proposals for Guaranteed Energy Savings Contracts", 2013.
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- (20 Ky.R. 1732; 2626; eff. 3-9-1994; 21 Ky.R. 1784; eff. 3-2-1995; 27 Ky.R. 848; 1254; eff. 11-17-2000; 35 Ky.R. 2142; 36 Ky.R. 56; eff. 7-13-2009; 39 Ky.R. 2073; eff. 9-6-2013.)