

AN ACT relating to government contracts.

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

➔Section 1. KRS 45A.690 is amended to read as follows:

(1) As used in KRS 45A.690 to 45A.725:

- (a) "Committee" means the Government Contract Review Committee of the Legislative Research Commission;
- (b) "Contracting body" means any~~each~~ state board, bureau, cabinet, commission, department, division, authority, postsecondary institution~~university, college~~, officer, or any other governmental entity, except the Legislature, authorized by law to contract for personal services. "Contracting body" includes the Tourism Development Finance Authority with regard to tax incentive agreements;
- (c) "Governmental emergency" means an unforeseen event or set of circumstances that creates an emergency condition as determined by the committee~~by promulgation of an administrative regulation~~;
- (d) "Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar arrangement~~device~~ relating to services between a contracting body~~state agency~~ and any other governmental entity~~body~~ or political subdivision of the Commonwealth or entity qualified as nonprofit under 26 U.S.C. sec. 501(c)(3) not authorized under KRS Chapter 65 that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations and agreements with Kentucky Distinguished Educators

pursuant to KRS 158.782. Except for memoranda of agreement for which review is required by subsection (11) of Section 2 of this Act, the following agreements shall be exempt from routine review by the committee, but shall be reported in a format and time as determined by the committee~~[This definition does not apply to]~~:

1. Agreements between the Transportation Cabinet and any political subdivision of the Commonwealth for road and road-related projects;
2. Agreements between the Auditor of Public Accounts and any other governmental agency or political subdivision of the Commonwealth for auditing services;
3. Agreements between state agencies as required by federal or state law;
4. Agreements between state agencies and postsecondary institutions~~[state universities or colleges]~~ only when the subject of the agreement does not result in the use of an employee or employees of a state university or college by a state agency to fill a position or perform a duty that an employee or employees of state government could perform if hired, and agreements between state universities or colleges and employers of students in the Commonwealth work-study program sponsored by the Kentucky Higher Education Assistance Authority;
5. Agreements involving child support collections and enforcement;
6. Agreements with public utilities, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, and transit authorities;
7. Nonfinancial agreements;

8. Any obligation or payment for reimbursement of the cost of corrective action made pursuant to KRS 224.60-140;
9. ~~Exchanges of confidential personal information between agencies;~~
10. ~~Agreements between state agencies and rural concentrated employment programs; and ~~or~~~~
10. ~~11.~~ Any other agreement that the committee deems inappropriate for consideration;
- (e) "Motion picture or entertainment production" means the same as defined in KRS 148.542;
- (f) "Multicontract" means a group of personal service contracts between a contracting body and individual vendors providing the same or substantially similar services to the contracting body that, for purposes of the committee, are treated as one (1) contract;
- (g) "Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services, including but not limited to services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes agreements, ~~all price~~ contracts, and master agreements for personal, professional, and technical services between a governmental body or political subdivision of the Commonwealth and any individual, firm, partnership, or corporation ~~other entity~~ in any amount and contracts with private entities for the provision of group health care for public employees. Except for personal service contracts for which review is required by subsection (11) of Section 2 of this Act, the following contracts shall be exempt from routine review by the committee ~~. This definition does not apply to:~~
1. Contracts ~~Agreements~~ between the Department of Parks and a performing artist or artists for less than five thousand dollars (\$5,000)

- per fiscal year per artist or artists;
2. ~~Contracts~~~~[Agreements]~~ with public utilities, transit authorities, foster care parents, and providers of direct Medicaid health care to individuals ; however,~~[except for]~~ any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services shall comply with the provisions of KRS 45A.690 to 45A.725~~[, individuals performing homemaker services, and transit authorities];~~
 3. ~~Contracts~~~~[Agreements]~~ between postsecondary institutions~~[state universities or colleges]~~ and employers of students in the Commonwealth work study program sponsored by the Kentucky Higher Education Assistance Authority and agreements between postsecondary institutions and health care providers for delivery or receipt of health care services;
 4. Contracts for services not requiring professional skill or professional judgment for forty thousand dollars (\$40,000) or less during any one (1) fiscal year;
 5. ~~Contracts~~~~[Agreements]~~ between a state agency and rural concentrated employment programs;
 - 6.~~[5.]~~ ~~Contracts~~~~[Agreements]~~ between the State Fair Board and judges, officials, and entertainers contracted for events promoted by the State Fair Board;~~[or]~~
 - 7.~~[6.]~~ Contracts between the Department of Public Advocacy and attorneys for representation of individual clients who are entitled to representation under KRS Chapter 31 and who, by reason of conflict or otherwise, the Department of Public Advocacy is unable to

represent; and

8. Any other contract that the committee deems inappropriate for consideration;

(h) "Tax incentive agreement" means an agreement executed under KRS 148.546; and

(i) "Tourism Development Finance Authority" means the authority established by KRS 148.850.

(2) Compliance with the provisions of KRS 45A.690 to 45A.725 does not dispense with the requirements of any other law necessary to make the personal service contract or memorandum of agreement valid.

➔Section 2. KRS 45A.695 is amended to read as follows:

(1) Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract *or memorandum of agreement* entered into by any contracting body or incur expenditures under a tax incentive agreement until notification of the personal service contract, *memorandum of agreement*, or tax incentive agreement is filed with the committee. Each personal service contract *or memorandum of agreement* shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.

(2) Each personal service contract, tax incentive agreement, and memorandum of agreement shall be filed with the committee prior to the effective date and shall be accompanied by a completed proof of necessity form as established by the committee~~[by promulgation of an administrative regulation]~~, or equivalent information if submitted electronically. The proof of necessity form shall document:

(a) The need for the service or benefit to the Commonwealth of the *personal service contract, memorandum of agreement, or* tax incentive agreement;

(b) For personal service contracts and memoranda of agreement, the

unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service;

- (c) The total projected cost of the contract or agreement and source of funding;
- (d) The total projected duration of the contract or tax incentive agreement;
- (e) Payment information, in detail;
- (f) In the case of memoranda of agreement or similar device, the reason for exchanging resources or responsibilities; and
- (g) Such other information as the committee deems appropriate.

(3) **Except as provided in Section 6 of this Act:**

(a) For an amount over forty thousand dollars (\$40,000), adequate notice of the need for a personal service contract **requiring professional skill or professional judgment** shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, state the relative importance of particular qualifications, and include the reciprocal preference for resident bidders required by KRS 45A.494.~~[-]~~

(b) For an amount of forty thousand dollars (\$40,000) or less, adequate notice of the need for a personal service contract requiring professional skill or professional judgment shall be given by the contracting body by, whenever feasible, solicitation of at least three (3) quotes for the needed service. A determination that solicitation of quotes is not feasible shall be in writing and submitted to the secretary of the Finance and Administration Cabinet, or to the president of the postsecondary institution if appropriate pursuant to KRS 164A.575. The committee may review a determination of unfeasibility by a contracting body. The Department of Public Advocacy shall be exempt from the solicitation requirement, but shall report personal service contracts on a quarterly basis in a format determined by the

committee.

- (4) The head of the contracting body or his or her designee may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (5) Award shall be made to the offeror determined by the head of the contracting body, or his or her designee, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.
- (6) The committee shall maintain a record or have readily accessible records of the date on which each personal service contract, tax incentive agreement, and memorandum of agreement was received and shall maintain or have access to electronic or paper files on all personal service contracts, tax incentive agreements, and memoranda of agreement. Except for records exempt from inspection under KRS 61.870 to 61.884, all personal service contracts, tax incentive agreements, and memoranda of agreement shall be made available for public inspection.
- (7) Payment on personal service contracts, tax incentive agreements, and memoranda of agreement submitted to the committee for approval shall not be made for

services rendered or projects undertaken after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary of the Finance and Administration Cabinet, or by the president of the postsecondary institution if appropriate pursuant to KRS 164A.575. All personal service contracts, tax incentive agreements, and memoranda of agreement shall contain a provision that stipulates that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority, or by the president of the postsecondary institution if appropriate pursuant to KRS 164A.575.

- (8) In the event of a governmental emergency as defined under KRS 45A.690, work may begin prior to filing notification of the personal service contract or memorandum of agreement with the committee, if the secretary of the Finance and Administration Cabinet or his designee, or the president of the postsecondary institution if appropriate pursuant to KRS 164A.575, determines that the time involved in the normal review process would be detrimental to the Commonwealth's ability or to the postsecondary institution's ability to act or procure the services and the normal process will not accommodate the governmental emergency. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the committee.
- (9) If a governmental emergency exists as defined under KRS 45A.690 and work is authorized to begin on a personal service contract or memorandum of agreement~~contract~~ immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet, or his designee or by the president of the postsecondary institution where appropriate, setting forth in detail the nature

of the emergency shall be filed with the committee, along with a copy of the personal service contract or memorandum of agreement.

- (10) (a) No payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.
- (b) Invoices shall be submitted every ninety (90) days, unless the personal service contract specifies a different submission time period.
- (c) Separate invoices shall be submitted for each distinct matter covered by the personal service contract, and shall be signed by the individual responsible for that matter.
- (d) Each invoice shall contain the following information:
1. A description of the matter covered by the invoice;
 2. The date each service was performed;
 3. A full description of each service;
 4. The name and title of each individual who worked on the matter, and the time the individual spent on the matter;
 5. The subject matter and recipient of any correspondence;
 6. A full description of any work product produced, designating the way in which the work product is associated with the matter being invoiced;
 7. The hourly rate for each individual working on the matter, and the total charge for that individual for each matter invoiced;
 8. An itemized list of all disbursements to be reimbursed by the state for each matter invoiced;
 9. The total charge for each matter;
 10. The combined total for services and disbursements for the billing period;

11. The tax identification number of the entity awarded the personal service contract; and
 12. An indication on each invoice of whether or not the invoice is final.
- (e) The issuance of an invoice to the Commonwealth constitutes an affirmation by the individual, firm, partnership, or corporation awarded the personal service contract that the invoice truly and accurately represents work actually performed and expenses actually incurred.
 - (f) The head of the contracting body shall approve the invoice, indicating that the charges in the invoice reflect the value of the work performed, and all recorded costs and disbursements were reasonably and necessarily incurred in connection with the matter invoiced.

(11) Except for agreements involving child support collections and enforcement, and contracts between the Department of Public Advocacy and attorneys for representation of indigent clients, personal service contracts or memoranda of agreement in an amount in excess of one million dollars (\$1,000,000) shall be reviewed by the committee regardless of type or characterization.

➔Section 3. KRS 45A.700 is amended to read as follows:

- (1) Personal service contracts in aggregate amounts of **forty thousand dollars (\$40,000)**~~ten thousand dollars (\$10,000)~~ or less during any one (1) fiscal year shall be exempt from routine review by the committee, **but**~~and~~ shall be filed with the committee not more than thirty (30) days after their effective date for informational purposes only. The committee shall examine all personal service contracts in aggregate amounts of **forty thousand dollars (\$40,000)**~~ten thousand dollars (\$10,000)~~ or less submitted more than thirty (30) days after the effective date. The committee may periodically examine the informational copies of personal service contracts in aggregate amounts of **forty thousand dollars (\$40,000)**~~ten thousand dollars (\$10,000)~~ or less and may request agency participation in

discussions relative to their contracts or payments.~~[The provisions of this subsection shall not apply to price contracts for personal services.]~~

- (2) Memoranda of agreement~~[and price contracts for personal services]~~ in aggregate amounts of fifty thousand dollars (\$50,000) or less during~~[in]~~ any one (1) fiscal year shall be exempt from routine review by the committee, but~~[and]~~ shall be filed with the committee not more than thirty (30) days after their effective date for informational purposes only. The committee shall examine all memoranda of agreement~~[and price contracts for personal services]~~ in aggregate amounts of fifty thousand dollars (\$50,000) or less submitted more than thirty (30) days after the effective date. The committee may periodically examine memoranda of agreement and price contracts for personal services in aggregate amounts of fifty thousand dollars (\$50,000) or less and may request agency participation in discussions relative to their agreements or payments.
- (3) If a personal service contract of forty thousand dollars (\$40,000) or less~~[than ten thousand dollars (\$10,000)]~~ is amended to the extent the amended total of the contract exceeds forty thousand dollars (\$40,000)~~[ten thousand dollars (\$10,000)]~~ per fiscal year per contractor, the amended contract shall be placed on the agenda for the committee's routine review.~~[The provisions of this subsection shall not apply to price contracts for personal services.]~~
- (4) If a memorandum of agreement of~~[or price contract for personal services of less than]~~ fifty thousand dollars (\$50,000) or less is amended to the extent the amended total of the agreement or contract exceeds fifty thousand dollars (\$50,000) per fiscal year per contracting~~[governmental]~~ body, the amended agreement or contract shall be placed on the agenda for the committee's routine review.

➔Section 4. KRS 45A.705 is amended to read as follows:

- (1) There is hereby created a permanent committee of the Legislative Research Commission to be known as the Government Contract Review Committee. The

committee shall be composed of eight (8) members appointed as follows: three (3) members of the Senate appointed by the President of the Senate; one (1) member of the minority party in the Senate appointed by the Minority Floor Leader in the Senate; three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives; and one (1) member of the minority party in the House of Representatives appointed by the Minority Floor Leader in the House of Representatives. Members shall serve for terms of two (2) years, and the members appointed from each chamber shall elect one (1) member from their chamber to serve as co-chair. Any vacancy that may occur in the membership of the committee shall be filled by the appointing authority who made the original appointment.

- (2) On an alternating basis, each co-chair shall have the first option to set the monthly meeting date. A monthly meeting may be canceled by agreement of both co-chairs. The co-chairs shall have joint responsibilities for committee meeting agendas and presiding at committee meetings. A majority of the entire membership of the Government Contract Review Committee shall constitute a quorum, and all actions of the committee shall be by vote of a majority of its entire membership. The members of the committee shall be compensated for attending meetings, as provided in KRS 7.090(3).
- (3) Any professional, clerical, or other employees required by the committee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).
- (4) All proposed personal service contracts, tax incentive agreements, and memoranda of agreement received by the Legislative Research Commission shall be submitted to the committee to:
 - (a) Examine the stated need for the service or benefit to the Commonwealth of the personal service contract, memorandum of agreement, or motion picture or entertainment production;

- (b) Examine whether the service could or should be performed by state personnel, for personal service contracts and memoranda of agreement;
 - (c) Examine the amount and duration of the contract or agreement; and
 - (d) Examine the appropriateness of any exchange of resources or responsibilities.
- (5) If the committee determines that a personal service~~[the]~~ contract, memorandum of~~[service or]~~ agreement, or~~[other than an]~~ emergency request~~[contract approved by the secretary of the Finance and Administration Cabinet or his or her designee,]~~ is not needed or inappropriate, the motion picture or entertainment production is not beneficial or is inappropriate, the service could or should be performed by state personnel, the amount or duration is excessive, or the exchange of resources or responsibilities is~~[are]~~ inappropriate, the committee shall forward~~[attach]~~ a written notation of the reasons for its disapproval or objection to the secretary of the Finance and Administration Cabinet, or to the president of the postsecondary institution if appropriate pursuant to KRS 164A.575~~[personal service contract, tax incentive agreement, or memorandum of agreement and shall return the personal service contract, tax incentive agreement, or memorandum of agreement to the secretary of the Finance and Administration Cabinet or his or her designee.]~~ The committee shall act on a personal service contract, tax incentive agreement, or memorandum of agreement submitted to the Legislative Research Commission within forty-five (45) days of the date received.
- (6) Upon receipt of the committee's disapproval or objection, the secretary of the Finance and Administration Cabinet, or the president of the postsecondary institution if appropriate pursuant to KRS 164.575,~~[to a personal service contract, tax incentive agreement, or memorandum of agreement, the secretary of the Finance and Administration Cabinet or his or her designee]~~ shall determine whether the personal service contract, tax incentive agreement, or memorandum of agreement, or emergency request shall:

- (a) Be revised to comply with the objections of the committee;
 - (b) Be canceled and, if applicable, payment allowed for services rendered~~[under the contract or amendment]~~; or
 - (c) Remain effective, notwithstanding the disapproval or objection of the committee ~~[as originally approved]~~.
- (7) The secretary of the Finance and Administration Cabinet~~[or his or her designee]~~ shall notify the committee of the action taken on items~~[personal service contracts, tax incentive agreements, and memoranda of agreement]~~ disapproved or objected to within ten (10) days from the date they~~[the personal service contracts, tax incentive agreement, or memoranda of agreement]~~ were reviewed by the committee.
- (8) The determination required by subsection (6) of this section to be made by the secretary of the Finance and Administration Cabinet shall not be delegated, except that for any postsecondary institution that has elected to utilize the procurement procedures established pursuant to KRS 164A.575, the determination required by subsection (6) of this section regarding the institution's contract or agreement shall be made by the president of the institution and shall not be delegated~~[Contracting bodies shall make annual reports to the committee not later than December 1 of each year. The committee shall establish reporting procedures for contracting bodies related to personal service contracts, tax incentive agreements, and memoranda of agreement submitted by the secretary of the Finance and Administration Cabinet or his or her designee].~~

➔Section 5. KRS 45A.725 is amended to read as follows:

- (1) The~~[Government Contract Review]~~ committee may:
- (a) Determine the appropriate format and time frame for reporting personal service contracts and memoranda of agreement;
 - (b) Select for further review, any contract or agreement submitted for review or reported by any contracting body, except for agreements involving child

support collections and enforcement;

(c) Establish policies and procedures;~~[- concerning the manner and form of notification]~~ and

(d) **Determine** the documentation to accompany~~[- the]~~ proposed personal service **contracts, memoranda of agreement**~~[-contract]~~, tax incentive **agreements,** **and emergency requests**~~[-agreement, or memorandum of agreement]~~.

(2) Nothing in this **chapter**~~[-code]~~ shall prohibit the committee from accepting personal service contracts, tax incentive **agreements,**~~[-agreement, or]~~ memoranda of agreement, **or other documents** through the use of electronic instrumentalities.

➔Section 6. KRS 45A.095 is amended to read as follows:

(1) A contract may be made by noncompetitive negotiation only for sole source purchases, or when competition is not feasible, as determined by the purchasing officer in writing prior to award, under administrative regulations promulgated by the secretary of the Finance and Administration Cabinet or the governing boards of universities operating under KRS Chapter 164A, or when emergency conditions exist. Sole source is a situation in which there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, the supplier, or market conditions. Insofar as it is practical, no less than three (3) suppliers shall be solicited to submit written or oral quotations whenever it is determined that competitive sealed bidding is not feasible. Award shall be made to the supplier offering the best value. The names of the suppliers submitting quotations and the date and amount of each quotation shall be placed in the procurement file and maintained as a public record. Competitive bids may not be required:

(a) For contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;

(b) Where rates are fixed by law or ordinance;

- (c) For library books;
 - (d) For commercial items that are purchased for resale;
 - (e) For interests in real property;
 - (f) For visiting speakers, professors, expert witnesses, and performing artists;
 - (g) For personal service contracts executed pursuant to KRS 45A.690 to 45A.725; and
 - (h) For agricultural products in accordance with KRS 45A.645.
- (2) The chief procurement officer, the head of a using agency, or a person authorized in writing as the designee of either officer may make or authorize others to make emergency procurements when an emergency condition exists.
- (3) An emergency condition is a situation which creates a threat or impending threat to public health, welfare, or safety such as may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of government, the preservation or protection of property, or the health or safety of any person.
- (4) The Finance and Administration Cabinet, or the president of the postsecondary institution if appropriate pursuant to KRS 164A.575, may negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency shall be fully explained, in writing, by the head of the agency for which the purchase is to be made. The explanation shall be approved by the secretary of the Finance and Administration Cabinet, or the president of the postsecondary institution if

appropriate pursuant to KRS 164A.575, and shall include the name of the vendor receiving the contract along with any other price quotations and a written determination for selection of the vendor receiving the contract. This information shall be filed with the record of all such purchases and made available to the public. Where practical, standard specifications shall be followed in making emergency purchases. In any event, every effort should be made to effect a competitively established price for purchases made by the state.