

1 AN ACT relating to government contracts.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 45A.690 TO 45A.725 IS CREATED
4 TO READ AS FOLLOWS:

5 *(1) The head of a contracting body, which includes constitutional officers, shall not*
6 *award a personal service contract for legal services that provides for payment by*
7 *contingency fee unless, prior to the award, the head of the contracting body*
8 *determines in writing:*

9 *(a) The contingency fee is both cost-effective and in the public interest;*

10 *(b) Sufficient and appropriate legal and financial resources do not exist within*
11 *the contracting body;*

12 *(c) The amount of time and labor required to perform the requested services;*

13 *(d) The novelty, complexity, and difficulty of the matter;*

14 *(e) The skill required to perform the requested services properly;*

15 *(f) The geographic area where the legal services are to be provided; and*

16 *(g) The experience desired for the particular kind of legal services to be*
17 *provided.*

18 *(2) The head of the contracting body or his or her designee shall participate in*
19 *reviewing and evaluating the responses to the requests for proposals and*
20 *discussions with offerors.*

21 *(3) A contingency fee shall not exceed:*

22 *(a) Twenty percent (20%) of the amount recovered up to ten million dollars*
23 *(\$10,000,000);*

24 *(b) Fifteen percent (15%) of the amount recovered between ten million dollars*
25 *(\$10,000,000) and fifteen million dollars (\$15,000,000);*

26 *(c) Ten percent (10%) of the amount recovered between fifteen million dollars*
27 *(\$15,000,000) and twenty million dollars (\$20,000,000); and*

1 (d) Five percent (5%) of the amount recovered of twenty million dollars
2 (\$20,000,000) or more.

3 (4) A contingency fee shall not exceed twenty million dollars (\$20,000,000),
4 regardless of the number of actions or proceedings or the number of attorneys or
5 law firms involved in the matter, and exclusive of any costs and expenses
6 provided for by the contract and actually incurred by the legal services
7 contractor.

8 (5) A contingency fee shall be payable only from money that is actually received
9 pursuant to a judgment or settlement agreement, and any judgment or settlement
10 funds shall be disbursed in accordance with KRS 48.005.

11 (6) During the contract period and any extension:

12 (a) The head of the contracting body or his or her designee shall retain control
13 over the course and conduct of the case and shall retain veto authority over
14 any decision made by the contract attorney;

15 (b) The head of the contracting body or his or her designee with authority over
16 the contract shall:

17 1. Attend all settlement conferences;

18 2. Be personally involved in overseeing the litigation; and

19 3. Have exclusive decision-making power regarding any settlement of the
20 matter for which the contract was entered; and

21 (c) Any opposing party to the matter for which the contract was entered into
22 may directly contact the head of the contracting body or his or her designee
23 with authority over the contract, without having to notify the contract
24 attorney.

25 (7) The Finance and Administration Cabinet shall develop a standard addendum to
26 be added to each personal service contract for legal services to include the terms
27 of this section.

1 (8) (a) Within five (5) business days after the contract award, the Finance and
2 Administration Cabinet shall post on its Web site each personal service
3 contract for legal services that provides for payment by contingency fee and
4 the accompanying written determinations described in subsection (1) of this
5 section. The contract and accompanying determinations shall remain on
6 the Web site during the duration of the contract and any extension.

7 (b) Any payment of contingency fees shall be posted on the contracting body's
8 Web site within fifteen (15) days after the payment of such contingency fees
9 to the legal services contractor and shall remain posted on the Web site for
10 at least three hundred sixty-five (365) days.

11 (9) (a) In addition to the information required by KRS 45A.695, a contractor
12 awarded a personal service contract for legal services that provides for
13 payment by contingency fee shall maintain detailed current records,
14 including documentation of:

15 1. Expenses;

16 2. Disbursements;

17 3. Charges and credits;

18 4. Underlying receipts and invoices; and

19 5. Any other financial transactions that concern the attorney services
20 rendered under the contract.

21 (b) 1. All records described in this subsection shall become public records
22 subject to KRS 61.870 to 61.884 after a judgment or agreement is
23 entered in the case and all appeals have been exhausted, but shall not
24 be public records until that time.

25 2. Any information that is subject to an evidentiary privilege and is
26 contained within any record described in this subsection shall not be a
27 public record. The privileged information shall be redacted before any

1 public disclosure of the record.

2 (10) (a) The Finance and Administration Cabinet and the contracting body shall
3 submit a joint report to the Government Contract Review Committee by
4 September 1 of each year identifying all contingency fee contracts for legal
5 services:

6 1. Awarded in the previous fiscal year;

7 2. Active in the previous fiscal year, but awarded in prior fiscal years; or

8 3. Concluded in the previous fiscal year.

9 (b) For each contract, the report shall include:

10 1. The written determinations made under subsection (1) of this section;

11 2. Any determination made that the contract was not to be procured
12 through the request for proposal process; and

13 3. Any determination made that the contract may be entered into despite
14 a finding of disapproval by the committee.

15 (c) In addition, the report shall describe:

16 1. The name of the attorney or law firm with whom the contract was
17 made;

18 2. The nature and status of the legal matter that is the subject of the
19 contract;

20 3. The name of the parties to the legal matter that is the subject of the
21 contract;

22 4. The amount of recovery, if any; and

23 5. The amount of the contingency fee paid, if any.

24 ➔Section 2. This Act shall not apply to contracts which were entered into before
25 the effective date of this Act, nor to extensions of those contracts. This Act shall not
26 apply to any litigation started before the effective date of this Act, nor to litigation
27 stemming from that litigation.