

1 AN ACT relating to public procurement.

2 WHEREAS, the production of iron, steel, and manufactured goods provides jobs
3 and family income to many individuals in Kentucky and, in turn, the jobs and family
4 incomes of millions of persons in the United States; and

5 WHEREAS, the taxes paid to the Commonwealth of Kentucky and its political
6 subdivisions by employers and employees engaged in the production and sale of iron,
7 steel, and manufactured goods are a large source of public revenue for the
8 Commonwealth; and

9 WHEREAS, the economy and general welfare of Kentucky and its people and the
10 economy and general welfare of the United States are inseparably linked to the
11 preservation and development of manufacturing industries in Kentucky, as well as the
12 other states of this nation; and

13 WHEREAS, it is the policy of the Commonwealth of Kentucky that its taxpayer
14 dollars be reinvested with its individual and employer taxpayers to foster job retention
15 and growth, particularly within the manufacturing sector, and to ensure a broad and
16 healthy tax base for future investments vital to the state's infrastructure; and

17 WHEREAS, it is the policy of the Commonwealth of Kentucky that its procurement
18 policies should reflect the state's and the nation's principles, ensuring that the products of
19 those companies and workers who abide by our workplace safety and environmental laws
20 and regulations should be rewarded with a common sense preference in government
21 contracting; and

22 WHEREAS, it is the policy of the Commonwealth of Kentucky that all public
23 officers and governmental bodies should aid and promote the economy of Kentucky and
24 of the United States by preferring the procurement of iron, steel, and manufactured goods
25 produced in Kentucky and in the United States in all contracts for the construction of
26 maintenance of public works;

27 NOW, THEREFORE,

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

2 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO
3 READ AS FOLLOWS:

4 *(1) For purposes of this section:*

5 *(a) "Manufactured in Kentucky" means:*

6 *1. In the case of an iron or steel product, all manufacturing has taken*
7 *place in Kentucky, except metallurgical processes involving the*
8 *refinement of steel additives; and*

9 *2. In the case of a manufactured good, all the manufacturing processes*
10 *for the product and its components has taken place in Kentucky,*
11 *regardless of the origin of a component's subcomponents;*

12 *(b) "Manufactured in the United States" means:*

13 *1. In the case of an iron or steel product, all manufacturing has taken*
14 *place in the United States, except metallurgical processes involving the*
15 *refinement of steel additives; and*

16 *2. In the case of a manufactured good, all the manufacturing processes*
17 *for the product and its components has taken place in the United*
18 *States, regardless of the origin of a component's subcomponents; and*

19 *(c) "United States" means the United States of America and includes all*
20 *territory, continental or insular, subject to the jurisdiction of the United*
21 *States.*

22 *(2) Each contract for construction or maintenance of a public building or public*
23 *work made by a governmental body shall contain a provision that the iron, steel,*
24 *or manufactured goods used or supplied as a primary component in the*
25 *performance of the contract and any subcontract shall be manufactured in*
26 *Kentucky, subject to the provisions of this section.*

27 *(3) The provisions of subsection (2) of this section shall not apply if the head of the*

1 governmental body issues a waiver of the requirements of subsection (2) under
2 the following provisions:

3 (a) A request for a waiver shall be filed with the head of the governmental body
4 at least twenty (20) days before the bid or proposal opening;

5 (b) The governmental body shall provide notice and an opportunity for public
6 comment on the request at least fifteen (15) days before the bids or
7 proposals for the contract are opened. The notice shall:

8 1. Include all information available to the head of the governmental
9 body;

10 2. State whether the request for a waiver is being made under paragraph
11 (c)1., 2., or 3. of this subsection; and

12 3. Be provided to parties interested in the contract by electronic means,
13 including on the official Web site of the governmental body;

14 (c) In determining whether to issue a waiver, the head of the governmental
15 body shall consider whether:

16 1. The application of the provisions of subsection (2) of this section
17 would be inconsistent with the public interest;

18 2. The iron, steel, or manufactured goods to be used or supplied in the
19 performance of the contract are not manufactured in Kentucky in
20 sufficient and reasonably available quantities and of a satisfactory
21 quality; or

22 3. The inclusion of iron, steel, or manufactured goods to be used or
23 supplied in the performance of the contract will unreasonably
24 increase the cost of the overall contract; and

25 (d) The head of the governmental body shall decide whether to issue a waiver
26 no more than five (5) days prior to the bid or proposal opening. Notification
27 of the head's decision regarding the waiver shall immediately be sent to the

1 person requesting the waiver, all persons who submitted comments, and all
2 persons who indicated interest in bidding or submitting requests for
3 proposals on the subject contract. The governmental body shall also
4 immediately publish the decision regarding the waiver on the official Web
5 site of the governmental body, and if issued, a detailed justification for the
6 waiver that addresses the public comments received under paragraph (b) of
7 this subsection.

8 (4) If the head of the governmental body issues a waiver of the requirements of
9 subsection (2) of this section, then the contract for construction or maintenance
10 of a public building or public work made by a governmental body shall contain a
11 provision that the iron, steel, or manufactured goods used or supplied as a
12 primary component in the performance of the contract and any subcontract shall
13 be manufactured in the United States. The bid or proposal opening shall be
14 delayed to accommodate any request for a waiver under subsection (5) of this
15 section.

16 (5) The provisions of subsection (4) of this section shall not apply if the head of the
17 governmental body issues a waiver of the requirements of subsection (4) under
18 the following provisions:

19 (a) A request for a waiver shall be filed with the head of the governmental body
20 at least twenty (20) days before the bid or proposal opening;

21 (b) The governmental body shall provide notice and an opportunity for public
22 comment on the request at least fifteen (15) days before the bids or
23 proposals for the contract are opened. The notice shall:

24 1. Include all information available to the head of the governmental
25 body;

26 2. State whether the request for a waiver is being made under paragraph
27 (c)1., 2., or 3. of this subsection; and

1 3. Be provided to parties interested in the contract by electronic means,
2 including on the official Web site of the governmental body;

3 (c) In determining whether to issue a waiver, the head of the governmental
4 body shall consider whether:

5 1. The application of the provisions of subsection (4) of this section
6 would be inconsistent with the public interest;

7 2. The iron, steel, or manufactured goods to be used or supplied in the
8 performance of the contract are not manufactured in the United States
9 in sufficient and reasonably available quantities and of a satisfactory
10 quality; or

11 3. The inclusion of iron, steel, or manufactured goods to be used or
12 supplied in the performance of the contract will unreasonably
13 increase the cost of the overall contract; and

14 (d) The head of the governmental body shall decide whether to issue a waiver
15 no more than five (5) days prior to the bid or proposal opening. Notification
16 of the head's decision regarding the waiver shall immediately be sent to the
17 person requesting the waiver, all persons who submitted comments, and all
18 persons who indicated interest in bidding or submitting requests for
19 proposals on the subject contract. The governmental body shall also
20 immediately publish the decision regarding the waiver on the official Web
21 site of the governmental body, and if issued, a detailed justification for the
22 waiver that addresses the public comments received under paragraph (b) of
23 this subsection.

24 (6) A person shall be debarred under KRS 45A.035(2)(b) from receiving any contract
25 with a governmental body, and any subcontract, if the person has been found by
26 a court or federal or state agency to have intentionally:

27 (a) Affixed a label bearing a "made in America" inscription, or any inscription

1 with the same meaning, to any iron, steel, or manufactured good used in
 2 projects to which this section applies, sold in or shipped to the United States
 3 that was not manufactured in the United States;

4 **(b) Represented that any iron, steel, or manufactured good used in projects to**
 5 **which this section applies that was not manufactured in the United States,**
 6 **was manufactured in the United States;**

7 **(c) Affixed a label bearing a "made in Kentucky" inscription, or any**
 8 **inscription with the same meaning, to any iron, steel, or manufactured good**
 9 **used in projects to which this section applies, sold in or shipped to Kentucky**
 10 **that was not manufactured in Kentucky; or**

11 **(d) Represented that any iron, steel, or manufactured good used in projects to**
 12 **which this section applies that was not manufactured in Kentucky, was**
 13 **manufactured in Kentucky.**

14 **(7) This section of this Act may be cited as the Kentucky Buy American Act.**

15 ➔Section 2. KRS 45A.343 is amended to read as follows:

16 (1) Any local public agency may adopt the provisions of KRS 45A.345 to 45A.460. No
 17 other statutes governing purchasing shall apply to a local public agency upon
 18 adoption of these provisions.

19 (2) After July 15, 1994, any contract entered into by a local public agency, whether
 20 under KRS 45A.345 to 45A.460 or any other authority, shall require the contractor
 21 and all subcontractors performing work under the contract to:

22 (a) Reveal any final determination of a violation by the contractor or
 23 subcontractor within the previous five (5) year period pursuant to KRS
 24 Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or
 25 subcontractor; and

26 (b) Be in continuous compliance with the provisions of KRS Chapters 136, 139,
 27 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor for

1 the duration of the contract.

2 (3) A contractor's failure to reveal a final determination of a violation by the contractor
3 of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these
4 statutes for the duration of the contract shall be grounds for the local public
5 agency's:

6 (a) Cancellation of the contract; and

7 (b) Disqualification of the contractor from eligibility for future contracts awarded
8 by the local public agency for a period of two (2) years.

9 (4) A subcontractor's failure to reveal a final determination of a violation by the
10 subcontractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply
11 with these statutes for the duration of the contract shall be grounds for the local
12 public agency's disqualification of the subcontractor from eligibility for future
13 contracts for a period of two (2) years.

14 **(5) A local public agency shall follow the requirements of Section 1 of this Act for**
15 **contract for construction or maintenance of a public building or public work.**

16 ➔Section 3. KRS 45A.352 is amended to read as follows:

17 (1) A local public agency may enter into a guaranteed energy savings contract for
18 innovative solutions for energy conservation measures. The local public agency
19 shall submit a request for proposals. The request for proposals for competitive
20 procurement of guaranteed energy savings contracts shall include the following:

21 (a) The name and address of the governmental unit;

22 (b) The name, address, title, and phone number of a contact person;

23 (c) Notice indicating that the local public agency is requesting qualified providers
24 to propose energy conservation measures through a guaranteed energy savings
25 contract;

26 (d) The following evaluation criteria for assessing the proposals:

27 1. Construction management capabilities;

- 1 2. Technical approach to facilities included;
- 2 3. Financial attributes, as defined by total cost of contract and guaranteed
- 3 savings and provider's financial strength demonstrating ability to fulfill
- 4 the guarantee term; and
- 5 4. Provider's capability, personnel, track record, and demonstrated ability
- 6 to accomplish the contract;
- 7 (e) The date, time, and place where proposals must be received;
- 8 (f) Any other stipulations and clarifications the local public agency may require;
- 9 and
- 10 (g) An overview prepared by the local public agency stating goals or objectives
- 11 specific to facility needs to be considered by the qualified providers who are
- 12 responding to the request. Detailed scope of construction is not required.
- 13 (2) Respondents to the request for proposal shall provide the following:
- 14 (a) A detailed list of the proposed energy conservation measures and the
- 15 guaranteed savings which shall be supported with calculations. Any
- 16 guaranteed energy and operational savings shall be determined by using one of
- 17 the measurement and verification methodologies listed in the United States
- 18 Department of Energy's "Measurement and Verification Guideline for Federal
- 19 Energy Projects" or in the "North American Energy Measurement and
- 20 Verification Protocol." If due to existing data limitations or the
- 21 nonconformance of specific project characteristics, none of the methods listed
- 22 in either the United States Department of Energy's "Measurement and
- 23 Verification Guideline for Federal Energy Projects" or in the "North American
- 24 Energy Measurement and Verification Protocol" is sufficient for measuring
- 25 guaranteed savings, the qualified provider shall develop an alternate method
- 26 that is compatible with one (1) of the two (2);
- 27 (b) The estimated cost of the proposed energy conservation measures including

- 1 engineering, construction, commissioning, measurement and verification,
2 annual reconciliation statements, and required on-going services; and
- 3 (c) Proposed method and costs of financing.
- 4 (3) The value for total cost of the contract minus the calculated savings from the energy
5 conservation measures listed in the qualified provider's proposal, shall be within
6 fifteen percent (15%) of the value for the total cost of the contract minus the
7 calculated savings after the final contract has been negotiated. If the difference
8 between the proposed and the final contract is not within fifteen percent (15%) and
9 the local public agency and the qualified provider are unable to renegotiate the final
10 contract to reconcile the difference between the proposed and final contract values,
11 then the local public agency may:
- 12 (a) Stop negotiations with the current qualified provider; and
13 (b) Select an alternate provider.
- 14 (4) The local public agency may, as a component of the request for proposal, solicit and
15 negotiate additional maintenance services for the affected proposed energy
16 conservation measures. Additional services shall be subject to budget appropriations
17 on an annual basis and may be discontinued at any time over the guarantee period
18 with no negative impact to the guaranteed savings contract.
- 19 (5) The local public agency shall utilize the request for proposal process to enter into a
20 guaranteed energy savings contract. The local public agency may, at its discretion,
21 utilize a request for qualifications, provided that the local public agency solicits
22 qualification statements from multiple potentially qualified providers. The local
23 public agency shall use the qualification statements to select no fewer than two (2)
24 providers and each provider shall then be subject to the request-for-proposal
25 requirement provided in subsections (1) to (4) of this section.
- 26 (6) The local public agency shall select the provider best qualified to meet its needs.
27 The local public agency shall provide public notice of the meeting at which it

1 proposes to award a guaranteed energy savings contract, the name of the parties to
2 the proposed contract, and the purpose of the contract. The public notice shall be
3 made at least ten (10) days prior to the meeting. After reviewing the proposals, a
4 local public agency may enter into a guaranteed energy savings contract with a
5 qualified provider if it finds that the amount it would spend on the energy
6 conservation measures recommended in the proposal would not exceed the amount
7 to be saved in either energy or operational costs plus capital cost avoidance within
8 the term of the contract from the date of installation, if the recommendations in the
9 proposal are followed.

10 (7) The guaranteed energy savings contract shall include a written guarantee of the
11 qualified provider that either the energy or operational costs savings plus capital
12 cost avoidance will meet or exceed the costs of the energy conservation measures
13 within the term of the contract. The qualified provider shall, on an annual basis,
14 reimburse the local public agency for any shortfall in guaranteed energy savings
15 projected in the contract. A qualified provider shall provide a sufficient bond to the
16 local public agency for the installation and the faithful performance of all the
17 measures included in the contract. The guaranteed energy savings contract may
18 provide for payments over a period of time, not to exceed the term of the contract.

19 (8) The qualified provider shall provide the local public agency with an annual
20 reconciliation statement. The statement shall disclose any shortfalls or surplus
21 between guaranteed energy and operational savings specified in the guaranteed
22 energy savings contract and actual energy and operational savings incurred during a
23 given guarantee year. The guarantee year shall consist of a twelve (12) month term
24 commencing from the time that the energy conservation measures became fully
25 operational. The qualified provider shall pay the local public agency any short fall
26 in the guaranteed energy and operation savings within thirty (30) days after the total
27 year savings have been determined. If there is a surplus in the actual guaranteed

1 energy and operational savings in a given year, that surplus savings may be carried
2 forward and applied against any possible savings shortfall in the following
3 guarantee year, except that the surplus carried forward is limited to a period not to
4 exceed one (1) year. If the qualified provider pays the local public agency for a short
5 fall in energy or operational savings incurred during a given guarantee year and
6 there is a surplus in energy or operational savings in future guarantee years, the
7 qualified provider shall bill the local public agency for an amount not to exceed the
8 amount of the short fall in the given guarantee year.

- 9 (9) The use of capital cost avoidance shall be subject to the following restrictions:
- 10 (a) The amount expended shall not exceed fifty percent (50%) of the project cost;
11 and
- 12 (b) Capital cost avoidance shall be restricted to payment for permanent equipment
13 replacement as follows:
- 14 1. Storm windows or doors, multiglazed windows or doors, additional
15 glazing, and reduction in glass area;
 - 16 2. Replacement of heating, ventilating, or air conditioning major
17 components or systems;
 - 18 3. New lighting fixtures where required to achieve Illuminating
19 Engineering Society of North America (IES) standards, provided the
20 existing light fixtures shall have been determined to be obsolete and
21 incapable of achieving IES standards; and
 - 22 4. Life safety system replacements or upgrades which shall have been
23 determined to be necessary to conform with existing state and local
24 codes and standards.

- 25 (10) The commissioner of education shall review, and approve or disapprove projects
26 from local school districts relating to energy conservation measures under a
27 guaranteed energy savings contract, on the basis of the following guidelines:

- 1 (a) The project design's compliance with technical, health, and safety standards as
2 required by administrative regulation;
- 3 (b) The availability of general funds, capital outlay allotments under KRS
4 157.420 or local and state funds from the Facilities Support Program of
5 Kentucky as provided by KRS 157.440, for projects that will use capital cost
6 avoidance;
- 7 (c) The appropriate use of capital outlay allotments under KRS 157.420, local and
8 state funds from the Facilities Support Program of Kentucky as provided by
9 KRS 157.440, for projects using capital cost avoidance, based on the project's
10 compliance with the district's approved facility plan;
- 11 (d) The funding capability of the school district; and
- 12 (e) The financing mechanism and proper financing documentation.
- 13 (11) The request for proposal as provided in subsections (1) to (4) of this section shall be
14 deemed to satisfy the requirements set out in KRS 162.070(1), and shall not be
15 subject to an award determination based on the lowest competitive bid or a separate
16 bidding process for each energy conservation measure listed in the proposal.
- 17 (12) A guaranteed energy savings contract that does not involve construction or the
18 installation of physical improvements shall not require the approval of the
19 commissioner of education and shall not be subject to other requirements of this
20 section.
- 21 ➔Section 4. KRS 65.027 is amended to read as follows:
- 22 (1) As used in this section, "local government" means city, county, urban-county,
23 consolidated local government, charter county, unified local government, or special
24 district.
- 25 (2) For all contracts awarded by a local government, the local government shall apply
26 the reciprocal preference for resident bidders described in KRS 45A.494.
- 27 **(3) Section 1 of this Act shall apply to all contracts awarded by a local government**

1 **for construction or maintenance of a public building or public work.**

2 ➔Section 5. KRS 162.070 is amended to read as follows:

3 **(1)** The contracts for the erection of new school buildings, additions and repairs to old
4 buildings, except additions or repairs not exceeding seven thousand five hundred
5 dollars (\$7,500), shall be made by the board of education with the lowest and best
6 responsible bidder complying with the terms of the letting, after advertisement for
7 competitive bids pursuant to KRS Chapter 424, but the board may reject any or all
8 bids. All necessary specifications and drawings shall be prepared for all such work.
9 The board shall advertise for bids on all supplies and equipment that it desires to
10 purchase, except where the amount of the purchase does not exceed seven thousand
11 five hundred dollars (\$7,500), and shall accept the bid of the lowest and best bidder
12 taking into consideration the price and the reciprocal preference for resident bidders
13 under KRS 45A.494, but the board may reject any and all bids.

14 **(2) Section 1 of this Act shall apply to all contracts for construction or maintenance**
15 **of a school building or other public work.**

16 ➔Section 6. KRS 164A.575 is amended to read as follows:

- 17 (1) The governing boards of each institution may elect to purchase interest in real
18 property, contractual services, rentals of all types, supplies, materials, equipment,
19 printing, and services, except that competitive bids may not be required for:
- 20 (a) Contractual services where no competition exists;
 - 21 (b) Food, clothing, equipment, supplies, or other materials to be used in
22 laboratory and experimental studies;
 - 23 (c) Instructional materials available from only one (1) source;
 - 24 (d) Where rates are fixed by law or ordinance;
 - 25 (e) Library books;
 - 26 (f) Commercial items that are purchased for resale;
 - 27 (g) Professional, technical, scientific, or artistic services, but contracts shall be

- 1 submitted in accordance with KRS 45A.690 to 45A.725;
- 2 (h) All other commodities, equipment, and services which, in the reasonable
3 discretion of the board, are available from only one (1) source; and
- 4 (i) Interests in real property.
- 5 (2) Nothing in this section shall deprive the boards from negotiating with vendors who
6 maintain a General Services Administration price agreement with the United States
7 of America or any agency thereof, provided, however, that no contract executed
8 under this provision shall authorize a price higher than is contained in the contract
9 between General Services Administration and the vendor affected.
- 10 (3) The governing board shall require the institution to take and maintain inventories of
11 plant and equipment.
- 12 (4) The governing board shall establish procedures to identify items of common general
13 usage among all departments to foster volume purchasing. It shall establish and
14 enforce schedules for purchasing supplies, materials, and equipment.
- 15 (5) The governing board shall have power to salvage, to exchange, and to condemn
16 supplies, equipment, and real property.
- 17 (6) Upon the approval of the secretary of the Finance and Administration Cabinet, the
18 governing board may purchase or otherwise acquire all real property determined to
19 be needed for the institution's use. The amount paid shall not exceed the fair market
20 value as determined by a qualified appraiser or the value set by the eminent domain
21 procedure. Any real property acquired under this section shall be in name of the
22 Commonwealth for the use and benefit of the institution.
- 23 (7) (a) Notwithstanding KRS 56.806, the governing board may renegotiate the cost of
24 a lease after the expiration of the lease term and any renewal terms provided in the
25 lease prior to any renewal not provided for in the terms of the lease.
- 26 (b) Except when a lease incorporates a lease-purchase under KRS 56.806, the
27 governing board shall reserve the right to cancel a lease upon at least thirty

- 1 (30) days' written notice.
- 2 (c) Notwithstanding KRS 56.823(2) and (3), any lease renewals, except automatic
3 renewals permitted under KRS 56.803, 56.805(2), and 56.806(1), for which
4 the annual rental cost will exceed two hundred thousand dollars (\$200,000)
5 shall be reported to the Capital Projects and Bond Oversight Committee in the
6 same format as set out in KRS 56.823(2).
- 7 (d) Notwithstanding KRS 56.813, a public college or university may pay for
8 improvements to leased property costing in excess of ten thousand dollars
9 (\$10,000) but less than one million dollars (\$1,000,000) in a lump sum upon
10 approval of its board using non-general fund appropriations and without
11 incurring debt.
- 12 (8) The governing board shall sell or otherwise dispose of all real or personal property
13 of the institution which is not needed or has become unsuitable for public use, or
14 would be more suitable consistent with the public interest for some other use, as
15 determined by the board. The determination of the board shall be set forth in an
16 order, and shall be reached only after review of a written request by the institution
17 desiring to dispose of the property. Such request shall describe the property and
18 state the reasons why the institution believes disposal should be effected. All
19 instruments required by law to be recorded which convey any interest in any such
20 real property so disposed of shall be executed and signed by the appropriate officer
21 of the board. Unless the board deems it in the best interest of the institution to
22 proceed otherwise, all such real or personal property shall be sold either by
23 invitation of sealed bids or by public auction; provided, however, that the selling
24 price of any interest in real property shall not be less than the fair market value
25 thereof as determined by the Finance and Administration Cabinet or the
26 Transportation Cabinet for such requirements of that department.
- 27 (9) Real property or any interest therein may, subject to the provisions of KRS Chapter

1 45A, be purchased, leased, or otherwise acquired from any officer or employee of
2 any board of the institution, based upon a written application by the grantor or
3 lessor approved by the board, that the employee has not either himself or through
4 any other person influenced or attempted to influence either the board requesting the
5 purchase of the property. In any case in which such an acquisition is consummated,
6 the said request and finding shall be recorded and kept by the Secretary of State
7 along with the other documents recorded pursuant to the provisions of KRS Chapter
8 56.

9 (10) (a) As used in this section, "construction manager-agency," "construction
10 management-at-risk," "design-bid-build," "design-build," and "construction
11 manager-general contractor" shall have the same meaning as in KRS 45A.030.

12 (b) For capital construction projects, the procurement may be on a total design-
13 bid-build basis, a design-build basis, construction manager-general contractor
14 basis, or construction management-at-risk basis, whichever in the judgment of
15 the board offers the best value to the taxpayer. Best value shall be determined
16 in accordance with KRS 45A.070. Proposals shall be reviewed by the
17 institution's engineering staff to assure quality and value, and compliance with
18 procurement procedures. All specifications shall be written to promote
19 competition. Services for projects delivered on the design-build basis,
20 construction manager-general contractor basis, or construction management-
21 at-risk basis shall be procured in accordance with KRS 45A.180, KRS
22 45A.183, and the regulations promulgated in accordance with KRS 45A.180.
23 Nothing in this section shall prohibit the procurement of construction
24 manager-agency services.

25 (c) Notwithstanding KRS 45A.185, for all capital construction projects, bidder
26 security for competitive sealed bidding for construction contracts shall only be
27 required when the price is estimated to exceed one million dollars

1 (\$1,000,000).

2 (11) The governing board shall attempt in every practicable way to insure the
3 institution's supplying its real needs at the lowest possible cost. To accomplish this
4 the board may enter into cooperative agreements with other public or private
5 institutions of education or health care.

6 (12) The governing board shall have control and supervision over all purchases of energy
7 consuming equipment, supplies, and related equipment purchased or acquired by
8 the institution, and shall designate by regulation the manner in which an energy
9 consuming item will be purchased so as to promote energy conservation and
10 acquisition of energy efficient products.

11 (13) The governing board may negotiate directly for the purchase of contractual services,
12 supplies, materials, or equipment in bona fide emergencies regardless of estimated
13 costs. The existence of the emergency must be fully explained, in writing, by the
14 vice president responsible for business affairs and such explanation must be
15 approved by the institution president. The letter and approval shall be filed with the
16 record of all such purchases. Where practical, standard specifications shall be
17 followed in making emergency purchases. A good faith effort shall be made to
18 effect a competitively established price for emergency purchases.

19 (14) (a) All governing boards that purchase agricultural products, as defined by KRS
20 45A.630, shall, on or before January 1 of each year, provide a report to the
21 Legislative Research Commission and to the Department of Agriculture
22 describing the types, quantities, and costs of each product purchased. The
23 report shall be completed on a form provided by the department.

24 (b) If purchasing agricultural products, a governing board shall encourage the
25 purchase of Kentucky-grown agricultural products in accordance with KRS
26 45A.645. If a governing board purchases agricultural products through a
27 contract with a vendor or food service provider, the contract shall require that

1 if Kentucky-grown agricultural products are purchased, the products shall be
2 purchased in accordance with KRS 45A.645. Only contracts entered into or
3 renewed after July 15, 2008, shall be required to comply with the provisions
4 of this subsection.

5 (c) All governing boards that purchase Kentucky-grown agricultural products
6 shall, on or before January 1 of each year, provide a report to the Legislative
7 Research Commission and to the Department of Agriculture describing the
8 types, quantities, and costs of each product purchased. The report shall be
9 completed on a form provided by the department.

10 (15) Notwithstanding KRS 45.760, the governing board may authorize a capital
11 construction project or a major item of equipment even though it is not specifically
12 listed in any branch budget bill, subject to the following conditions and procedures:

13 (a) The full cost shall be funded solely by non-general fund appropriations;

14 (b) Moneys specifically budgeted and appropriated by the General Assembly for
15 another purpose shall not be allotted or reallocated for expenditure on the
16 project or major item of equipment. Moneys utilized shall not jeopardize any
17 existing program and shall not require the use of any current general funds
18 specifically dedicated to existing programs; and

19 (c) The institution's president, or designee, shall submit the project or major item
20 of equipment to the Capital Projects and Bond Oversight Committee for
21 review as provided by KRS 45.800.

22 (16) Governing boards shall apply the reciprocal resident bidder preference described in
23 KRS 45A.494 prior to the award of any contract.

24 (17) Governing boards may authorize the use of reverse auctions as defined in KRS
25 45A.070 for the procurement of goods and leases.

26 (18) (a) Notwithstanding KRS 56.070, the governing board may obtain private
27 insurance to cover any state property in the institution's possession against loss

1 by fire and other hazards. The level of private insurance coverage shall be
2 commensurate with or greater than the insurance coverage provided through
3 the state fire and tornado insurance fund. An institution whose governing
4 board elects to obtain private insurance shall notify the secretary of the
5 Finance and Administration Cabinet at least six (6) months before terminating
6 the institution's insurance coverage through the state fire and tornado
7 insurance fund.

8 (b) No later than January 1 of each year, an institution whose governing board
9 elects to obtain private insurance instead of insurance coverage provided
10 through the state fire and tornado insurance fund shall certify, in writing, to
11 the secretary of the Finance and Administration Cabinet that the property is
12 insured in accordance with paragraph (a) of this subsection and shall attach a
13 copy of the private insurance policy.

14 **(19) Section 1 of this Act shall apply to all contracts issued by a governing board for**
15 **construction or maintenance of a public building or other public work.**

16 ➔Section 7. KRS 176.080 is amended to read as follows:

17 (1) **Section 1 of this Act shall apply to all contracts issued by the department.**

18 **(2)** Each bidder shall accompany his bid with a bond or certified check payable to the
19 State Treasurer for a reasonable sum, fixed by the department, guaranteeing that he
20 will enter into a contract with the department for doing the work if the work is
21 awarded to him.

22 **(3)**~~(2)~~ Bids shall be opened publicly at the time and place designated in the invitation
23 for bids. At the time the bids are opened, the department shall announce the
24 department's engineer's estimate and make it a part of the department's records
25 pertaining to the letting of any highway construction project contract for which bids
26 were received. Each bid, together with the name of the bidder and the department's
27 engineer's estimate, shall be recorded and open to public inspection.

1 ~~(4)~~~~(3)~~ The contract shall be awarded to the lowest and best bidder. The department
2 may require bonds from any contractor to secure the performance of any contract or
3 may require security by any other means it deems advisable.

4 ~~(5)~~~~(4)~~ The department may reject any bid when it finds it for the best interest of the
5 state to do so. When all bids are rejected, the department shall advertise for new
6 bids as in the first place.

7 ➔Section 8. KRS 424.260 is amended to read as follows:

8 (1) Except where a statute specifically fixes a larger sum as the minimum for a
9 requirement of advertisement for bids, no city, county, or district, or board or
10 commission of a city or county, or sheriff or county clerk, may make a contract,
11 lease, or other agreement for materials, supplies except perishable meat, fish, and
12 vegetables, equipment, or for contractual services other than professional, involving
13 an expenditure of more than thirty thousand dollars (\$30,000) without first making
14 newspaper advertisement for bids. **The advertisement for bids shall include notice**
15 **that Section 1 of this Act shall apply to all contracts involving construction or**
16 **maintenance of a public building or public works.** This subsection shall not apply
17 to the transfer of property between governmental agencies as authorized in KRS
18 82.083(4)(a).

19 (2) If the fiscal court requires that the sheriff or county clerk advertise for bids on
20 expenditures of less than thirty thousand dollars (\$30,000), the fiscal court
21 requirement shall prevail.

22 (3) (a) Nothing in this statute shall limit or restrict the ability of a local school district
23 to acquire supplies and equipment outside of the bidding procedure if those
24 supplies and equipment meet the specifications of the contracts awarded by
25 the Office of Material and Procurement Services in the Office of the
26 Controller within the Finance and Administration Cabinet or a federal, local,
27 or cooperative agency and are available for purchase elsewhere at a lower

1 price. A board of education may purchase those supplies and equipment
2 without advertising for bids if, prior to making the purchases, the board of
3 education obtains certification from the district's finance or purchasing officer
4 that the items to be purchased meet the standards and specifications fixed by
5 state price contract, federal (GSA) price contract, or the bid of another school
6 district whose bid specifications allow other districts to utilize their bids, and
7 that the sales price is lower than that established by the various price contract
8 agreements or available through the bid of another school district whose bid
9 specifications would allow the district to utilize their bid.

10 (b) The procedures set forth in paragraph (a) of this subsection shall not be
11 available to the district for any specific item once the bidding procedure has
12 been initiated by an invitation to bid and a publication of specifications for
13 that specific item has been published. In the event that all bids are rejected, the
14 district may again avail itself of the provisions of paragraph (a) of this
15 subsection.

16 (4) This requirement shall not apply in an emergency if the chief executive officer of
17 the city, county, or district has duly certified that an emergency exists, and has filed
18 a copy of the certificate with the chief financial officer of the city, county, or
19 district, or if the sheriff or the county clerk has certified that an emergency exists,
20 and has filed a copy of the certificate with the clerk of the court where his necessary
21 office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the
22 superintendent of the board of education has duly certified that an emergency exists,
23 and has filed a copy of the certificate with the chief state school officer.

24 (5) The provisions of subsection (1) of this section shall not apply for the purchase of
25 wholesale electric power for resale to the ultimate customers of a municipal utility
26 organized under KRS 96.550 to 96.900.