

## CHAPTER 42

( HB 188 )

AN ACT relating to public contracts.

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

➔Section 1. KRS 45A.183 is amended to read as follows:

- (1) *For the purposes of this section, "self-perform" or "self-performance" means work performed by direct employees of a construction management-at-risk entity or a construction manager-general contractor and not by direct employees of a subcontractor that does not exceed twenty percent (20%) of the total cost of the project.*
- (2) When a capital project is to be constructed using the construction management-at-risk method, a process parallel to the selection committee procedures established in KRS 45A.810 shall apply when procuring a construction management-at-risk firm and regulations promulgated in accordance with KRS 45A.180 shall apply that set forth requirements for:
  - (a) Description of the bond, insurance, and other security provisions that apply to a project;
  - (b) Description of appropriate contract clauses and fiscal responsibility requirements that apply to each project; and
  - (c) Restrictions relating to conflicts of interest~~[-, including a provision that a construction management-at-risk entity shall be eligible to become an offeror of goods or services on a project it manages only when a subcontractor fails to perform and upon prior approval by the contracting body].~~
- (3) *A construction management-at-risk entity shall be eligible to become an offeror of goods or services on a project it manages when a subcontractor fails to perform and upon prior approval by the contracting body, or when a construction management-at-risk entity meets the following conditions:*
  - (a) *The construction management-at-risk entity shall only be eligible to competitively bid on a part of a project that the entity or its parent, affiliate, or subsidiary performs in its ordinary course of business;*
  - (b) *The construction management-at-risk entity shall publicly declare in its advertisement for bids or addenda thereto which parts of the project it plans to competitively bid. The scope of work for those parts of the project shall be reviewed and approved by the contracting body. The advertisement for bids or addenda thereto shall be issued at least two (2) weeks prior to the bid date;*
  - (c) *The construction management-at-risk entity shall submit a sealed bid for the parts of the project it plans to competitively bid to the contracting body. Other entities who plan to submit bids on the parts of the project submitted by the construction management-at-risk entity shall also submit their bids to the contracting body;*
  - (d) *The staffing, equipment, and materials that a construction management-at-risk entity uses for the management part of the project shall be separate from the staffing, equipment, and materials required for the self-performance part of the project;*
  - (e) *The construction management-at-risk entity shall not be eligible to utilize any of the construction contingency it may be carrying on the project for any part of the project it competitively bids to self-perform unless approved to do so by the contracting body; and*
  - (f) *Electrical, mechanical, fire suppression, or plumbing work shall not be self-performed.*
- (4) *To execute its self-performance bid, a construction management-at-risk entity may use:*
  - (a) *Materials or supplies from a supplier or subcontractor; or*
  - (b) *Tools or equipment leased from a subcontractor.*
- (5)~~(2)~~ (a) When a construction project is to be constructed using the construction manager-general contractor method, a competitive process consistent with this code established by administrative regulations promulgated under KRS 45A.180 shall apply.

- (b) The procurement process shall set forth the requirements for:
1. Description of the bond, insurance, and other security provisions that apply to the project;
  2. Description of appropriate contract clauses and fiscal responsibility requirements that apply to the project; and
  3. Restrictions relating to conflicts of interest, ~~including a provision that a construction manager-general contractor shall be eligible to become an offeror of goods or services on a project it manages only when a subcontractor fails to perform and upon prior approval by the contracting body.~~
- (c) The selection of the construction manager-general contractor shall be based on:
1. Qualifications; and
  2. Price, including preconstruction consulting services, overhead, and profit.
- (d) Prior to the construction phase, the construction manager-general contractor shall competitively bid the subcontracts by public notice and award each subcontract to the lowest responsive and responsible bidder.
- (e) The final construction cost and completion date for the project shall be established by change order after the construction manager-general contractor enters into all applicable subcontracts.
- (6) *A construction manager-general contractor shall be eligible to become an offeror of goods or services on a project it manages when a subcontractor fails to perform and upon prior approval by the contracting body, or when the construction manager-general contractor meets the following conditions:*
- (a) *The construction manager-general contractor shall only be eligible to competitively bid on part or parts of a project that the construction manager-general contractor or its parent, affiliate, or subsidiary performs in its ordinary course of business;*
  - (b) *The construction manager-general contractor shall publicly declare in its advertisement for bids or addenda thereto which parts of the project it plans to competitively bid. The scope of work for those parts of the project shall be reviewed and approved by the contracting body. The advertisement for bids or addenda thereto shall be issued at least two (2) weeks prior to the bid date;*
  - (c) *The construction manager-general contractor shall submit a sealed bid for the parts of the project it seeks to self-perform no later than thirty (30) minutes prior to the date and time established for other entities to submit sealed bids for the same project parts. The construction manager-general contractor shall publicly open and read all bid amounts aloud. All bidders shall be granted access to view the bid amounts submitted. All bids for portions of the project the construction manager-general contractor submitted a bid to self-perform shall be submitted to the contracting body for recordkeeping purposes;*
  - (d) *The staffing, equipment, and materials that a construction manager-general contractor uses for the management part of the project shall be separate from any staffing, equipment, and materials required for the self-performance part of the project;*
  - (e) *The construction manager-general contractor shall not be eligible to utilize any of the construction contingency it may be carrying on the project for any part of the project it competitively bids to self-perform unless approved to do so by the contracting body; and*
  - (f) *Electrical, mechanical, fire suppression, or plumbing work shall not be self-performed.*
- (7) *To execute its self-performance bid, a construction manager-general contractor may use:*
- (a) *Materials or supplies from a supplier or subcontractor; or*
  - (b) *Tools or equipment leased from a subcontractor.*
- (8) *The provisions of this section shall not apply to any project, contract, proposal, bid, or other submission or engagement entered into by the Transportation Cabinet, including but not limited to procurement of architectural or engineering services.*

