

AN ACT relating to government contracts.

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

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

*(1) No personal service contract for legal services that provides for payment by contingency fee shall be entered into unless, prior to the award, the Attorney General determines in writing:*

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

*(b) Sufficient and appropriate legal and financial resources do not exist within the Attorney General's office;*

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

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

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

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

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

*(2) The Attorney General, or his or her designee, shall participate in reviewing and evaluating the responses to the requests for proposals and discussions with offerors as required in Section 2 of this Act.*

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

*(a) Twenty-five percent (25%) of the amount recovered up to ten million dollars (\$10,000,000);*

*(b) Twenty percent (20%) of the amount recovered between ten million dollars (\$10,000,000) and fifteen million dollars (\$15,000,000);*

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

*(d) Ten percent (10%) of the amount recovered between twenty million dollars*

(\$20,000,000) and twenty-five million dollars (\$25,000,000); and

(e) Five percent (5%) of the amount recovered exceeding twenty-five million dollars (\$25,000,000).

(4) A contingency fee shall not:

(a) Exceed fifty million dollars (\$50,000,000); or

(b) Be based on penalties or fines awarded, or amounts attributable to penalties or fines.

(5) During the contract period and any extension:

(a) Attorneys for the agency shall retain control over the course and conduct of the case;

(b) An agency attorney with authority over the contract shall be personally involved in overseeing the litigation;

(c) Agency attorneys shall retain veto authority over any decision made by the contract attorney;

(d) An agency attorney with authority over the contract shall attend all settlement conferences;

(e) Any opposing party to the matter for which the contract was entered into may contact the agency attorney with authority over the contract directly, without having to notify the contract attorney; and

(f) Decisions regarding settlement of the matter for which the contract was entered into shall be made exclusively by the agency.

(6) The Finance and Administration Cabinet shall develop a standard addendum to be added to every personal service contract for legal services that provides for payment by contingency fee that will include the terms of this section.

(7) Within five (5) business days of the personal service contract award, the Finance and Administration Cabinet shall post on its Web site all contingency fee contracts and the accompanying written determination by the Attorney General

described in subsection (1) of this section. The contract and accompanying determination shall remain on the Web site during the duration of the contract and any extension.

(8) (a) In addition to the information described in paragraph (d) of subsection (10) of Section 2 of this Act, a contractor awarded a personal service contract for legal services that provides for payment by contingency fee shall maintain detailed current records, including documentation of:

1. All expenses;
2. Disbursements;
3. Charges and credits;
4. Underlying receipts and invoices;
5. Contemporaneous time records for the attorneys and paralegals working on the subject of the contract in increments of no greater than one tenth (1/10) of an hour; and
6. Any other financial transactions that concern the attorney services rendered under the contract.

(b) All records described in this subsection shall be subject to KRS 61.872 to 61.884.

(9) (a) The Finance and Administration Cabinet and the Attorney General shall submit a joint report to the Government Contract Review Committee by September 1 of each year identifying all contingency fee contracts for legal services:

1. Awarded in the previous fiscal year;
2. Active in the previous fiscal year, but awarded in prior fiscal years; or
3. Concluded in the previous fiscal year.

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

1. The written determinations made by the Attorney General under

subsection (1) of this section;

2. Any determination made that the contract was not to be procured through the request for proposal process;
3. Any determination made that payment on the contract may be made prior to filing the contract with the Government Contract Review Committee; and
4. Any determination made that the contract may be entered into despite a finding of disapproval by the committee.

(c) In addition, the report shall describe:

1. The name of the attorney or law firm with whom the contract was made;
2. The nature and status of the legal matter that is the subject of the contract;
3. The name of the parties to the legal matter that is the subject of the contract;
4. The amount of recovery, if any; and
5. The amount of the contingency fee paid, if any.

➔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 entered into by any contracting body or incur expenditures under a tax incentive agreement until notification of the personal service contract or tax incentive agreement is filed with the committee. Each personal service contract 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 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) Adequate notice of the need for a personal service contract 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.
- (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. **The Attorney General, or his or her designee, shall participate in discussions of proposals for legal services where payment may be by contingency fee to consider the offeror's experience with similar issues or cases, and the factors listed in subsection (1) of Section 1 of this Act.** 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. **No award shall be made of a contract for a personal service contract that provides for payment by contingency fee, except upon the approval of the Attorney General and the written determination pursuant to subsection (1) of Section 1 of this Act.**

- (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. 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.

- (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 with the committee, if the secretary of the Finance and Administration Cabinet or his designee determines that the time involved in the normal review process would be detrimental to the Commonwealth'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 immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet or his designee, setting forth in detail the nature of the emergency shall be filed with the committee, along with a copy of the personal service contract.
- (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) Contracts for legal services that provide for payment by contingency fee shall be governed by Section 1 of this Act.**