

1 AN ACT relating to public procurement.

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

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

5 *(1) The General Assembly makes the following findings:*

6 *(a) The production of iron, steel, and manufactured goods provides jobs and*  
7 *family income to many individuals in Kentucky and, in turn, jobs and*  
8 *family incomes to millions of persons in the United States;*

9 *(b) The taxes paid to the Commonwealth of Kentucky and its political*  
10 *subdivisions by employers and employees engaged in the production and*  
11 *sale of iron, steel, and manufactured goods are a large source of public*  
12 *revenue for Kentucky; and*

13 *(c) The economy and general welfare of Kentucky and its people and the*  
14 *economy and general welfare of the United States are inseparably linked to*  
15 *the preservation and development of manufacturing industries in Kentucky,*  
16 *as well as the other states of this nation.*

17 *(2) It shall be the policy of the Commonwealth of Kentucky that:*

18 *(a) Its taxpayer dollars be reinvested with its individual and employer taxpayers*  
19 *in order to foster job retention and growth, particularly within the*  
20 *manufacturing sector, and to ensure a broad and healthy tax base for*  
21 *future investments vital to the state's infrastructure;*

22 *(b) Its procurement policies should reflect the state's and the nation's*  
23 *principles, ensuring that the products of those companies and workers who*  
24 *abide by our workplace safety and environmental laws and regulations are*  
25 *rewarded with a commonsense preference in government contracting; and*

26 *(c) All public officers and governmental bodies should aid and promote the*  
27 *economy of Kentucky and of the United States by requiring a preference for*

1           the procurement of iron, steel, and manufactured goods produced in  
2           Kentucky and in the United States in all contracts for the construction or  
3           maintenance of public works.

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

6           (1) For purposes of Sections 1 to 3 of this Act:

7           (a) "Manufactured in Kentucky" means:

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

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

14           (b) "Manufactured in the United States" means:

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

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

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

24           (2) Notwithstanding any other provision of law to the contrary, each contract for  
25           construction or maintenance of a public building or public work made by a  
26           governmental body shall contain a provision that the iron, steel, or manufactured  
27           goods used or supplied as a primary component in the performance of the

1 contract and any subcontract shall be manufactured in Kentucky, subject to the  
2 provisions of this section.

3 (3) Subsection (2) of this section shall not apply if the head of the governmental body  
4 issues a waiver of the requirements of that subsection in accordance with the  
5 following:

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

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

11 1. Include all information available to the head of the governmental  
12 body;

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

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

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

19 1. The application of subsection (2) of this section would be inconsistent  
20 with the public interest;

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

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

1        (d) The head of the governmental body shall decide whether to issue a waiver  
2        no more than five (5) days prior to the bid or proposal opening. Notification  
3        of the head's decision regarding the waiver shall immediately be sent to the  
4        person requesting the waiver, all persons who submitted comments, and all  
5        persons who indicated interest in bidding or submitting requests for  
6        proposals on the subject contract. The governmental body shall also  
7        immediately publish the decision regarding the waiver on the official Web  
8        site of the governmental body and, if issued, a detailed justification for the  
9        waiver that addresses the public comments received under paragraph (b) of  
10       this subsection.

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

19      (5) Subsection (4) of this section shall not apply if the head of the governmental body  
20      issues a waiver of the requirements of that subsection in accordance with the  
21      following:

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

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

27      1. Include all information available to the head of the governmental

1

body;

2

2. State whether the request for a waiver is being made under paragraph

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(c)1., 2., or 3. of this subsection; and

4

3. Be provided to parties interested in the contract by electronic means,

5

including on the official Web site of the governmental body;

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(c) In determining whether to issue a waiver, the head of the governmental

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body shall consider whether:

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1. The application of subsection (4) of this section would be inconsistent

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with the public interest;

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2. The iron, steel, or manufactured goods to be used or supplied in the

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performance of the contract are not manufactured in the United States

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in sufficient and reasonably available quantities or of a satisfactory

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quality; or

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3. The inclusion of iron, steel, or manufactured goods to be used or

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supplied in the performance of the contract will unreasonably

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increase the cost of the overall contract; and

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(d) The head of the governmental body shall decide whether to issue a waiver

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no more than five (5) days prior to the bid or proposal opening. Notification

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of the head's decision regarding the waiver shall immediately be sent to the

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person requesting the waiver, all persons who submitted comments, and all

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persons who indicated interest in bidding or submitting requests for

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proposals on the subject contract. The governmental body shall also

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immediately publish the decision regarding the waiver on the official Web

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site of the governmental body and, if issued, a detailed justification for the

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waiver that addresses the public comments received under paragraph (b) of

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this subsection.

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(6) A person shall be debarred under KRS 45A.035(2)(b) from receiving any contract

1 with a governmental body, and any subcontract, if the person has been found by  
 2 a court or federal or state agency to have intentionally:

3 (a) Affixed a label bearing a "Made in America" inscription, or any inscription  
 4 with the same meaning, to any iron, steel, or manufactured good used in  
 5 projects to which this section applies, sold in or shipped to the United States  
 6 that was not manufactured in the United States;

7 (b) Represented that any iron, steel, or manufactured good used in projects to  
 8 which this section applies was manufactured in the United States, when it  
 9 was not manufactured in the United States;

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

14 (d) Represented that any iron, steel, or manufactured good used in projects to  
 15 which this section applies was manufactured in Kentucky, when it was not  
 16 manufactured in Kentucky.

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

19 Sections 1 to 3 of this Act may be cited as the Kentucky Buy American Act.

20 ➔Section 4. KRS 45A.343 is amended to read as follows:

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

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

27 (a) Reveal any final determination of a violation by the contractor or

1 subcontractor within the previous five (5) year period pursuant to KRS  
2 Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or  
3 subcontractor; and

4 (b) Be in continuous compliance with the provisions of KRS Chapters 136, 139,  
5 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor for  
6 the duration of the contract.

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

11 (a) Cancellation of the contract; and

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

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

19 **(5) A local public agency shall follow the requirements of Sections 1 to 3 of this Act**  
20 **for a contract for construction or maintenance of a public building or public**  
21 **work.**

22 ➔Section 5. KRS 45A.352 is amended to read as follows:

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

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

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



- 1 in either the United States Department of Energy's "Measurement and  
2 Verification Guideline for Federal Energy Projects" or in the "North American  
3 Energy Measurement and Verification Protocol" is sufficient for measuring  
4 guaranteed savings, the qualified provider shall develop an alternate method  
5 that is compatible with one (1) of the two (2);
- 6 (b) The estimated cost of the proposed energy conservation measures including  
7 engineering, construction, commissioning, measurement and verification,  
8 annual reconciliation statements, and required on-going services; and
- 9 (c) Proposed method and costs of financing.
- 10 (3) The value for total cost of the contract minus the calculated savings from the energy  
11 conservation measures listed in the qualified provider's proposal, shall be within  
12 fifteen percent (15%) of the value for the total cost of the contract minus the  
13 calculated savings after the final contract has been negotiated. If the difference  
14 between the proposed and the final contract is not within fifteen percent (15%) and  
15 the local public agency and the qualified provider are unable to renegotiate the final  
16 contract to reconcile the difference between the proposed and final contract values,  
17 then the local public agency may:
- 18 (a) Stop negotiations with the current qualified provider; and  
19 (b) Select an alternate provider.
- 20 (4) The local public agency may, as a component of the request for proposal, solicit and  
21 negotiate additional maintenance services for the affected proposed energy  
22 conservation measures. Additional services shall be subject to budget appropriations  
23 on an annual basis and may be discontinued at any time over the guarantee period  
24 with no negative impact to the guaranteed savings contract.
- 25 (5) The local public agency shall utilize the request for proposal process to enter into a  
26 guaranteed energy savings contract. The local public agency may, at its discretion,  
27 utilize a request for qualifications, provided that the local public agency solicits

1 qualification statements from multiple potentially qualified providers. The local  
2 public agency shall use the qualification statements to select no fewer than two (2)  
3 providers and each provider shall then be subject to the request-for-proposal  
4 requirement provided in subsections (1) to (4) of this section.

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

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

25 (8) The qualified provider shall provide the local public agency with an annual  
26 reconciliation statement. The statement shall disclose any shortfalls or surplus  
27 between guaranteed energy and operational savings specified in the guaranteed

1 energy savings contract and actual energy and operational savings incurred during a  
2 given guarantee year. The guarantee year shall consist of a twelve (12) month term  
3 commencing from the time that the energy conservation measures became fully  
4 operational. The qualified provider shall pay the local public agency any short fall  
5 in the guaranteed energy and operation savings within thirty (30) days after the total  
6 year savings have been determined. If there is a surplus in the actual guaranteed  
7 energy and operational savings in a given year, that surplus savings may be carried  
8 forward and applied against any possible savings shortfall in the following  
9 guarantee year, except that the surplus carried forward is limited to a period not to  
10 exceed one (1) year. If the qualified provider pays the local public agency for a short  
11 fall in energy or operational savings incurred during a given guarantee year and  
12 there is a surplus in energy or operational savings in future guarantee years, the  
13 qualified provider shall bill the local public agency for an amount not to exceed the  
14 amount of the short fall in the given guarantee year.

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

- 1           4. Life safety system replacements or upgrades which shall have been  
2           determined to be necessary to conform with existing state and local  
3           codes and standards.
- 4 (10) The commissioner of education shall review, and approve or disapprove projects  
5       from local school districts relating to energy conservation measures under a  
6       guaranteed energy savings contract, on the basis of the following guidelines:
- 7       (a) The project design's compliance with technical, health, and safety standards as  
8       required by administrative regulation;
- 9       (b) The availability of general funds, capital outlay allotments under KRS  
10       157.420 or local and state funds from the Facilities Support Program of  
11       Kentucky as provided by KRS 157.440, for projects that will use capital cost  
12       avoidance;
- 13       (c) The appropriate use of capital outlay allotments under KRS 157.420, local and  
14       state funds from the Facilities Support Program of Kentucky as provided by  
15       KRS 157.440, for projects using capital cost avoidance, based on the project's  
16       compliance with the district's approved facility plan;
- 17       (d) The funding capability of the school district; and
- 18       (e) The financing mechanism and proper financing documentation.
- 19 (11) The request for proposal as provided in subsections (1) to (4) of this section shall be  
20       deemed to satisfy the requirements set out in KRS 162.070(1), and shall not be  
21       subject to an award determination based on the lowest competitive bid or a separate  
22       bidding process for each energy conservation measure listed in the proposal.
- 23 (12) A guaranteed energy savings contract that does not involve construction or the  
24       installation of physical improvements shall not require the approval of the  
25       commissioner of education and shall not be subject to other requirements of this  
26       section.
- 27       ➔Section 6. KRS 65.027 is amended to read as follows:

1 (1) As used in this section, "local government" means city, county, urban-county,  
2 consolidated local government, charter county, unified local government, or special  
3 district.

4 (2) For all contracts awarded by a local government, the local government shall apply  
5 the reciprocal preference for resident bidders described in KRS 45A.494.

6 **(3) Sections 1 to 3 of this Act shall apply to all contracts awarded by a local**  
7 **government for construction or maintenance of a public building or public work.**

8 ➔Section 7. KRS 162.070 is amended to read as follows:

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

20 **(2) Sections 1 to 3 of this Act shall apply to all contracts for construction or**  
21 **maintenance of a school building or other public work.**

22 ➔Section 8. KRS 164A.575 is amended to read as follows:

23 (1) The governing boards of each institution may elect to purchase interest in real  
24 property, contractual services, rentals of all types, supplies, materials, equipment,  
25 printing, and services, except that competitive bids may not be required for:

26 (a) Contractual services where no competition exists;

27 (b) Food, clothing, equipment, supplies, or other materials to be used in

- 1           laboratory and experimental studies;
- 2           (c) Instructional materials available from only one (1) source;
- 3           (d) Where rates are fixed by law or ordinance;
- 4           (e) Library books;
- 5           (f) Commercial items that are purchased for resale;
- 6           (g) Professional, technical, scientific, or artistic services, but contracts shall be  
7           submitted in accordance with KRS 45A.690 to 45A.725;
- 8           (h) All other commodities, equipment, and services which, in the reasonable  
9           discretion of the board, are available from only one (1) source; and
- 10          (i) Interests in real property.
- 11       (2) Nothing in this section shall deprive the boards from negotiating with vendors who  
12       maintain a General Services Administration price agreement with the United States  
13       of America or any agency thereof, provided, however, that no contract executed  
14       under this provision shall authorize a price higher than is contained in the contract  
15       between General Services Administration and the vendor affected.
- 16       (3) The governing board shall require the institution to take and maintain inventories of  
17       plant and equipment.
- 18       (4) The governing board shall establish procedures to identify items of common general  
19       usage among all departments to foster volume purchasing. It shall establish and  
20       enforce schedules for purchasing supplies, materials, and equipment.
- 21       (5) The governing board shall have power to salvage, to exchange, and to condemn  
22       supplies, equipment, and real property.
- 23       (6) Upon the approval of the secretary of the Finance and Administration Cabinet, the  
24       governing board may purchase or otherwise acquire all real property determined to  
25       be needed for the institution's use. The amount paid shall not exceed the fair market  
26       value as determined by a qualified appraiser or the value set by the eminent domain  
27       procedure. Any real property acquired under this section shall be in name of the

- 1 Commonwealth for the use and benefit of the institution.
- 2 (7) (a) Notwithstanding KRS 56.806, the governing board may renegotiate the cost of  
3 a lease after the expiration of the lease term and any renewal terms provided  
4 in the lease prior to any renewal not provided for in the terms of the lease.
- 5 (b) Except when a lease incorporates a lease-purchase under KRS 56.806, the  
6 governing board shall reserve the right to cancel a lease upon at least thirty  
7 (30) days' written notice.
- 8 (c) Notwithstanding KRS 56.823(2) and (3), any lease renewals, except automatic  
9 renewals permitted under KRS 56.803, 56.805(2), and 56.806(1), for which  
10 the annual rental cost will exceed two hundred thousand dollars (\$200,000)  
11 shall be reported to the Capital Projects and Bond Oversight Committee in the  
12 same format as set out in KRS 56.823(2).
- 13 (d) Notwithstanding KRS 56.813, a public college or university may pay for  
14 improvements to leased property costing in excess of ten thousand dollars  
15 (\$10,000) but less than one million dollars (\$1,000,000) in a lump sum upon  
16 approval of its board using non-general fund appropriations and without  
17 incurring debt.
- 18 (8) The governing board shall sell or otherwise dispose of all real or personal property  
19 of the institution which is not needed or has become unsuitable for public use, or  
20 would be more suitable consistent with the public interest for some other use, as  
21 determined by the board. The determination of the board shall be set forth in an  
22 order, and shall be reached only after review of a written request by the institution  
23 desiring to dispose of the property. Such request shall describe the property and  
24 state the reasons why the institution believes disposal should be effected. All  
25 instruments required by law to be recorded which convey any interest in any such  
26 real property so disposed of shall be executed and signed by the appropriate officer  
27 of the board. Unless the board deems it in the best interest of the institution to

1        proceed otherwise, all such real or personal property shall be sold either by  
2        invitation of sealed bids or by public auction; provided, however, that the selling  
3        price of any interest in real property shall not be less than the fair market value  
4        thereof as determined by the Finance and Administration Cabinet or the  
5        Transportation Cabinet for such requirements of that department.

6        (9) Real property or any interest therein may, subject to the provisions of KRS Chapter  
7        45A, be purchased, leased, or otherwise acquired from any officer or employee of  
8        any board of the institution, based upon a written application by the grantor or  
9        lessor approved by the board, that the employee has not either himself or through  
10       any other person influenced or attempted to influence either the board requesting the  
11       purchase of the property. In any case in which such an acquisition is consummated,  
12       the said request and finding shall be recorded and kept by the Secretary of State  
13       along with the other documents recorded pursuant to the provisions of KRS Chapter  
14       56.

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

18       (b) For capital construction projects, the procurement may be on a total design-  
19       bid-build basis, a design-build basis, construction manager-general contractor  
20       basis, or construction management-at-risk basis, whichever in the judgment of  
21       the board offers the best value to the taxpayer. Best value shall be determined  
22       in accordance with KRS 45A.070. Proposals shall be reviewed by the  
23       institution's engineering staff to assure quality and value, and compliance with  
24       procurement procedures. All specifications shall be written to promote  
25       competition. Services for projects delivered on the design-build basis,  
26       construction manager-general contractor basis, or construction management-  
27       at-risk basis shall be procured in accordance with KRS 45A.180, KRS



1           45A.183, and the regulations promulgated in accordance with KRS 45A.180.  
2           Nothing in this section shall prohibit the procurement of construction  
3           manager-agency services.

4           (c) Notwithstanding KRS 45A.185, for all capital construction projects, bidder  
5           security for competitive sealed bidding for construction contracts shall only be  
6           required when the price is estimated to exceed one million dollars  
7           (\$1,000,000).

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

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

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

25          (14) (a) All governing boards that purchase agricultural products, as defined by KRS  
26          45A.630, shall, on or before January 1 of each year, provide a report to the  
27          Legislative Research Commission and to the Department of Agriculture

1 describing the types, quantities, and costs of each product purchased. The  
2 report shall be completed on a form provided by the department.

3 (b) If purchasing agricultural products, a governing board shall encourage the  
4 purchase of Kentucky-grown agricultural products in accordance with KRS  
5 45A.645. If a governing board purchases agricultural products through a  
6 contract with a vendor or food service provider, the contract shall require that  
7 if Kentucky-grown agricultural products are purchased, the products shall be  
8 purchased in accordance with KRS 45A.645. Only contracts entered into or  
9 renewed after July 15, 2008, shall be required to comply with the provisions  
10 of this subsection.

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

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

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

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

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

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

3 (17) Governing boards may authorize the use of reverse auctions as defined in KRS  
4 45A.070 for the procurement of goods and leases.

5 **(18) Sections 1 to 3 of this Act shall apply to all contracts issued by a governing board**  
6 **for construction or maintenance of a public building or other public work.**

7 **(19)**~~(18)~~ (a) Notwithstanding KRS 56.070, the governing board may obtain private  
8 insurance to cover any state property in the institution's possession against loss  
9 by fire and other hazards. The level of private insurance coverage shall be  
10 commensurate with or greater than the insurance coverage provided through  
11 the state fire and tornado insurance fund. An institution whose governing  
12 board elects to obtain private insurance shall notify the secretary of the  
13 Finance and Administration Cabinet at least six (6) months before terminating  
14 the institution's insurance coverage through the state fire and tornado  
15 insurance fund.

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

22 ➔Section 9. KRS 176.080 is amended to read as follows:

23 (1) **Sections 1 to 3 of this Act shall apply to all contracts issued by the department.**

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

1 ~~(3)~~~~(2)~~ Bids shall be opened publicly at the time and place designated in the invitation  
2 for bids. At the time the bids are opened, the department shall announce the  
3 department's engineer's estimate and make it a part of the department's records  
4 pertaining to the letting of any highway construction project contract for which bids  
5 were received. Each bid, together with the name of the bidder and the department's  
6 engineer's estimate, shall be recorded and open to public inspection.

7 ~~(4)~~~~(3)~~ The contract shall be awarded to the lowest and best bidder. The department  
8 may require bonds from any contractor to secure the performance of any contract or  
9 may require security by any other means it deems advisable.

10 ~~(5)~~~~(4)~~ The department may reject any bid when it finds it for the best interest of the  
11 state to do so. When all bids are rejected, the department shall advertise for new  
12 bids as in the first place.

13 ➔Section 10. KRS 424.260 is amended to read as follows:

14 (1) Except where a statute specifically fixes a larger sum as the minimum for a  
15 requirement of advertisement for bids, no city, county, urban-county government,  
16 charter county government, consolidated local government, unified local  
17 government, or district, or board or commission of a city or county, or sheriff or  
18 county clerk, may make a contract, lease, or other agreement for materials, supplies  
19 except perishable meat, fish, and vegetables, equipment, or for contractual services  
20 other than professional, involving an expenditure of more than twenty thousand  
21 dollars (\$20,000) without first making newspaper advertisement for bids. The  
22 advertisement for bids shall include notice that Sections 1 to 3 of this Act shall  
23 apply to all contracts involving construction or maintenance of a public building  
24 or public works. This subsection shall not apply to the transfer of property between  
25 governmental agencies as authorized in KRS 82.083(4)(a).

26 (2) If the fiscal court requires that the sheriff or county clerk advertise for bids on  
27 expenditures of less than twenty thousand dollars (\$20,000), the fiscal court

1 requirement shall prevail.

2 (3) (a) Nothing in this statute shall limit or restrict the ability of a local school district  
3 to acquire supplies and equipment outside of the bidding procedure if those  
4 supplies and equipment meet the specifications of the contracts awarded by  
5 the Office of Material and Procurement Services in the Office of the  
6 Controller within the Finance and Administration Cabinet or a federal, local,  
7 or cooperative agency and are available for purchase elsewhere at a lower  
8 price. A board of education may purchase those supplies and equipment  
9 without advertising for bids if, prior to making the purchases, the board of  
10 education obtains certification from the district's finance or purchasing officer  
11 that the items to be purchased meet the standards and specifications fixed by  
12 state price contract, federal (GSA) price contract, or the bid of another school  
13 district whose bid specifications allow other districts to utilize their bids, and  
14 that the sales price is lower than that established by the various price contract  
15 agreements or available through the bid of another school district whose bid  
16 specifications would allow the district to utilize their bid.

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

23 (4) This requirement shall not apply in an emergency if the chief executive officer of  
24 the city, county, urban-county government, charter county government,  
25 consolidated local government, unified local government, or district has duly  
26 certified that an emergency exists, and has filed a copy of the certificate with the  
27 chief financial officer of the city, county, urban-county government, charter

1       county government, consolidated local government, unified local government, or  
2       district, or if the sheriff or the county clerk has certified that an emergency exists,  
3       and has filed a copy of the certificate with the clerk of the court where his or her  
4       necessary office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the  
5       superintendent of the board of education has duly certified that an emergency exists,  
6       and has filed a copy of the certificate with the chief state school officer.

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