

1 AN ACT relating to procurement and declaring an emergency.

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

3 ➔Section 1. KRS 45A.100 is amended to read as follows:

4 (1) Procurements may be made in accordance with small purchase administrative
5 regulations promulgated by the secretary of the Finance and Administration
6 Cabinet, pursuant to KRS Chapter 13A, as follows:

7 (a) Up to ten thousand dollars (\$10,000) per project for construction and one
8 thousand dollars (\$1,000) for purchases by any state governmental body,
9 except for those state administrative bodies specified in paragraph (b) of this
10 subsection; and

11 (b) Up to one hundred~~forty~~ thousand dollars (\$100,000)~~(\$40,000)~~ per project
12 for construction or purchases by the Finance and Administration Cabinet,
13 state institutions of higher education, and the legislative branch of
14 government.

15 (2) Procurement requirements shall not be artificially divided so as to constitute a small
16 purchase under this section. Reverse auctions may be used for small purchase
17 procurements. At least every two (2) years, the secretary shall review the prevailing
18 costs of labor and materials and may make recommendations to the next regular
19 session of the General Assembly for the revision of the then current maximum
20 small purchase amount as justified by intervening changes in the cost of labor and
21 materials.

22 (3) The secretary of the Finance and Administration Cabinet may grant to any state
23 agency with a justifiable need a delegation of small purchasing authority which
24 exceeds the agency's small purchase limit provided in subsection (1) of this section.
25 Delegations of small purchasing authority shall be granted or revoked by the
26 secretary of the Finance and Administration Cabinet, in accordance with
27 administrative regulations promulgated by the cabinet pursuant to KRS Chapter

1 13A. These administrative regulations shall establish, at a minimum, the criteria for
2 granting and revoking delegations of small purchasing authority, including the
3 requesting agency's past compliance with purchasing regulations, the level of
4 training of the agency's purchasing staff, and the extent to which the agency utilizes
5 the Kentucky Automated Purchasing System. The administrative regulations may
6 permit the secretary of the Finance and Administration Cabinet to delegate small
7 purchase procurements up to the maximum amount specified in subsection (1)(b) of
8 this section.

9 ➔Section 2. KRS 45A.190 is amended to read as follows:

10 (1) As used in this section, "agency contract administrator" means the state agency
11 employee responsible for the administration of a contract.

12 (2) When a construction contract is awarded in an amount in excess of one
13 hundred~~forty~~ thousand dollars (\$100,000)~~(\$40,000)~~, the following bonds shall
14 be furnished to the Commonwealth, and shall be binding on the parties upon the
15 award of the contract:

16 (a) A performance bond satisfactory to the Commonwealth executed by a surety
17 company authorized to do business in this Commonwealth, or otherwise
18 supplied, satisfactory to the Commonwealth, in an amount equal to one
19 hundred percent (100%) of the contract price as it may be increased; and

20 (b) A payment bond satisfactory to the Commonwealth executed by a surety
21 company authorized to do business in the Commonwealth, or otherwise
22 supplied, satisfactory to the Commonwealth, for the protection of all persons
23 supplying labor and material to the contractor or his subcontractors, for the
24 performance of the work provided for in the contract. The bond shall be in an
25 amount equal to one hundred percent (100%) of the original contract price.

26 (3) When any contract in an amount in excess of one hundred~~forty~~ thousand dollars
27 (\$100,000)~~(\$40,000)~~ for commodities, supplies, equipment, or services of any

1 kind, or when a contract for construction services costing one hundred~~forty~~
2 thousand dollars (\$100,000)~~(\$40,000)~~ or less is proposed for presentation to
3 vendors or contractors, the agency contract administrator shall evaluate whether a
4 performance bond should be required in the procurement document, and make his
5 recommendation to the purchasing agency. The agency contract administrator shall
6 note the reason that a performance bond is or is not recommended and his notation
7 shall be a part of the permanent record relating to the contract. If a performance
8 bond is required, the requirement shall be included in the invitation to bid, request
9 for proposal, or other procurement document. The agency contract administrator
10 shall make audits of the performance of contracts upon completion of one-third
11 (1/3) of the contract and upon completion of two-thirds (2/3) of the contract. For
12 contracts taking longer than one (1) year to complete, audits of performance shall
13 be conducted at least annually. Before a vendor is released from a performance
14 bond, the agency contract administrator shall review the audits of performance,
15 make a final performance review, and promptly determine whether, in his or her
16 opinion, the vendor has fully complied with the terms of the contract. The opinion
17 of the agency contract administrator shall be made in writing or electronically, set
18 forth the reasons for his or her opinion regarding compliance or noncompliance,
19 and be signed by the agency contract administrator. This opinion may have an
20 electronic signature. The using agency head shall, after consideration of the
21 performance audits, the final performance review, and the opinion of the agency
22 contract administrator regarding compliance or noncompliance, determine whether
23 to recommend to the purchasing agency that the performance bond be released or
24 whether a claim should be made against the performance bond. This determination
25 of the using agency head shall be in writing, signed by the using agency head, and
26 forwarded to the purchasing agency. This determination may have an electronic
27 signature and be transmitted electronically. If the recommendation of the using

1 agency is not followed by the purchasing agency, the purchasing agency shall place
2 a statement in the file explaining why it is not followed.

3 (4) Nothing in this section shall be construed to limit the authority of the
4 Commonwealth to require a performance bond or other security in addition to those
5 bonds, or in circumstances other than specified in subsection (2) or (3) of this
6 section.

7 ➔Section 3. KRS 56.491 is amended to read as follows:

8 (1) No state agency shall have power or authority to make plans and specifications,
9 provide public notice of invitations for bids, let contracts, or incur any financing
10 commitments, either in the way of a charge against public funds or in the way of
11 negotiations for issuance of revenue bonds, for any capital construction projects
12 involving the improvement of lands or the construction, alteration, reconstruction,
13 or major repair of any building or other structure, or sewage disposal or water
14 supply system, requiring the expenditure of more than five~~two~~ hundred ~~fifty~~
15 thousand dollars (\$500,000)~~(\$250,000)~~ without first securing the approval of the
16 Finance and Administration Cabinet.

17 (2) The state agency seeking the approval shall submit to the Finance and
18 Administration Cabinet a general description of the proposed project, with the
19 detailed information the cabinet may require. Review of construction plans for
20 conformance with the Uniform State Building Code shall be conducted by the
21 Department of Housing, Buildings and Construction. The Finance and
22 Administration Cabinet shall not approve any project requiring its approval in any
23 instance if it finds that: the project is not needed; the proposed method of financing
24 is not sound; the project will exceed the amount of the funds available therefor; the
25 work contemplated will be insufficient to accomplish the purpose of the project; or
26 after providing for the ordinary recurring expenses of government and debt service
27 and for payments under existing allotments for extraordinary expenses and capital

1 outlay, cash will not be available in the State Treasury to promptly pay for the work
2 during the biennium, or except as provided in subsection (5) of this section, that the
3 work is to be done by employees of the agency.

4 (3) The finding of the Finance and Administration Cabinet shall be final, except in
5 cases where the issuance and sale of bonds is proposed, in which cases the cabinet
6 shall submit its findings to the commission for final approval, modification, or
7 disapproval.

8 (4) Any capital construction project, the total cost of completion of which the Finance
9 and Administration Cabinet determines will exceed five~~two~~ hundred ~~fifty~~
10 thousand dollars (\$500,000)~~(\$250,000)~~, shall be contracted for on a competitive
11 bid basis, and the execution of the contracts shall be approved and authorized by the
12 cabinet. When a capital construction project has been approved as provided in this
13 section, in whole or in part, the cabinet shall prepare the plans and specifications,
14 provide public notice of invitations for bids, award the contracts, supervise the
15 construction, and handle the financial negotiations on behalf of the requesting state
16 agency; or with prior written approval, the cabinet may authorize a state agency to
17 do so with delegated authority of the cabinet.

18 (5) A capital construction project, the total cost of completion of which the Finance and
19 Administration Cabinet determines will not exceed five~~two~~ hundred ~~fifty~~
20 thousand dollars (\$500,000)~~(\$250,000)~~, may be performed by the employees of
21 the requesting agency or by individuals hired specifically for the project who shall
22 be exempt from the requirements of KRS Chapter 18A, if the project is approved
23 and authorized by the cabinet. Necessary materials and supplies shall be procured in
24 accordance with the standard purchasing procedures and policies of the cabinet as
25 defined in KRS Chapter 45A.

26 (6) This section shall not apply to capital outlays to the Department of Highways for
27 roads and bridges.

1 (7) This section shall not apply to capital outlays by the Justice and Public Safety
2 Cabinet for repair, maintenance, improvement, or expansion of present correctional
3 facilities on which projects inmates are used. Any capital construction project to be
4 performed by the Justice and Public Safety Cabinet shall be approved and
5 authorized by the Finance and Administration Cabinet.

6 (8) This section shall not apply to surveys capable of being performed by employees of
7 the Department of Fish and Wildlife Resources. Boundary surveys or surveys
8 involving property lines shall be performed by or under the supervision of an
9 employee possessing a professional land surveyor license.

10 ➔Section 4. Whereas it is necessary to expedite the implementation and
11 advancement of capital construction projects in the Commonwealth, including
12 improvements to facilities operated by the Kentucky Department of Parks, an emergency
13 is declared to exist, and this Act takes effect upon its passage and approval by the
14 Governor or upon its otherwise becoming a law.