

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, the jobs and*  
8 *family incomes of 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*  
25 *should be rewarded with a commonsense preference in government*  
26 *contracting; and*

27 *(c) All public officers and governmental bodies should aid and promote the*

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

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

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

8 (a) "Manufactured in Kentucky" means:

- 9 1. In the case of an iron or steel product, all manufacturing has taken  
10 place in Kentucky, except metallurgical processes involving the  
11 refinement of steel additives; and  
12 2. In the case of a manufactured good, all the manufacturing processes  
13 for the product and its components have taken place in Kentucky,  
14 regardless of the origin of a component's subcomponents;

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

- 16 1. In the case of an iron or steel product, all manufacturing has taken  
17 place in the United States, except metallurgical processes involving the  
18 refinement of steel additives; and  
19 2. In the case of a manufactured good, all the manufacturing processes  
20 for the product and its components have taken place in the United  
21 States, regardless of the origin of a component's subcomponents; and

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

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

1 goods used or supplied as a primary component in the performance of the  
2 contract and any subcontract shall be manufactured in Kentucky, subject to the  
3 provisions of this section.

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

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

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

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

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

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

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

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

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

26 3. The inclusion of iron, steel, or manufactured goods to be used or  
27 supplied in the performance of the contract will unreasonably

- 1                   increase the cost of the overall contract; and
- 2           (d) The head of the governmental body shall decide whether to issue a waiver  
3           no more than five (5) days prior to the bid or proposal opening. Notification  
4           of the head's decision regarding the waiver shall immediately be sent to the  
5           person requesting the waiver, all persons who submitted comments, and all  
6           persons who indicated interest in bidding or submitting requests for  
7           proposals on the subject contract. The governmental body shall also  
8           immediately publish the decision regarding the waiver on the official Web  
9           site of the governmental body and, if issued, a detailed justification for the  
10           waiver that addresses the public comments received under paragraph (b) of  
11           this subsection.
- 12   (4) If the head of the governmental body issues a waiver of the requirements of  
13   subsection (2) of this section, then the contract for construction or maintenance  
14   of a public building or public work made by a governmental body shall contain a  
15   provision that the iron, steel, or manufactured goods used or supplied as a  
16   primary component in the performance of the contract and any subcontract shall  
17   be manufactured in the United States. The bid or proposal opening shall be  
18   delayed to accommodate any request for a waiver under subsection (5) of this  
19   section.
- 20   (5) Subsection (4) of this section shall not apply if the head of the governmental body  
21   issues a waiver of the requirements of that subsection in accordance with the  
22   following provisions:
- 23           (a) A request for a waiver shall be filed with the head of the governmental body  
24           at least twenty (20) days before the bid or proposal opening;
- 25           (b) The governmental body shall provide notice and an opportunity for public  
26           comment on the request at least fifteen (15) days before the bids or  
27           proposals for the contract are opened. The notice shall:

- 1           1. Include all information available to the head of the governmental  
2           body;
- 3           2. State whether the request for a waiver is being made under  
4           subparagraph 1., 2., or 3. of paragraph (c) of this subsection; and
- 5           3. Be provided to parties interested in the contract by electronic means,  
6           including on the official Web site of the governmental body;

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

- 9           1. The application of subsection (4) of this section would be inconsistent  
10           with the public interest;
- 11           2. The iron, steel, or manufactured goods to be used or supplied in the  
12           performance of the contract are not manufactured in the United States  
13           in sufficient and reasonably available quantities and of a satisfactory  
14           quality; or
- 15           3. The inclusion of iron, steel, or manufactured goods to be used or  
16           supplied in the performance of the contract will unreasonably  
17           increase the cost of the overall contract; and

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

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

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

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

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

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

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

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

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

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

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

- 1 (a) Reveal any final determination of a violation by the contractor or  
2 subcontractor within the previous five (5) year period pursuant to KRS  
3 Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or  
4 subcontractor; and
- 5 (b) Be in continuous compliance with the provisions of KRS Chapters 136, 139,  
6 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor for  
7 the duration of the contract.
- 8 (3) A contractor's failure to reveal a final determination of a violation by the contractor  
9 of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these  
10 statutes for the duration of the contract shall be grounds for the local public  
11 agency's:
- 12 (a) Cancellation of the contract; and
- 13 (b) Disqualification of the contractor from eligibility for future contracts awarded  
14 by the local public agency for a period of two (2) years.
- 15 (4) A subcontractor's failure to reveal a final determination of a violation by the  
16 subcontractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply  
17 with these statutes for the duration of the contract shall be grounds for the local  
18 public agency's disqualification of the subcontractor from eligibility for future  
19 contracts for a period of two (2) years.
- 20 **(5) A local public agency shall follow the requirements of Sections 1 to 3 of this Act**  
21 **for a contract for construction or maintenance of a public building or public**  
22 **work.**
- 23 ➔Section 5. KRS 45A.352 is amended to read as follows:
- 24 (1) A local public agency may enter into a guaranteed energy savings contract for  
25 innovative solutions for energy conservation measures. The local public agency  
26 shall submit a request for proposals. The request for proposals for competitive  
27 procurement of guaranteed energy savings contracts shall include the following:

- 1 (a) The name and address of the governmental unit;
- 2 (b) The name, address, title, and phone number of a contact person;
- 3 (c) Notice indicating that the local public agency is requesting qualified providers
- 4 to propose energy conservation measures through a guaranteed energy savings
- 5 contract;
- 6 (d) The following evaluation criteria for assessing the proposals:
- 7 1. Construction management capabilities;
- 8 2. Technical approach to facilities included;
- 9 3. Financial attributes, as defined by total cost of contract and guaranteed
- 10 savings and provider's financial strength demonstrating ability to fulfill
- 11 the guarantee term; and
- 12 4. Provider's capability, personnel, track record, and demonstrated ability
- 13 to accomplish the contract;
- 14 (e) The date, time, and place where proposals must be received;
- 15 (f) Any other stipulations and clarifications the local public agency may require;
- 16 and
- 17 (g) An overview prepared by the local public agency stating goals or objectives
- 18 specific to facility needs to be considered by the qualified providers who are
- 19 responding to the request. Detailed scope of construction is not required.
- 20 (2) Respondents to the request for proposal shall provide the following:
- 21 (a) A detailed list of the proposed energy conservation measures and the
- 22 guaranteed savings which shall be supported with calculations. Any
- 23 guaranteed energy and operational savings shall be determined by using one of
- 24 the measurement and verification methodologies listed in the United States
- 25 Department of Energy's "Measurement and Verification Guideline for Federal
- 26 Energy Projects" or in the "North American Energy Measurement and
- 27 Verification Protocol." If due to existing data limitations or the



1 nonconformance of specific project characteristics, none of the methods listed  
2 in either the United States Department of Energy's "Measurement and  
3 Verification Guideline for Federal Energy Projects" or in the "North American  
4 Energy Measurement and Verification Protocol" is sufficient for measuring  
5 guaranteed savings, the qualified provider shall develop an alternate method  
6 that is compatible with one (1) of the two (2);

7 (b) The estimated cost of the proposed energy conservation measures including  
8 engineering, construction, commissioning, measurement and verification,  
9 annual reconciliation statements, and required on-going services; and

10 (c) Proposed method and costs of financing.

11 (3) The value for total cost of the contract minus the calculated savings from the energy  
12 conservation measures listed in the qualified provider's proposal, shall be within  
13 fifteen percent (15%) of the value for the total cost of the contract minus the  
14 calculated savings after the final contract has been negotiated. If the difference  
15 between the proposed and the final contract is not within fifteen percent (15%) and  
16 the local public agency and the qualified provider are unable to renegotiate the final  
17 contract to reconcile the difference between the proposed and final contract values,  
18 then the local public agency may:

19 (a) Stop negotiations with the current qualified provider; and

20 (b) Select an alternate provider.

21 (4) The local public agency may, as a component of the request for proposal, solicit and  
22 negotiate additional maintenance services for the affected proposed energy  
23 conservation measures. Additional services shall be subject to budget appropriations  
24 on an annual basis and may be discontinued at any time over the guarantee period  
25 with no negative impact to the guaranteed savings contract.

26 (5) The local public agency shall utilize the request for proposal process to enter into a  
27 guaranteed energy savings contract. The local public agency may, at its discretion,

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

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

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

26 (8) The qualified provider shall provide the local public agency with an annual  
27 reconciliation statement. The statement shall disclose any shortfalls or surplus

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

16 (9) The use of capital cost avoidance shall be subject to the following restrictions:

17 (a) The amount expended shall not exceed fifty percent (50%) of the project cost;  
18 and

19 (b) Capital cost avoidance shall be restricted to payment for permanent equipment  
20 replacement as follows:

- 21 1. Storm windows or doors, multiglazed windows or doors, additional  
22 glazing, and reduction in glass area;
- 23 2. Replacement of heating, ventilating, or air conditioning major  
24 components or systems;
- 25 3. New lighting fixtures where required to achieve Illuminating  
26 Engineering Society of North America (IES) standards, provided the  
27 existing light fixtures shall have been determined to be obsolete and

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

1       ➔Section 6. KRS 65.027 is amended to read as follows:

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

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

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

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

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

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

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

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

27      (a) Contractual services where no competition exists;

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

1 procedure. Any real property acquired under this section shall be in name of the  
2 Commonwealth for the use and benefit of the institution.

3 (7) The governing board shall sell or otherwise dispose of all real or personal property  
4 of the institution which is not needed or has become unsuitable for public use, or  
5 would be more suitable consistent with the public interest for some other use, as  
6 determined by the board. The determination of the board shall be set forth in an  
7 order, and shall be reached only after review of a written request by the institution  
8 desiring to dispose of the property. Such request shall describe the property and  
9 state the reasons why the institution believes disposal should be effected. All  
10 instruments required by law to be recorded which convey any interest in any such  
11 real property so disposed of shall be executed and signed by the appropriate officer  
12 of the board. Unless the board deems it in the best interest of the institution to  
13 proceed otherwise, all such real or personal property shall be sold either by  
14 invitation of sealed bids or by public auction; provided, however, that the selling  
15 price of any interest in real property shall not be less than the appraised value  
16 thereof as determined by the Finance and Administration Cabinet or the  
17 Transportation Cabinet for such requirements of that department.

18 (8) Real property or any interest therein may, subject to the provisions of KRS Chapter  
19 45A, be purchased, leased, or otherwise acquired from any officer or employee of  
20 any board of the institution, based upon a written application by the grantor or  
21 lessor approved by the board, that the employee has not either himself, herself, or  
22 through any other person influenced or attempted to influence either the board  
23 requesting the purchase of the property. In any case in which such an acquisition is  
24 consummated, the said request and finding shall be recorded and kept by the  
25 Secretary of State along with the other documents recorded pursuant to the  
26 provisions of KRS Chapter 56.

27 (9) (a) As used in this section, "construction manager-agency," "construction

1 management-at-risk," "design-bid-build," "design-build," and "construction  
2 manager-general contractor" shall have the same meaning as in KRS 45A.030.

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

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

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

25 (12) The governing board may negotiate directly for the purchase of contractual services,  
26 supplies, materials, or equipment in bona fide emergencies regardless of estimated  
27 costs. The existence of the emergency must be fully explained, in writing, by the



1 vice president responsible for business affairs and such explanation must be  
2 approved by the university president. The letter and approval shall be filed with the  
3 record of all such purchases. Where practical, standard specifications shall be  
4 followed in making emergency purchases. A good faith effort shall be made to  
5 effect a competitively established price for emergency purchases.

6 (13) (a) All governing boards that purchase agricultural products, as defined by KRS  
7 45A.630, shall, on or before January 1 of each year, provide a report to the  
8 Legislative Research Commission and to the Department of Agriculture  
9 describing the types, quantities, and costs of each product purchased. The  
10 report shall be completed on a form provided by the department.

11 (b) If purchasing agricultural products, a governing board shall encourage the  
12 purchase of Kentucky-grown agricultural products in accordance with KRS  
13 45A.645. If a governing board purchases agricultural products through a  
14 contract with a vendor or food service provider, the contract shall require that  
15 if Kentucky-grown agricultural products are purchased, the products shall be  
16 purchased in accordance with KRS 45A.645. Only contracts entered into or  
17 renewed after July 15, 2008, shall be required to comply with the provisions  
18 of this subsection.

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

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

26 (15) Governing boards may authorize the use of reverse auctions as defined in KRS  
27 45A.070 for the procurement of goods and leases.

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

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

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

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

9 **(3)**~~(2)~~ Bids shall be opened publicly at the time and place designated in the invitation  
 10 for bids. At the time the bids are opened, the department shall announce the  
 11 department's engineer's estimate and make it a part of the department's records  
 12 pertaining to the letting of any highway construction project contract for which bids  
 13 were received. Each bid, together with the name of the bidder and the department's  
 14 engineer's estimate, shall be recorded and open to public inspection.

15 **(4)**~~(3)~~ The contract shall be awarded to the lowest and best bidder. The department  
 16 may require bonds from any contractor to secure the performance of any contract or  
 17 may require security by any other means it deems advisable.

18 **(5)**~~(4)~~ The department may reject any bid when it finds it for the best interest of the  
 19 state to do so. When all bids are rejected, the department shall advertise for new  
 20 bids as in the first place.

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

22 (1) Except where a statute specifically fixes a larger sum as the minimum for a  
 23 requirement of advertisement for bids, no city, county, **urban-county government,**  
 24 **charter county government, consolidated local government, unified local**  
 25 **government,** or district, or board or commission of a city or county, or sheriff or  
 26 county clerk, may make a contract, lease, or other agreement for materials, supplies  
 27 except perishable meat, fish, and vegetables, equipment, or for contractual services

1 other than professional, involving an expenditure of more than twenty thousand  
2 dollars (\$20,000) without first making newspaper advertisement for bids. **The**  
3 **advertisement for bids shall include notice that Sections 1 to 3 of this Act shall**  
4 **apply to all contracts involving construction or maintenance of a public building**  
5 **or public works.** This subsection shall not apply to the transfer of property between  
6 governmental agencies as authorized in KRS 82.083(4)(a).

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

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

25 (b) The procedures set forth in paragraph (a) of this subsection shall not be  
26 available to the district for any specific item once the bidding procedure has  
27 been initiated by an invitation to bid and a publication of specifications for

1           that specific item has been published. In the event that all bids are rejected, the  
2           district may again avail itself of the provisions of paragraph (a) of this  
3           subsection.

- 4   (4) This requirement shall not apply in an emergency if the chief executive officer of  
5   the city, county, urban-county government, charter county government,  
6   consolidated local government, unified local government, or district has duly  
7   certified that an emergency exists, and has filed a copy of the certificate with the  
8   chief financial officer of the city, county, urban-county government, charter  
9   county government, consolidated local government, unified local government, or  
10   district, or if the sheriff or the county clerk has certified that an emergency exists,  
11   and has filed a copy of the certificate with the clerk of the court where his or her  
12   necessary office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the  
13   superintendent of the board of education has duly certified that an emergency exists,  
14   and has filed a copy of the certificate with the chief state school officer.
- 15   (5) The provisions of subsection (1) of this section shall not apply for the purchase of  
16   wholesale electric power for resale to the ultimate customers of a municipal utility  
17   organized under KRS 96.550 to 96.900.