

1 AN ACT relating to procurement.

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

3 ➔Section 1. KRS 45A.490 is amended to read as follows:

4 As used in KRS 45A.490 to 45A.494:

5 (1) "Contract" means any agreement of a public agency, including grants and orders, for
6 the purchase or disposal of supplies, services, construction, or any other item;~~and~~

7 **(2) "Headquarters" means the principal executive office location from which**
8 **personnel, branches, affiliates, offices, or entities are controlled;**

9 ~~(3)(2)~~ "Public agency" has the same meaning as in KRS 61.805; **and**

10 **(4) "Ultimate controlling person" means any corporation, holding company,**
11 **business, person, or affiliate that directly or indirectly owns, or otherwise**
12 **exercises operational control over, the entity bidding on a contract under the**
13 **Kentucky Model Procurement Code.**

14 ➔Section 2. KRS 45A.494 is amended to read as follows:

15 (1) Prior to a contract being awarded to the lowest responsible and responsive bidder on
16 a contract by a public agency, a resident bidder of the Commonwealth shall be given
17 a preference against a nonresident bidder registered in any state that gives or
18 requires a preference to bidders from that state. The preference shall be equal to the
19 preference given or required by the state of the nonresident bidder.

20 (2) A resident bidder is~~an individual, partnership, association, corporation, or other~~ **a**
21 **business entity** that, on the date the contract is first advertised or announced as
22 available for bidding:

23 (a) Is authorized to transact business in the Commonwealth;~~and~~

24 (b) **Maintains its headquarters in the Commonwealth;**

25 **(c) Does not have an ultimate controlling person with a headquarters located**
26 **outside of the Commonwealth; and**

27 **(d)** Has for one (1) year prior to and through the date of the advertisement, filed

1 Kentucky corporate income taxes, made payments to the Kentucky
2 unemployment insurance fund established in KRS 341.490, and maintained a
3 Kentucky workers' compensation policy in effect.

4 (3) A nonresident bidder is an individual, partnership, association, corporation, or other
5 business entity that does not meet the requirements of subsection (2) of this section.

6 (4) If a procurement determination results in a tie between a resident bidder and a
7 nonresident bidder, preference shall be given to the resident bidder.

8 (5) Regardless of whether a reciprocal preference is awarded under subsection (1) of
9 this section, a tiered bonus of up to ten percent (10%) shall be given to
10 Commonwealth resident bidders and bidders that perform the majority of their
11 operations within the Commonwealth, either in-house or through contractual
12 arrangements by staff located in the Commonwealth. The bonus shall be awarded
13 as follows:

14 (a) A bidder shall receive a three (3) percentage point scoring bonus if the
15 bidder meets the requirements of subsection (2) of this section;

16 (b) A bidder shall receive a two (2) percentage point scoring bonus if the
17 majority of employees and independent contractors, both direct and
18 indirect, necessary to administer the contract are located within the
19 Commonwealth, regardless of whether or not the bidder qualifies as a
20 resident bidder under subsection (2) of this section; and

21 (c) A bidder shall receive a five (5) percentage point scoring bonus if the
22 majority of employees and independent contractors, both direct and
23 indirect, necessary to administer the contract are located in a county of the
24 Commonwealth that, as determined by the United States Bureau of the
25 Census, has a median family income less than the median family income of
26 the Commonwealth as a whole and is not within a metropolitan statistical
27 area.

1 **(6)** This section shall apply to all contracts funded or controlled in whole or in part by a
2 public agency.

3 ~~(7)~~ The Finance and Administration Cabinet shall maintain a list of states that
4 give to or require a preference for their own resident bidders, including details of
5 the preference given to such bidders, to be used by public agencies in determining
6 resident bidder preferences. The cabinet shall also promulgate administrative
7 regulations in accordance with KRS Chapter 13A establishing the procedure by
8 which the preferences required by this section shall be given.

9 ~~(8)~~ *No preference shall be awarded to a bidder under this section* ~~[The~~
10 ~~preference for resident bidders shall not be given]~~ if the preference conflicts with
11 federal law.

12 **(9)** *No preference shall be awarded to a bidder under this section if the contract is*
13 *partially or wholly funded by federal funds and awarding the preference would*
14 *run counter to the purpose for which the federal funds were provided.*

15 ~~(10)~~ Any public agency soliciting or advertising for bids for contracts shall make
16 KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

17 ➔Section 3. KRS 176.082 is amended to read as follows:

18 (1) Prior to a contract being awarded for the construction phase of a project, a resident
19 bidder of the Commonwealth shall be given a preference against a nonresident
20 bidder registered in any state that gives or requires a preference to bidders from that
21 state. The preference shall be equal to the preference given or required by the state
22 of the nonresident bidder and shall be applied after the opening of the bids.

23 (2) A resident bidder is an individual, partnership, association, corporation, or other
24 business entity that, on the date the department advertises for bids:

25 (a) Is authorized to transact business in the Commonwealth; and

26 (b) Has for one (1) year prior to and through the date of advertisement, filed
27 Kentucky corporate or other business income taxes, made payments to the

1 Kentucky unemployment insurance fund established in KRS 341.490, and
2 maintained a Kentucky workers' compensation policy in effect.

3 (3) A nonresident bidder is an individual, partnership, association, corporation, or other
4 business entity that does not meet the requirements of subsection (2) of this section.

5 (4) The department shall use the list and administrative regulations described in KRS
6 45A.494~~(7)~~~~(6)~~ to determine the preferences to be given in awarding a contract.

7 (5) The preference shall not be given if the preference conflicts with federal law.