

45A.343 Local public agency may adopt provisions of KRS 45A.345 to 45A.460 -- Effect of adoption -- Contracts required to mandate revealing of violations of and compliance with specified KRS chapters -- Effect of nondisclosure or noncompliance.

- (1) Any local public agency may adopt the provisions of KRS 45A.345 to 45A.460. No other statutes governing purchasing shall apply to a local public agency upon adoption of these provisions.
- (2) After July 15, 1994, any contract entered into by a local public agency, whether under KRS 45A.345 to 45A.460 or any other authority, shall require the contractor and all subcontractors performing work under the contract to:
 - (a) Reveal any final determination of a violation by the contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor; and
 - (b) Be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor for the duration of the contract.
- (3) A contractor's failure to reveal a final determination of a violation by the contractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public agency's:
 - (a) Cancellation of the contract; and
 - (b) Disqualification of the contractor from eligibility for future contracts awarded by the local public agency for a period of two (2) years.
- (4) A subcontractor's failure to reveal a final determination of a violation by the subcontractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public agency's disqualification of the subcontractor from eligibility for future contracts for a period of two (2) years.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 520, sec. 2, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 491, sec. 2, effective July 15, 1994. -- Created 1980 Ky. Acts ch. 250, sec. 9, effective April 9, 1980.

45A.345 Definitions for KRS 45A.343 to 45A.460.

As used in KRS 45A.343 to 45A.460, unless the context indicates otherwise:

- (1) "Aggregate amount" means the total dollar amount during a fiscal year of items of a like nature, function, and use the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which could not reasonably be established in advance or which were unavailable because of a failure of delivery need not be included in the aggregate amount.
- (2) "Capital cost avoidance" means moneys expended by a local public agency to pay for an energy conservation measure identified as a permanent equipment replacement and whose cost has been discounted by any additional energy and operation savings generated from other energy conservation measures identified in the guaranteed energy savings contract, except that for school districts capital cost avoidance shall also mean moneys expended by the district from one (1) or more of the following sources:
 - (a) General fund;
 - (b) Capital outlay allotment under KRS 157.420; and
 - (c) State and local funds from the Facilities Support Program of Kentucky under KRS 157.440.
- (3) "Chief executive officer" means the mayor, county judge/executive, superintendent of schools, or the principal administrative officer of a local public agency, or the person designated by the chief executive officer or legislative body of the local public agency to perform the procurement function.
- (4) "Construction" means the process of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (5) "Contract" means all types of local public agency agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing. It does not include labor contracts with employees of local public agencies.
- (6) "Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.
- (7) "Established catalogue price" means the price included in the most current catalogue, price list, schedule, or other form that:
 - (a) Is regularly maintained by the manufacturer or vendor of an item; and
 - (b) Is either published or otherwise available for inspection by customers; and
 - (c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.

- (8) "Evaluated bid price" means the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion.
- (9) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.365.
- (10) "The legislative body or governing board" means a council, commission, or other legislative body of a city, consolidated local government, or urban-county; a county fiscal court; board of education of a county or independent school district; board of directors of an area development district or special district; or board of any other local public agency.
- (11) "Local public agency" means a city, county, urban-county, consolidated local government, school district, special district, or an agency formed by a combination of such agencies under KRS Chapter 79, or any department, board, commission, authority, office, or other sub-unit of a political subdivision which shall include the offices of the county clerk, county sheriff, county attorney, coroner, and jailer.
- (12) "May" means permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.
- (13) "Negotiation" means contracting by either the method set forth in KRS 45A.370, 45A.375, or 45A.380.
- (14) "Noncompetitive negotiation" means informal negotiation with one (1) or more vendor, contractor, or individual without advertisement or notice.
- (15) "Objective measurable criteria" means sufficient information in the invitation to bid as to weight and method of evaluation so that the evaluation may be determined with reasonable mathematical certainty. Criteria which are otherwise subjective, such as taste and appearance, may be established when appropriate.
- (16) "Person" means any business, individual, union, committee, club, or other organization or group of individuals.
- (17) "Procurement" means the purchasing, buying, renting, leasing, or otherwise obtaining any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (18) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.370, 45A.375, 45A.380, or 45A.385.
- (19) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (20) "Responsive bidder" means a person who has submitted a bid under KRS 45A.365 which conforms in all material respects to the invitation for bids, so that all bidders

may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

- (21) "Services" means the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product other than reports which are merely incidental to the required performance of service. It does not include labor contracts with employees of local public agencies.
- (22) "Shall" means imperative.
- (23) "Specifications" means any description of a physical or functional characteristic of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (24) "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.
- (25) "Supplies" means all property, including but not limited to leases on real property, printing, and insurance, except land or a permanent interest in land.
- (26) "Energy conservation measure" means a training program or facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:
 - (a) Insulation of the building structure or systems within the building;
 - (b) Storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;
 - (c) Automated or computerized energy control systems;
 - (d) Heating, ventilating, or air conditioning system modifications or replacements;
 - (e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;
 - (f) Energy recovery systems;
 - (g) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
 - (h) Energy, water, or wastewater conservation measures that provide long-term operating cost reductions or billable revenue increases;
 - (i) Any life safety measures that provide long-term operating cost reductions;
 - (j) Water and wastewater conservation measures, including plumbing fixtures and infrastructure;
 - (k) Equipment upgrades that improve the accuracy of billable revenue generating systems; or

- (l) Automated, electronic, or remotely controlled systems or measures that reduce direct personnel costs.
- (27) "Guaranteed energy savings contract" means a contract for the evaluation and recommendation of energy, water, and wastewater conservation measures and for implementation of one (1) or more of those measures. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make payments for the cost of the design, installation, and maintenance of energy, water, and wastewater conservation measures.
- (28) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy, water, and wastewater conservation measures and is determined to be qualified by the local public agency. The qualified provider shall be responsible for and shall provide the local public agency with the following information regarding guaranteed energy, water, and wastewater savings contracts:
 - (a) Project design and specifications;
 - (b) Construction management;
 - (c) Construction;
 - (d) Commissioning;
 - (e) On-going services as required;
 - (f) Measurement and verification of savings for guaranteed energy, water, and wastewater savings contracts; and
 - (g) Annual reconciliation statements as provided in KRS 45A.352(8).

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 163, sec. 1, effective June 20, 2005. -- Amended 2002 Ky. Acts ch. 346, sec. 12, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 120, sec. 12, effective July 15, 1998; and ch. 375, sec. 2, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 203, sec. 2, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 491, sec. 3, effective July 15, 1994. -- Amended 1980 Ky. Acts ch. 250, sec. 8, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 70, effective January 1, 1980.

45A.350 Repealed, 1984.

Catchline at repeal: Application.

History: Repealed 1984 Ky. Acts ch. 6, sec. 3, effective July 13, 1984. -- Amended 1980 Ky. Acts ch. 293, sec. 1, effective July 15, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 71, effective January 1, 1980.

45A.351 Declaration of public policy on preservation of Commonwealth's natural resources through energy efficiency.

Recognizing the need in the Commonwealth to preserve to the greatest extent possible natural resources within the Commonwealth which produce energy for the citizens, businesses, schools, and governments within the Commonwealth, it shall be the policy of the Commonwealth to preserve these natural resources by maximizing the use of energy efficiency measures in the construction, renovation, and maintenance of buildings owned by local public agencies and to encourage local public agencies to incorporate cost-effective energy efficiency measures into their buildings.

Effective: July 15, 1996

History: Created 1996 Ky. Acts ch. 203, sec. 1, effective July 15, 1996.

45A.352 Guaranteed energy savings contracts involving local public agencies.

- (1) A local public agency may enter into a guaranteed energy savings contract for innovative solutions for energy conservation measures. The local public agency shall submit a request for proposals. The request for proposals for competitive procurement of guaranteed energy savings contracts shall include the following:
 - (a) The name and address of the governmental unit;
 - (b) The name, address, title, and phone number of a contact person;
 - (c) Notice indicating that the local public agency is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract;
 - (d) The following evaluation criteria for assessing the proposals:
 1. Construction management capabilities;
 2. Technical approach to facilities included;
 3. Financial attributes, as defined by total cost of contract and guaranteed savings and provider's financial strength demonstrating ability to fulfill the guarantee term; and
 4. Provider's capability, personnel, track record, and demonstrated ability to accomplish the contract;
 - (e) The date, time, and place where proposals must be received;
 - (f) Any other stipulations and clarifications the local public agency may require; and
 - (g) An overview prepared by the local public agency stating goals or objectives specific to facility needs to be considered by the qualified providers who are responding to the request. Detailed scope of construction is not required.
- (2) Respondents to the request for proposal shall provide the following:
 - (a) A detailed list of the proposed energy conservation measures and the guaranteed savings which shall be supported with calculations. Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification methodologies listed in the United States Department of Energy's "Measurement and Verification Guideline for Federal Energy Projects" or in the "North American Energy Measurement and Verification Protocol." If due to existing data limitations or the nonconformance of specific project characteristics, none of the methods listed in either the United States Department of Energy's "Measurement and Verification Guideline for Federal Energy Projects" or in the "North American Energy Measurement and Verification Protocol" is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one (1) of the two (2);
 - (b) The estimated cost of the proposed energy conservation measures including engineering, construction, commissioning, measurement and verification, annual reconciliation statements, and required on-going services; and
 - (c) Proposed method and costs of financing.

- (3) The value for total cost of the contract minus the calculated savings from the energy conservation measures listed in the qualified provider's proposal, shall be within fifteen percent (15%) of the value for the total cost of the contract minus the calculated savings after the final contract has been negotiated. If the difference between the proposed and the final contract is not within fifteen percent (15%) and the local public agency and the qualified provider are unable to renegotiate the final contract to reconcile the difference between the proposed and final contract values, then the local public agency may:
 - (a) Stop negotiations with the current qualified provider; and
 - (b) Select an alternate provider.
- (4) The local public agency may, as a component of the request for proposal, solicit and negotiate additional maintenance services for the affected proposed energy conservation measures. Additional services shall be subject to budget appropriations on an annual basis and may be discontinued at any time over the guarantee period with no negative impact to the guaranteed savings contract.
- (5) The local public agency shall utilize the request for proposal process to enter into a guaranteed energy savings contract. The local public agency may, at its discretion, utilize a request for qualifications, provided that the local public agency solicits qualification statements from multiple potentially qualified providers. The local public agency shall use the qualification statements to select no fewer than two (2) providers and each provider shall then be subject to the request-for-proposal requirement provided in subsections (1) to (4) of this section.
- (6) The local public agency shall select the provider best qualified to meet its needs. The local public agency shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the name of the parties to the proposed contract, and the purpose of the contract. The public notice shall be made at least ten (10) days prior to the meeting. After reviewing the proposals, a local public agency may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount to be saved in either energy or operational costs plus capital cost avoidance within the term of the contract from the date of installation, if the recommendations in the proposal are followed.
- (7) The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy or operational costs savings plus capital cost avoidance will meet or exceed the costs of the energy conservation measures within the term of the contract. The qualified provider shall, on an annual basis, reimburse the local public agency for any shortfall in guaranteed energy savings projected in the contract. A qualified provider shall provide a sufficient bond to the local public agency for the installation and the faithful performance of all the measures included in the contract. The guaranteed energy savings contract may provide for payments over a period of time, not to exceed the term of the contract.
- (8) The qualified provider shall provide the local public agency with an annual reconciliation statement. The statement shall disclose any shortfalls or surplus

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

- (9) The use of capital cost avoidance shall be subject to the following restrictions:
 - (a) The amount expended shall not exceed fifty percent (50%) of the project cost; and
 - (b) Capital cost avoidance shall be restricted to payment for permanent equipment replacement as follows:
 - 1. Storm windows or doors, multiglazed windows or doors, additional glazing, and reduction in glass area;
 - 2. Replacement of heating, ventilating, or air conditioning major components or systems;
 - 3. New lighting fixtures where required to achieve Illuminating Engineering Society of North America (IES) standards, provided the existing light fixtures shall have been determined to be obsolete and incapable of achieving IES standards; and
 - 4. Life safety system replacements or upgrades which shall have been determined to be necessary to conform with existing state and local codes and standards.
- (10) The commissioner of education shall review, and approve or disapprove projects from local school districts relating to energy conservation measures under a guaranteed energy savings contract, on the basis of the following guidelines:
 - (a) The project design's compliance with technical, health, and safety standards as required by administrative regulation;
 - (b) The availability of general funds, capital outlay allotments under KRS 157.420 or local and state funds from the Facilities Support Program of Kentucky as provided by KRS 157.440, for projects that will use capital cost avoidance;
 - (c) The appropriate use of capital outlay allotments under KRS 157.420, local and state funds from the Facilities Support Program of Kentucky as provided by

KRS 157.440, for projects using capital cost avoidance, based on the project's compliance with the district's approved facility plan;

- (d) The funding capability of the school district; and
 - (e) The financing mechanism and proper financing documentation.
- (11) The request for proposal as provided in subsections (1) to (4) of this section shall be deemed to satisfy the requirements set out in KRS 162.070, and shall not be subject to an award determination based on the lowest competitive bid or a separate bidding process for each energy conservation measure listed in the proposal.
- (12) A guaranteed energy savings contract that does not involve construction or the installation of physical improvements shall not require the approval of the commissioner of education and shall not be subject to other requirements of this section.

Effective: June 26, 2007

History: Amended 2007 Ky. Acts ch. 122, sec. 3, effective June 26, 2007. -- Amended 1998 Ky. Acts ch. 375, sec. 3, effective July 15, 1998. -- Created 1996 Ky. Acts ch. 203, sec. 3, effective July 15, 1996.

Legislative Research Commission Note (6/26/2007). A manifest clerical or typographical error in this section has been corrected by the Reviser of Statutes under the authority of KRS 7.136.

45A.353 Extension of guaranteed energy savings contract -- Documentation of savings -- Lease-purchase agreements -- Exemption from debt limitations.

- (1) Guaranteed energy savings contracts may extend beyond the fiscal year in which they become effective. The local public agency shall include in its annual budget and appropriations act, for each subsequent fiscal year, any accounts payable under guaranteed energy savings contracts during the fiscal year.
- (2) The local public agency shall document the operational and energy cost savings and capital cost avoidance specified in the guaranteed energy savings contract and designate and appropriate that amount for an annual payment of the contract. If the annual energy and operational savings are less than projected under the guaranteed savings contract, the qualified provider shall pay the difference as provided for in KRS 45A.352.
- (3) Notwithstanding any other provisions of law to the contrary, a local public agency may finance the installation of energy conservation measures for its buildings through a lease-purchase agreement, bonds, or whichever brings the most economic value to the local public agency, subject to the local public agency's compliance with all other laws regarding approval of plans for additions, alterations, or renovations of its buildings.
- (4) The component which is guaranteed as energy savings and as operational savings shall be exempt from current or future debt limitations, except that capital cost avoidance, as defined in KRS 45A.345, shall be limited to current or future debt limitations.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 375, sec. 4, effective July 15, 1998. -- Created 1996 Ky. Acts ch. 203, sec. 4, effective July 15, 1996.

45A.355 Determinations -- Finality.

- (1) Every determination required by this code shall be in writing and based upon written findings of the public official making the determination. These determinations and written findings shall be retained in the official contract file.
- (2) The determinations required by KRS 45A.345 to 45A.460 shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

Effective: January 1, 1980

History: Created 1978 Ky. Acts ch. 110, sec. 72, effective January 1, 1980.

45A.360 Administrative regulations.

- (1) A local public agency may adopt regulations, not inconsistent with KRS 45A.345 to 45A.460, governing the following:
 - (a) Conditions and procedures for delegations of purchasing authority;
 - (b) Prequalification, suspension, debarment, and reinstatement of prospective bidders;
 - (c) Modification and termination of contracts;
 - (d) Conditions and procedures for the purchase of perishables and items for resale;
 - (e) Conditions, including emergencies, and procedures under which purchases may be made by means other than competitive sealed bids;
 - (f) Rejection of bids, consideration of alternate bids, and waiver of informalities in offers;
 - (g) Confidentiality of technical data and trade secrets information submitted by actual and prospective bidders or offerors;
 - (h) Partial, progressive, and multiple awards;
 - (i) Supervision of store rooms and inventories, including determination of appropriate stock levels and the management, transfer, sale, or other disposal of government-owned property;
 - (j) Definitions and classes of contractual services and procedures for acquiring them;
 - (k) Procedures for the verification and auditing of local public agency procurement records;
 - (l) Annual reports from those vested with purchasing authority as may be deemed advisable in order to insure that the requirements of this chapter are complied with; and
 - (m) Such other regulations as may be deemed advisable to carry out the purposes of KRS 45A.345 to 45A.460 or otherwise fulfill the local public agency's procurement responsibilities.
- (2) All local public agency ordinances and regulations pertaining to procurement, whether promulgated under KRS 45A.345 to 45A.460 or otherwise, shall be maintained by the local public agency and shall be available to the public upon request at a cost not to exceed the cost of reproduction.
- (3) Local school districts may adopt policies, not inconsistent with KRS 45A.345 to 45A.460, governing the conditions and procedures under which purchases of supplies may be made elsewhere. These policies shall include a provision that supplies purchased under this section shall meet any applicable contract specifications and not exceed two thousand five hundred dollars (\$2,500).

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 89, sec. 2, effective July 15, 1996. -- Amended 1980 Ky. Acts ch. 250, sec. 10, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 73, effective January 1, 1980.

45A.365 Competitive sealed bidding.

- (1) All contracts or purchases shall be awarded by competitive sealed bidding, except as otherwise provided by KRS 45A.370 to 45A.385 and for the purchase of wholesale electric power by municipal utilities as provided in KRS 96.901(1).
- (2) The invitation for bids shall state that the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids.
- (3) Adequate public notice of the invitation for bids shall be given prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication in a newspaper of general circulation in the local jurisdiction not less than seven (7) days before the date set for the opening of the bids. The public notice shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.
- (4) The bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.
- (5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price.
- (6) The local public agency may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 510, sec. 2, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 120, sec. 13, effective July 15, 1998. -- Created 1978 Ky. Acts ch. 110, sec. 74, effective January 1, 1980.

45A.370 Competitive negotiation.

- (1) A local public agency may contract or purchase through competitive negotiation upon a written finding that:
 - (a) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or
 - (b) Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or
 - (c) The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsible bidder is notified of the intention to negotiate and is given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsible bidder.
- (2) Proposals shall be solicited through public notice pursuant to KRS 45A.365(3) or any other means which can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The request for proposals shall indicate the factors to be considered in the evaluation and the relative importance of each factor.
- (3) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
 - (a) With respect to prices, where such prices are fixed by law or regulation except that consideration shall be given to competitive terms and conditions; or
 - (b) Where time of delivery or performance will not permit discussions; or
 - (c) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular supply, service, or construction item that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of the possibility that award may be made on the basis of initial offers.
- (4) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions. A request for proposals based on revised specifications or quantities shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a

compelling reason as determined in writing by the local public agency. The request for proposals shall state that an award is to be made without discussion except as herein provided.

- (5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the local public agency based upon the evaluation factors set forth in the request for proposals.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 120, sec. 14, effective July 15, 1998. -- Created 1978 Ky. Acts ch. 110, sec. 75, effective January 1, 1980.

45A.375 Negotiations after competitive sealed bidding when all bids exceed available funds -- Action when no bids received.

- (1) In the event that all bids submitted pursuant to competitive sealed bidding under KRS 45A.365 result in bid prices in excess of the funds available for the purchase, and the local public agency determines in writing:
 - (a) That there are no additional funds then available from any source so as to permit an award to the lowest responsive and responsible bidder; and
 - (b) The best interest of the local public agency will not permit the delay attendant to a resolicitation under revised specifications or revised quantities under competitive sealed bidding as provided in KRS 45A.365; then a negotiated award may be made as set forth in subsections (2) or (3) of this section.
- (2) Where there is more than one (1) bidder, competitive negotiations pursuant to KRS 45A.370 shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined in writing by the local public agency to be the lowest responsive and responsible bidders to the competitive sealed bid invitation. Such competitive negotiations shall be conducted under the following restrictions:
 - (a) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and
 - (b) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that award is to be made without discussions except as herein provided.
- (3) Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with KRS 45A.380.
- (4) Where, after invitation for bids has been made in accordance with KRS 45A.365 and no bids have been received from responsive and responsible bidders, the local public agency may proceed to acquire the supplies, services, or construction by noncompetitive negotiations in accordance with KRS 45A.380.

Effective: April 9, 1980

History: Amended 1980 Ky. Acts ch. 250, sec. 11, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 76, effective January 1, 1980.

45A.380 Noncompetitive negotiation.

A local public agency may contract or purchase through noncompetitive negotiation only when a written determination is made that competition is not feasible and it is further determined in writing by a designee of the local public agency that:

- (1) An emergency exists which will cause public harm as a result of the delay in competitive procedures; or
- (2) There is a single source within a reasonable geographical area of the product or service to be procured; or
- (3) The contract is for the services of a licensed professional, such as attorney, physician, psychiatrist, psychologist, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; or an artist such as a sculptor, aesthetic painter, or musician, provided, however, that this provision shall not apply to architects or engineers providing construction management services rather than professional architect or engineer services; or
- (4) The contract is for the purchase of perishable items purchased on a weekly or more frequent basis, such as fresh fruits, vegetables, fish or meat;
- (5) The contract is for replacement parts where the need cannot be reasonably anticipated and stockpiling is not feasible;
- (6) The contract is for proprietary items for resale;
- (7) In school districts the contract relates to an enterprise in which the buying or selling by students is a part of the educational experience;
- (8) The contract or purchase is for expenditures made on authorized trips outside of the boundaries of the local public agency;
- (9) The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids;
- (10) The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, and unemployment insurance; or
- (11) The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the local public agency.

Effective: April 9, 1980

History: Amended 1980 Ky. Acts ch. 250, sec. 12, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 77, effective January 1, 1980.

45A.385 Small purchases by local public agencies.

The local public agency may use small purchase procedures for any contract for which a determination is made that the aggregate amount of the contract does not exceed twenty thousand dollars (\$20,000) if small purchase procedures are in writing and available to the public.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 192, sec. 1, effective July 15, 2002. -- Amended 1990 Ky. Acts ch. 95, sec. 2, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 6, sec. 2, effective July 13, 1984. -- Amended 1980 Ky. Acts ch. 250, sec. 13, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 78, effective January 1, 1980.

45A.390 Cancellation.

An invitation for bid, a request for proposal or other solicitation may be canceled, or all bids or proposals may be rejected, if it is determined in writing that such action is in the best interest of the local public agency.

Effective: January 1, 1980

History: Created 1978 Ky. Acts ch. 110, sec. 79, effective January 1, 1980.

45A.395 Determination of responsibility -- Right of nondisclosure.

- (1) A written determination of responsibility of a bidder or offeror shall be made, based on a reasonable inquiry conducted by the local public agency. The unreasonable failure of a bidder or offeror to promptly supply information upon request may be grounds for a determination of nonresponsibility of such bidder or offeror.
- (2) A written determination of responsibility of a bidder or offeror shall not be made until the bidder or offeror provides the local public agency with a sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the bidder or offeror will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.
- (3) Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the local public agency without prior written consent of the bidder or offeror.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 288, sec. 19, effective July 14, 1992. -- Created 1978 Ky. Acts ch. 110, sec. 80, effective January 1, 1980.

45A.400 Prequalification of bidders and offerors.

Suppliers may be prequalified as responsible prospective contractors for particular types of supplies, services, and construction. No supplier shall be prequalified as a responsible prospective contractor until the supplier provides the local public agency with a sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the supplier will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists. Solicitation mailing lists of potential contractors of such supplies, services, and construction shall include, but shall not be limited to, such prequalified prospective contractors. Prequalification shall not foreclose a written determination:

- (1) Between the time of bid opening or receipt of offers in the making of an award that a prequalified prospective contractor is not responsible; or
- (2) That a prospective contractor who is not prequalified at the time of bid opening or receipt of offers is responsible.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 288, sec. 20, effective July 14, 1992. -- Created 1978 Ky. Acts ch. 110, sec. 81, effective January 1, 1980.

45A.405 Cost or pricing data.

- (1) A contractor shall submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:
 - (a) Pricing of any negotiated contract where the total contract price is expected to exceed fifty thousand dollars (\$50,000), or such lesser amount as may be prescribed by the local public agency; or
 - (b) Pricing of any change order or contract modification which is expected to exceed twenty-five thousand dollars (\$25,000), or such lesser amount as may be prescribed by the local public agency.
- (2) Any contract, change, or modification thereto under which a certificate is required shall contain a provision that the price to the local public agency, including profit or fee, shall be adjusted to exclude any significant sums by which the local public agency finds that such price was increased because the contractor-furnished cost or pricing data which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.
- (3) The requirement of this section need not be applied to contracts where the price negotiated is based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation, or in exceptional cases where it is determined in writing that the requirements of this section may be waived, and the reasons for such waiver are enumerated in the determination.

Effective: January 1, 1980

History: Created 1978 Ky. Acts ch. 110, sec. 82, effective January 1, 1980.

45A.410 Inspection of contractor's place of business -- Audit of records.

- (1) The local public agency may inspect the plant or place of business of a contractor or any subcontractor under any contract awarded or to be awarded by the local public agency.
- (2) The local public agency may audit the books and records of any person who has submitted cost or pricing data under KRS 45A.405, at any time until the period of record retention as set forth in subsection (3) of this section shall have expired. The right to audit hereunder shall only extend to those books and records reasonably connected with cost or pricing data submitted under KRS 45A.420, and such books and records shall be maintained by the contractor or subcontractor for the period specified in subsection (3) of this section.
- (3) The local public agency shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price type contract, provided, however, that this subparagraph shall not limit the right to audit as set forth in subsection (2) of this section. Such books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment under the prime contract and by the subcontractor for a period of five (5) years from the date of final payment under the subcontract.

Effective: January 1, 1980

History: Created 1978 Ky. Acts ch. 110, sec. 83, effective January 1, 1980.

45A.415 Specifications.

- (1) The local public agency shall use specifications which assure the maximum practicable competition to meet the agency's needs.
- (2) A specification which describes a product which is proprietary to one (1) company may be used only when:
 - (a) No other kind of specification is reasonably available to describe requirements; and
 - (b) Such specification includes language which specifically permits an equivalent product to be supplied. Such specification shall include a description of the salient characteristics of the product.

Effective: January 1, 1980

History: Created 1978 Ky. Acts ch. 110, sec. 84, effective January 1, 1980.

45A.420 Cooperative purchasing -- Price agreements with Commonwealth.

- (1) Any local public agency may enter into an agreement for cooperative purchasing with any other local public agency. When the contracting local public agency contracts for supplies, services or construction pursuant to KRS 45A.365, 45A.370, 45A.375, or 45A.380, all other parties to the agreement shall be deemed to have complied with the provisions of those sections.
- (2) Nothing in KRS 45A.345 to 45A.990 shall deprive a local public agency from negotiating with vendors for supplies where such supplies are the subject of a price agreement with the Commonwealth of Kentucky provided, however, that no contract executed under this section would authorize a price higher than is contained in the price agreement with the Commonwealth of Kentucky for such specific supplies.
- (3) Nothing in KRS 45A.345 to 45A.990 shall deprive a local school district from acquiring supplies outside of price agreements with the Commonwealth of Kentucky if the supplies meet the same specifications as the contract items and the supplies are purchased at a lower price than is contained in the price agreement with the Commonwealth of Kentucky for such specific supplies and the purchase does not exceed two thousand five hundred dollars (\$2,500).

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 89, sec. 3, effective July 15, 1996. -- Amended 1980 Ky. Acts ch. 250, sec. 14, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 85, effective January 1, 1980.

45A.425 Surplus or excess property.

- (1) A local public agency may sell or otherwise dispose of any personal property which is not needed or has become unsuitable for public use, or which would be suitable, consistent with the public interest, for some other use.
- (2) A written determination as to need of suitability of any personal property of the local public agency shall be made; and such determination shall fully describe the personal property; its intended use at the time of acquisition; the reasons why it is in the public interest to dispose of the item; and the method of disposition to be used.
- (3) Surplus or excess personal property as described in this section may be transferred, with or without compensation, to another governmental agency; or it may be sold at public auction or by sealed bids in accordance with KRS 45A.365.
- (4) In the event that a local public agency receives no bids for surplus or excess personal property, either at public auction or by sealed bid, such property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the local public agency. In such instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made. Any compensation resulting from the disposal of surplus or excess personal property shall be transferred to the general fund of the local public agency.

Effective: July 13, 1984

History: Amended 1984 Ky. Acts ch. 199, sec. 1, effective July 13, 1984. -- Created 1978 Ky. Acts ch. 110, sec. 86, effective January 1, 1980.

45A.430 Bid bonds.

- (1) Bidder security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the local public agency to exceed twenty-five thousand dollars (\$25,000). Bidder's security shall be a bond provided by a surety company authorized to do business in this Commonwealth, or the equivalent in cash, in a form satisfactory to the local public agency. Nothing herein prevents the requirement of such bonds on construction contracts under twenty-five thousand dollars (\$25,000) when the circumstances warrant.
- (2) Bidder's security shall be in an amount equal to at least five percent (5%) of the amount of the bid.
- (3) When the invitation for bids requires that bidder security be provided, noncompliance requires that the bid be rejected, provided, however, that the local public agency may set forth by regulation exceptions to this requirement in the event of substantial compliance.
- (4) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, provided that, if a bidder is permitted to withdraw his bid before award because of a mistake in the bid as allowed by law or regulation, no action shall be had against the bidder or the bidder's security.

Effective: January 1, 1980

History: Created 1978 Ky. Acts ch. 110, sec. 87, effective January 1, 1980.

45A.435 Contract performance and payment bonds.

- (1) When a construction contract is awarded in an amount in excess of twenty-five thousand dollars (\$25,000), the following bonds shall be furnished to the local public agency, and shall become binding on the parties upon the award of the contract:
 - (a) A performance bond satisfactory to the local public agency executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the local public agency, in an amount equal to one hundred percent (100%) of the contract price as it may be increased; and
 - (b) A payment bond satisfactory to the local public agency, executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the local public agency, for the protection of all persons supplying labor and material to the contractor or his subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the original contract price.
- (2) Nothing in this section shall be construed to limit the authority of the local public agency to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (1) of this section, including, but not limited to, bonds for the payment of taxes and unemployment insurance premiums.

Effective: January 1, 1980

History: Created 1978 Ky. Acts ch. 110, sec. 88, effective January 1, 1980.

45A.440 Bond forms, filings, and copies.

- (1) The local public agency may promulgate by regulation the form of the bonds required by KRS 45A.430 and 45A.435, or it may adopt the form established by the state under KRS 45A.180 to 45A.200.
- (2) The local public agency shall furnish a certified copy of a bond to any person who requests such and pays the reasonable fee for that copy. The copy shall be prima facie evidence of the contents, execution, and delivery of the original.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 55, sec. 10, effective July 14, 1992. -- Created 1978 Ky. Acts ch. 110, sec. 89, effective January 1, 1980.

45A.445 Definitions for terms used in KRS 45A.445 to 45A.460.

As used in KRS 45A.445 to 45A.460, unless the context indicates otherwise:

- (1) "Conspicuously" shall mean written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.
- (2) "Confidential information" shall mean any information which is available to an employee only because of his status as an employee of the local public agency and is not a matter of public knowledge or available to the public on request.
- (3) "Debarment" shall mean the disqualification of a person to receive invitations for bids or requests for proposals, or the award of a contract by the local public agency for a specified period of time.
- (4) "Financial interest" shall mean:
 - (a) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person has, within the past three (3) years, received or is presently or in the future entitled to receive more than one thousand dollars (\$1,000) per year, or its equivalent; or
 - (b) Ownership of more than a ten percent (10%) interest in any business; or
 - (c) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (5) "Gratuity" shall mean a payment, loan, subscription, advance, deposit of money, services, or anything of more than fifty dollars (\$50) value, present or promised, unless consideration of substantially equal or greater value is received.
- (6) "Immediate family" shall mean a spouse, children, grandchildren, parents, grandparents, brothers and sisters, and such other relatives as designated by the local public agency.
- (7) "Official responsibility" shall mean direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct local public agency actions.
- (8) "Suspension" shall mean the disqualification of any person to receive invitations for bids or requests for proposals, or to be awarded a contract by a local public agency for a temporary period, pending the completion of an investigation and any legal proceedings that may ensue.

Effective: April 9, 1980

History: Amended 1980 Ky. Acts ch. 250, sec. 15, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 90, effective January 1, 1980.

45A.450 Statement of public policy.

- (1) Public employment is a public trust.
- (2) It is the policy and purpose of KRS 45A.345 to 45A.460 to promote and balance the object of protecting government integrity and of facilitating the recruitment and retention of personnel needed by local public agencies by prescribing essential restrictions against conflict of interest without creating unnecessary barriers to public service and by facilitating development of fair and competitive access to local public agency purchasing by responsible contractors.
- (3) Employees must discharge their duties and responsibilities fairly and impartially. They should also maintain a standard of conduct that will inspire public confidence in the integrity of the government of all local public agencies.

Effective: January 1, 1980

History: Created 1978 Ky. Acts ch. 110, sec. 91, effective January 1, 1980.

45A.455 Conflict of interest -- Gratuities and kickbacks -- Use of confidential information.

- (1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:
 - (a) He, or any member of his immediate family has a financial interest therein; or
 - (b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
 - (c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.
- (3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.
- (5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

Effective: April 9, 1980

History: Amended 1980 Ky. Acts ch. 250, sec. 16, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 92, effective January 1, 1980.

45A.460 Recovery of value of anything transferred or received in breach of ethical standards.

- (1) The value of anything transferred or received in breach of the ethical standards of KRS 45A.345 to 45A.990 or regulations or rules issued thereunder by an employee or a nonemployee may be recovered from both the employee and the nonemployee.
- (2) Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the local public agency and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one (1) offending party shall not preclude recovery against other offending parties.

Effective: January 1, 1980

History: Created 1978 Ky. Acts ch. 110, sec. 93, effective January 1, 1980.