

AN ACT relating to state leases for real property.

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

➔Section 1. KRS 56.803 is amended to read as follows:

- (1) When an agency determines that it will need office or other space, the agency shall submit a request for the acquisition of the additional space to the Department for Facilities Management in the Finance and Administration Cabinet. Except in the case of an emergency as described at KRS 56.805(3), an agency shall submit its space request in writing to the department. In the case of an emergency, an agency shall communicate its space needs to the department pursuant to KRS 56.805(3) as soon as an agency knows that it will need the space. If the commissioner of the Department for Facilities Management determines that insufficient space has been allocated to the agency making the request and that it is appropriate to lease additional space for the agency making the request, the commissioner shall acquire the space required by lease as provided by KRS 43.050, 48.111, and 56.800 to 56.823.
- (2) The Department for Facilities Management shall review each agency space request to determine whether space suitable to meet the agency's reasonable needs may be available in a state-owned or occupied building. If it is determined that there is suitable space available in a state-owned or occupied building, the commissioner shall notify the agency. A copy of the notice shall be kept on file.
- (3) If it is determined that there is no suitable space available in a state-owned or occupied building, the department shall comply with the procedures set forth in this section in the leasing of space, except as otherwise provided in KRS 43.050, 48.111, and 56.800 to 56.823.
- (4) The department shall draw up general requirement specifications for the space required. These general requirement specifications shall not be changed except, at the discretion of the commissioner, when the lease process is initiated again

pursuant to paragraph (c) of subsection ~~(16)~~~~(15)~~ of this section or pursuant to paragraph (b) of subsection ~~(17)~~~~(16)~~ of this section. The general requirement specifications shall be kept on file.

- (5) (a) In soliciting the interest of lessors who have property to let in a county where space is sought, the department shall give adequate public notice to reasonably inform persons having property to let within the county of the type of space required, the general location of the property, and the ***minimum*** number of square feet needed. The notice may include posting on the Internet or newspaper advertisements. Each notice shall ***also*** contain ~~general~~ information concerning the agency ***minimum*** requirements for the space sought and shall state the last time, date, and place that written responses shall be received. When it is anticipated that a lease may be negotiated containing deviations or variations from the terms and conditions of the state standard lease form prescribed by the Division of Real Properties, within the department, any deviations or variations shall be stated in the notice.
- (b) The Department for Facilities Management may use any means available to notify landlords that a notice has been given.
- (6) A property owner, or his ***or her*** representative, shall respond in writing on or before the time and date designated in the notice and shall state in the writing the:
- (a)*** Type and location of the property;~~the~~
- (b)*** Name and address of the property owner;
- (c)*** ***Square footage of property;***
- (d)*** ***Response to the minimum requirements described in the notice;***~~;~~ and~~the~~
- (e)*** Date of availability of the property.
- (7)*** The department shall deal only with individuals who have submitted written responses:
- (a)*** On or before the time and date designated; ***and***

(b) That meet the minimum square footage and other minimum requirements

in the notice **described in subsection (5) if this section.**

~~(8)~~~~(7)~~ All written responses received on or before the time and date designated shall be opened or downloaded at the same time, publicly read or posted, and kept on file by the department.

~~(9)~~~~(8)~~ Within ten (10) business days of the opening of written responses, the department shall transmit general requirement specifications to each person who submitted a written response **that met the minimum square footage and other minimum requirements of the notice described in subsection (5) of this section** on or before the time and date designated. The same general requirement specifications shall be transmitted to each **qualifying** person. The department shall state whether a reverse auction will be used to determine any terms of the proposals and shall specify the procedures for the reverse auction. **The department shall notify all nonqualifying persons that their responses were nonqualifying, and of their right to examine the leasing records after the lease has been awarded.**

~~(10)~~~~(9)~~ After the general requirement specifications have been transmitted, except as provided in paragraph (a) of subsection ~~(14)~~~~(13)~~ of this section, the commissioner, and department employees under his **or her** supervision, may negotiate with persons who submitted **qualifying** written responses on or before the time and date designated. If in the course of negotiations, a person proposes terms and conditions of lease different from those contained in the state standard lease form which are determined to be in the Commonwealth's best interest to accept, but no mention of the acceptability thereof has been made in the notice given pursuant to subsection (5) of this section, all other persons who submitted **qualifying** written responses on or before the time and date designated shall be notified of the terms and conditions and shall be allowed to incorporate the terms and conditions in written **best and final offers**~~proposals~~ when submitted pursuant to subsection ~~(13)~~~~(12)~~ of this

section. A copy of each notice shall be kept on file.

~~(11)~~~~(10)~~ The department shall inspect each space proposed to be leased **that meets all the minimum requirements and specifications in the notice stated in subsection (5) of this section, and the general requirement specifications stated in subsection (9) of this section.** to determine its suitability to the reasonable needs of the agency for whose use the property is sought. The owner of the property, or the owner's representative, shall provide access to the property for the inspection. A report of the findings about each property inspected shall be submitted on a site evaluation form to the commissioner of the department. Completed site evaluation forms shall be kept on file.

~~(12)~~~~(11)~~ After the commissioner has reviewed the completed site evaluation forms, the commissioner shall inform each owner of property **inspected under subsection (11) of this section,** or his **or her** representative, of the steps necessary to bring the property up to general ~~and specific~~ requirement specifications **described in subsection (9) of this section.** The commissioner shall also invite each person to submit a written **best and final offer**~~proposal~~ on a form created by the Department for Facilities Management. A copy of the form shall be provided to each **best and final offeror**~~bidder~~. The department may require any terms of the **best and final offer**~~proposal~~ to be the subject of a reverse auction.~~[A written proposal shall constitute a best and final offer.]~~ The department shall not consider a written **best and final offer**~~proposal~~ unless it is submitted on a department form on or before the time and date designated.

~~(13)~~~~(12)~~ All written portions of the **best and final offers**~~proposals~~ **described in subsection (12) of this section** submitted on or before the time and date designated shall be opened at the same time, publicly identified by the name of the property owner and the location of the property, and kept on file.

~~(14)~~~~(13)~~ Except pursuant to paragraph (b) of subsection ~~(16)~~~~(15)~~ of this section,

when the requirements of paragraph (a) of this subsection shall not apply, from the time that written **best and final offers**~~[proposals]~~ are opened until the awarding of a lease, the department:

- (a) Shall not negotiate or agree to changes in the terms of written **best and final offers**~~[proposals]~~ except to correct technical errors;
- (b) Shall log in all contacts between department employees and any person with an interest in the awarding of a lease. The log shall state the time, date, place, and a summary of the substance of each contact. Each log entry shall be signed by the department employee who was contacted. After the lease is awarded, the log shall be kept as a department record.

~~(15)~~~~(14)~~ (a) The commissioner shall assess the **best and final offers submitted under subsection (13) of this section**~~[proposals]~~, taking into account factors including, but not limited to: consultation with the head of the agency for whose use the space is sought; the location and accessibility of the property to the public; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; any terms of the proposal determined through a reverse auction; and whether the property proposed is in ~~substantial~~ conformity with the general and specific requirement specifications **of subsections (5) and (9) of this section.**

- (b) The commissioner shall give preference to properties in areas which have received, within the previous five (5) year period, state community development funds for revitalization if properties are offered at a competitive rate and meet the provisions of paragraph (a) of this subsection.

~~(16)~~~~(15)~~ The commissioner, relying exclusively on his assessment made pursuant to subsection ~~(15)~~~~(14)~~ of this section, shall:

- (a) Choose the best offer~~[proposal]~~ in the interest of the Commonwealth;
- (b) Be permitted to negotiate with a potential lessor if he or she was the only qualifying responsive and responsible potential lessor who submitted a best and final offer~~[proposal]~~; or
- (c) Except as provided in paragraph (b) of this subsection, reject all best and final offers~~[proposals]~~ when none is in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (15)~~[(14)]~~ of this section and may, at his or her discretion, initiate the lease process again.

(17)~~[(16)]~~ (a) The commissioner shall award or decline to award a lease to the potential lessor who submitted the best offer~~[proposal]~~ pursuant to paragraph (a) of subsection (16)~~[(15)]~~ of this section or who negotiated with the commissioner pursuant to paragraph (b) of subsection (16)~~[(15)]~~ of this section. However, the commissioner shall not award a lease to a potential lessor who negotiated with the commissioner pursuant to paragraph (b) of subsection (16)~~[(15)]~~ of this section if that potential lessor's offer~~[proposal]~~ after negotiations was not in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (15)~~[(14)]~~ of this section, and the commissioner shall not award a lease to a person other than a potential lessor prescribed in this paragraph.

- (b) If the commissioner declines to award a lease, he may, at his or her discretion, initiate the lease process again.

(18)~~[(17)]~~ The commissioner shall put in writing the justifications for his decisions made pursuant to subsections (16)~~[(15)]~~ and (17)~~[(16)]~~ of this section. This writing shall be kept on file.

(19)~~[(18)]~~ The commissioner, all department employees under the commissioner's supervision who performed a site evaluation or negotiated a lease agreement under this section, the head of the agency that will occupy the leased space, and all agency

employees who were directly involved with a site evaluation or lease negotiations shall sign separate certificates, devised by the commissioner, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of KRS 56.800 to 56.823. The Department for Facilities Management shall keep the certificates on file and shall inform state agencies of the legal requirements concerning lease certification on an annual basis.

~~(20)~~~~(19)~~ The department shall notify each person who submitted a written ***best and final offer***~~[response]~~ ***under subsection (12) of this section***~~[on or before the time and date designated in the public notice pursuant to subsection (6) of this section]~~, but who was not awarded the lease, of the selected property to be leased, and that the person has a right to examine the leasing records relevant to the lease that was awarded. If the Capital Projects and Bond Oversight Committee, pursuant to KRS 56.823(2), will review the awarding of a lease, each notice shall state that fact. A copy of each notice shall be kept on file.

~~(21)~~~~(20)~~ Prior to finalization of the lease, the department or the leasing agency shall inspect the property to ensure that any changes described in subsection ~~(12)~~~~(11)~~ of this section necessary to bring the property up to specifications have been completed in a manner satisfactory to the agency or department. At the conclusion of the inspection, the owner shall be advised in writing by the department either that the property is approved for occupancy and the lease may be finalized, or that there remain changes to be completed or corrected before the lease may be finalized.

➔Section 2. KRS 56.805 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 56.803(4) to ~~(20)~~~~(19)~~, this section shall govern the leasing of space in a building owned by the federal government, by a political subdivision or municipal corporation of the Commonwealth, or if the space is required as the result of a bona fide emergency.

- (2) When the commissioner of the Department for Facilities Management determines that it is in the Commonwealth's best interest for him or her to negotiate a lease in a building owned by the federal government or by a political subdivision or municipal corporation of the Commonwealth, he or she shall do so. The commissioner shall state in writing his or her justifications for the determination, and the writing shall be kept on file.
- (3) A bona fide emergency shall ~~be deemed to~~ exist only in cases where the head of an agency already occupying leased premises certifies in writing to the Secretary of the Finance and Administration Cabinet that:
- (a) The leased premises have been damaged or destroyed by fire, windstorm, or other casualty;~~;~~
 - (b) The leased premises are found to be in violation of administrative regulations promulgated by~~;~~ the Kentucky Occupational Safety and Health Review Commission, and the violations cannot be remedied within thirty (30) days after the issuance of a citation to the lessor of the premises;~~;~~
 - (c) The leased premises are found to be unsafe or unfit for occupancy due to any condition constituting a violation or infraction of fire or health laws and administrative regulations and cannot be made safe within a reasonable time;~~;~~
 - (d)
 1. The necessity for leased premises arises from the enactment or adoption of federal legislation or administrative regulations or state legislation, the effective date of which mandates commencement of programs to be housed in leased space before there is time for space to be acquired by public notice; and
 2. The agency's functions will be impaired or have to be discontinued unless other quarters to house the agency's operations are immediately located and occupied by the agency; or

- (e) An emergency, other than one described in paragraph (a), (b), (c), or (d) of this subsection, exists, and the Governor has given his ***or her*** express written authorization of an emergency lease. The certificate shall state the details of the emergency, and the head of the agency shall include the Governor's written authorization along with the certificate sent to the Secretary of Finance and Administration Cabinet.
- (4) Upon receipt by the Finance and Administration Cabinet of the certificate, written pursuant to paragraph (a), (b), (c), or (d) of subsection (3) of this section, or the certificate and the Governor's authorization written pursuant to paragraph (e) of subsection (3) of this section, the Department for Facilities Management shall take ~~the~~ action to locate and negotiate for the lease of space meeting the certifying agency's reasonable needs. As appropriate, the department shall keep the certificate or the certificate and the Governor's written authorization on file.

➔Section 3. KRS 56.823 is amended to read as follows:

- (1) The Finance and Administration Cabinet shall report information on leases and lease modifications awarded pursuant to KRS 43.050, 48.111, and 56.800 to 56.823 to the Capital Projects and Bond Oversight Committee as required by this section.
- (2) Any lease awarded pursuant to KRS 56.803, including all lease renewals except automatic renewals permitted under KRS 56.806(1), for which the annual rental cost will exceed one hundred thousand dollars (\$100,000) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall include:
 - (a) The name of the agency that will occupy the premises;
 - (b) The name of the lessor;
 - (c) The terms of the lease;
 - (d) The reason for the lease;
 - (e) A copy of the writing required by ***subsection (18) of Section 1 of this***

Act~~[KRS 56.803(17)]~~;

- (f) A statement as to whether the Finance and Administration Cabinet complied with the requirements established in KRS 43.050, 48.111, and 56.800 to 56.823. If the cabinet has not complied with any requirement, the cabinet shall explain why;
 - (g) An explanation of why the Finance and Administration Cabinet chose this lessor over his or her competition; and
 - (h) A cost comparison between the cost per square foot of the leased space and the average cost per square foot of comparable space the state leases in the same county. If there are factors which make the comparison misleading, the cabinet shall inform the committee of these factors.
- (3) Any lease that incorporates a lease-purchase pursuant to KRS 56.806(5) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution.
- (a) If a lease is awarded pursuant to KRS 56.803, the report shall include the:
 - 1. Fair market value of the property as of the time the lessor and the Commonwealth entered into the lease;
 - 2. Name and qualifications of each of the two (2) real estate appraisers who determined the fair market value;
 - 3. Appraisal technique each appraiser employed; and
 - 4. Information required by subsection (2) of this section.
 - (b) 1. Except as provided in subparagraph 2. of this paragraph, if a lease is awarded pursuant to KRS 56.805(2), the report shall include the:
 - a. Fair market value of the property at the time the lessor and the Commonwealth entered into the lease;
 - b. Name and qualifications of each of the two (2) real estate appraisers who determined the fair market value;

- c. Appraisal technique each appraiser employed;
 - d. Information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section; and
 - e. Procedure the department followed to obtain the lease.
 2. If the federal government is the lessor, the report shall include the substance of the lease-purchase.
- (4) Any lease awarded pursuant to KRS 56.805(2), including all lease renewals except automatic renewals permitted under KRS 56.806(1), for which the annual rental cost will exceed one hundred thousand dollars (\$100,000) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall state the information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section and the procedure the department followed to obtain the lease. The report shall also include a copy of the writing required by KRS 56.805(2).
- (5) Any lease awarded as the result of an emergency described at KRS 56.805(3) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution. The report shall include a copy of the certificate or the certificate and the Governor's authorization, as appropriate, kept on file pursuant to KRS 56.805(4) and shall further state:
 - (a) The information required by paragraphs (a), (b), (f), (g), and (h) of subsection (2) of this section;
 - (b) The terms of lease before and after the emergency; and
 - (c) The procedure the department followed after the emergency to obtain a lease.
- (6) Any built-to-suit lease awarded pursuant to KRS 56.8169 shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is reached~~arrived at~~ but before execution. The report shall state the information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this

section. The report shall also include:

- (a) The written finding and Governor's approval required by KRS 56.8161;
 - (b) The selection committee's ranking of firms required by KRS 56.8169(15)(a);
 - (c) The written reason for requesting best-and-final offers, if best-and-final offers are requested, made pursuant to KRS 56.8169(16)(b);
 - (d) The selection committee's selection of the best best-and-final offer, if best-and-final offers are requested, made pursuant to KRS 56.8169(16)(d);
 - (e) The certificates signed pursuant to KRS 56.8171(2); and
 - (f) The report prepared by the employee of the Auditor of Public Accounts pursuant to KRS 56.8171(3).
- (7) If the Finance and Administration Cabinet decides to exercise an option to purchase pursuant to KRS 56.806(4), the cabinet shall report to the Capital Projects and Bond Oversight Committee after the decision is reached but before the purchase occurs. The report shall include the:
- (a) Fair market value of the property;
 - (b) Option price;
 - (c) Name and qualifications of each of the two (2) real estate appraisers who set the fair market value;
 - (d) Appraisal technique each appraiser employed; and
 - (e) Rent paid by the Commonwealth prior to the exercise of the option.
- (8) (a) When, pursuant to KRS 56.806(5)(a), the Finance and Administration Cabinet attempts to complete a lease-purchase through lease payments totally amortizing the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease, the cabinet shall report to the Capital Projects and Bond Oversight Committee no more than ninety (90) days before the final lease payment. The report shall include the:
- 1. Fair market value of the property at the time the lessor and the

- Commonwealth entered into the lease;
2. Name and qualifications of each of the two (2) real estate appraisers who set the fair market value;
 3. Appraisal technique each appraiser employed; and
 4. Rent paid by the Commonwealth toward the purchase.
- (b) When, pursuant to KRS 56.806(5)(b), the Finance and Administration Cabinet attempts to complete a lease-purchase, the cabinet shall report to the Capital Projects and Bond Oversight Committee no more than ninety (90) days before the final lease payment. The report shall include the terms of the lease purchase.
- (9) When, pursuant to KRS 56.806(5), the Finance and Administration Cabinet decides to attempt to complete a lease-purchase prior to the total amortization, through lease payments, of the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease, the cabinet shall report to the Capital Projects and Bond Oversight Committee after the decision is reached but before the purchase occurs. The report shall state the information required by paragraph (a) or (b) of subsection (8) of this section as appropriate. The report shall also include the sum of money that must be paid in addition to rent paid, in order to complete the purchase.
- (10) If the Finance and Administration Cabinet, pursuant to KRS 56.806(5), includes in a lease the lease-purchase of the leased property and later~~[thereafter]~~ becomes aware that a purchase will not be achieved, within thirty (30) days after the cabinet becomes aware, it shall notify the Capital Projects and Bond Oversight Committee of the circumstances preventing the purchase.
- (11) (a) Except in the case of an emergency as provided in paragraph (b) of this subsection, any modification to an existing lease, made pursuant to KRS 56.813, that is less than fifty thousand dollars (\$50,000) shall be reported to

the Capital Projects and Bond Oversight Committee within thirty (30) days after execution, and any modification to an existing lease, made pursuant to KRS 56.813, that is fifty thousand dollars (\$50,000) or more shall be reported to the Capital Projects and Bond Oversight Committee before execution. In either case, the report shall consist of:

1. The terms of the lease before and after modification;
 2. The reason for the modification;
 3. The name of the lessor;
 4. Any comments received from the public pursuant to KRS 56.813(4); and
 5. A statement as to whether the Finance and Administration Cabinet complied with the requirements in KRS 56.813. If the cabinet has not complied with any requirement, the cabinet shall explain why.
- (b) Any modification to an existing lease which is required because of an emergency as described at KRS 56.805(3) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution. The report shall include a copy of the certificate or the certificate and the Governor's authorization, as appropriate, kept on file pursuant to KRS 56.805(4) and shall further state:
1. The terms of the lease before and after modification;
 2. The name of the lessor;
 3. Any comments received from the public pursuant to KRS 56.813(4); and
 4. A statement that the Finance and Administration Cabinet complied with the requirements in KRS 56.805(3) and (4) and in KRS 56.813. If the cabinet has not complied with any requirement, the cabinet shall explain why.