

1 AN ACT relating to the Kentucky Model Procurement Code.

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

3 ➔Section 1. KRS 45A.030 is amended to read as follows:

4 As used in this code, unless the context requires otherwise:

- 5 (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint  
6 stock company, joint venture, or any other legal entity through which business is  
7 conducted;
- 8 (2) "Change order" means a written order signed by the purchasing officer, directing the  
9 contractor to make changes that the changes clause of the contract authorizes the  
10 purchasing officer to order without the consent of the contractor;
- 11 (3) "Chief purchasing officer" means the secretary of the Finance and Administration  
12 Cabinet, who shall be responsible for all procurement of the Commonwealth except  
13 as provided by KRS Chapters 175, 175B, 176, 177, and 180;
- 14 (4) "Construction" means the process of building, altering, repairing, improving, or  
15 demolishing any public structures or buildings, or other public improvements ~~of~~  
16 ~~any kind~~ to any public real property. It does not include the routine maintenance of  
17 existing structures, buildings, or real property;
- 18 (5) "Construction manager-agency" means services to assist the purchasing agency  
19 manage construction that are procured through a contract that is qualifications-  
20 based;
- 21 (6) "Construction management-at-risk" means a project delivery method in which the  
22 purchasing officer enters into a single contract with an offeror that assumes the risk  
23 for construction at a contracted guaranteed maximum price as a general contractor,  
24 and provides consultation and collaboration regarding the construction during and  
25 after design of a capital project. The contract shall be subject to the bonding  
26 requirements of KRS 45A.190;
- 27 (7) "Construction manager-general contractor" means a project delivery method in

1       which the purchasing officer enters into a single contract with an offeror to provide  
2       preconstruction and construction services. During the preconstruction phase, the  
3       successful offeror provides design consulting services. During the construction  
4       phase, the successful offeror acts as general contractor by:

- 5       (a) Contracting with subcontractors; and
- 6       (b) Providing for management and construction at a fixed price with a completion  
7       deadline;

8       (8) "Contract" means all types of state agreements, including grants and orders, for the  
9       acquisition, purchase, or disposal of supplies, services, construction, or any other  
10      item. It includes: awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee,  
11      contingency fee, or incentive type; contracts providing for the issuance of job or  
12      task orders; leases; letter contracts; purchase orders; public-private partnership  
13      agreements; and insurance contracts except as provided in KRS 45A.022. It  
14      includes supplemental agreements with respect to any of the foregoing;

15      (9) "Contract modification" means any written alteration in the specifications, delivery  
16      point, rate of delivery, contract period, price, quantity, or other contract provisions  
17      of any existing contract, whether accomplished by unilateral action in accordance  
18      with a contract provision or by mutual action of the parties to the contract. It  
19      includes bilateral actions, such as supplemental agreements, and unilateral actions,  
20      such as change orders, administrative changes, notices of termination, and notices  
21      of the exercise of a contract option;

22      (10) "Contractor" means any person having a contract with a governmental body;

23      (11) "Data" means recorded information, regardless of form or characteristic;

24      (12) "Design-bid-build" means a project delivery method in which the purchasing officer  
25      sequentially awards separate contracts, the first for architectural, engineering, or  
26      engineering-related services to design the project and the second for construction of  
27      the capital project according to the design. The contract shall be subject to the

- 1 bonding requirements of KRS 45A.185;
- 2 (13) "Design-build" means a project delivery method in which the purchasing officer  
3 enters into a single contract for design and construction of a capital project. The  
4 contract shall be subject to the bonding requirements of KRS 45A.190;
- 5 (14) "Designee" means a duly authorized representative of a person holding a superior  
6 position;
- 7 (15) "Document" means any physical embodiment of information or ideas, regardless of  
8 form or characteristic, including electronic versions thereof;
- 9 (16) "Employee" means an individual drawing a salary from a governmental body,  
10 whether elected or not, and any nonsalaried individual performing personal services  
11 for any governmental body;
- 12 (17) "Governmental body" means any department, commission, council, board, bureau,  
13 committee, institution, legislative body, agency, government corporation, or other  
14 establishment of the executive or legislative branch of the state government;
- 15 (18) "Meeting" means all gatherings of every kind, including video teleconferences;
- 16 (19) "Negotiation" means contracting by either the method set forth in KRS 45A.085,  
17 45A.090, or 45A.095;
- 18 (20) "Person" means any business, individual, organization, or group of individuals;
- 19 (21) "Private partner" means any entity that is a partner in a public-private partnership  
20 other than:
- 21 (a) The Commonwealth of Kentucky, or any agency or department thereof;
- 22 (b) The federal government;
- 23 (c) Any other state government; or
- 24 (d) Any agency of a state, federal, or local government;
- 25 (22) "Procurement" means the purchasing, buying, renting, leasing, or otherwise  
26 obtaining of any supplies, services, or construction. It includes all functions that  
27 pertain to the procurement of any supply, service, or construction item, including

- 1 description of requirements, selection and solicitation of sources, preparation and  
2 award of contract, and all phases of contract administration;
- 3 (23) "Public-private partnership" means a project delivery method for construction or  
4 financing of capital projects, as defined in KRS 45.750, or procurement of services,  
5 pursuant to a written public-private partnership agreement entered into pursuant to  
6 KRS 45A.077 and administrative regulations promulgated thereunder, between:
- 7 (a) At least one (1) private partner; and  
8 (b) The Commonwealth of Kentucky, or any agency or department thereof;
- 9 (24) "Purchase request" or "purchase requisition" means that document whereby a using  
10 agency requests that a contract be obtained for a specified need, and may include,  
11 but is not limited to, the technical description of the requested item, delivery  
12 schedule, transportation, criteria for evaluation of solicitees, suggested sources of  
13 supply, and information supplied for the making of any written determination and  
14 finding required by KRS 45A.025;
- 15 (25) "Purchasing agency" means any governmental body that is authorized by this code  
16 or its implementing administrative regulations or by way of delegation from the  
17 chief purchasing officer to contract on its own behalf rather than through the central  
18 contracting authority of the chief purchasing officer;
- 19 (26) "Purchasing officer" means any person authorized by a governmental body in  
20 accordance with procedures prescribed by administrative regulations to enter into  
21 and administer contracts and make written determinations and findings with respect  
22 thereto. The term includes an authorized representative acting within the limits of  
23 authority;
- 24 (27) "Services" means the rendering by a contractor of its time and effort rather than the  
25 furnishing of a specific end product, other than reports that are merely incidental to  
26 the required performance of services;
- 27 (28) "Supplemental agreement" means any contract modification that is accomplished by

- 1           the mutual action of the parties;
- 2   (29) "Supplies" means all property, including but not limited to leases of real property,  
3       printing, and insurance, except land or a permanent interest in land;
- 4   (30) "Using agency" means any governmental body of the state that utilizes any supplies,  
5       services, or construction purchased under this code;
- 6   (31) "Video teleconference" means one (1) meeting, occurring in two (2) or more  
7       locations, where individuals can see and hear each other by means of video and  
8       audio equipment; and
- 9   (32) "Writing" or "written" means letters, words, or numbers, or their equivalent, set  
10      down by handwriting, typewriting, printing, photostating, photographing, magnetic  
11      impulse, mechanical or electronic recording, or other form of data compilation.