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Notice Regarding Citation of these Laws

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The Kentucky "Little Miller Act"

Kentucky Revised Statutes, Chapter 45A, Kentucky Model Procurement Code, sections 45A.185, 45A.190, 45A.195, 45A.225 through 45A.265, and 45A.430 through 45A.440

See also:

Kentucky Revised Statutes, Title XXVII, Chapter 341, Unemployment Compensation, section 341.317

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Kentucky Revised Statutes, Title VI, Financial Administration, Chapter 45A, Kentucky Model Procurement Code

§ 45A.185 Bid bonds.

- (1) Bidder security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Commonwealth to exceed forty thousand dollars (\$40,000). 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 Commonwealth. Nothing herein prevents the requirement of such bonds on construction contracts under forty thousand dollars (\$40,000) 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 secretary of the Finance and Administration Cabinet 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.

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§ 45A.190 Performance bond and payment bond -- Recommendations on whether performance bond should be required -- Audit of contract performance -- Release from performance bond.

- (1) As used in this section, "agency contract administrator" means the state agency employee responsible for the administration of a contract.
- (2) When a construction contract is awarded in an amount in excess of forty thousand dollars

(\$40,000), the following bonds shall be furnished to the Commonwealth, and shall be binding on the parties upon the award of the contract:

- (a) A performance bond satisfactory to the Commonwealth executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the Commonwealth, 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 Commonwealth executed by a surety company authorized to do business in the Commonwealth, or otherwise supplied, satisfactory to the Commonwealth, 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.
- (3) When any contract in an amount in excess of forty thousand dollars (\$40,000) for commodities, supplies, equipment, or services of any kind, or when a contract for construction services costing forty thousand dollars (\$40,000) or less is proposed for presentation to vendors or contractors, the agency contract administrator shall evaluate whether a performance bond should be required in the procurement document, and make his recommendation to the purchasing agency. The agency contract administrator shall note the reason that a performance bond is or is not recommended and his notation shall be a part of the permanent record relating to the contract. If a performance bond is required, the requirement shall be included in the invitation to bid, request for proposal, or other procurement document. The agency contract administrator shall make audits of the performance of contracts upon completion of one-third (1/3) of the contract and upon completion of two-thirds (2/3) of the contract. For contracts taking longer than one (1) year to complete, audits of performance shall be conducted at least annually. Before a vendor is released from a performance bond, the agency contract administrator shall review the audits of performance, make a final performance review, and promptly determine whether, in his or her opinion, the vendor has fully complied with the terms of the contract. The opinion of the agency contract administrator shall be made in writing or electronically, set forth the reasons for his or her opinion regarding compliance or noncompliance, and be signed by the agency contract administrator. This opinion may have an electronic signature. The using agency head shall, after consideration of the performance audits, the final performance review, and the opinion of the agency contract administrator regarding compliance or noncompliance, determine whether to recommend to the purchasing agency that the performance bond be released or whether a claim should be made against the performance bond. This determination of the using agency head shall be in writing, signed by the using agency head, and forwarded to the purchasing agency. This determination may have an electronic signature and be transmitted electronically. If the recommendation of the using agency is not followed by the purchasing agency, the purchasing agency shall place a statement in the file explaining why it is not followed.
- (4) Nothing in this section shall be construed to limit the authority of the Commonwealth to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (2) or (3) of this section.

§ 45A.195 Bond forms.

- (1) The secretary of the Finance and Administration Cabinet shall promulgate by regulation the form of the bonds required by KRS 45A.180 to 45A.200.
- (2) The purchasing agency shall furnish a certified copy of a bond to any person who requests a copy and pays a reasonable fee for the copy. The copy shall be prima facie evidence of the

contents, execution, and delivery of the original.

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§ 45A.225 Definitions and applicability.

- (1) For purposes of KRS 45A.225 to 45A.290, court means the court of this Commonwealth which would have original jurisdiction over the action if it were between private citizens of this Commonwealth; and in the event of an appeal from such a court, the court which would have jurisdiction over such an appeal if the action were between private citizens of this Commonwealth.
- (2) KRS 45A.225 to 45A.290 apply only to each contract solicited or entered into after January 1, 1979.

§ 45A.230 Authority of secretary to settle claims.

Prior to the institution of any action in a court concerning any contract, claim, or controversy, the secretary of the Finance and Administration Cabinet is authorized, subject to any limitations or conditions imposed by regulations, to settle, compromise, pay, or otherwise adjust the claim by or against, or controversy with, a contractor relating to a contract entered into by the Finance and Administration Cabinet on behalf of the Commonwealth or any state agency, including a claim or controversy based on breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission, but excluding any claim or controversy involving penalties or forfeitures prescribed by statute or regulation where an official other than the secretary of the Finance and Administration Cabinet is specifically authorized to settle or determine such controversy.

§ 45A.235 Action on contract claims or controversies.

This section shall apply to a claim or controversy arising under contracts between the Commonwealth and its contractors. If such a claim or controversy is not resolved by mutual agreement, the secretary of the Finance and Administration Cabinet, or his designee, shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the contractor. The decision shall be final and conclusive unless fraudulent, or unless the contractor sues pursuant to KRS 45A.245. If the secretary of the Finance and Administration Cabinet does not issue a written decision within one hundred and twenty (120) days after written request for a final decision, or within such longer period as might be established by the parties to the contract in writing, then the contractor may proceed as if an adverse decision had been received.

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45A.260 Limitations on claims.

- (1) Any claim arising from a construction contract executed and administered by the Transportation Cabinet pursuant to the provisions of KRS Chapters 175, 176, 177 and 180 shall be commenced in Franklin Circuit Court within one (1) year from the time the Commonwealth has determined final pay quantities and issues a final pay estimate to the contracting party, notifying him of its final determination, or from the receipt of a final adverse decision from the Commonwealth, whichever occurs later.
- (2) Any other claim shall be commenced in Franklin Circuit Court within one (1) year from the date of completion specified in the contract.

§ 45A.265 One recovery only.

No person, firm, or corporation shall be permitted more than one (1) money recovery upon a claim for the enforcement of or for breach of contract with the Commonwealth.

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§ 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.

§ 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.

§ 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.

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Kentucky Revised Statutes, Title XXVII, Labor and Human Rights, Chapter 341, Unemployment Compensation

§ 341.317 Bond of public works contractor.

- (1) Before any contract, exceeding two thousand dollars (\$2,000) in amount, is awarded to any person for the construction, alteration, or repair of any public building or public work of the Commonwealth of Kentucky, or any subdivision, county or municipality thereof, such person shall furnish to the contracting agency, county or municipality a payment bond with satisfactory surety, which shall become binding upon the award of the contract to such person, to assure the payment of all contributions under this chapter incurred by such person incident to his performance of such contract.
- (2) Nothing in this section shall be construed to limit the authority of any contracting agency, county or municipality to require such other bonds or security as might be elsewhere authorized or deemed desirable.

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