

STATEMENT OF CONSIDERATION

Relating to 702 KAR 4:160 Capital Construction Process

Kentucky Department of Education

Amended After Comments

- (1) The public hearing on 702 KAR 4:160 scheduled for April 24, 2013 at 2:00 p.m. in the State Board Room, Kentucky Department of Education was cancelled; however, written comments were received during the public comment period.
- (2) The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Robert Tarvin, Executive Director	School Facilities Construction Commission (SFCC)
Ron Wolf, Director of External Relations	Associated General Contractors of Kentucky (AGC)

- (3) The following people from the promulgating administrative body attended this public hearing or responded to the written comments:

<u>Name and Title</u>
Kevin C. Brown, Associate Commissioner and General Counsel
Hiren Desai, Associate Commissioner
Kay Kennedy, Director
Greg Dunbar, Branch Manager
Tim Lucas, Architect / Planner
Sherri Craig, Resource Management Analyst
Amy Peabody, Assistant General Counsel
Paige Patterson-Grant, Project Manager

Summary of Comments and Responses

- 1) Subject Matter: Major renovation definition
 - a) Comment: Dr. Tarvin (SFCC) wrote that the change to the definition of major renovation should not be made. The updated definition allows for a minimum of twenty years shall have passed for a facility to be qualified for a major renovation. This is a change from thirty years as a minimum amount of time to have passed. He states that the current definition has served the state system well for quite some time

and has support within national facility professional groups. The proposed change from thirty years to twenty years will automatically, unnecessarily drive up the “facility unmet need” statewide when calculating the SFCC’s offers of assistance. Moreover, he fears that this change would also subtly leave a lack of maintenance motive within districts that our public taxpayers complain is missing with some of our schools. He states that this change is not needed and will only serve to increase facility costs statewide for the taxpayers.

- b) Response: A change was made as a result of this comment. The KDE Facilities Branch analyzed recent construction projects and the impact to the need/unmet need calculations in relation to decreasing the number of years needed to pass for a major renovation to be undertaken. The results are as follows and support Dr. Tarvin’s comment to change the number of years back to the 2007 definition of thirty years.
- Of the \$4,300,000,000 Need noted in 2011 about half or \$2,122,000,000 was attributed to renovation. This would have significant fiscal impact, therefore KDE will maintain the 30 year time period. Districts can utilize the waiver process defined in KRS 156.072.

2) Subject Matter: Model program space percentages

- a) Comment: Dr. Tarvin (SFCC) wrote that the proposed changes to increase the elementary school gross square footage from 110% to 115% and middle and high schools gross square footage from 115% to 120% should not be made. The percentages for the model program space were put in place in 2007 in an attempt to get control of what several legislators during committee meetings critically referred to as “Taj Mahal” buildings. At that time the change was based on a review of several years of data on the actual size of new buildings within the state. The proposed amendment should also be viewed in terms of the equity that is required in our school system. Allowing more wealthy districts to build larger facilities because they can is not in concurrence with the 1989 court case *Rose v. County for Better Education*. This change would just create more facility inequity across the Commonwealth that can and should be avoided.
- b) Response: No changes have been made as a result of this comment. The Department of Education accepts the 2010-211 Facilities Work Group (consisting of superintendents, district facility directors, and architects) recommendation to increase the percentage definition of 110% to 115% for elementary schools and 115% to 120% for middle and high schools. It is important to note that, as part of this feedback process, even larger changes to the percentages were discussed; however, the 5% increase recognizes the need for greater flexibility across the state –

as expressed by multiple districts – without materially jeopardizing the core principles of equity and access supported by KERA.

3) Subject Matter: Contract documents definition

- a) Comment: Mr. Wolf (AGC) wrote that Contract documents definition was deleted. He wrote that some members of AGC feel that this could be a mistake. In addition, he wrote that some members feel “Contract Documents” is better terminology and more customary in the industry than “Construction Documents”.
- b) Response: A change was made as a result of this comment. The term construction documents in the capital construction process regulation is defined by the Construction Specifications Institute in the Manual of Practice. It includes the following categories: bidding requirements, contract forms, conditions of the contract, specifications, drawings, addenda, and contract modifications. Section 1 (4), Section 3 (10) (b) and (c), and Section 6 (3) (a) 2. have been updated to provide more consistency of the correct terms within the regulation.

4) Subject Matter: Construction files and records maintain by the district

- a) Comment: Mr. Wolf (AGC) wrote that the Construction files and records maintained by the district should be organized by project to bring clarity and precision, especially when districts may have more than one construction project in progress.
- b) Response: A change was made as a result of this comment. The words “by project” have been added to Section 3 (3). The sentence now reads: Construction files and records shall be maintained by the superintendent, organized by project, and accessible for review.

5) Subject Matter: Insurance

- a) Comment: Mr. Wolf (AGC) wrote that CGL (commercial general liability) and workers compensation should be included as specific forms of insurance.
- b) Response: No changes have been made as a result of this comment. The regulation language is inclusive of all required certificates of insurance as defined within the contracts signed by the owner (district) and the architects, construction managers, qualified providers, and general contractors in Section 3 (3) (d), Section 3 (4) (c) 2., Section 3 (5) (c) 2., Section 3 (6) (c) 2., Section 3 (10) (f) 2., Section 4 (4) (a), Section 4 (5) (b), Section 5 (4) (b), Section 5 (5) (b), Section 7 (5) (b), and Section 8 (9) (b).

6) Subject Matter: Construction Manager at Risk

- a) Comment: Mr. Wolf (AGC) wrote three comments regarding that Construction Manager at Risk contract documents and delivery should be included along with the Construction Manager as Adviser.
- b) Response: No changes have been made as a result of these comments. The delivery method of Construction Manager at Risk places additional burden on the owner (district). It may also place other restrictions on districts during the bid process.

7) Subject Matter: Contract change orders

- a) Comment: Mr. Wolf (AGC) wrote that the wording related to change orders in Section 9 (1) should be updated since there can be changes to a project without changing the scope of the work.
- b) Response: A change was made as a result of this comment. The term “contract modifications” is used in Section 9 (1) to more clearly identify that changes can occur for multiple reasons. “Contract modifications” is defined in KRS 45A.030. The Section 9 (1) sentence now reads: Board-approved contract modifications shall be submitted using forms AIA Document G701-2001, Change Order or AIA Document G701/CMa-1992, Change Order, Construction Manager-Adviser Edition, including the KDE Change Order Supplemental Information Form, to ensure the cumulative cost of the contract and all change orders are within the approved budget.

8) Subject Matter: Construction dispute resolution

- a) Comment: Mr. Wolf (AGC) wrote that dispute avoidance and resolution is important. The regulation should take the time to spell out a comprehensive approach to dispute procedures. Some members of AGC feel there are better ways than reliance on AIA standard documents.
- b) Response: No changes have been made as a result of this comment. The regulation identifies that KDE Versions of AIA standard documents are to be used for construction projects. These KDE Versions of the contracts include clear dispute resolution language on how the owner (district) should utilize mediation as the primary form of resolution and to only use arbitration if all parties agree.

Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The Kentucky Department of Education has responded to comments from the public regarding proposed amendments to 702 KAR 4:160. Two commenters requested ten changes to the administrative regulation. Three of the comments were regarding the same item, therefore eight actual changes were requested. The agency made eight revisions as a result of four of the eight comments. The agency determined the four remaining suggestions should not be adopted because governing statutes already address the item, the contracts used during the construction process include KDE amended language to handle the items, and inclusion of an additional delivery method is not feasible at this time.

One commenter requested that the agency not reduce the major renovation timeframe to twenty years from thirty years. The agency agrees with this comment, concluding that the minimum timeframe for a major renovation to a facility should revert back to the 2007 timeframe definition of thirty years. The agency analyzed construction projects from 2011 and found that nearly half were defined as major renovations. This accounted for \$2,122,000,000 of the total need amount of \$4,300,000,000. The twenty year definition could increase the pool of buildings which currently qualify for major renovation by approximately 33%. Applying a conservative estimate of 25% would increase the Need by about \$530,000,000.

One commenter requested that the agency not increase the percentage of additional gross square footage allowed by five percent. The agency does not agree with this comment, concluding that a maximum gross square footage increase of 5% above the 2004 definition is valid based on input from the 2010-2011 Facilities Work Group and other stakeholders.

One commenter requested that the term contract documents be used within the regulation instead of the term construction documents. The agency agrees that common industry terminology should be used and consistent within the regulation. The regulation was updated in five places to use the term construction documents consistently. The term contract documents is not used in the regulation and therefore, a definition is not needed.

One commenter suggested that the construction delivery method of Construction Manager at Risk be included in the regulation in three different sections. The agency does not agree that this form of construction should be utilized in Kentucky's school construction projects. The agency would consider a hybrid form of the Construction Manager at Risk delivery method in the future. Stakeholders from all areas of the school construction process would need to provide input to a hybrid delivery method. Construction contracts would need to be written to support a hybrid delivery method.

The agency proposes the following changes to the administrative regulation:

After “specifications,” insert “ and”.
Delete “and record documents”.

Page 4
Section 1 (12)
Lines 4-5

After “minimum of”, insert “ thirty (30) years old or thirty (30)”.
Delete “twenty (20) years old or twenty (20)”.

Page 8
Section 3 (3)
Lines 21-22

After “organized”, insert “ by project,”.

Page 11
Section 3 (10) (b)
Lines 4-5

After “department of the ”, insert “construction”.
Delete “bidding”.

Page 11
Section 3 (10) (c)
Line 6

After “possession of the ”, insert “construction”.
Delete “bidding”.

Page 12
Section 3 (12) (c)
Line 2

Delete “ documents”.

Page 17
Section 6 (3) (a) 2.
Line 5

After “completed ”, insert “construction”.
Delete “bidding”.

Page 24
Section 9 (1)
Lines 3-4

After “Board-approved ”, insert “contract modifications”.
Delete “changes in the contract scope of work”.

1 Education and Workforce Development Cabinet

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

5 702 KAR 4:160. Capital construction process.

6 RELATES TO: KRS Chapter 45A, 156.074, 156.076, 156.496, 156.670~~[156.160(1)(f) and (m)],~~
7 157.420(4), 157.450, 157.455, 160.160, 160.476~~[162.060, 162.065],~~ 162.070, 322.010, 323.010,
8 323A.010, 371.405(7), 371.410, 424.260~~[160.160, 322.360(1)]~~

9 STATUTORY AUTHORITY: KRS 156.070, 156.160, ~~[157.420,]~~ 162.060, 162.065, 322.360,
10 323.033

11 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 establishes the general powers
12 and duties of the Kentucky Board of Education. KRS 156.160 ~~authorizes~~requires the Kentucky
13 Board of Education ~~[(KBE)]~~ to promulgate administrative regulations establishing standards that
14 school districts shall meet in operational performance, including construction of public school
15 buildings and the use of uniform forms. ~~[KRS 157.420 requires each school district's capital outlay to~~
16 ~~be utilized in accordance with the district's facility plan.]~~ KRS 162.060 requires that the chief state
17 school officer shall examine or cause to be examined all plans and specifications for public school
18 buildings in accordance with administrative regulations promulgated by the Kentucky Board of
19 Education~~[approval of all school building plans and specifications by the chief state school officer].~~
20 KRS 162.065 requires the Kentucky Board of Education~~[(KBE)]~~ to prescribe administrative
21 regulations governing construction managers. ~~[KRS 162.070 requires school construction contracts~~

1 ~~to be awarded to the lowest and best responsible bidder.] KRS 322.360 and 323.033~~
2 ~~require~~requires a school district, when engaged in the construction of any public work involving
3 architecture or engineering, to utilize an architect or engineer to directly supervise the preparation of
4 plans and specifications, estimates, and the execution of construction. [~~KRS 323.033 requires the~~
5 ~~services of an architect for new buildings and additions or alterations to existing buildings classified~~
6 ~~as educational use group, including the administration of construction contracts.] This administrative~~
7 regulation establishes the procedures and criteria for the construction of public school buildings.

8
9 Section 1. Definitions. (1) "AIA" means the American Institute of Architects.

10 (2) [~~"Architect" means any design professional licensed in the Commonwealth of Kentucky under~~
11 ~~KRS Chapter 322, 323, or 323A, which includes architects, engineers, and landscape architects.~~

12 (3) "Board" means the local board of education.

13 (3) "Change event" means a contiguous or similar action regarding a change order.

14 (4) "Construction documents" means the written and graphic documents prepared or assembled
15 for communicating the project design for construction and for administering the construction
16 contract, and consists of bidding requirements, contract forms, contract conditions, contract
17 modifications, addenda, specifications, and drawings~~[, and record documents].~~

18 (5)~~(4)~~ "Construction manager" or "CM" means a qualified and experienced contracting
19 organization which provides the services of construction management and possesses a general trades
20 workforce, staff and equipment, financial base, insurance coverage, bonding capability, a minimum
21 of three (3) years of~~[years']~~ construction management experience on projects of \$2,000,000 or more,
22 and the ability to provide the services required.

23 (6) "Contractor" means an individual, corporation, estate, trust, partnership, limited liability

1 company, association, joint venture, or any other legal entity performing construction and having a
2 contract with a board.

3 (7) "Design professional" means a person licensed in the Commonwealth of Kentucky under KRS
4 Chapter 322, 323, or 323A, which includes architects, engineers, and landscape architects providing
5 services within their respective practice areas.

6 (8) "Emergency" means a situation which creates a threat or impending threat to public health,
7 welfare, or safety that may arise by reason of fires, floods, tornadoes, other natural or man-caused
8 disasters, epidemics, riots, enemy attack, sabotage, theft, explosion, power failure, energy shortages,
9 transportation emergencies, equipment failures, state or federal legislative mandates, or similar
10 unforeseen events, and results in the loss of use of the physical facilities.

11 ~~(9)[(5) "Contract documents" means the owner-contractor agreement, conditions of the contract~~
12 ~~(general, supplementary, and other conditions), purchase orders, drawings, specifications, addenda~~
13 ~~issued prior to execution of the owner-contractor agreement, other documents listed in the owner-~~
14 ~~contractor agreement, and modifications issued after the execution of the agreement.~~

15 ~~(6) "Division" means the Division of Facilities Management, Kentucky Department of Education~~
16 ~~(KDE).~~

17 ~~(7) "Emergency" means the loss of use of physical facilities resulting from an unforeseen~~
18 ~~occurrence which requires prompt action.~~

19 ~~(8)]~~ "Fixed equipment" means furnishings or equipment that:

20 (a) Are secured to the wall, floor, or ceiling to operate or function in the manner intended by the
21 product manufacturer; and

22 (b) May include bleachers, student lockers, casework with sinks, or plumbing fixtures.

23 (10) "Guaranteed energy savings contract" or "GES" is defined by KRS 45A.345(28).

1 (11) “KBE” means the Kentucky Board of Education.

2 (12) “Major renovation” means a project at a permanent center including three (3) or more
3 building systems and an estimated cost of twenty (20) percent of the current replacement cost of the
4 building, or portion thereof, and the building or building systems shall be a minimum of **thirty (30)**
5 **years old or thirty (30)** [~~twenty (20) years old or twenty (20)~~] years shall have passed since its last
6 major renovation with the exception of:

7 (a) The restructuring of an open space school for conventional classrooms; or

8 (b) The replacement of one (1) of the following single building systems that is within fifteen (15)
9 years of its original installation, or if required by a change in regulation or code:

10 1. Heating, ventilation, and air conditioning systems and controls;

11 2. Systems to provide full use of a facility by the physically handicapped and to bring a facility
12 into compliance with state and federal law;

13 3. Life safety and security systems; or

14 4. Roofing systems, flashings, and accessories.

15 (13) “Minor project” means a project for expansion of a permanent center to include a maximum
16 of four (4) classrooms, campus enlargement, renovation of buildings and building systems with a
17 budget of less than \$25,000, or construction of support space at permanent centers, or renovation not
18 defined as major renovation.

19 (14)[(9) “KERA” means Kentucky Education Reform Act.

20 (10) “Moveable equipment” means any furnishings or equipment not considered fixed equipment.

21 (11) “Owner” means the local board of education or financing corporation established for the
22 purpose of financing school construction.

23 (15) “Qualified provider” is defined by KRS 45A.345(29).

1 (16)[(42)] "Record documents~~[drawings]~~" means a set of reproducible drawings or electronic
2 digital files revised to indicate significant changes in the work during construction, including
3 addenda, change orders, and construction change directives.

4 (17)[(43)] "Superintendent" means the superintendent of the local school district or an authorized
5 designee of the ~~[employee the]~~ superintendent ~~[has]~~ selected to represent the board regarding
6 construction issues.

7
8 Section 2. Construction Project Application. (1) The board shall submit an application on the
9 ~~[Form BG-1,]~~ BG-1 Project Application Form (BG-1 Form), to the department~~[division]~~ for
10 approval of a proposed construction project.

11 (2) An application shall be submitted for each~~[any]~~ project that is:

12 (a) Funded by Support Education Excellence in Kentucky (SEEK) capital outlay funds, Facility
13 Support Program of Kentucky (FSPK) funds as provided by KRS 157.620, School Facilities
14 Construction Commission (SFCC) funds, or building funds as provided by KRS 160.476; ~~[or]~~

15 (b) Proposing construction of a new building, addition, or alteration of an existing building that
16 requires design by a design professional~~[an architect]~~ for a building or building system;

17 (c) Proposing a guaranteed energy savings contract;

18 (d) Proposing a minor project; or

19 (e) Proposing a major renovation.

20 (3) ~~[To initiate a project listed in its facility plan or a minor project permitted in subsection (8) of~~
21 ~~this section, a vote by the board approving the project shall be required.~~

22 (4)](a) If SFCC funds are included in the financing plan, projects shall be selected in prioritized
23 order from the District Facility Plan created pursuant to 702 KAR 4:180.

1 (b) If restricted funds other than SFCC are~~[funding is not]~~ included in the financing plan, the
2 board may select any[a] project in any priority used to determine district need.

3 (c) Projects not used to determine district need shall only be funded as defined by the General
4 Assembly.

5 (4) The BG-1 Form shall be approved by the board.

6 (5) The department shall take action on the BG-1 Form within thirty (30) calendar days of
7 receipt.

8 (6) If an emergency occurs, impacting an activity for which a BG-1 Form is required:

9 (a) The superintendent shall:

10 1. Proceed with corrective actions, as needed;

11 2. Notify the department of the emergency and request approval to continue with the plans and
12 corrective action;

13 3. Advise the board to declare an emergency in accordance with the district's officially
14 adopted procurement method under KRS 424.260 or 45A.380; and

15 4. Submit to the department:

16 a. BG-1 Form; and

17 b. The board order declaring the emergency; and

18 (b) The department shall process the emergency BG-1 Form request within seven (7) calendar
19 days of receipt~~[on its facility plan without regard to priority number.~~

20 ~~(5) The Form BG-1 shall be accompanied by:~~

21 ~~(a) A copy of the board's action, either by official board minutes or an unofficial excerpt signed by~~
22 ~~the board secretary verifying authenticity, approving the application; and~~

23 ~~(b) A narrative justification of the construction project selection, including its priority over other~~

1 ~~projects relative to district goals and maximization of funding and benefits to students.~~

2 ~~(6) Within sixty (60) days of receiving the completed application documents, the Form BG-1 shall~~
3 ~~be approved by the division, if justified pursuant to the following criteria:~~

4 ~~(a) The proposed project is on the facility plan or conforms to the minor project criteria~~
5 ~~established in subsection (8) of this section;~~

6 ~~(b) The SFCC funding does not exceed the SFCC maximum budget established for the project;~~

7 ~~(c) The application has original signatures;~~

8 ~~(d) A board order was issued; and~~

9 ~~(e) The narrative justification was submitted as required by subsection (5)(b) of this section.~~

10 ~~(7) The Division of District Operations, KDE, may give tentative approval based on a review of~~
11 ~~the board's ability to support the financing plan for the proposed construction budget.~~

12 ~~(8) The board may submit a Form BG-1 for minor projects not listed in the facility plan if the~~
13 ~~project meets the following criteria:~~

14 ~~(a) Expansion of a permanent center or functional center to include a maximum of four (4)~~
15 ~~classrooms if documentation to support the request is provided for either student population growth~~
16 ~~or curriculum changes;~~

17 ~~(b) Campus enlargement, minor renovation of buildings and building systems, or construction of~~
18 ~~an additional support space at permanent or functional centers if its need can be documented and~~
19 ~~justified; or~~

20 ~~(c) Projects to comply with statutes and administrative regulations of other agencies having~~
21 ~~jurisdiction.~~

22 ~~(9) If action is not taken by the board within one (1) year from the date of Form BG-1 approval,~~
23 ~~the approval shall no longer be effective.~~

1 ~~(10) If the division considers the architect, CM, or board to be nonresponsive or causing undue~~
2 ~~delays in the design schedule, it may request the chief state school officer to revoke the Form BG-1~~
3 ~~approval.~~

4 ~~(11) If an emergency requiring the submission of a Form BG-1 occurs:~~

5 ~~(a) The emergency shall be declared in accordance with KRS 424.260 or 45A.380, whichever is~~
6 ~~applicable; and~~

7 ~~(b) The board shall:~~

8 ~~1. Notify the division and request approval to proceed with the plans and corrective action;~~

9 ~~2. Submit to the division:~~

10 ~~a. Form BG-1;~~

11 ~~b. Copy of the board order declaring the emergency; and~~

12 ~~c. Copy of the written determination as required by KRS 45A.380 for those districts that have~~
13 ~~adopted the Model Procurement Code].~~

14
15 Section 3. Local Board Oversight Responsibilities. (1) Site acquisition for new sites shall be
16 conducted in compliance with 702 KAR 4:050.

17 (2) An easement, property lease, property lease purchase or property lease with an option to
18 purchase by a board for fixed equipment, capital construction, or an alteration to an existing building
19 or building system shall require the submittal of plans and specifications and lease documents to the
20 department for review and approval based on compliance with the requirements in 702 KAR 4:090.

21 (3) Construction files and records shall be maintained by the superintendent, organized by
22 project, and accessible for review. Construction files and records shall include:

23 (a) Board orders;

1 (b) Proposals (bids);

2 (c) Contracts, construction documents, and record documents;

3 (d) Copy of each certificate of required liability insurance for the design professional, the
4 design professional's consultants, and CM or qualified provider of GESC services, if used;

5 (e) Correspondence; and

6 (f) Financial documents.

7 (4) The board shall provide oversight of the design professional services as established in this
8 subsection.

9 (a) The board's attorney shall review the design professional's proposed contract for
10 compliance with the law.

11 (b) The board shall submit the proposed board-approved design professional contract to the
12 department for approval.

13 (c) The board shall submit to the department for review:

14 1. Copy of each KDE Non-Collusion Affidavit for the design professional and the design
15 professional's consultants;

16 2. Copy of each required certificate of liability insurance; and

17 3. Copy of the signed design professional contract.

18 (5) The board shall provide oversight of the CM services as established in this subsection.

19 (a) The board's attorney shall review the CM's proposed contract for compliance with the law.

20 (b) The board shall submit the proposed board-approved CM contract to the department for
21 approval.

22 (c) The board shall submit to the department for review:

23 1. Copy of the CM's KDE Non-Collusion Affidavit;

1 2. Copy of each required certificate of liability insurance;

2 3. Copy of the performance and payment bond; and

3 4. Copy of the signed CM contract.

4 (6) The board shall provide oversight of the qualified provider of GESC services as
5 established in this subsection.

6 (a) The board's attorney shall review the qualified provider's proposed contract for
7 compliance with the law.

8 (b) The board shall submit the proposed board-approved GESC contract to the department for
9 approval.

10 (c) The board shall submit to the department for review:

11 1. Copy of the qualified provider's KDE Non-Collusion Affidavit;

12 2. Copy of each required certificate of liability insurance;

13 3. Copy of the performance and payment bond; and

14 4. Copy of the signed GESC contract.

15 (7) The board shall prepare an educational specification which complies with 702 KAR 4:170,
16 Facility Programming and Construction Criteria, and 702 KAR 4:180, Implementation
17 Guidelines – Kentucky School Facilities Planning Manual.

18 (8) During the design phases of a new school building project, areas shall comply with the
19 model program of spaces established in 702 KAR 4:180.

20 (9) If the design professional for general contractor delivery projects or the design professional
21 and CM for CM delivery projects determine additional funding is justified or a reduction of
22 physical scope of the project is needed and the board concurs, the board shall forward a revised
23 board-approved BG-1 Form to the department for approval.

1 (10) During the bidding phase of the construction project, the board shall:

2 (a) Conduct the bid process in accordance with the district's officially adopted procurement
3 method under KRS 424.260 or Chapter 45A;

4 (b) Prior to advertising, receive written approval from the department of the **construction**
5 **[bidding]** documents;

6 (c) Hold possession of the **construction [bidding]** documents;

7 (d) Approve and submit each successful bidder's documents to the department for review and
8 approval of each proposed contract and the financial plan;

9 (e) Submit a revised board-approved BG-1 Form for funding changes after bidding; and

10 (f) Have in its possession prior to signing the construction contract:

11 1. Unsigned contractor's performance and payment bond;

12 2. Certificates of required insurance;

13 3. Property insurance policy including insurance written on a builder's risk "all-risk" or
14 equivalent policy in the amount of the initial total construction cost, plus the value of subsequent
15 contract modifications and the cost of materials supplied and installed by others, comprising total
16 value for the entire project at the site on a replacement cost basis without optional deductibles;

17 4. The department's written approval to sign each owner contractor agreement; and

18 5. Bids accepted for the bond sale.

19 (11) The board shall provide oversight of construction administration and construction
20 contract closeout and submit a revised board-approved BG-1 Form if construction contingency is
21 exceeded.

22 (12) If a lien is filed with a court and the board is given notice of the lien, the board shall:

23 (a) Notify the board attorney;

1 **(b) Notify the department; and**

2 **(c) Proceed in accordance with the contract[-documents].**

3
4 **Section 4. Architectural Services. (1) The board shall advertise for architectural services**
5 **utilizing the KDE Request for Proposals for Architectural/Engineering Services or shall evaluate**
6 **and select a minimum of three (3) architectural firms who have submitted a letter of interest.**

7 **Advertisement and evaluation of three (3) firms shall not be required if:**

8 **(a) The total construction cost of the project is estimated at less than \$1,000,000; or**

9 **(b) The project is the continuation of phased construction at the same site.**

10 **(2) The board and design professional shall negotiate a contract for services required, using**
11 **either:**

12 **(a) AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect -**
13 **KDE Version; or**

14 **(b) AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect,**
15 **Construction Manager as Adviser Edition - KDE Version.**

16 **(3) A letter of agreement stating services, terms, and conditions that have been approved by**
17 **the board shall be acceptable in lieu of AIA Document B101-2007, Standard Form of Agreement**
18 **Between Owner and Architect - KDE Version for a project with an estimated construction cost of**
19 **less than \$50,000.**

20 **(4) The design professional shall:**

21 **(a) Provide professional liability insurance;**

22 **(b) Complete a KDE Non-Collusion Affidavit;**

23 **(c) Provide construction documents and cost estimates, as required by the contract;**

1 (d) If requesting reimbursements or additional service fees, provide a detailed listing of each
2 charge on the payment request; and

3 (e) Request payment of the construction phase fee at the same proportionate percentage as the
4 construction's completion.

5 (5) The department shall review and approve the board-approved design professional's
6 contract based on the following criteria:

7 (a) Compliance of the fee to KDE Architect/Engineer Fee Guidelines for Basic Services;

8 (b) Required certificates of liability insurance as stated in the AIA Document B101-2007,
9 Standard Form of Agreement Between Owner and Architect - KDE Version or the AIA
10 Document B132-2009, Standard Form of Agreement Between Owner and Architect,
11 Construction Manager as Adviser Edition - KDE Version;

12 (c) Compliance with applicable laws for modifications to the contract; and

13 (d) Consistency with the scope of work and anticipated cost approved on the BG-1 Form.

14 (6) The design professional shall prepare and provide documents and services required by
15 contract, laws, and AIA documents incorporated by reference in this administrative regulation.
16 The department shall request clarification, as needed, on documentation which does not comply.

17
18 Section 5. Construction Management Services. (1) A CM shall not be employed on a project
19 estimated at less than \$2,000,000 for construction cost. The department may approve exceptions
20 if the:

21 (a) Project is a phase of a phased project and the CM is to be employed on all subsequent
22 phases; or

23 (b) Project's complexity or fiscal soundness requires it.

1 (2) The board shall advertise for CM services utilizing the KDE Request for Proposals for
2 Construction Management Services or shall evaluate and select a minimum of three (3) CM firms
3 who have submitted a letter of interest.

4 (3) The board and CM shall negotiate a contract for services required using AIA Document
5 C132-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser
6 - KDE Version.

7 (4) The CM shall:

8 (a) Prior to the board signing the construction contracts, provide a 100 percent performance
9 and payment bond, AIA Document A312-2010, Performance Bond and Payment Bond - KDE
10 Version, in the amount of the CM fee and in compliance with KRS 45A.435;

11 (b) Provide professional liability insurance;

12 (c) Provide construction cost estimates in conjunction with the design professional's design at
13 the end of each phase for schematic design documents, design development documents, and
14 construction documents;

15 (d) Complete a KDE Non-Collusion Affidavit;

16 (e) Request approval by the owner's representative for reimbursement or an additional service
17 fee prior to the service being rendered or expenditure being made;

18 (f) If requesting reimbursement or an additional service fee, provide a detailed listing of each
19 charge on the payment request; and

20 (g) Request payment of the construction phase fee at the same proportionate percentage as the
21 construction's completion.

22 (5) The department shall review and approve the board-approved CM contract based on the
23 following criteria:

1 (a) Compliance of the fee to KDE Construction Manager Fee Guidelines for Basic Services;
2 (b) Required certificates of liability insurance as stated in the AIA Document B132-2009,
3 Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser
4 Edition - KDE Version;
5 (c) Required performance and payment bond as stated in the AIA Document A312-2010,
6 Performance Bond and Payment Bond - KDE Version;
7 (d) Compliance with applicable laws for modifications to the contract; and
8 (e) Consistency with the scope of work and anticipated cost approved on the BG-1 Form.
9 (6) The CM shall provide all documents and services required by contract, laws, and AIA
10 documents incorporated by reference in this administrative regulation. The department shall
11 request clarification, as needed, on documentation which does not comply.
12

13 Section 6. Project Documents for General Construction and Construction Management. (1)
14 After the department has issued written approval of the BG-1 Form, the department shall notify
15 the board of required submissions for the project.

16 (a) The design professional shall prepare schematic design documents of the proposed
17 construction from written educational program specifications which are in compliance with 702
18 KAR 4:170 and 702 KAR 4:180.

19 (b) The board shall submit the board-approved schematic design documents and a copy of the
20 educational program specifications to the department for review and approval.

21 (c) The department shall review and approve the schematic design documents based on:
22 1. The schematic design documents and a copy of the educational program specifications,
23 approved by board order;

1 2. The site plan demonstrating compliance with 702 KAR 4:170;

2 3. Proposed floor elevation which is a minimum of one (1) foot above the 100-year flood plain

3 elevation for new construction and the proposal of no state funds for renovation below the 100-

4 year flood plain elevation;

5 4. Floor plans demonstrating:

6 a. The number, type, and size of the planned spaces, including support spaces;

7 b. The educational program specifications;

8 c. Maximum gross areas in compliance with 702 KAR 4:170 and 702 KAR 4:180, with:

9 (i) An elementary school limited to 115 percent of the total gross area of the model program of

10 spaces; or

11 (ii) A middle or high school limited to 120 percent of the total gross area of the model

12 program of spaces; and

13 d. Building efficiency (the percent of net program area to gross building area) meeting or

14 exceeding the guidelines of 702 KAR 4:180;

15 5. Functional aspects demonstrating:

16 a. The distribution of functions;

17 b. Program space educational suitability; and

18 c. The appropriateness for the needs of the facility; and

19 6. The budget documenting the estimated construction cost (gross building area multiplied by

20 the cost per square foot, plus site development costs) in relation to the BG-1 Form total

21 construction cost. If the estimated construction cost exceeds the BG-1 Form total construction

22 cost, the board shall approve either an increase in the budget or a decrease in the physical scope

23 of the project.

1 (2) After receiving the department’s written approval of the schematic design documents, the
2 design professional shall prepare the design development documents.

3 (a) The board shall submit to the department for review and approval:

4 1. Board-approved design development documents;

5 2. BG-2 Outline Specifications Energy Design Criteria (BG-2 Form); and

6 3. BG-3 Statement of Probable Cost (BG-3 Form).

7 (b) The board shall submit to the department a copy of the signed letter of transmittal sent to
8 the Kentucky Transportation Cabinet or other agency having jurisdiction regarding proposed
9 entrance and right-of-way improvements.

10 (c) The department shall review and approve design development documents, which
11 incorporate all previous schematic design documents review comments, based on:

12 1. Site plan (proper siting of the building with respect to vehicular and pedestrian circulation,
13 separation of bus loading area, student play areas, athletic fields, utility construction, and site
14 drainage, with details appropriately developed);

15 2. Floor plan (number, type, and size of the planned spaces consistent with each approved
16 schematic plan);

17 3. Enlarged plans and details (appropriate to describe the design intention);

18 4. Budget (the total project cost on the BG-3 Form is within the approved BG-1 Form total
19 project cost budget; if the BG-3 Form total project cost exceeds the BG-1 Form total project cost,
20 the board shall approve an increase in the budget or a decrease in the physical scope of the
21 project); and

22 5. BG-2 Form (properly completed and conforms to the educational program specifications).

23 (3) After receiving the department’s written approval of design development documents, the

design professional, and the CM if utilized, shall prepare the completed construction documents for bidding.

(a) The board shall submit to the department:

1. Board-approved completed drawings and project manual; and

2. Proof of submission of completed **construction [bidding]** documents to other agencies having jurisdiction.

(b) The department shall review and approve the completed construction documents based on:

1. Compliance with state laws regarding the seal, signature, and date of the documents by design professionals;

2. Compliance with the requirement that documents be of sufficient detail and complexity that they may be used:

a. To obtain a building permit;

b. As instruments in the competitive bidding process; and

c. By contractors to construct the project;

3. Compliance with the requirement that BG-3 Form total project cost be less than or equal to 110 percent of the approved BG-1 Form total project cost;

4. Compliance with the requirement that documents be appropriate to industry standards for general construction or construction management, including:

a. AIA Document A701-1997, Instruction to Bidders - KDE Version;

b. KDE Form of Proposal;

c. AIA Document A310-2010, Bid Bond;

d. KDE Purchase Order;

e. AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor

1 where the basis of payment is a Stipulated Sum - KDE Version;

2 f. AIA Document A201-2007, General Conditions of the Contract for Construction - KDE
3 Version;

4 g. AIA Document A132-2009, Standard Form of Agreement Between Owner and Contractor,
5 Construction Manager as Adviser Edition - KDE Version;

6 h. AIA Document A232-2009, General Conditions of the Contract for Construction,
7 Construction Manager as Adviser Edition - KDE Version;

8 i. AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version;

9 j. AIA Document G702-1992, Application and Certification for Payment;

10 k. AIA Document G732-2009, Application and Certification for Payment, Construction
11 Manager-Adviser Edition;

12 l. AIA Document G701-2001, Change Order;

13 m. AIA Document G701/CMa-1992, Change Order, Construction Manager-Adviser Edition;

14 n. KDE Change Order Supplemental Information Form;

15 o. AIA Document G704-2000, Certificate of Substantial Completion;

16 p. AIA Document G704/CMa-1992, Certificate of Substantial Completion, Construction
17 Manager-Adviser Edition;

18 q. AIA Document G707A-1994, Consent of Surety to Reduction in or Partial Release of
19 Retainage;

20 r. AIA Document G706-1994, Contractor's Affidavit of Payment of Debts and Claims;

21 s. AIA Document G706A-1994, Contractor's Affidavit of Release of Liens; and

22 t. AIA Document G707-1994, Consent of Surety to Final Payment; and

23 5. Inclusion of letter of transmittal to state and local agencies having jurisdiction over issues

1 related to construction projects, including:

2 a. Department of Housing, Buildings and Construction;

3 (i) Division of Building Codes Enforcement; and

4 (ii) Division of Plumbing.

5 b. Division of Water;

6 c. Division of Air Quality;

7 d. Local health department; and

8 e. Local building inspector.

9 (4) The board shall receive written approval of the completed construction documents and
10 authorization to advertise from the department prior to advertisement for bids.
11

12 Section 7. Guaranteed Energy Savings Contracts. (1) The board shall submit to the department
13 a letter of intent to issue a request for proposal for a GESC.

14 (2) The department shall notify the board of required submissions for the GESC project.

15 (3) The board shall advertise for qualified providers to propose energy conservation measures
16 utilizing the KDE Request for Proposals for Guaranteed Energy Savings Contracts in compliance
17 with KRS 45A.352(1) and (5) for a GESC.

18 (4) The board and qualified provider shall negotiate a contract for services required using:

19 (a) AIA Document A141-2004, Standard Form of Agreement Between Owner and Design-
20 Builder - KDE Version;

21 (b) AIA Document A141-2004, Exhibit A, Terms and Conditions - KDE Version;

22 (c) AIA Document A141-2004, Exhibit C, Insurance and Bonds - KDE Version; and

23 (d) Other exhibits as required to define the agreement.

1 (5) The qualified provider shall:

2 (a) Complete a KDE Non-Collusion Affidavit;

3 (b) Provide each required certificate of liability insurance; and

4 (c) Provide a 100 percent performance and payment bond, AIA Document 312-2010,
5 Performance Bond and Payment Bond - KDE Version, in compliance with KRS 45A.435.

6 (6) The board shall submit to the department:

7 (a) A board-approved proposal from the selected provider; and

8 (b) BG-1 Form.

9 (7) The department shall review and approve the project based on compliance with KRS
10 45A.352(9) and (10).

11 (8) After written approval of the project is received from the department, the qualified
12 provider shall incorporate review comments and prepare the project scope documents. The board
13 shall submit to the department for review and approval:

14 (a) Board-approved project scope documents;

15 (b) BG-2 Form; and

16 (c) Proposed contract.

17 (9) After written approval of the project scope is received from the department, the qualified
18 provider shall incorporate review comments and complete the project documents, including
19 drawings and specifications. The board shall submit to the department:

20 (a) Board-approved project documents, including final drawings and specifications;

21 (b) Proposed board-approved contract with financing documentation;

22 (c) Confirmation that the proposed contract complies with KRS 45A.352(3); and

23 (d) Revised BG-1 Form to conform to the proposed contract and financing.

1 (10) The department shall review and provide written approval of the proposed GESC based
2 on:

3 (a) Financing documentation; and

4 (b) KRS 45A.352(9) and (10).

5
6 Section 8. Construction Bids, Contracts, and Bond Sales. (1) Negotiation of the bid price shall
7 not be allowed, except in accordance with KRS 45A.375 for those districts under the Model
8 Procurement Code.

9 (2) The board shall submit to the department for review and approval:

10 (a) Each proposed contract;

11 (b) A completed KDE Purchase Order Summary Form, if owner direct purchase orders are
12 utilized;

13 (c) The revised financial page of the BG-1 Form to coincide with the proposed project costs;

14 (d) Preliminary official statement;

15 (e) Notice of revenue bond sale;

16 (f) Official terms and conditions; and

17 (g) Plans of financing.

18 (3) The board shall submit to the department for review and approval the following
19 documentation for projects that are bid:

20 (a) Each bid tabulation;

21 (b) Bid security;

22 (c) KDE Form of Proposal for each successful bidder;

23 (d) Written recommendation of the design professional and CM, if utilized, regarding the

1 awarding of the contract; and

2 (e) Written rationale for the additional cost if the accepted bid exceeds the BG-3 Form by ten
3 (10) percent or more.

4 (4) If a bond sale is pending, the documents required by subsections (2) and (3) of this section
5 shall be submitted to the department a minimum of ten (10) working days prior to the scheduled
6 bond sale date.

7 (5)(a) Discrepancies between the proposed contract and bidding documents shall be remedied
8 prior to approval.

9 (b) Approval of the proposed contract by the department shall not indicate the contract is the
10 best or the most reasonable.

11 (6) If the submitted documents are not in an approvable form at least five (5) working days
12 before the scheduled bond sale, the sale date shall be postponed.

13 (7) The board shall contract with a fiscal agent to assist in meeting all reporting, filing, and
14 selling requirements for securing the financial approval of the department if school revenue
15 bonds are proposed for sale.

16 (8) The department shall issue the written approval for the financing plan, authorize the bond
17 sale, and issue the approval letter for the chief state school officer or a designee.

18 (9) The board shall submit to the department:

19 (a) A copy of each signed contract and purchase order;

20 (b) Each contractor's insurance certificate required by law and by contract to hold the board
21 safe from loss until the project is completed or until an occupancy permit is received by the
22 board; and

23 (c) A copy of each 100 percent performance and payment bond in compliance with KRS

1 45A.435.

2
3 Section 9. Contract Change Orders. (1) Board-approved **contract modification** [~~changes in~~
4 ~~the contract scope of work~~] shall be submitted using forms AIA Document G701-2001, Change
5 Order or AIA Document G701/CMa-1992, Change Order, Construction Manager-Adviser
6 Edition, including the KDE Change Order Supplemental Information Form, to ensure the
7 cumulative cost of the contract and all change orders are within the approved budget.

8 (2) Board-approved change orders under \$25,000 per change event and within the
9 construction contingency amount shall be submitted to the department.

10 (3) Board-approved change orders which equal or exceed \$25,000 per change event and
11 within the construction contingency amount shall be submitted, prior to execution, to the
12 department for review and approval.

13 (4) The department may approve a change order only if the change order amount is less than
14 the available construction contingency amount on the BG-1 Form and is in accordance with
15 subsections (1) and (3) of this section.

16
17 Section 10. Construction Contract Retainage and Payments. (1)(a) Retainage shall be
18 governed by KRS 371.410(1).

19 (b) Payments shall be governed by KRS 371.405(7).

20 (2) The investment earnings resulting from an agreement entered by a board involving the
21 construction account, including the construction contract retainage for an approved project, shall
22 be invested in a manner so that additional income from the investment shall accrue only to the
23 construction account.

1
2 Section 11. Construction Dispute Resolution. Owners shall utilize the construction dispute
3 resolution processes defined in the signed contracts for the project.
4

5 Section 12. Construction Contract Closeout Process. (1) The applicable design professional,
6 CM, or qualified provider shall furnish the board a completed BG-4 Contract Closeout Form,
7 2012 (BG-4 Form) and record documents, with applicable information requesting approval of:

8 (a) Each contract, including change orders; and

9 (b) A reconciliation of the summary of all purchase orders, if utilized, including change
10 orders, for each contract.

11 (2) If the board agrees the construction contract is complete and all accounts are reconciled, it
12 shall approve the BG-4 Form and forward it to the department for review and approval.

13 (3) When all construction contracts are complete, if the board agrees the project is complete, it
14 shall approve the BG-5 Project Closeout Form, 2012 (BG-5 Form) and forward it to the
15 department for review and approval.
16

17 Section 13. Penalties for Malfeasance or Nonfeasance. (1) A determination by the board or the
18 department of malfeasance or nonfeasance shall be forwarded to the chief state school officer.

19 (2) The chief state school officer may make a recommendation to the KBE to determine that
20 the offending firm is ineligible to provide professional services on school construction projects
21 for a period not to exceed five (5) years.

22 (3) The KBE may prescribe alternative penalties.

23 (4) If the principals of the offending firm become associated with another firm during the

1 penalty period, upon recommendation by the chief state school officer, the KBE may determine
2 that the penalty invoked shall also apply to that firm.

3
4 Section 14. Incorporation By Reference. (1) The following material is incorporated by
5 reference:

6 (a) “AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect
7 - KDE Version”, 2013;

8 (b) “AIA Document A201-2007, General Conditions of the Contract for Construction - KDE
9 Version”, 2013;

10 (c) “AIA Document A101-2007, Standard Form of Agreement Between Owner and
11 Contractor where the basis of payment is a Stipulated Sum - KDE Version”, 2013;

12 (d) “AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect,
13 Construction Manager as Adviser Edition - KDE Version”, 2013;

14 (e) “AIA Document C132-2009, Standard Form of Agreement Between Owner and
15 Construction Manager as Adviser - KDE Version”, 2013;

16 (f) “AIA Document A232-2009, General Conditions of the Contract for Construction,
17 Construction Manager as Adviser Edition - KDE Version”, 2013;

18 (g) “AIA Document A132-2009, Standard Form of Agreement Between Owner and
19 Contractor, Construction Manager as Adviser Edition - KDE Version”, 2013;

20 (h) “AIA Document A141-2004, Standard Form of Agreement Between Owner and Design-
21 Builder - KDE Version”, 2013;

22 (i) “AIA Document A141-2004, Exhibit A, Terms and Conditions - KDE Version”, 2013;

23 (j) “AIA Document A141-2004, Exhibit C, Insurance and Bonds - KDE Version”, 2013;

1 (k) “AIA Document A701-1997, Instruction to Bidders - KDE Version”, 2013;
2 (l) “AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version”,
3 2013;
4 (m) “AIA Document A310-2010, Bid Bond”, 2010;
5 (n) “AIA Document G701-2001, Change Order”, 2001;
6 (o) “AIA Document G701/CMa-1992, Change Order, Construction Manager-Adviser
7 edition”, 1992;
8 (p) “AIA Document G702-1992, Application and Certification for Payment”, 1992;
9 (q) “AIA Document G732-2009, Application and Certification for Payment, Construction
10 Manager-Adviser Edition”, 2009;
11 (r) “AIA Document G704-2000, Certificate of Substantial Completion”, 2000;
12 (s) “AIA Document G704/CMa-1992, Certificate of Substantial Completion, Construction
13 Manager-Adviser Edition”, 1992;
14 (t) “AIA Document G706-1994, Contractor’s Affidavit of Payment of Debts and Claims”,
15 1994;
16 (u) “AIA Document G706A-1994, Contractor’s Affidavit of Release of Liens”, 1994;
17 (v) “AIA Document G707-1994, Consent of Surety to Final Payment”, 1994;
18 (w) “AIA Document G707A-1994, Consent of Surety to Reduction in or Partial Release of
19 Retainage”, 1994;
20 (x) “BG-1 Project Application Form”, 2012;
21 (y) “BG-2 Outline Specifications Energy Design Criteria”, 2012;
22 (z) “BG-3 Statement of Probable Cost”, 2012;
23 (aa) “BG-4 Contract Closeout Form”, 2012;

1 (bb) “BG-5 Project Closeout Form”, 2012;

2 (cc) “KDE Architect/Engineer Fee Guidelines for Basic Services”, 2012;

3 (dd) “KDE Change Order Supplemental Information Form”, 2012;

4 (ee) “KDE Construction Manager Fee Guidelines for Basic Services”, 2012;

5 (ff) “KDE Form of Proposal”, 2012;

6 (gg) “KDE Non-Collusion Affidavit”, 2012;

7 (hh) “KDE Purchase Order”, 2012;

8 (ii) “KDE Purchase Order Summary Form”, 2012;

9 (jj) “KDE Request for Proposals for Architectural/Engineering Services”, 2012;

10 (kk) “KDE Request for Proposals for Construction Management Services”, 2012; and

11 (ll) “KDE Request for Proposals for Guaranteed Energy Savings Contracts”, 2012.

12 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the
13 Kentucky Department of Education, 500 Mero Street, Frankfort, Kentucky 40601, Monday through
14 Friday, 8 a.m. to 4:30 p.m.

15 ~~[Construction files and records shall be maintained by the superintendent in the central office and~~
16 ~~organized and accessible for review. Construction files and records shall include:~~

17 ~~(a) Board actions;~~

18 ~~(b) Proposals (bids);~~

19 ~~(c) Contracts, contract documents and record drawings;~~

20 ~~(d) Correspondence; and~~

21 ~~(e) Financial documents.~~

22 ~~(2) During the design phases of a new school building project, the maximum gross area shall be~~
23 ~~limited using the Model Program Space established in 702 KAR 4:180, to:~~

1 ~~(a) For an elementary school, 110 percent of the Total Gross Area of the Model Program Space;~~

2 ~~or~~

3 ~~(b) For a middle or high school, 115 percent of the Total Gross Area of the Model Program Space.~~

4 ~~(3) If the architect or the CM determines additional funding is justified or a reduction of physical~~
5 ~~scope of the project is needed, the local board may approve the action if it believes it is justified and~~
6 ~~forward it to the division.~~

7 ~~(4) During the planning and bidding phase of the construction project, the board shall:~~

8 ~~(a) Review bidding documents for compliance with statutes and administrative regulations, with~~
9 ~~particular attention to sales and use tax exemption when purchasing materials direct;~~

10 ~~(b) Comply with all submission requirements resulting from the review of bidding documents by~~
11 ~~the division;~~

12 ~~(c) Not advertise before receipt of written approval from the division;~~

13 ~~(d) Advertise in the newspaper having the largest circulation in the school district the following~~
14 ~~number of days prior to the date established to receive bids:~~

15 ~~1. \$1,000,000 or less project, a minimum of seven (7) days and a maximum of twenty one (21)~~
16 ~~days; or~~

17 ~~2. A project in excess of \$1,000,000, a minimum of twenty one (21) days;~~

18 ~~(e) Hold the bid opening:~~

19 ~~1. In a location accessible to the public;~~

20 ~~2. Between 10 a.m. and 3 p.m. (local time); and~~

21 ~~3. Monday through Friday, excluding holidays;~~

22 ~~(f) Accept the architect's and CM's evaluation of the bids and approve or reject their~~
23 ~~recommendations, giving consideration during the review process to businesses owned by minorities~~

1 and women;

2 ~~(g) Ensure the CM completes the KDE Non-Collusion Affidavit;~~

3 ~~(h) Hold possession of original bidding documents;~~

4 ~~(i) Approve and submit the successful bidders' documents to the division for review and approval~~
5 ~~of each proposed contract and the financial plan; and~~

6 ~~(j) Have in its possession prior to executing the construction contract:~~

7 ~~1. Contractor's performance and payment bond;~~

8 ~~2. Certificate of required insurance;~~

9 ~~3. Property insurance policy;~~

10 ~~4. Written approval from the division; and~~

11 ~~5. Bids accepted for the bond sale, if applicable.~~

12 ~~(5) During the construction administration of the project, the board shall:~~

13 ~~(a) Name the superintendent or his or her representative, known as the owner's representative, to~~
14 ~~speak on behalf of the board as owner in the contract documents and set the parameters of that~~
15 ~~responsibility;~~

16 ~~(b) Seek the superintendent's recommendation relative to proposed board actions;~~

17 ~~(c) Approve all expenditures from the construction account;~~

18 ~~(d) Seek SFCC approval of expenditures as applicable;~~

19 ~~(e) At least once per month receive and review written on-site observation and progress reports~~
20 ~~provided by the architect;~~

21 ~~(f) Review the need for changes to the contract;~~

22 ~~(g) Assign partial or full responsibility to the proper party if additional costs are due to an~~
23 ~~oversight or omission;~~

1 ~~(h) Monitor the administration of the project by its architect and CM to ensure no prepayment is~~
2 ~~made for their services;~~

3 ~~(i) After notifying the division, hire a professional services firm experienced in architectural,~~
4 ~~engineering, accounting, or construction management services to provide an audit of the construction~~
5 ~~project if the board suspects nonfeasance or malfeasance;~~

6 ~~(j) Secure all required inspections and close out documents for submittal to the appropriate~~
7 ~~agencies;~~

8 ~~(k) Receive a certificate of occupancy from the Department of Housing, Buildings, and~~
9 ~~Construction or local building code authority having expanded jurisdiction prior to occupying the~~
10 ~~facility;~~

11 ~~(l) Retain a minimum five (5) percent retainage of the construction contract until substantial~~
12 ~~completion of the work as defined in AIA Document A201-2007, General Conditions of the Contract~~
13 ~~for Construction, and the KDE Amendment to AIA A201-2007;~~

14 ~~(m) Require the superintendent or the owner's representative to participate in the year-end~~
15 ~~inspection and report results of the inspection to the board;~~

16 ~~(n) Contact the contractor's bonding company each month if the contractor is more than two (2)~~
17 ~~weeks behind schedule or is not performing in accordance with the contract; and~~

18 ~~(o) Not hire additional architectural services outside the architect's contract without approval from~~
19 ~~the division.~~

20 ~~(6) If federal funds or federal agencies are involved, the board may request approval from the~~
21 ~~chief state school officer to waive or condense procedures to expedite the construction design~~
22 ~~process.~~

23 ~~(7) If a lien is filed with a court and the board is given notice of the lien, the board shall stop~~

1 ~~partial payments on the contract in the amount of the lien and contact the division. Payments shall~~
2 ~~begin after:~~

3 ~~(a) The lien has been released;~~

4 ~~(b) The division has approved a payment schedule which provides for retaining the lien amount~~
5 ~~being contested; or~~

6 ~~(c) The division has approved a payment schedule after a surety bond has been provided to pay~~
7 ~~the lien.~~

8
9 ~~Section 4. Architectural Services. (1)(a) The board and architect shall negotiate a contract for~~
10 ~~services required.~~

11 ~~(b) The board shall either advertise for architectural services or select a minimum of three (3)~~
12 ~~architectural firms that shall be evaluated through the request for proposal (RFP) process, giving~~
13 ~~consideration during the review process to businesses owned by minorities and women.~~

14 ~~(c) Advertisement or RFP evaluation of three (3) firms shall not be required if:~~

15 ~~1. The total construction cost of the project is estimated at less than \$1,000,000;~~

16 ~~2. The project is the continuation of phased construction at the same site.~~

17 ~~(2) The architectural services shall be negotiated using the following documents:~~

18 ~~(a) Request for Proposals for Architectural/Engineering Services; if utilized;~~

19 ~~(b)1. AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect,~~
20 ~~with the KDE Amendment to AIA B101-2007; or~~

21 ~~2. AIA B141/Cma, Standard Form of Agreement Between Owner and Architect, Construction~~
22 ~~Manager—Adviser Edition, with the KDE Amendment to AIA B141/Cma 1992;~~

23 ~~(c) KDE Non-Collusion Affidavit; and~~

1 ~~(d) Architect/Engineer Fee Guidelines as a percentage of the cost of construction, or a lump sum~~
2 ~~fee.~~

3 ~~(3) A letter of agreement stating services, terms, and conditions that have been approved by the~~
4 ~~board shall be acceptable in lieu of the AIA B101–2007 for projects with an estimated construction~~
5 ~~cost of less than \$50,000.~~

6 ~~(4) The division shall review and approve the proposed architect's contract based on the following~~
7 ~~criteria:~~

8 ~~(a) Copy of the board action approving the terms of the proposed contract;~~

9 ~~(b) Scope and fee conforms to Form BG-1; and~~

10 ~~(c) Submittal of required forms.~~

11 ~~(5) The division shall advise the board of:~~

12 ~~(a) Apparent deficiencies in completion of the contract;~~

13 ~~(b) Discrepancies related to the scope of work and anticipated cost approved on the Form BG-1;~~

14 ~~(c) Compliance of fee to fee schedule; and~~

15 ~~(d) Concerns regarding modifications to the contract.~~

16 ~~(6) The architect shall:~~

17 ~~(a) Provide on-site visitation and shall report on the construction project to the board;~~

18 ~~(b) Certify, to the best of his ability, professional judgment, and with due diligence, that all phases~~
19 ~~of the project have been completed in conformance with the approved plans and specifications and~~
20 ~~any authorized changes by signing the BG-4 Project Closeout Form;~~

21 ~~(c) Provide professional liability insurance in the following minimum amounts:~~

22 ~~1. If the project is \$1,000,000 or less, \$500,000 per claim and \$1,000,000 aggregate per annum; or~~

23 ~~2. If the project exceeds \$1,000,000, per claim and \$2,000,000 aggregate per annum;~~

1 ~~(d) Require his consultants to retain professional liability insurance in the minimum amount of~~
2 ~~\$250,000 aggregate, except structural design and mechanical-electrical-plumbing consultants shall~~
3 ~~carry a minimum amount of \$1,000,000 aggregate for projects \$1,000,000 or less, and \$2,000,000~~
4 ~~aggregate for projects exceeding \$1,000,000;~~

5 ~~(e) Provide copies of certificates of insurance to the division;~~

6 ~~(f) Assist in preparing the bid advertisement for the board;~~

7 ~~(g) List projects estimated in excess of \$1,000,000 with a minimum of two (2) Kentucky~~
8 ~~construction reporting services;~~

9 ~~(h) Submit to the board a written report that includes a status of the project, dates and times~~
10 ~~architect was on site, conditions of the job, problems, delays, and concerns at least monthly after~~
11 ~~construction begins;~~

12 ~~(i) Request payment of construction administration phase fee at the same proportionate percentage~~
13 ~~as the construction's completion;~~

14 ~~(j) Request approval by the owner's representative for any reimbursement or additional service~~
15 ~~prior to the service being rendered or expenditure being made;~~

16 ~~(k) If requesting reimbursements or additional service fees, provide a detailed listing of each~~
17 ~~charge on the payment request;~~

18 ~~(l) Request additional payment for construction time or services extending beyond the scheduled~~
19 ~~completion date, if the additional costs were incurred through no fault of the architectural firm and~~
20 ~~are documented due to the delay of the contractor, subcontractors, material suppliers, or vendors;~~

21 ~~(m) Utilize his consultants listed on the contract form for design, construction administration and~~
22 ~~observation of the work;~~

23 ~~(n) Pay his consultants the same percentage proportion of their fee as he has received from the~~

board;

(o) ~~Pay his consultants eighty (80) percent of the architect's fee based on the construction cost of the consultant's work. If the architect's fee is a lump sum, the consultant shall receive the same proportionate amount;~~

(p) ~~If a joint venture, list on the contract form the prime architectural firm accountable to the board and provide the board with a copy of the joint venture contract indicating each party's responsibilities and fees; and~~

(q) ~~Provide independent contract administration over construction contracts awarded to the project's CM.~~

~~(7) The board shall provide oversight of the architectural services in the following manner:~~

(a) ~~The architect's proposed contract shall be reviewed by the board's attorney for compliance with the law; and~~

~~(b) The board shall submit to the division for approval:~~

~~1. The proposed architect contract;~~

~~2. A copy of the board order approving the contract;~~

~~3. A narrative of the selection and evaluation process;~~

~~4. A copy of each certificate of required liability insurance; and~~

~~5. A copy of each KDE Non-Collusion Affidavit.~~

~~Section 5. Construction Management Services. (1) A CM shall not be employed on any project estimated at less than \$2,000,000 or without the approval of the division if the number of work categories negate the need for full time, on-site supervision for projects in excess of \$2,000,000. The division may approve exceptions as follows:~~

1 ~~(a) If the project is a phase of a phased project and the CM is to be employed on all subsequent~~
2 ~~phases; or~~

3 ~~(b) If the project's complexity or fiscal soundness requires it.~~

4 ~~(2) In hiring a CM, the board shall either advertise for CM services or select a minimum of three~~
5 ~~(3) construction management firms that shall be evaluated through the RFP process. Advertisement~~
6 ~~or RFP evaluation of three (3) firms shall not be required if the project is the continuation of phased~~
7 ~~construction at the same site.~~

8 ~~(3) The board shall negotiate a contract using the following:~~

9 ~~(a) Request for Proposals for Construction Management Services, if utilized;~~

10 ~~(b) AIA Document B801/Cma Standard Form of Agreement Between Owner and Construction~~
11 ~~Manager, and the KDE Amendment to AIA B801/Cma 1992; or~~

12 ~~(c) KDE Construction Manager Fee Guidelines;~~

13 ~~(d) KDE Non-Collusion Affidavit;~~

14 ~~(e) Projected number of months construction;~~

15 ~~(f) On-site services fee per month; and~~

16 ~~(g) Fee scale for additional construction cost and months.~~

17 ~~(4) The number of months in the CM contract for the construction phase shall not be altered~~
18 ~~unless:~~

19 ~~(a) There is a change in the scope of the work; and~~

20 ~~(b) The owner, architect, and CM agree to the revised number of months during the evaluation of~~
21 ~~construction bids.~~

22 ~~(5) The preconstruction phase payment shall be a maximum of ten (10) percent of the total~~
23 ~~proposed fee.~~

1 ~~(6) The CM shall:~~

2 ~~(a) Provide a 100 percent performance and payment bond prior to the construction contracts being~~
3 ~~executed by the board in the amount of the CM fee from an insurance firm authorized to do business~~
4 ~~in Kentucky and listed in and written within the terms and limits established in 31 C.F.R. 223;~~

5 ~~(b) Provide professional liability insurance in the following minimum amounts:~~

6 ~~1. Projects of \$10,000,000 or less, insurance in the amount of \$500,000; or~~

7 ~~2. For projects in excess of \$10,000,000, insurance in the amount of \$1,000,000;~~

8 ~~(c) Develop bid packaging to ensure at least five (5) known potential bidders are notified on each~~
9 ~~bid package;~~

10 ~~(d) Not transport any bidder's proposal to the bid opening;~~

11 ~~(e) Complete a KDE Non-Collusion Affidavit relative to both the superintendent and local board~~
12 ~~members and the apparent low bidders;~~

13 ~~(f) Request approval by the owner's representative for any reimbursement or additional service fee~~
14 ~~prior to the service being rendered or expenditure being made;~~

15 ~~(g) If requesting reimbursements or additional service fees, provide a detailed listing of each~~
16 ~~charge on the payment request;~~

17 ~~(h) Request additional payment for construction time or services extending beyond the scheduled~~
18 ~~completion date, by the additional costs were incurred through no fault of the construction~~
19 ~~management firm and are documented due to the delay of a contractor, material supplier, or vendor;~~
20 ~~and~~

21 ~~(i) Request payment of the construction phase fee at the same proportionate percentage as the~~
22 ~~construction's completion.~~

23 ~~(7) The board shall provide oversight of the CM services by:~~

~~(a) Retaining an attorney to:~~

~~1. Review the contract as negotiated to ensure compliance with the law;~~

~~2. Request modifications to the contract as needed; and~~

~~3. Sign the contract form attesting to review;~~

~~(b) Taking action approving the contract terms and conditions; and~~

~~(c) Forwarding to the division for review and approval:~~

~~1. A copy of proposed contract;~~

~~2. The board order;~~

~~3. A narrative of the selection and evaluation process;~~

~~4. The certificate of required liability insurance; and~~

~~5. The KDE Non-Collusion Affidavit.~~

~~(8) The CM contract shall be reviewed and approved by the division based on the following criteria:~~

~~(a) A copy of board order of approval;~~

~~(b) The fee is based on a lump sum amount or fee guideline established in the document titled Construction Manager Fee Guidelines;~~

~~(c) Any modifications to the contract comply with applicable laws; and~~

~~(d) Submission of required forms is made in a timely fashion.~~

~~Section 6. Plans and Specifications. (1) After approval of the Form BG-1 application by the division, the division shall provide a procedural checklist to the board that indicates required submissions for the project.~~

~~(a) The architect shall prepare schematic plans of the proposed construction from written~~

1 ~~educational program specifications supplied by the board.~~

2 ~~(b) The schematic plans and a copy of the educational program specifications, approved by board~~
3 ~~action with a copy of the minutes, shall be submitted by the board to the division for review and~~
4 ~~approval.~~

5 ~~(c) The division shall review and approve the schematic plan submittal based on:~~

6 ~~1. Site plan: proper siting of the building footprint provides appropriate access, vehicular and~~
7 ~~pedestrian circulation, separation of bus loading area from other vehicular traffic, parking, service,~~
8 ~~play and athletic areas, utility connections and drainage;~~

9 ~~2. Floor plan: number, type, and size of the planned spaces, including support spaces, agree with~~
10 ~~the programmed spaces listed on the Form BG-1, the educational specifications, and are in~~
11 ~~compliance with 702 KAR 4:180 and 702 KAR 4:170;~~

12 ~~3. Functional aspects: review of the distribution of functions, or program space and the~~
13 ~~appropriateness for the needs of the facility;~~

14 ~~4. Compliance with the Model Program Space requirements established in 702 KAR 4:180, with~~
15 ~~the maximum gross area of:~~

16 ~~a. An elementary school limited to 110 percent of the Total Gross Area of the Model Program~~
17 ~~Space; or~~

18 ~~b. A middle or high school limited to 115 percent of the Total Gross Area of the Model Program~~
19 ~~Space;~~

20 ~~5. Building efficiency: review of the percent of net program area to gross building area to meet or~~
21 ~~exceed the guidelines of 702 KAR 4:180; and~~

22 ~~6. Budget: review of the estimated construction cost (gross area multiplied by the cost per square~~
23 ~~foot, plus site development costs) in relation to the Form BG-1 Total Construction Cost. If the~~

~~estimated construction cost exceeds the Form BG-1 Total Construction Cost, an increase in the budget or a decrease in the physical scope of the project shall be approved by the board.~~

~~(2) After written approval of the schematic plans is received from the division, the architect shall prepare the design development plans.~~

~~(a) The board shall submit to the division for review and approval:~~

~~1. Design development plans;~~

~~2. Board order approving plans;~~

~~3. BG-2, Outline Specification; and~~

~~4. BG-3, Statement of Probably Cost.~~

~~(b) The division shall review and approve design development plans submittals based on:~~

~~1. Site plan: proper siting of the building with respect to vehicular and pedestrian circulation, separation of bus loading area, student play areas, athletic fields, utility construction and site drainage, with details appropriately developed;~~

~~2. Floor plan: number, type, and size of the planned spaces consistent with the schematic plan;~~

~~3. Enlarged plans and details: appropriate to describe the design intention;~~

~~4. Compliance with the Model Program Space requirements established in 702 KAR 4:180, with the maximum gross area of:~~

~~a. An elementary school limited to 110 percent of the Total Gross Area of the Model Program Space; or~~

~~b. A middle or high school limited to 115 percent of the Total Gross Area of the Model Program Space;~~

~~5. Building efficiency: the percent of net program area to gross building area meets or exceeds the guidelines of 702 KAR 4:180;~~

1 ~~6. Budget: the Grand Total Cost on the Statement of Probable Cost, Form BG-3, is within the~~
2 ~~approved Form BG-1 Total Estimated Cost budget. If the Grand Total Cost exceeds the BG #1 Total~~
3 ~~Estimated Cost, an increase in the budget or a decrease in the physical scope of the project shall be~~
4 ~~approved by the board;~~

5 ~~7. Form BG-2, Outline Specifications form is properly completed and conforms to the educational~~
6 ~~program specifications; and~~

7 ~~8. Design development plans incorporate all previous schematic design review comments.~~

8 ~~(3) After written approval of design development plans is received from the division, the~~
9 ~~completed plans and specifications and project manual shall be prepared by the architect and, if~~
10 ~~applicable, CM, for bidding.~~

11 ~~(a) The board shall submit to the division for review and approval:~~

12 ~~1. Completed plans and specifications and project manual;~~

13 ~~2. Board order approving plans and specifications;~~

14 ~~3. Revised BG-3, Statement of Probably Cost; and~~

15 ~~4. Proof of submission of completed plans to other agencies having jurisdiction.~~

16 ~~(b) The division shall review and approve the completed plans and specifications and project~~
17 ~~manual submittals based on:~~

18 ~~1. Compliance with 702 KAR 4:170, with special concern to reduce change orders during~~
19 ~~construction;~~

20 ~~2. Compliance with state law regarding the seal, signature, and date of the documents by~~
21 ~~architects and engineers;~~

22 ~~3. Documents are of sufficient detail and complexity that they may be used:~~

23 ~~a. To obtain a building permit;~~

- ~~b. As instruments in the competitive bidding process; and~~
- ~~c. By a general contractor to construct the project;~~
- ~~4. BG-3 Grand Total Cost does not exceed by ten (10) percent the approved Form BG-1 Total Estimated Cost budget;~~
- ~~5. Deed, certificate of title insurance to the property, deed of easements for all utilities, and proof of road and utility access for the project are filed with the division;~~
- ~~6. Proposed floor elevation is a minimum of one (1) foot above the 100-year flood plain elevation for new construction and no state funds are proposed for renovation below the 100-year flood plain elevation;~~
- ~~7. Construction documents include the following forms to the extent applicable with KDE amendments appropriate for general construction or construction management:~~
- ~~a. AIA Document A201-2007, General Conditions of the Contract for Construction;~~
- ~~b. KDE Amendment to AIA A201-2007;~~
- ~~c. AIA Document A201/CMA, General Conditions of the Contract for Construction, 1992 Construction Manager Adviser Edition;~~
- ~~d. KDE Amendment to AIA A201/CMA 1992;~~
- ~~e. AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor;~~
- ~~f. KDE Amendment to AIA A101-2007;~~
- ~~g. AIA Document A101/CMA, Standard Form of Agreement Between Owner and Contractor, 1992 Construction Manager Adviser edition;~~
- ~~h. KDE Amendment to AIA A101/CMA 1992;~~
- ~~i. AIA Document A701-1997, Instructions to Bidders;~~
- ~~j. KDE Amendment to AIA A701-1997;~~

1 ~~k. KDE Form of Proposal;~~

2 ~~l. AIA Document A310, Bid Bond;~~

3 ~~m. AIA Document A312, Performance Bond and Payment Bond;~~

4 ~~n. KDE Amendment to AIA A312-1984;~~

5 ~~o. AIA G702-1992, Application and Certification for Payment;~~

6 ~~p. AIA Document G702/CMA, Application and Certificate for Payment, 1992 Construction~~

7 ~~Manager Adviser edition;~~

8 ~~q. AIA Document G701-2000, Change Order;~~

9 ~~r. KDE Change Order Supplemental Information Form;~~

10 ~~s. AIA Document G701/CMA, Change Order, 1992 Construction Manager Adviser edition;~~

11 ~~t. AIA Document G704-2000, Certificate of Substantial Completion;~~

12 ~~u. AIA Document G704/CMA, Certificate of Substantial Completion, 1992 Construction~~

13 ~~Manager Adviser edition;~~

14 ~~v. AIA Document G706, Contractor's Affidavit of Payment of Debts and Claims;~~

15 ~~w. AIA Document G706A, Contractor's Affidavit of Release of Liens;~~

16 ~~x. AIA Document G707, Consent of Surety to Final Payment; and~~

17 ~~y. AIA Document G707A, Consent of Surety to Reduction in or Partial Release of Retainage;~~

18 ~~8. A 100 percent performance and payment bond shall be required for any contract in excess of~~

19 ~~\$25,000 and on all contracts using the CM process from an insurance firm authorized to do business~~

20 ~~in Kentucky. The insurance firm shall be listed in and the performance and payment bond shall be~~

21 ~~written within the terms and limits established by the United States Department of the Treasury,~~

22 ~~Financial Management Service, and available at <http://fms.treas.gov/c570/c570.htm>;~~

23 ~~9. A contractor shall carry all insurance required by law and by contract to hold the board safe~~

1 ~~from loss until the project is completed or an occupancy permit is received by the board. Unless~~
2 ~~otherwise provided in the bidding documents, the board shall purchase and maintain property~~
3 ~~insurance written on a builder's risk "all-risk" or equivalent policy in the amount of the initial Total~~
4 ~~Construction Cost, plus value of subsequent contract modifications and the cost of materials supplied~~
5 ~~and installed by others, comprising total value for the entire project at the site on a replacement cost~~
6 ~~basis without optional deductibles; and~~

7 ~~10. Notification of other state and local agencies having jurisdiction, including:~~

8 ~~a. Department of Housing, Buildings and Construction;~~

9 ~~b. Division of Building Codes Enforcement;~~

10 ~~c. Division of Plumbing;~~

11 ~~d. Division of Water;~~

12 ~~e. Division of Air Quality;~~

13 ~~f. Local health department; and~~

14 ~~g. Local building inspector.~~

15 ~~(4) The board shall receive written approval of the construction bidding documents and~~
16 ~~authorization to bid from the division prior to advertisement for bids.~~

17 ~~(5) Performance specification procedures may be used by the board for proposed capital~~
18 ~~construction projects. The proposed performance specifications as prepared by the board shall be~~
19 ~~approved in writing by the division prior to advertisement for bids.~~

20 ~~(6) Leases, lease purchases, or leases with an option to purchase by a board for fixed equipment,~~
21 ~~capital construction, or alterations to existing buildings and building systems shall require the~~
22 ~~submittal of plans and specifications and lease documents to the division for review and approval.~~

~~Section 7. Construction Bidding, Bond Sale, and Contracting. (1) A minimum of ten (10) working days prior to the scheduled bond sale date, the board shall submit to KDE for review and approval:~~

~~(a) To the division:~~

~~1. Each bid tabulation;~~

~~2. Bid security;~~

~~3. The proposal form for each successful bidder;~~

~~4. Each proposed contract or purchase order (unsigned);~~

~~5. The revised financial form (Form BG 1, page 3) to coincide with the proposed construction costs; and~~

~~6. The architect's written recommendation regarding the awarding of the contract; and~~

~~(b) To the Division of District Operations, KDE:~~

~~1. Preliminary official statement;~~

~~2. Notice of bond sale;~~

~~3. Official terms and conditions; and~~

~~4. Plans of financing.~~

~~(2) If the submitted documents are not in an approvable form at least five (5) working days before the scheduled bond sale, the sale date shall be postponed.~~

~~(3) The board shall contract with a fiscal agent to assist in meeting all reporting, filing, and selling requirements for securing the financial approval of KDE when school revenue bonds are proposed for sale.~~

~~(4)(a) Bids for school revenue bond sales shall be received in Frankfort, Kentucky, at:~~

~~1. Kentucky Department of Education, Office of District Support Services, 15th Floor, Capital Plaza Tower; or~~

1 ~~2. SFCC, 229 W. Main St., Suite 102, Frankfort, Kentucky 40601, if SFCC funds are involved.~~

2 ~~(b) A KDE or SFCC staff member shall be present to receive the bids.~~

3 ~~(c) Bids shall be delivered by mail, in person, by telephone, electronically or by facsimile (fax)~~
4 ~~machine. If the apparent winning bid is telephoned, the bid shall be reaffirmed by fax within thirty~~
5 ~~(30) minutes after the bid opening.~~

6 ~~(5) The division shall approve a proposed construction contract based on:~~

7 ~~(a) Submission of tabulation of bids, form of proposal, bid security and proposed contract;~~

8 ~~(b) The board order indicating that the low bid was accepted or written justification if other than~~
9 ~~the low bid is proposed;~~

10 ~~(c) The proposed construction contract is within approved budget; and~~

11 ~~(d) The form of proposal is completed in accordance with the instructions to bidders.~~

12 ~~(6)(a) Any discrepancies between the proposed contract and bidding documents shall be remedied~~
13 ~~prior to approval.~~

14 ~~(b) The board's desire to waive irregularities and informalities as to a bid shall be reviewed and~~
15 ~~final judgment made by the division prior to approval of the contract and financing plan.~~

16 ~~(c) Approval of the proposed contract by the division shall not indicate the contract is the best or~~
17 ~~the most reasonable.~~

18 ~~(7) The Division of District Operations, KDE, shall issue the final approval for the financing plan,~~
19 ~~authorize the bond sale, and prepare the approval letter for the chief state school officer or his or her~~
20 ~~designee.~~

21 ~~(8) A negotiation of the bid price shall not be allowed, except in accordance with KRS 45A.375~~
22 ~~for those districts under the Model Procurement Code.~~

23 ~~(9) Construction account expenditures that are subject to bidding shall be approved by the~~

1 ~~division, except for expenditures for moveable equipment.~~

2 ~~(10) The board shall submit to the division:~~

3 ~~(a) A copy of each executed contract and purchase order;~~

4 ~~(b) Each insurance certificate and a copy of the property insurance policy; and~~

5 ~~(c) A copy of each 100 percent performance and payment bond.~~

6
7 ~~Section 8. Contract Change Orders. (1)(a) All change orders shall be submitted to the division,~~
8 ~~and shall be accompanied with the following:~~

9 ~~1. Copy of local board action approving the change order;~~

10 ~~2. Properly completed KDE Change Order Supplemental Information Form; and~~

11 ~~3. Cost breakdown which separates labor, material, profit and overhead. If unit prices are utilized,~~
12 ~~this cost breakdown shall not be necessary.~~

13 ~~(b) Changes in the contract which do not substantially alter the nature of the contract, or may be~~
14 ~~regarded as incidental to or which relate to an integral part of the original contract and specifications,~~
15 ~~may be approved by the division.~~

16 ~~(c) A copy of any change order using the forms AIA Document G701-2000 or AIA Document~~
17 ~~G701/CMA issued in connection with the project shall be signed by the appropriate parties as a~~
18 ~~recommendation and shall be subject to approval by the board.~~

19 ~~(2) Any additive or deductive change order proposal in excess of \$7,500 shall be subject to~~
20 ~~approval by the division prior to execution.~~

21 ~~(3) Approval of proposed change orders over \$7,500 shall be based upon:~~

22 ~~(a) Completed supplemental information form, board order, and cost breakdown;~~

23 ~~(b) Cost calculated according to contract unit prices or alternative method with documentation~~

1 provided to support cost;

2 (c) The change order scope and cost are considered within the norm based upon the information
3 submitted; and

4 (d) Cumulative cost of contract and all change orders are within the approved budget.

5 (4) The division approval shall not indicate the change order cost is the best cost or the requested
6 change order is the most appropriate action.

7
8 ~~Section 9. Construction Contract Retainage. (1)(a) The board shall retain ten (10) percent from~~
9 ~~each application for payment up to fifty (50) percent completion of the work. If the work is on~~
10 ~~schedule and satisfactory, and upon written request of the contractor together with written consent of~~
11 ~~surety and the recommendation of the architect, the board shall approve a reduction in retainage to~~
12 ~~five (5) percent of the current contract sum.~~

13 (b) No part of the five (5) percent retainage shall be paid until after substantial completion of the
14 work, as defined in AIA A201-2007, General Conditions of the Contract for Construction, and the
15 KDE Amendment to AIA A201-2007.

16 (c) After substantial completion of the work, if reasons for reduction of the retainage are certified
17 in writing by the architect, a reduction to a lump sum amount less than the five (5) percent retainage
18 shall be approved by the board. The minimum lump sum retainage shall be twice the estimated cost
19 to correct the deficient or incomplete work.

20 (2) The investment earnings resulting from any agreement entered into by a board involving the
21 construction account, including the construction contract retainage for an approved project, shall be
22 invested in such a manner that any additional income from the investment shall accrue only to the
23 board.

1
2 ~~Section 10. Construction Dispute Resolution. (1) Unresolved claims between parties arising out of~~
3 ~~or relating to any contract subject to this administrative regulation shall not utilize arbitration or the~~
4 ~~American Arbitration Association unless agreed to by all parties.~~

5 ~~(2) Prior to the initiation of legal proceedings, unresolved claims arising out of or relating to any~~
6 ~~contract shall be subject to mediation, which shall be in accordance with the Construction Industry~~
7 ~~Mediation Procedures of the American Arbitration Association in effect on the date of the contract~~
8 ~~and, if the parties fail to resolve their disputes through mediation, to binding dispute resolution.~~

9 ~~(3) Mediation may be initiated by written request filed by any party.~~

10
11 ~~Section 11. Construction Contract Closeout Process. (1) The architect shall furnish the board a~~
12 ~~completed BG 4, Project Closeout Form, with applicable information requesting final approval.~~

13 ~~(2) If the board agrees the construction contract is complete, it shall approve the BG #4 and~~
14 ~~forward it to the division for review and approval.~~

15
16 ~~Section 12. Penalties for Malfeasance or Nonfeasance. (1) A determination by the board or the~~
17 ~~division of malfeasance or nonfeasance by the architect or CM shall be forwarded to the chief state~~
18 ~~school officer.~~

19 ~~(2) The chief state school officer may make a recommendation to the KBE to determine that the~~
20 ~~offending firm is ineligible to provide professional services on school construction projects for a~~
21 ~~period not to exceed five (5) years.~~

22 ~~(3) The KBE may prescribe alternative penalties.~~

23 ~~(4) If the principals of the offending firm become associated with another firm during the penalty~~

1 ~~period, upon recommendation by the chief state school officer, the KBE may determine that the~~
2 ~~penalty invoked shall also apply to that firm.~~

3
4 ~~Section 13. Incorporation By Reference. (1) The following material is incorporated by reference:~~

5 ~~(a) BG-1, Project Application Form, 2008;~~

6 ~~(b) Non-Collusion Affidavit, December 2008;~~

7 ~~(c) Request for Proposals for Architectural/Engineering Services, May 1993;~~

8 ~~(d) Architect/Engineer Fee Guidelines, May 1993;~~

9 ~~(e) AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect;~~

10 ~~(f) KDE Amendment to AIA B101-2007, December 2008;~~

11 ~~(g) AIA Document B141/CMA, Standard Form of Agreement Between Owner and Architect, 1992~~

12 ~~Construction Manager Adviser Edition;~~

13 ~~(h) KDE Amendment to AIA B141/CMA 1992, May 1993;~~

14 ~~(i) Request for Proposals for Construction Management Services, May 1993;~~

15 ~~(j) AIA Document B801/CMA, Standard Form of Agreement Between Owner and Construction~~
16 ~~Manager, 1992 edition;~~

17 ~~(k) KDE Amendment to AIA B801/CMA 1992, May 1993;~~

18 ~~(l) AIA Document A201-2007, General Conditions of the Contract for Construction;~~

19 ~~(m) KDE Amendment to AIA A201-2007, December 2008;~~

20 ~~(n) AIA Document A201/CMA, General Conditions of the Contract for Construction, 1992~~
21 ~~Construction Manager Adviser Edition;~~

22 ~~(o) KDE Amendment to AIA A201/CMA 1992, May 1993;~~

23 ~~(p) AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor;~~

~~(q) KDE Amendment to AIA A101-2007, December 2008;~~
~~(r) AIA Document A101/CMA, Standard Form of Agreement Between Owner and Contractor,~~
~~1992 Construction Manager Adviser edition;~~
~~(s) KDE Amendment to AIA A101/CMA-1992, May 1993;~~
~~(t) AIA Document A701-1997, Instructions to Bidders;~~
~~(u) KDE Amendment to AIA A701-1997, April 2000;~~
~~(v) KDE Form of Proposal, April 2000;~~
~~(w) AIA Document A310, Bid Bond, 1970;~~
~~(x) AIA Document A312, Performance Bond and Payment Bond, 1984;~~
~~(y) KDE Amendment to AIA A312-1984, May 1993;~~
~~(z) KDE Purchase Order, May 1993;~~
~~(aa) KDE Material Supplier Authorization, May 1993;~~
~~(bb) AIA Document G702/CMA, Application and Certificate for Payment, 1992 Construction~~
~~Manager Adviser edition;~~
~~(cc) KDE Change Order Supplemental Information Form, April 2000;~~
~~(dd) AIA Document G701-2000, Change Order;~~
~~(ee) AIA Document G701/CMA, Change Order, 1992 Construction Manager Adviser edition;~~
~~(ff) AIA Document G704-2000, Certificate of Substantial Completion;~~
~~(gg) AIA Document G704/CMA, Certificate of Substantial Completion, 1992 Construction~~
~~Manager Adviser edition;~~
~~(hh) AIA Document G706, Contractor's Affidavit of Payment of Debts and Claims, 1994;~~
~~(ii) AIA Document G706A, Contractor's Affidavit of Release of Liens, 1994;~~
~~(jj) AIA Document G707, Consent of Surety to Final Payment, 1994;~~

1 ~~(kk) AIA Document G707A, Consent of Surety to Reduction in or Partial Release of Retainage,~~
2 ~~1994.~~

3 ~~(ll) KDE CM Fee Guideline, May 1993;~~

4 ~~(mm) BG #2, 2008, Outline Specifications;~~

5 ~~(nn) BG #3, 2008, Statement of Probable Construction Cost;~~

6 ~~(oo) AIA G702-1992, Application and Certificate for Payment; and~~

7 ~~(pp) BG #4, 2008, Project Closeout Form.~~

8 ~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the~~
9 ~~Division of Facilities Management, Department of Education, 15th Floor, Capital Plaza Tower, 500~~
10 ~~Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

11 ~~(3) The AIA documents may be purchased from the American Institute of Architects by calling 1-~~
12 ~~800-365-2724.]~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (4).

(Date)

Terry Holliday
Commissioner of Education

(Date)

David Karem, Chairperson
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on April 24, 2013, at 2:00 p.m. eastern time in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin C. Brown, General Counsel, Office of Guiding Support Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone 502/564-4474, fax 502/564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 702 KAR 4:160

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards that school districts shall meet in operational performance, including construction of public school buildings and the use of uniform forms.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.070, 156.160, 162.060, 162.065, 322.360 and 323.033 that set forth the Kentucky Board of Education's responsibility to establish standards that districts shall meet in operational performance and execution of school construction.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for the school construction process required in KRS 156.070, 156.160, 162.060, 162.065, 322.360 and 323.033.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics for the school construction process required in KRS 156.070, 156.160, 162.060, 162.065, 322.360 and 323.033.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment provides an update to streamline the school construction process by aligning the agency's business processes with the current construction environment and by revamping the agency's role of guidance and oversight. The School Facilities Work Group Report, issued on August 5, 2011, documented recommendations for improving the school construction process. The agency construction forms were revised in conjunction with the administrative regulation revision.

In addition to improving the overall construction process, the agency included a section in the administrative regulation for the Guaranteed Energy Savings Contract delivery method. Local board oversight activities were identified along with required submissions for the agency's oversight.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish standards that districts shall meet in operational performance and execution of school construction and align standards and incorporate recommendations from the School Facilities Work Group.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statutes by establishing standards that districts shall meet in operational performance and execution of school construction.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specifics for the school construction process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts in Kentucky and supporting staff in the agency, design consultants, and contractors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendment will provide a comprehensive set of uniform construction documents for use by school districts, design consultants, and contractors.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to

comply with this administrative regulation or amendment: School districts, design consultants, and contractors will abide by the standards and requirements set forth.

Agency staff will continue to review all construction projects for compliance with the amendments to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will have updated regulations that support and incorporate the standards and recommendations from the School Facilities Work Group and will have the guidance establishing standards that districts shall meet in operational performance and execution of school construction.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment does not result in additional costs.

(b) On a continuing basis: The amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 702 KAR 4:160

Contact Person: Kevin C. Brown

Phone number: 502-564-4474

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All school districts and the agency are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation provides specifics for the school construction process required in KRS 156.070, 156.160, 162.060, 162.065, 322.360 and 323.033.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation does not directly affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated with this administrative regulation in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment of this administrative regulation does not result in additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment of this administrative regulation does not result in additional costs in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation amendment does not have a fiscal impact.

Revenues (+/-): Not applicable

Expenditures (+/-): Not applicable

Other Explanation: Not applicable

Summary Page - Incorporation by Reference
702 KAR 4:160. Capital construction process.

- (1) The following documents are incorporated by reference:
- (a) AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version, 2013;
 - (b) AIA Document A201-2007, General Conditions of the Contract for Construction - KDE Version, 2013;
 - (c) AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum - KDE Version, 2013;
 - (d) AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version, 2013;
 - (e) AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser - KDE Version, 2013;
 - (f) AIA Document A232-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition - KDE Version, 2013;
 - (g) AIA Document A132-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition - KDE Version, 2013;
 - (h) AIA Document A141-2004, Standard Form of Agreement Between Owner and Design-Builder - KDE Version, 2013;
 - (i) AIA Document A141-2004, Exhibit A, Terms and Conditions - KDE Version, 2013;
 - (j) AIA Document A141-2004, Exhibit C, Insurance and Bonds - KDE Version, 2013;
 - (k) AIA Document A701-1997, Instruction to Bidders - KDE Version, 2013;
 - (l) AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version, 2013;
 - (m) AIA Document A310-2010, Bid Bond, 2010;
 - (n) AIA Document G701-2001, Change Order, 2001;
 - (o) AIA Document G701/CMa-1992, Change Order, Construction Manager-Adviser Edition, 1992;
 - (p) AIA Document G702-1992, Application and Certification for Payment, 1992;
 - (q) AIA Document G732-2009, Application and Certification for Payment, Construction Manager-Adviser Edition, 2009;
 - (r) AIA Document G704-2000, Certificate of Substantial Completion, 2000;
 - (s) AIA Document G704/CMa-1992, Certificate of Substantial Completion, Construction Manager-Adviser Edition, 1992;
 - (t) AIA Document G706-1994, Contractor's Affidavit of Payment of Debts and Claims, 1994;
 - (u) AIA Document G706A-1994, Contractor's Affidavit of Release of Liens, 1994;
 - (v) AIA Document G707-1994, Consent of Surety to Final Payment, 1994;
 - (w) AIA Document G707A-1994, Consent of Surety to Reduction in or Partial Release of Retainage, 1994;
 - (x) BG-1 Project Application Form, 2012;

- (y) BG-2 Outline Specifications Energy Design Criteria, 2012;
- (z) BG-3 Statement of Probable Cost, 2012;
- (aa) BG-4 Contract Closeout Form, 2012;
- (bb) BG-5 Project Closeout Form, 2012;
- (cc) KDE Architect/Engineer Fee Guidelines for Basic Services, 2012;
- (dd) KDE Change Order Supplemental Information Form, 2012;
- (ee) KDE Construction Manager Fee Guidelines for Basic Services, 2012;
- (ff) KDE Form of Proposal, 2012;
- (gg) KDE Non-Collusion Affidavit, 2012;
- (hh) KDE Purchase Order, 2012;
- (ii) KDE Purchase Order Summary Form, 2012;
- (jj) KDE Request for Proposals for Architectural/Engineering Services, 2012;
- (kk) KDE Request for Proposals for Construction Management Services, 2012; and
- (ll) KDE Request for Proposals for Guaranteed Energy Savings Contracts, 2012.

(2) These documents are forms to assist school districts with procedures and criteria for the construction of public school buildings.

(3) The documents incorporated by reference consist of 309 pages.