

## STATEMENT OF EMERGENCY

200 KAR 5:021E

1) This emergency amendment to an existing administrative regulation is necessary to update the Finance manual of policies and procedures to comply with statutory changes in 24 RS SB 91, which was enacted into law with an emergency clause rendering the changes effective on passage. Accordingly, this emergency amendment to the existing administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)3. to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute or federal law. Senate Bill 91 adjusted small purchase authority for construction projects, contract valuation thresholds which trigger bond requirements, and valuation thresholds for capital construction to determine whether Finance and Administration Cabinet approval is required. The Finance manual of policies and procedures, attached as incorporated material to 200 KAR 5:021, contains policies that address these issues and must be updated to comply.

2) An ordinary amendment to the existing administrative regulation is not sufficient because the effective date of an ordinary regulation would leave an extended and unnecessary period of time where the Finance manual of policies and procedures would be in direct conflict with statutory language made effective with the passage of Senate Bill 91. The emergency amendment to the existing administrative regulation is limited to updates necessary to remain in compliance with statutory language amended by the passage of SB 91.

3) This administrative regulation will be replaced through an emergency amendment by an ordinary administrative regulation.

4) The ordinary administrative regulation will retain the updated provisions of this administrative regulation through an emergency amendment but will also contain additional updates to the Finance manual of policies and procedures of a non-emergency nature.

  
Andy Beshear, Governor

5.16.24  
Date

DocuSigned by:  
  
81C993F6FA23433  
Holly M. Johnson, Secretary  
Finance and Administration Cabinet

5/16/2024  
Date

1 FINANCE AND ADMINISTRATION CABINET

2 (Emergency Amendment)

3 200 KAR 5:021E. Manual of policies and procedures.

4 RELATES TO: KRS 45A.045(2) [~~Chapter 45A~~]

5 STATUTORY AUTHORITY: KRS 45A.045(2)

6 NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045(2) requires the Finance  
7 and Administration Cabinet to publish a manual of policies and procedures, which is to be  
8 incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This  
9 administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies  
10 and Procedures.

11 Section 1. Incorporation by Reference. (1) "Finance and Administration Cabinet Manual  
12 of Policies and Procedures (Revised May 2024~~[February 2016]~~)" is incorporated by reference.

13 (2) This material may be inspected, copied, or obtained, subject to applicable copyright  
14 law, at the Finance and Administration Cabinet, Office of General Counsel, 200 Mero Street, 5th  
15 Floor [~~Office of Policy and Audit, Policy Branch, Room 493, Capitol Annex~~], Frankfort, Kentucky  
16 40622~~[40601]~~, Monday through Friday, 8 a.m. to 4:00~~[30]~~ p.m. This material may also be obtained  
17 at the Finance and Administration Cabinet's Web site, [https://finance.ky.gov/office-of-the-](https://finance.ky.gov/office-of-the-secretary/office-of-policy-and-audit/Pages/Finance-Policies.aspx)  
18 [secretary/office-of-policy-and-audit/Pages/Finance-Policies.aspx](https://finance.ky.gov/office-of-policy-and-audit/Pages/Finance-Policies.aspx)  
19 [~~[www.finance.ky.gov/services/policies/Pages/default.aspx](http://www.finance.ky.gov/services/policies/Pages/default.aspx)~~].

Approved:

DocuSigned by:

*Holly M. Johnson*

81C993F6FA23433

Holly M. Johnson, Secretary  
Finance and Administration Cabinet

5/16/2024

Date

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on July 24, 2024, at 10:00 a.m. at the Kentucky Finance and Administration Cabinet, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays 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 cancelled. 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 11:59 p.m. on July 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Cary Bishop, Assistant General Counsel, Office of General Counsel, 200 Mero Street, 5<sup>th</sup> Floor, Frankfort, Kentucky 40622. Phone: (502)564-6660, Fax: (502)564-9875. Email: cary.bishop@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

200 KAR 5:021.

Contact person: Cary Bishop, Assistant General Counsel, Office of General Counsel, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622. Phone: (502)564-6660, Fax: (502)564-9875. Email: cary.bishop@ky.gov.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation publishes a manual of procedures that clarify and explain detailed processes necessary for daily administration of purchase-related activities.

(b) The necessity of this administrative regulation: This regulation fulfills the requirement of KRS 45A.045(2) for the Secretary to publish a manual of procedures which shall be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation incorporates by reference the policies and procedures manual required by KRS 45A.045(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides guidance to vendors, prospective bidders, Finance and Administration Cabinet ("FAC") staff and other state employees in the administration of Kentucky's Model Procurement Code (KRS Chapter 45A).

(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: The regulation contains minimal changes to the regulation and manual, mostly limited to those necessary to conform with recently effective statutory changes.

(b) The necessity of the amendment to this administrative regulation: This amendment will reflect changes in statutes and related policies.

(c) How the amendment conforms to the content of the authorizing statutes: The manual is required by KRS 45A.045(2).

(d) How the amendment will assist in the effective administration of the statutes: The updated manual will assist state employees and vendors in procurement matters.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All current and prospective state vendors.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Amendment of administrative regulation is required to comply with recently passed legislation which contained an emergency clause.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(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 for implementation of this regulation.

(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 for implementation of this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) While the regulation itself is limited in scope and does not utilize tiering, the incorporated Manual of Policies and Procedures, consistent with KRS 13A.210, uses tiering, when possible, to avoid disproportionate impacts by using reasonable criteria. For example, the manual had reduced administrative requirements for small purchase amounts, as opposed to larger purchases where greater oversight is necessary. Additionally, per 13A.210(2), the manual generally aims to provide clarification and eliminate ambiguity regarding provisions of the model procurement code which might otherwise cause confusion and administrative inefficiency for agencies and vendors.

## FISCAL IMPACT STATEMENT

200 KAR 5:021.

Contact Person: Cary Bishop, Assistant General Counsel, Office of General Counsel, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622.

Phone: (502)564-6660

Email: [cary.bishop@ky.gov](mailto:cary.bishop@ky.gov)

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. No federal statute or regulation at issue. While the Commonwealth's Model Procurement Code is modeled on the federal model, the statute authorizing this regulation is a state statute, KRS 45A.045.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This regulation is promulgated by the Finance and Administration as a whole and will impact all state agencies.

(a) Estimate the following for the first year: No additional cost from this regulation amendment.

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change expected.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): No local entities will be affected.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change expected.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year: \$0

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change expected.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: No fiscal impact expected.



(b) Methodology and resources used to determine the fiscal impact: Legal office review of changes included with regulatory amendment. Changes are limited to procedural thresholds that will not have a direct fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) No major economic impact is expected.

(b) The methodology and resources used to reach this conclusion: Legal office review of changes included with regulatory amendment. Changes are limited to procedural thresholds that will not have a direct fiscal impact.

## SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The "Finance and Administration Cabinet Manual of Policies and Procedures", as required by KRS 45A.045(2), enacts a manual of procedures which incorporated by reference as into this administrative regulation. The manual contains regulations, rules, and procedures binding on all purchases by the various spending agencies, except as otherwise provided by law.

## SUMMARY OF CHANGES TO MATERIAL INCORPORATED BY REFERENCE

The " Finance and Administration Cabinet Manual of Policies and Procedures "is being updated in accordance with provisions of 24 RS SB 91. Specifically, the threshold for construction contract bonds to be required is increasing from \$40,000 to \$100,000, the ceiling for force account projects is being increased from \$250,000 to \$500,000, and small purchase threshold amounts are being increased in parallel to the increase of the above thresholds.