



**Kentucky's Model Procurement Code:
State Funds Do Not Necessarily Require State Rules**

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Public-sector construction contracts can provide a wide berth of benefits but may also present a variety of practical and legal pitfalls. Such projects tend to be more financially stable, an important incentive in the current economy. However, contractors may be subject to the political preferences of the public entity sponsoring the particular project. Additionally, contractors bidding public-sector work are subject to various types of legislative enactments and regulations, including the Kentucky Model Procurement Code (“Code”).

The Code imposes heightened requirements and reviewing standards on every expenditure of public state funds by the Commonwealth under any contract or like business agreement. If the Code applies, the government must adhere to these strict requirements when awarding contracts. This includes such determinations related to competitive sealed bidding.

Importantly, however, the provisions of the Code apply to a *local* governmental agency only if the local agency in question chooses to adopt them. This peculiar outcome became clear in *Laurel Construction Co., Inc. v. Paintsville Utility Comm.*, 336 S.W.3d 903 (Ky. App. 2010). Despite the fact that a local agency received state funding to construct a \$200,000 water tower, the agency had not adopted the Code. Therefore, its provisions did not apply to the award of a construction contract.

If the Code does not apply to a given contract, Kentucky law assumes that the government agency either awarded the contract to the lowest or the best bidder. Anyone who challenges the bid must make specific allegations of fraud or collusion in order to properly state a case. This is a difficult burden for plaintiffs to overcome. Where municipalities reject a bid, Kentucky courts generally do not disturb their actions based on mere technicalities, even if made unwisely.

Performing work on a public-sector contract can be a messy – but profitable – business. Thus, it is always wise to have a qualified attorney that you can call to help guide you through the process and ensure a successful and lucrative undertaking.