STATE PURCHASING POLICIES AND PRACTICES

Research Report No. 250

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STATE PURCHASING POLICIES AND PRACTICES

Adopted Report and Recommendations of the Program Review and Investigations Committee

By

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Research Report No. 250

Legislative Research Commission

Frankfort, Kentucky

Committee for Program Review and Investigations

September, 1989

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FOREWORD

The 1988 General Assembly, in Senate Concurrent Resolution 68, established a subcommittee of the Program Review and Investigations Committee to study state purchasing. The report and its recommendations were adopted by the Program Review and Investigations Committee on October 9, 1989 for submission to the Legislative Research Commission and the Interim Joint Committee on State Government.

The report is the result of dedicated time and effort by the Program Review staff and secretaries Wilda Bond, Susie Reed and Jo Ann Blake. Our appreciation is also expressed to the personnel of the Finance and Administration Cabinet and to all other persons interviewed for this study.

Vic Hellard, Jr.
Director

Frankfort, Kentucky
October, 1989

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TRANSMITTAL MEMORANDUM

TO: The Honorable Wallace Wilkinson,
Members of the General Assembly, and
Affected Agency Heads and Interested Individuals

FROM: Representative C.M. "Hank" Hancock, Chairman,
Program Review and Investigations Committee, and
Senator Bill Clouse, Chairman
Subcommittee on State Purchasing

DATE: October 11, 1989

RE: Program Evaluation: State Purchasing Policies and Practices

Attached is the final report and recommendations resulting from a review of state purchasing procedures by the Program Review and Investigations Committee Special Subcommittee on State Purchasing. The Special Subcommittee was established in accordance with Senate Concurrent Resolution 68, adopted by the 1988 General Assembly. Data and information was gathered by: staff interviews with state purchasing officials in the Finance and Administration Cabinet and user agencies; record and document reviews; surveys of vendors and user agencies; and several months of testimony before the Subcommittee by persons representing former and current state purchasing and budget administrators, local government procurement administrators, associates of the American Bar Association and national purchasing associations, state agencies and vendors.

According to state accounting records, the Commonwealth spends approximately $800 million annually for goods and services. Statutes applicable to state purchasing are basically centralized in KRS Chapter 45A, commonly referred to as the Kentucky Model Procurement Code (KMPC), and KRS Chapter 45, which provides statutory guidance to the Finance and Administration Cabinet (Finance Cabinet). The KMPC is based on an early draft of the American Bar Association Model Procurement Code for State and Local

Governments (ABA Model Code). The ABA Model Code provides statutory principles and policy guidelines for all aspects of sound governmental procurement. A key recommendation of the American Bar Association and national governmental procurement organizations is that purchasing statutes be consolidated into one body of law which covers the full cycle of acquisition and disposal of property. A recommendation is made to merge procurement statutes from KRS Chapter 45 into Chapter 45A.

The KMPC designates the Secretary of the Finance Cabinet as the Chief Purchasing Officer of the state. Kentucky statutes make the Secretary of the Cabinet and the Cabinet itself responsible for all aspects of Kentucky's procurement system. Within the Cabinet, responsibility for procurement of commodities and services, and leasing and capital construction are administratively assigned to the Department for Administration and the Department for Facilities Management respectively. A recommendation is made that the Finance Cabinet recognize the importance of the procurement function by elevating its status within the Cabinet.

Much of the savings realized by centralized purchasing results from lower costs through high volume purchasing. The approximate $800 million annual cost for goods and services accounts for the purchasing expenditures of all agencies in the state's accounting system (STARS), but does not include university expenditures, small purchases, or the purchases of local governments from state price contracts. Currently there is no central point in state government for monitoring all state purchasing activities. In order to enhance the state's negotiating ability to use its cumulative purchasing power to lower prices, a recommendation is made to require the Division of Purchases to compile an annual report of the purchasing expenditures of all agencies in STARS.

The KMPC and KRS Chapter 45 provide four methods for procuring goods and services: 1) small purchases procedures, 2) competitive sealed bidding, 3) competitive negotiation, and 4) noncompetitive negotiation. Small purchase procedures are allowed when a particular purchase is too small to justify the administrative time and expense required by soliciting competitive sealed bids. Agency testimony and survey responses advocated increasing small purchase limits. A recommendation is made to permit the Secretary of the Finance Cabinet to delegate increased small purchase dollar limits to agencies for purchasing specific commodities.

Under Kentucky procurement statutes, competitive sealed bidding is the standard method for acquiring goods and services unless the item is statutorily exempted from the competitive bidding process. A recommendation is made to limit the statutory exemptions from competitive sealed bidding allowed by the KMPC and KRS Chapter 45.

The KMPC allows for competitive sealed bids to be awarded based on either the lowest bid or the lowest evaluated bid. A recommendation is made to broaden the statutory language relating to bid acceptance to allow more flexibility for subjective considerations in awarding bids. The term noncompetitive negotiation encompasses single source and emergency purchases. Recommendations are made to define a single source situation and provide for a single definition of an emergency condition for purchases of commodities, personal services, capital construction and equipment.

The KMPC provides that vendors seeking clarification or relief from decisions rendered by the Division of Purchases should file a protest with the Secretary of the Finance and Administration Cabinet. In such cases, the written decision of the Secretary is final and conclusive. A recommendation is made to establish another administrative route of appeal by creation of a review and advisory board, to issue either before-or-after-the-fact advisory opinions on the ethical conduct of purchasing officials or vendors, or the propriety of procurement transactions.

On request of the Capital Projects and Bond Oversight Committee, the Subcommittee also reviewed statutes in KRS Chapter 56 governing the leasing of space by the Commonwealth. Partly as a result of the codification of leasing administrative regulations, the leasing statutes are repetitious and contain subtle contradictions. Nevertheless, there are few formal requirements and Kentucky leasing officials have broad discretion in leasing office space for use. A recommendation is made to rewrite portions of KRS Chapter 56 for clarity and to increase the reporting and documentation required for various stages of the process. The recommendation also requires a biennial audit of the Finance and Administration Cabinet's compliance with KRS Chapter 56 by the Auditor of Public Accounts, and lowering the standard of judicial review for vendors challenging the process. A second recommendation is made to require that leases with an annual rental cost exceeding $200,000 be included in the executive budget, as required for capital construction projects.

For questions or additional information, please contact Joseph Fiala, Assistant Director for Program Review and Investigations.

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EXECUTIVE SUMMARY
KENTUCKY'S PROCUREMENT SYSTEM

The Program Review and Investigations Committee adopted a proposal to study state purchasing in February, 1988. Separately, the 1988 General Assembly passed Senate Concurrent Resolution 68, which established a special seven-member subcommittee of the Program Review and Investigations Committee to study state purchasing. Both of these studies were assigned to the Special Subcommittee. A subsequent request from the Capital Construction and Bond Oversight Committee to consider the incorporation of state leasing laws within the state's purchasing statutes resulted in an expansion of the study to include leasing. The report of the Special Subcommittee was adopted by the Program Review and Investigations Committee on October 9, 1989.

Chapter II presents an overview of Kentucky's state purchasing policies and procedures, as well as information on the types and amounts of purchases in FY '88. State agencies made purchases in excess of $800 million in FY '88, up from $746 million in FY '87. State agencies are required to acquire goods and services in accordance with provisions of KRS Chapter 45A, (commonly referred to as the Kentucky Model Procurement Code (KMPC)), and KRS Chapter 45. The KMPC, enacted in 1979 based on an early draft of the American Bar Association Model Procurement Code for State and Local Governments (ABA Model Code), basically allows four methods by which state agencies may obtain goods and services:

- Small purchases procedures;
- Competitive sealed bidding;
- Competitive negotiation; and
- Noncompetitive negotiation.

Competitive sealed bidding is the standard method for acquiring goods and services unless the item is statutorily exempted from the competitive bidding process. Under this method, contracts are to be awarded to the lowest bid price or the lowest evaluated bid price, whichever is determined to be in the Commonwealth's best interest. Competitive negotiation may be used if use of the competitive sealed bid method is deemed impractical by the Secretary of the Finance and Administration Cabinet. Noncompetitive negotiation may be used to purchase commodities that have a single source or that are made under emergency situations. Small purchase procedures are allowed when a purchase is too small (generally under $1,000) to justify the administrative time and expense required by soliciting competitive sealed bids.

Basically, there are three parties involved in the procurement process: the Finance and Administration Cabinet (Finance Cabinet), state agencies, and vendors. Each of the parties has certain broad responsibilities. As the state's Chief Purchasing Officer, the Secretary of the Finance and Administration Cabinet, is responsible for all aspects of the Commonwealth's procurement system and has broad power concerning policy making and day-to-day operations. The Finance Cabinet is directed by statute to attempt in every

practical way to insure that state agencies are acquiring necessary goods and services at the lowest possible cost. State agencies must adhere to the price/purchase contracts system and other aspects of the Finance Cabinet's Management Manual. Vendors must meet bond requirements and fulfill all terms of the contract, including timely delivery of the specified commodity or service.

The Finance Cabinet may delegate purchasing authority to other state agencies. Currently, the Transportation Cabinet is the only Cabinet to be granted a standing delegation of purchasing authority. However, this authority only extends to specific items, such as guard rails and paving cement.

Chapter III compares the KMPC and purchasing statutes in KRS Chapter 45 to the ABA Model Code. The ABA Model Code was designed to provide state governments with policy and statutory guidance to manage procurement of supplies and services for public purposes. The KMPC is based on a 1978 draft of the ABA Code. Since the KMPC was adopted ten years ago, a major portion of the Subcommittee's activity focused on comparing the KMPC to the current ABA Model Code.

Article 1 of the ABA Model Code outlines general provisions concerning purposes, construction and application. The ABA Model Code states that to the extent provided by a state's public access statute, procurement information is a matter of public record. This provision is intended to achieve maximum public access to procurement information. Although this is not specified in the KMPC, the Kentucky Open Records Act governs procurement information, thereby making it a matter of public record.

Article 2 of the ABA Model Code deals with procurement organization, and suggests that the policy making and operational functions of the procurement process should be separate. The separation of these two functions is more distinct under the ABA Model Code than the KMPC. The ABA provides for a Policy Office as a separate independent policy making body in the executive branch, and a chief procurement officer (CPO), responsible for day-to-day operations. The ABA Model Code also allows for an Advisory Council, to recommend improvements for the procurement process, and a Procurement Institute, to offer education and training to procurement officials.

On the other hand, in Kentucky, the CPO serves a dual role as head of both the primary policy making body, and day-to-day operational activities, which include awarding and administering contracts. The KMPC does allow for an Advisory Council and Procurement Institute. These entities do not, however, exist as ongoing bodies.

Article 3 of the ABA Model Code deals with source selection and contract formation. Both the ABA Model Code and the KMPC emphasize competitive sealed bidding as the primary method of procurement but allow for exceptions from competitive sealed bidding under changing market conditions. There are, however, four key differences in the two codes :

- The KMPC has broad language which allows for noncompetitive negotiated purchases. Rather than using broad provisions, the ABA Model Code allows for

specific exemptions (such as sole source and emergency purchases) in the body of the Code.

- The ABA Model Code may provide greater latitude for bid acceptance and evaluation than the KMPC. Both Codes allow for acceptance of bids on a basis other than price. However, the more specific language in the ABA Model Code dealing with the concept of product acceptability may allow for more subjective considerations, such as taste and appearance, than are legally permissible under the KMPC.

- The ABA Model Code is more definitive than the KMPC about conditions warranting emergency purchases. In fact, the KMPC has no definition for an emergency situation warranting purchases on commodities.

- The ABA Model Code establishes competitive selection procedures for specified services, such as those of accountants or lawyers. This involves a public announcement and a form of RFPs. However, Kentucky does provide for a review process through the procedures for personal service contracts.

Article 4 of the ABA Model Code deals with specifications. Both the ABA Model Code and the KMPC promote a centralized process for drafting of specifications. The ABA Model Code allows user agencies to prepare specifications for certain services and commodities. The KMPC does not contain any provision that would allow a purchasing agency to draft final specifications.

Articles 5 and 6 of the ABA Model Code deal with the procurement of construction and engineering services and modifications and termination of contracts. The ABA Model Code provides more specific clauses for contract adjustments, such as price adjustment clauses, and specified reasons for delay. Moreover, under the ABA Model Code, construction contracts require that changes in excess of a set dollar amount should be certified as to their effect on the project's budget.

The ABA Model Code's Article 7, on cost principles, requires that cost principle modifications be approved at a policy making level. Both the ABA Model Code and the KMPC require regulations regarding the use of cost principles which may be used for negotiation when competitive sealed bidding is not possible. The KMPC delegates this responsibility to the Secretary of Finance.

Article 8 of the ABA Model Code addresses supply management for state agencies, which includes the management of supplies during their life cycle and the disposal or transfer of surplus property. The KMPC does not address supply management. This area

is addressed, however, in a less detailed manner in the powers and duties of the Finance Cabinet outlined in KRS 45.

Article 9 of the ABA Model Code provides for legal and contractual remedies. The ABA Model Code states that an aggrieved vendor may either carry a protest to court or pursue an administrative appeal to a Procurement Appeals Board. In addition, the ABA Model Code allows for entitlement costs (bid preparation and solicit costs) to a vendor who wins an appeal. On the other hand, under the KMPC, the Secretary of the Finance Cabinet has the only determination regarding a protest before a vendor must pursue judicial relief.

Article 10 of the ABA Model Code deals with intergovernmental relations. Both the ABA Model Code and KMPC allow local governments to utilize state price contracts.

Article 11 of the ABA Model Code covers assistance to small and disadvantaged businesses. Unlike the KMPC, the ABA Model Code requires that the Chief Procurement Officer assist small and disadvantaged businesses. Kentucky's Small Business Purchase Act, which allows for "small business set asides", may meet the intent of the ABA Model Code. Nevertheless, the duties and responsibilities of the CPO are still not as specific as in the ABA Model Code.

The last Article of the ABA Model Code (Article 12) addresses ethics in public contracting in more detail than the KMPC. For instance, the ABA Model Code provides for general standards of ethical conduct, remedies for a breach of ethical conduct, and an Ethics Commission to promulgate regulations implementing ethics in public contracting. The KMPC makes no such provisions.

Chapter IV details the issues discussed by the Subcommittee, and preliminary and final recommendations. During Subcommittee meetings, issues arose in the following procurement related areas: products and services exempted under Kentucky statutes; small purchase limits; emergency purchases; preferential treatment; criteria for bid selection; reporting purchasing expenditures; procurement organization; administrative protest or appeal; and consolidation of purchasing statutes.

The following objectives were established by the Subcommittee:

- To maximize competition by limiting Kentucky's statutory exemptions from competitive sealed bidding to those recommended by the American Bar Association's Model Procurement Code (ABA Code).

- To facilitate the ability of state agencies to make routine purchases in a timely manner.

- To better ensure the legitimacy of emergency purchases by establishing uniform and statutory definitions for emergency purchase situations, and increasing the requirements for appropriate justification, documentation and monitoring of emergency procurements.

- To penalize vendors from other states in accordance with the penalities imposed on Kentucky vendors as a result of enacted preferential treatment laws for home state vendors and/or products.

- To broaden the statutory language relating to bid criteria to provide purchasing officers with sufficient flexibility for procuring products of adequate quality at the best price, within legal perimeters.

- To establish a central data source for all governmental purchasing, which will enhance the state's ability to use its cumulative purchasing power to lower prices for high volume commodities.

- To establish greater distance between the policy making and day-to-day operational responsibilities of Kentucky's procurement organization, in order to reinforce the independence of the procurement function and minimize political and other influences on purchasing decisions.

- To elevate the status of Kentucky's procurement organization to a higher level in the state organizational structure, which may be more reflective of the stature necessary to coordinate and act with other agencies in achieving overall mutual goals

- To provide an independent administrative avenue for vendors seeking advice or clarification on decisions rendered by state officials regarding purchases made under Kentucky procurement statutes; to provide an advisory forum for purchasing officials seeking advise or clarification on state or local procurement policies based upon Kentucky procurement statutes; and to create a review forum for designated transactions under waived or limited competitive circumstances.

- To merge Kentucky's procurement statutes into the Kentucky Model Procurement Code (KMPC) for purposes of clarifying purchasing laws and reducing repetitiveness.

The final recommendations accepted by the Subcommittee are as follows:

LIMIT STATUTORY EXEMPTIONS FROM COMPETITION

In order to better ensure maximized competition, the General Assembly should amend KRS Chapter 45.360 to repeal exemptions for: food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies as judged by the FAC; commercial items purchased for resale; personal service contracts; public utilities; library books; rates fixed by law or ordinance; commodities, services, and instructional materials which, in the judgement of the FAC, are available from only one source; and interest in real property. Amend KRS 45A.095, concerning noncompetitive purchasing, to allow the following exemptions: public utilities; library books; rates fixed by law or ordinance; commodities; services; and instructional materials which, in the judgement of the FAC, are available from only one source; and interest in real property. Amend KRS 45.700-720 to include provisions for competitiveness through a form of request for proposals and public notice, as recommended by the American Bar Association Model Procurement Code; and Amend KRS Chapter 45A.095 to provide for and define sole source purchases as a condition for noncompetitive negotiation.

DELEGATE INCREASED LIMITS

The General Assembly should amend KRS 45A.100, to allow the secretary the authority to grant agencies delegated authority to purchase items that are routinely purchased but frequently exceed their small purchase limits.

SINGLE DEFINITION OF AN EMERGENCY PURCHASE

The General Assembly should create a new section of Chapter 45A to define emergency conditions for purchases of commodities, personal services, capital construction and equipment. An emergency condition is a situation which creates a threat to public health, welfare or safety, such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten: 1) the functioning of government; 2) the preservation or protection of property; or 3) the health or safety of any person.

The General Assembly should amend KRS 45A.095 to require emergency purchase files to include the name of the vendor receiving the contract and written determination why the vendor was selected. Emergency purchase files should be made public record and be reviewed by an independent entity. Emergency procurements should be made with competition as is practicable under the circumstances.

BROADEN CRITERIA FOR PRODUCT ACCEPTABILITY

The General Assembly should amend KRS 45A.070 to broaden the statutory criteria for source selection to include subjective criteria, such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose in determining the acceptability of responsive bids.

REPORT PURCHASES BY AGENCIES IN STARS

In order to establish a central data source for governmental purchasing which will enhance the state's ability to use its cumulative purchasing power to lower prices for high volume commodities, the General Assembly should amend KRS Chapter 45.301 to require the FAC's Division of Accounts to report to the Division of Purchases all purchasing expenditures for state agencies. The General Assembly should also amend KRS Chapter 45.360 to require the FAC to compile an annual report of purchasing expenditures for all state agencies on the state's accounting system.

ELEVATE STATUS OF PROCUREMENT FUNCTION

The Finance and Administration Cabinet should recognize the importance of and elevate the status of procurement functions within the Cabinet.

PROCUREMENT REVIEW AND ADVISORY BOARD

The General Assembly should create a Procurement Review and Advisory Board to act as a review forum for vendors and as an independent avenue for aggrieved participants of the procurement system. The board should issue formal advisory opinions that could be used as evidence of good or bad faith in the event of court action. The advisory opinions should address: 1) the ethical conduct of purchasing officials or vendors; 2) the propriety of procurement transactions either before or after the transaction has occurred.

The board should review all "emergency purchases" and develop standards for ethical conduct for persons involved in the purchasing system.

The board should be available to serve: all state agencies, affiliated boards, commissions, and associations; all political subdivisions (including school districts) which have elected to operate under Kentucky's Model Procurement Code (KRS 45A.345 through 45A.460); and all vendors to the above entities.

The board should be composed of three members from the private sector appointed by the Governor from nominations provided by professional organizations (ABA, NASPO .). Appointments should be confirmed by the Senate during regular sessions of the General Assembly. Terms of office should be four years. Members could be compensated $100 per meeting and be reimbursed for expenses.

The board should forward any determination of wrongdoing or violation of the laws to the Attorney General or to the Auditor of Public Accounts for appropriate action.

For administrative purposes, the Procurement Review and Advisory Board should be attached to the Office of the Auditor of Public Accounts.

The operation of and need for the Board should be reevaluated after its initial two years.

CONSOLIDATE PROCUREMENT STATUTES

In order to clarify Kentucky purchasing laws and reduce repetitiveness, the General Assembly should repeal all procurement related statutes in KRS Chapter 45 and merge appropriate sections into KRS Chapter 45A.

Proposed recommendations concerning reciprocal preference for Kentucky vendors, establishment of a procurement policy office, changing the designation of Chief Purchasing Officer and establishing a set term for the Chief Purchasing Officer were rejected by the Subcommittee. A Subcommittee recommendation to create a separate department within the Finance Cabinet responsible for all procurement functions, including leasing and capital construction, was rejected by the Program Review Committee.

Chapter V presents information considered by the Subcommittee during the review of state space leasing statutes. The statutes governing the lease of property for state use are contained in KRS Chapter 56. These statutes establish guidelines concerning agency requests for space, advertisement for space, response to advertisements for space, inspection of proposed properties, awarding of lease contracts and judicial review. KRS Chapter 56 is somewhat repetitious and contains subtle contradictions.

Currently Kentucky statutes provide for a competitive negotiation lease process with few formal requirements. Therefore, Kentucky leasing officials, like leasing officials in several other states, have broad discretion in leasing office space for state use. Any lease with an annual rental cost exceeding $200,000 must be reported to the Capital Projects and Bond Oversight Committee within thirty days after its execution. That Committee can express disagreement with a lease but cannot reject any lease. In contrast, any item of capital construction exceeding $200,000 must be included as a line-item in the biennial budget and approved by the General Assembly.

Two recommendations were prepared for consideration by the Subcommittee:

STATE LEASING OF SPACE #1

The Kentucky General Assembly should amend KRS Chapter 56 to require that any rental of space by the Commonwealth for an annual rental cost which will exceed $200,000 be identified and authorized in the biennial executive budget.

STATE LEASING OF SPACE #2

KRS Chapter 56 should be rewritten to eliminate duplications and clarify subtle contradictions and insert some of the basic leasing procedures that the Department for Facilities Management follows. The leasing statute should be amended to require increased documentation and reporting of various stages of the leasing process.

The Auditor of Public Accounts should be required to audit the Finance and Administration Cabinet's compliance with KRS 56.800 to 56.820 at least once every two years and to report findings to the Capital Projects and Bond Oversight Committee. Furthermore, the judicial standard of review for vendors seeking relief from the decisions or state leasing officials should be lowered; and the threat of having to pay court costs in the event of an unsuccessful court challenge should be deleted.

CHAPTER I

INTRODUCTION

In accordance with Senate Concurrent Resolution 68, adopted by the 1988 General Assembly, the Legislative Research Commission appointed seven members of the Legislative Program Review and Investigations Committee to a Special Subcommittee on State Purchasing to study state purchasing procedures. The first meeting of the Special Subcommittee was held on October 3, 1988. Noting that Kentucky's procurement statutes were structured after an early draft of the American Bar Association Model Procurement Code for State and Local Governments (ABA Model Code), the Subcommittee established as its major objective a review of the ten-year-old Kentucky Model Procurement Code, to determine if any adjustments or fine tuning might improve the system.

During the course of this review, the Subcommittee staff conducted a series of interviews with Finance and Administration Cabinet administrators, personnel from the Cabinet's Division of Purchases, and purchasing officials within the various state agencies. The staff also reviewed a sample of commodity purchase files and emergency purchase files maintained by the Division of Purchases; reviewed audits of the Finance and Administration Cabinet by the Auditor of Public Accounts; surveyed 92 state agencies and 831 vendors about their perceptions and experiences with the state procurement process; and made a detailed comparison of the ABA Model Code and the Kentucky Model Procurement Code. In addition, the Subcommittee heard testimony from current and former state purchasing administrators, and persons associated with the American Bar Association Policy Board, local government purchasing, national purchasing organizations, state agencies, and vendors.

This report is a compilation of the staff reports submitted to the Subcommittee during the course of the review. Chapter Two presents the overview paper provided to the full Program Review and Investigations Committee prior to the Subcommittee's organization. Chapter Three is the staff paper, Comparison of the ABA Model Procurement Code to Kentucky Purchasing Statutes, presented to the Subcommittee on May 1, 1989. Chapter Four outlines the key issues that the Subcommittee focused on after several months of testimony and presents proposed recommendations considered in each of the areas of concern. Chapter Five contains information relative to the Subcommittee's review of state space leasing statutes and practices in KRS Chapter 56 and recommendations resulting from that review. The appendix contains the background reports and information provided to the Subcommittee during their deliberations of the relevant issues pursued for discussion and legislative action.

CHAPTER II

STATE PURCHASING LAWS AND PROCEDURES: AN OVERVIEW

On August 1, 1989, the Program Review and Investigations Committee staff presented an overview of Kentucky's purchasing system to the Program Review and Investigations Committee. The following paper, State Purchasing Laws and Procedures: An Overview, covers three broad areas of the procurement system. These include the missions and responsibilities assigned by Kentucky's procurement statutes, the process and procedures established for various types of procurement, and management and oversight of the system.

State Purchasing Laws and Procedures

The Program Review and Investigations Committee adopted a proposal to study state purchasing in February, 1988. In addition, the '88 General Assembly passed Senate Concurrent Resolution 68, which calls for a special subcommittee of the Program Review Committee to study state purchasing. This paper provides background information for these studies.

General Requirements

State government is one of the largest consumers in the Commonwealth. According to purchasing officials, state purchasing for commodities and services amounted to $807 million in fiscal year 1988. Of this amount, approximately $250-350 million annually is spent for goods and services on price/purchase contracts. **(A more detailed accounting of state purchasing expenditures is contained in Appendix G.)**

Goods and services are to be acquired according to the Kentucky Model Procurement Code (The Kentucky Code), codified as KRS 45A, effective January, 1979. The Kentucky Code is based on the American Bar Association's Model Procurement Code (The ABA Model Code). KRS 45A.020(1) states: "This code shall apply to every expenditure of public funds by this commonwealth under any contract or like business agreement, excepting . . . agreements between the Commonwealth and its political subdivisions . . . ." **(For comparative information on the ABA Model Code and the Kentucky Model Code, refer to Appendix A.)**

The four methods (KRS 45A.075) that state agencies can utilize in obtaining goods/services are as follows:

1. Small purchase procedures,
2. Competitive sealed bidding,
3. Competitive negotiation, and
4. Noncompetitive negotiation.

There are basically two types of contracts that result from state purchasing—price contracts and purchase contracts. Price contracts are used when agencies have a continuing need for a specific commodity or service over a fixed period of time. Purchase contracts are executed when the Commonwealth obligates itself to purchase a specific quantity at a specific price. The purchase contracts are one-time deals while price contracts can be utilized as many times as needed. It is mandatory that all state agencies buy from a price contract unless exemption is made optional in the contract terms (KRS 45A.135). As of July 1, 1988, there were 432 price contracts available for the procurement of goods and services. According to purchasing officials, the majority of contracts are awarded through competitive sealed bidding. The Finance and Administration Cabinet has the right to inspect or audit any place of business under any contract awarded by the Commonwealth (KRS 45A.150).

In general, various statutes and regulations give the Secretary of the Finance and Administration Cabinet the authority to determine what is in the best interests of the Commonwealth, and allow flexibility for departure from standard procedures, provided that the decision is in writing. In addition, the Commonwealth can terminate contracts for the procurement of supplies/services for its own convenience when such termination will be in the best interest of the Commonwealth (200 KAR 5:312(2)). However, contractors can be compensated for lost profits under this provision.

Statutory Missions And Responsibilities

Laws applicable to state purchasing are basically centralized in KRS 45A (The Model Procurement Code) and in KRS 45 (Budget and Financial Administration). KRS 45A.010 states that the purposes of the Kentucky Model Procurement Code are:

- To provide for increased public confidence in the procedures followed in public procurement;
- To insure the fair and equitable treatment of all persons who deal with the procurement system of the Commonwealth;
- To provide increased economy in state procurement activities by fostering effective competition;
- To provide safeguards for the maintenance of a procurement system of quality and integrity;
- To simplify, clarify, and modernize the law governing purchasing by the Commonwealth;
- To permit the continued development of purchasing policies and practices; and
- To make as consistent as possible the purchasing laws among the various states.

Generally all goods and services, except those specifically exempted, are to be acquired according to The Code. KRS 45A.020 states that this Code applies to every expenditure of public funds under any contract or like business agreement, except for contracts between the Commonwealth and its political subdivisions or other governments.

This would include all state agencies, boards, and commissions. Universities are permitted to carry out their own purchasing activities, but their policies and procedures are supposed to follow the Model Procurement Code. Also, any political subdivision of this Commonwealth (cities, counties, school districts or special districts) may participate in state agency price contracts (KRS 45.365, 200 KAR 5:050(1)).

Finance and Administration Cabinet

The Secretary of the Finance and Administration Cabinet, as the state's chief purchasing officer, is responsible for procurement for the Commonwealth (KRS 45A.030(3)). The Secretary has the power and authority to adopt regulations governing the purchasing, management, and control of any and all supplies, services, construction, and other items required to be purchased by the Commonwealth (KRS 45A.035(1)). The purchasing regulations that implement these statutes are found in 200 KAR 5. KRS 45A.065 also empowers the Secretary of the Finance and Administration Cabinet to establish a Procurement Advisory Council to conduct studies and make recommendations concerning state procurement. Purchasing officials advised that this Council was in existence in the early 1980's, but is not in existence at this time.

One of the responsibilities of the Finance and Administration Cabinet outlined in KRS 45.360(12) is to attempt in every practical way to insure that the state is supplying its real needs at the lowest possible cost. Other statutes (KRS 45A.045-.050) empower the Finance and Administration Cabinet with all rights and powers relating to the procurement of goods and services. Specifically, the Finance and Administration Cabinet has the following authorities and responsibilities (KRS 45A.045):

- To serve as the central procurement and contracting agency of the Commonwealth;
- To recommend regulations, rules, and procedures;
- To purchase or otherwise acquire, or, with the approval of the secretary, delegate the purchase and acquisition of all supplies, services and construction for the Commonwealth;
- To sell, trade, or otherwise dispose of surplus supplies, services, and construction for the Commonwealth;
- To exercise general supervision and control over all warehouses, storerooms, and stores and of all inventories of supplies, services, and construction belonging to the Commonwealth; and
- To establish and maintain programs for the development and use of purchasing specifications and for the inspection, testing, and acceptance of supplies, services, and construction.

The Secretary of the Finance and Administration Cabinet has designated the Division of Purchases in the Department for Administration to be responsible for and perform the Cabinet's activities and functions in the areas of procurement of commodities, supplies, equipment, and services (KRS 42.024(2), 45A.040, 200 KAR 5:300(1)). The Division

of Purchases' procurement activities, such as bidding, negotiating, and awarding contracts are guided by the Model Procurement Code. When state agencies have a need for a product/service, they are to make a purchase request to the Division of Purchases. The Division of Purchases will then enter into a contract to obtain the product/service.

In addition to the regulations promulgated by the Secretary, the Division of Purchases has a Management Manual of Policy and Procedures (Management Manual) that details procurement requirements for user agencies. The statutory authority for this manual comes from KRS 45.360(3), which authorizes the Finance and Administration Cabinet to publish a manual of procedures to distribute to agencies. Also, KRS 45A.035(2) directs the Secretary of Finance and Administration Cabinet to promulgate regulations governing conditions and procedures for the use of source selection methods authorized by the Code. The regulations, 200 KAR 5:313(1), state that the Management Manual is to contain the general conditions of bidding, and any revisions thereto, adopted by the Division of Purchases. Finally, BO-110-12 of the Management Manual states that its policies/procedures are to " . . . assist state agencies in meeting their purchasing requirements by the most economical and effective means." **(A more detailed description of state purchasing practices is contained in Appendix G.)**

Agencies

State agencies, called "governmental bodies" in KRS 45A.030(11), include any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment of the executive or legislative branch of the state government. Any expenditure for goods and services by these agencies falls within the provisions of the Kentucky Model Procurement Code. KRS 45.360(5) requires the agencies to furnish the Finance and Administration Cabinet yearly estimates of all needs for supplies, materials, and equipment.

The Division of Purchases' Management Manual delineates several responsibilities for agencies. State agencies are required to purchase products from the Central Stores Branch of the Division of Purchases (BO-112-10). If an item is not available from the Central Stores Branch, then the agency must submit a purchase request to the Division of Purchases, which obtains a purchase/price contract. Unless the contract terms make participation optional, it is mandatory that all agencies purchase from a price contract when it has been established (BO-111-37).

Responsibility for ensuring that contract terms are fulfilled belongs with the state agencies (BO-111-51). Each agency head is responsible for establishing procedures to receive and inspect all property and services purchased (BO-114-10). The Division of Purchases relies on agencies to ensure that proper quantity, quality, and other contract terms are being fulfilled (BO-111-51). If a minor problem develops, the agency is expected to try to work it out with the vendor. If the problem is major, or cannot be resolved between the agency and vendor, the agency is supposed to file a vendor complaint report with the Division of Purchases. Each agency head also has the responsibility of taking and controlling inventories (BO-118-14).

All state agencies are required to maintain records to support purchases (BO-111-28). These records must contain such documentation as purchase requisitions, bid tabulation sheets, contracts, receiving reports, and record of payment. **(Additional information on agencies' experience with state procurement is contained in Appendix B, Survey Summary of State Agencies on State Purchasing.)**

Vendor Responsibility

KRS 45A.035(2b) directs the Secretary of the Finance and Administration Cabinet to promulgate regulations for the suspension or debarment of vendors. The regulations (200 KAR 5:315) outline disciplinary action for a vendor's failure to perform. Vendor responsibilities inferred from this regulation direct that the vendor must:

- post performance bonds;
- not substitute commodities without written agency approval;
- comply with terms and conditions of the contract within the specified time;
- replace defective materials;
- not fail to respond to 3 consecutive invitations to bid;
- accept a contract awarded pursuant to the terms agreed upon;
- not falsify invoices or make false representations;
- not collude or collaborate with other bidders to reduce competition;
- not falsify information on the application to get on bidders list;
- not fail to report to the Kentucky Revenue Cabinet the sales/use tax due to a contract; and
- not fail to comply with wage law requirements.

These same responsibilities are also covered in the Management Manual (BO-111-30). **(Additional information on vendors' experiences with the state procurement system is contained in Appendix C, Survey Summary of Vendors on State Purchasing.)**

Delegated Authority

KRS 45.360(1) and 45A.035 specify the Finance and Administration Cabinet's power to delegate purchasing authority to the various cabinets, departments, institutions, and other agencies of state government. KRS 45A.035(2) specifies that the Secretary of the Finance and Administration Cabinet is to promulgate regulations regarding delegation of purchasing authority.

Universities have the option of purchasing their own products/services under KRS 164A.575. According to purchasing officials, all universities have elected to enter into purchase/price contracts on their own behalf.

According to 200 KAR 5:301(1), there are "temporary delegations" and long-term delegations (referred to as "standing delegations"). "Temporary delegations" are made by the Commissioner of Administration of the Finance and Administration Cabinet for pre-established and limited periods of time. "Standing delegations" are to be made on the basis of a written order signed by the Secretary of the Finance and Administration Cabinet

setting forth with particularity the kind or type of procurement activity or function delegated, and any limitations or restrictions on the exercise of such authority. The Transportation Cabinet is the only cabinet to be granted a standing delegation of authority based upon KRS 45.360 (1) and KRS 45A.035 (2); following are examples of items the Transportation Cabinet is delegated to purchase:

- Guard Rails
- Paving Cement (Resinous)
- Reflective Material
- Traffic Cones
- Traffic Paint
- Treated Lumber
- Signal Boxes
- Lighting Arrestors, Contractors and Transformers

(Additional information on the Finance and Administration Cabinet's monitoring of delegated authority is contained in Appendix D, Documentation and Monitoring.)

Vendors

The main criteria for vendors outlined in the statutes are that they be responsible and responsive. KRS 45A.070(6)(7) define responsible and responsive as:

> Responsible bidder or offeror shall mean a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
>
> Responsive bidder shall mean a person who has submitted a bid . . . which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

A reasonable inquiry to determine the responsibility of a bidder may be conducted by the Finance and Administration Cabinet. The failure of a bidder to promptly supply information in connection with such inquiry may be grounds for a determination of non-responsibility (KRS 45A.110(1)).

Prequalifications

KRS 45A.035 dictates that the Secretary of the Finance and Administration Cabinet prescribe regulations concerning vendor prequalification. The regulations, 200 KAR 5:304(1), state that any persons, firms, or corporations desiring to receive written notice of procurement requirements of the Commonwealth may make application to have their

name placed on a bidder's list for the types or kinds of procurement activities or functions they wish to supply or provide. Upon request, an "Application to be placed on Vendors List" will be sent to any prospective bidder. Complete information as requested in the application must be submitted before a name will be placed on the list. Section 2 of this regulation states that the qualifications of the prospective bidder will be verified in terms of:

- ability and capacity to perform on a timely basis;
- good character, integrity, reputation, and experience;
- satisfactory performance in prior dealings; and
- previous satisfactory compliance with the health rules and regulations.

The prospective bidder has the burden of showing that he meets these qualifications. If the application is not approved, the bidder can appeal in writing to the Secretary of the Finance and Administration Cabinet within 2 weeks of the disapproval, or may reapply after six months.

KRS 45A.035 allows the Secretary of the Finance and Administration Cabinet to promulgate regulations for the suspension, debarment, and reinstatement of prospective bidders. The regulations state that any bidder failing to perform shall be liable to disciplinary action by being placed on probation, suspended from bidding, or both, for a period of 1-2 years, depending on the circumstances (200 KAR 5:315(2)). A bidder may appeal this action in writing to the Secretary of the Finance and Administration Cabinet, stating why the action should be set aside (200 KAR 5:315(4)). **(Additional vendor information is contained in Appendix C, Survey Summary of Vendors on State Purchasing.)**

Preferential Treatment

KRS 45A.470(1) requires all state agencies to give first preference to the products made by the Corrections Cabinet and second preference to the Kentucky Industries for the Blind and agencies of the severely handicapped. However, in no case shall the product prices of these preferential groups exceed the current price range determined by the Finance and Administration Cabinet (KRS 45A.470(3)).

Whenever there is a reasonable expectation that bids can be obtained from at least three small or small minority businesses capable of producing the desired product/ service, the Finance and Administration Cabinet is to advertise the bids for small businesses only (KRS 45.490(1)). If the Finance and Administration Cabinet feels that the lowest bid is too high, bids can be obtained without the small business reference (KRS 45.500).

Small Purchases

State agencies can make some procurements directly through small purchase procedures, if the dollar amount falls within certain spending limits. KRS 45A.100(1) sets the small purchase limits at $5,000 for state institutions of higher education, the Department

of Parks, the Transportation Cabinet, and the Finance and Administration Cabinet. All other state governmental bodies are limited to $1,000.

The regulations state that all state agencies are authorized to make purchases within the monetary limits without specific delegation of purchasing authority from the Finance and Administration Cabinet (200 KAR 5:301(2)). Most agencies are limited to $500 on one price quotation, or $1000 with three price quotations. The Finance and Administration Cabinet can buy products/services for itself or on behalf of other state agencies, up to $3000 on one price quotation, or $5000 with three price quotations.

Both statutory and regulatory references dictate that procurement requirements can't be split up over a period of time in order to meet the dollar limitations of the small purchase procedure (KRS 45A.100(2), 200 KAR 5:308(1)). Agencies requiring a certain item that will exceed the limits over a period of time are supposed to make a purchase request to the Division of Purchases for award of a price contract.

Imprest Cash Purchases

KRS 45.420(1) authorizes the establishment of imprest cash funds for agencies to make purchases which require prompt cash outlay. A custodian, who is designated by the agency and certified by the Finance and Administration Cabinet, administers the fund for types of purchases that are pre-authorized by the Division of Purchases (KRS 45.420(2)). The Management Manual outlines what types of purchases can and cannot be made from imprest cash funds (BO-111-56-01). Agencies can make purchases for items such as:

- honoraria,
- fresh produce,
- utilities, and
- items on price contract (less than $1,000/vendor).

Agencies cannot use imprest cash funds for items such as:

- salaries or wages,
- travel expenses, and
- legal fees.

KRS 45.410 allows agencies to make petty cash fund purchases on the open market up to fifty dollars. These petty cash funds are considered sub-imprest cash accounts and are to be used for the following purposes (BO-111-56-02):

- postage,
- freight and express,
- governmental publications, and
- local purchases less than $15.00.

Competitive Purchases

Competitive purchases for items used by a single agency or many agencies are required to be purchased through competitive sealed bidding. As an alternative, competitive negotiation can be used when bidding is not practical.

Central Stores uses competitive bid procedures to purchase bulk office supplies and equipment used generally by state agencies. These goods can be purchased directly from Central Stores by the user agency.

Competitive Sealed Bidding

KRS 45A.080(1) states that purchases exceeding the small purchase limits are to be awarded by competitive sealed bidding, unless it is determined in writing that this method is not practicable. The statute further stipulates that

> Factors to be considered in determining whether competitive sealed bidding is not practicable shall include whether:
>
> (a) Specifications can be prepared that permit award on the basis of either the lowest bid price or the lowest evaluated bid price; and
>
> (b) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.

The regulations (200 KAR 5:306(1)) also state that competitive sealed bids are to be used when practical.

Purchasing officials indicate they lack a management information system which allows them to determine the precise percentage of contracts awarded through competitive sealed bidding, but state that the majority of contracts are awarded by this method.

The Finance and Administration Cabinet's Management Manual (BO-111-09) details the Division of Purchases standing determination as to the sorts of purchases for which bidding is not practical as follows:

- Fresh produce, fresh seafood and fresh eggs;
- Hearing aids;
- Court reporters;
- Public displays (billboards, booths, etc.);
- Insurance and bonds;
- Equipment repair service and parts;
- Short-term equipment rental;
- Airfare, discount travel tickets; and
- Other goods and services with prior Division of Purchases approval.

Under the method of competitive sealed bidding, agencies make a procurement request to the Division of Purchases, which, in turn, is required to give adequate public notice of the invitation for bid (KRS 45A.080(3)). Each competitive bidder must be given reasonable opportunity to bid (KRS 45A.080(2)) on the same description of supplies or services sought (200 KAR 5:306 (7), 5:307(2)).

Advertisements are made in a newspaper(s) of general circulation in the state for contracts estimated to exceed $10,000 (KRS 45A.080(3)). Bids are also solicited from interested persons listed on the bidders' lists, by sending invitations for bids to at least 10 persons on such lists (200 KAR 5:306(2)).

Contracts are awarded to the lowest bid price or the lowest evaluated bid price, whichever is determined to be in the best interests of the Commonwealth (45A.080(5)). All bids submitted are open to public inspection (KRS 45A.080(4)).

Competitive Negotiation

According to KRS 45A.085(1), when the purchasing officer determines that competitive sealed bidding is not practical, a contract may be awarded by competitive negotiation. This statement is reiterated in 200 KAR 5:306(1). Generally, the bid prices received by competitive sealed bidding must be unreasonable as to all or part of the requirements, or not independently reached in open competition (KRS 45A.085(3)).

A "request for proposal" (KRS 45A.070(5)) is sent out in the same manner as described for the "invitation for bids" in the competitive sealed bid method (KRS 45A.085(2)). The regulations state that competitive negotiation is to be used if the procurement is of a complex nature or technical detail or when specifications cannot be fairly and objectively prepared so as to permit competition in the invitation for sealed bids (200 KAR 5:307(1)).

Central Stores

Central Stores is a warehouse of products available to state agencies. According to the Management Manual (BO-112-10), state agencies are required to purchase from Central Stores all items available in their published catalog. Central Stores operates as a service to state government to ensure that the Commonwealth is able to competitively purchase quality products at favorable market prices. The Central Stores Branch, Division of Purchases, is the sole designated source of supply for all agencies of state government. State agencies may easily determine the availability of in-stock products by consulting the current Central Stores Catalog. Agencies are not permitted to purchase directly from Price Contracts issued to Central Stores without specific written authority from the Director of the Division of Purchases.

Statutory authority for Central Stores can be inferred from KRS 45A.045(1), which states that the Finance and Administration Cabinet has the authority "to serve as the central procurement and contracting agency of the Commonwealth," and from KRS 45A.045(5), which gives the Finance and Administration Cabinet the authority "to exercise general supervision and control over all warehouses, storerooms, and stores and of all inventories of supplies, services and construction belonging to the Commonwealth".

Noncompetitive Purchases

KRS 45A.095 states: "A contract may be made by noncompetitive negotiation only when competition is not feasible . . . under regulations issued by the Secretary of the Finance and Administration Cabinet . . . ." The regulations state that contracts awarded on this basis are limited to the following (200 KAR 5:309(1)):

- Public utility services,
- Single-source items,
- Works of art for museum and public display,
- Special supplies for laboratories,
- Commercial items for resale to the public via a state agency,
- Purchases from other governmental units,
- Contracts with vendors who maintain a general service administration price agreement with the federal government.
- Real property,
- Scientific or artistic services, and
- Emergencies.

Emergency Purchases

KRS 45.400 allows for emergency purchases:

> The Finance and Administration Cabinet may negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency must be fully explained, in writing, by the head of the agency for which the purchase is to be made, and such explanation must be approved by the Secretary of the Finance and Administration Cabinet. This letter and the approval shall be filed with the record of all such purchases. Where practical, standard specifications shall be followed in making emergency purchases. In any event every effort should be made to effect a competitively established price for purchases made by the state.

The regulations say that products/services that would ordinarily be purchased on a competitive basis can be made by an emergency declaration as prescribed by KRS 45.400 (200 KAR 5:309(1)).

The Management Manual explains that it is the policy of the Commonwealth that (BO-111-39):

> Emergency purchases are for equipment and services required by a state agency for continuity of operations or the protection of the health and welfare of its personnel or other citizens. The determination of an emergency should be made by the agency head. Where a pressing emergency makes it impractical to consult in advance with the Finance

and Administration Cabinet, a state agency may make a required emergency purchase. Emergency purchases require the final approval of the Secretary of the Finance and Administration Cabinet. Emergency purchases of services are specifically defined as the purchase of services for which immediate need was created by an unforeseen event or set of circumstances and which are necessary for maintenance of governmental operations or to prevent or minimize injury or damage.

Single-Source Purchases

The statutory authority for making single-source purchases comes from KRS 45.360(1g), which gives an exemption from competitive bidding "for all other commodities, equipment and services which, in the reasonable discretion of the finance and administration cabinet, are available from only one (1) source . . . ."

200 KRS 5:309(1) notes that noncompetitive negotiations include commodities, equipment and services available, in the discretion of the purchasing official, from a single-source.

Pursuant to the Management Manual, the items listed below are exempt from sealed bidding and can be acquired from a single-source, provided that the using agency supports the purchase by written justification. Prior approval by the Director of Purchases is required on all of these purchases exceeding $3,000:

- Supplies and equipment for laboratory or experimental studies;
- Instructional materials or services for which only one source of supply is available;
- Patented equipment for which a single-source of supply is available;
- Proprietary equipment and supplies;
- Equipment lease or rental for which a single-source of supply is available (excluding passenger vehicles);
- Proprietary service and maintenance agreements;
- Advertisements and public media;
- Dues and organizational fees;
- Gasoline and motor fuels;
- Computer software which is copyrighted and available from only one source; and
- Other commodities, equipment and service available from only one source.

(Additional information regarding noncompetitive purchases is contained in Appendix E, Exempt and Non-governed Purchases.)

Management And Oversight

Kentucky Automated Purchasing System

The '88 General Assembly allocated $400,000 from the general fund for the first phase of automation of the state's purchasing system. The costs of this first phase include needs assessment, hardware, software, installation and training. The system is to identify

the quantity and cost of commodities purchased by the state, thus allowing more effective contracts for volume buying. The system is also to allow for electronic mail and communications between the Division of Purchases and using agencies. In addition, an electronic streamlined bidders list with definitions for geographic locations and small business identification, which will allow for more effective bidding procedures, including automatic removal of non-responsive bidders, is to be developed.

Oversight

KRS 45.360(5) allows the Finance and Administration Cabinet to require all agencies to furnish information that permits the Finance and Administration Cabinet to purchase competitive bid items in large volume. Agencies must supply the Finance and Administration Cabinet with estimated needs prior to the beginning of each fiscal year. Also, KRS 45.360(4) requires the Finance and Administration Cabinet to conduct periodic physical audits of inventories.

The Finance and Administration Cabinet is to make summary reports of all purchases made under its authority to the Secretary of the Finance and Administration Cabinet, the Governor, and the General Assembly. The Finance and Administration Cabinet is also required to report cost trends, and savings realized by improved practices to these same authorities (KRS 45.360(10)).

Reports are to be made of all noncompetitively negotiated contracts by the Secretary of the Finance and Administration Cabinet within 90 days of the close of the fiscal year (KRS 45A.165(1)). These reports are to contain information such as the amount and type of each contract and the supplies or services purchased. The report is to be retained for 5 years (KRS 45A.165(2)).

The availability of information necessary for oversight is required through KRS 45A.025, which states that all findings of the Kentucky Model Procurement Code must be in writing and maintained in the Secretary of the Finance and Administration Cabinet's office or in the using agency's office.

Audits

The Finance and Administration Cabinet has the right to audit or inspect any contractor's (or subcontractor's) place of business under any state contract (KRS 45A.150(1)). The Finance and Administration Cabinet is only allowed to audit the records connected with cost or pricing data submitted by the contractor (KRS 45A.150(2)). This right to audit is extended for 3 years from the date of final payment (KRS 45A.150(3)). **(Additional information on documentation and monitoring performed by the Finance and Administration Cabinet is contained in Appendix D, Documentation and Monitoring.)**

Penalties

Any state employee or official of the Commonwealth who receives a bribe from anyone seeking to do business with the Commonwealth is guilty of a felony and can be fined up to $5,000 and/or imprisoned 1—10 years (KRS 45.990(5)). This penalty also applies to the person making the bribe (KRS 45.990(6)).

Any person who agrees or colludes to fix a bid price is guilty of a felony and can be fined between $5,000—$10,000 and/or imprisoned 1—5 years. Any firm, corporation, or association guilty of "fixing" a bid price can be fined between $10,000—$20,000 (KRS 45A.990(1)).

Any person who willfully violates the Kentucky Model Procurement Code is to be fined up to $1,000 and/or imprisoned up to 1 year (KRS 45A.990(3)).

Any person who violates the conflict of interest statute (KRS 45A.340) is guilty of a Class B misdemeanor and forfeits their state employment (KRS 45A.990(2)).

CHAPTER III

COMPARISON OF KENTUCKY'S PURCHASING STATUTES TO THE ABA MODEL PROCUREMENT CODE

The Kentucky Model Procurement Code, enacted in 1980, was based on an early draft of The American Bar Association Model Procurement Code for State and Local Governments (ABA Model Code). The ABA Model Code was approved by the American Bar Association on February 13, 1979, after prolonged and intensive work by a coordinating committee. The ABA Model Code provides statutory principles and policy guidelines for the administration of all aspects of a sound public procurement system. Moreover, it is designed to be adaptable to the diverse organizational structures and differential procurement needs of state and local governments.

The following paper, Comparison of the ABA Model Procurement Code to Kentucky Purchasing Statutes, was presented to the Subcommittee on May 1, 1989.

The American Bar Association's Model Procurement Code (ABA Code) was designed to provide state governments with policy and statutory guidance to manage procurement of supplies and services for public purposes. Kentucky's Model Procurement Code (KMPC) is based on the ABA Code, with some differences. This paper highlights the major differences in Kentucky's implementation of the ABA Code. A more detailed comparison between the ABA Code and the KMPC is attached in the form of a chart. The paper and the chart both indicate differences as to the "intent", but neither indicates minor variances, such as wording changes.

Latter sections of this paper deal with Kentucky purchasing requirements not addressed by the ABA Code and Kentucky purchasing statutes that are not included in the KMPC.

General Provisions (Article 1)

Unlike the KMPC, the ABA Code makes specific reference to procurement information being a matter of public record. The purpose of this general provision under Article 1 of the ABA Code is to achieve maximum public access regarding procurement information. Although the KMPC does not specifically state that such information is a public record, it appears that the Kentucky Open Records Act, KRS 61.870 to 61.884, includes procurement information. Public records are defined in these statutes as:

> all books, papers, maps photographs, cards, tapes, discs, diskettes, recordings or other documentary materials regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency.

Since the Finance and Administration Cabinet's Division of Purchases is a public agency, as defined in the same section, and no exemptions from the Open Records Act appear to apply, procurement information is a matter of public record.

Procurement Organization (Article 2)

Separation of policy-making and day-to-day operational roles are more distinct under the ABA Code than under the KMPC. A basic concept of the ABA Code is that policy making and operational functions of the procurement process should be separated. The basic organizational structure suggested by the ABA Code is designed to achieve this objective. First, a separate policy office acts as an independent entity within the executive branch. The Policy Office has the power and responsibility to:

- Promulgate regulations governing the procurement, management, control and disposal of all supplies, services and construction to be procured by the state;
- Consider and decide matters of policy; and
- Audit and monitor the implementation of procurement regulations and statutes.

The Policy Office, however, does not exercise any authority over the award and administration of particular contracts, or over the resulting disputes, claims or litigation. Additionally, the Policy Office does not establish regulations or operating procedures governing the management and operation of any state agency or the Chief Procurement Officer.

The second layer of the organizational structure consists of a Chief Procurement Officer, with prior experience in public procurement, who is responsible for:

- procurement of all supplies, services and needed construction;
- general supervision and control over all inventories of supplies;
- disposition of surplus supplies; and
- programs for inspection, testing and acceptance of supplies, services and construction.

Finally, The ABA Code provides for a Procurement Advisory Council and a Procurement Institute. The Advisory Council is responsible for the discussion of problems and the recommendations for improvement of the procurement process. The Procurement Institute is responsible for:

- Coordinating education and training for employees and vendors;
- Conducting research into existing and new procurement methods; and
- Establishing and maintaining a procurement library.

In Kentucky the authority and duties of the Secretary of the Finance and Administration Cabinet and of the Cabinet itself are very similar to those given to the Policy Office and the Chief Procurement Officer under the ABA code. KRS 45A.035 and KRS 45A.045 require the Secretary, who is also designated the Chief Procurement Officer, to:

- Adopt regulations governing the purchasing, management, and control of all services, supplies, construction, or other items purchased by the state.
- Decide matters of policy.

Additionally, the Finance and Administration Cabinet is directed to:

- Serve as the central procurement and contracting agency for the state;
- Recommend regulations, rules and procedures;
- Purchase, acquire or delegate the purchase and acquisition, with the Secretary's approval, of all supplies, services and construction for the state;
- Sell, trade or dispose of surplus supplies, services and construction for the state;
- Supervise and control all storage facilities;
- Establish and maintain programs for the development and use of purchasing specifications and for inspection, testing and acceptance of supplies, services and construction.

Additional powers and duties of the FAC are listed in KRS 45.360.

Although the FAC basically serves as a policy office, it differs from the policy office concept in the ABA Code, since it also has authority over the award and administration of contracts. It is given more authority than that recommended by the ABA Code and serves a dual role as both a policy office and a procurement office. This difference is noted in appropriate sections of the paper.

The KMPC permits the establishment of a Procurement Advisory Council and a Procurement Institute, but it should be noted that neither has met as an on-going body since the statute was enacted.

Source Selection and Contract Formation (Article 3)

Source selection methods are more restricted under the ABA Code than under the KMPC. The ABA Code emphasizes fair and open competition as a basic tenet of public procurement. Accordingly, competitive sealed bidding, with a contract award based solely on criteria set forth in the Invitation for Bid, is established as the preferred method of procurement. Nevertheless, the ABA Code provides purchasing officials with various

methods of source selection which are designed to provide the best competition for all types of procurement under changing market conditions. Exceptions to the competitive sealed bidding method are specifically cited in the ABA Code, which allows competitive sealed proposals, small purchase procedures, sole-source procurements, emergency procurements, and competitive selection procedures for certain services. Each of these methods requires written justification.

Source selection is not as restricted under the KMPC as it is under the ABA Code. Competitive sealed bidding remains the preferred method under the KMPC. Additionally, the KMPC permits competitive negotiation (comparable to the ABA competitive sealed proposal), small purchases, emergency purchases (authorized under KRS Chapter 45), and noncompetitive negotiation as exceptions to the competitive sealed proposal process. The provision for noncompetitive negotiation (KRS 45A.095) distinguishes this section of the KMPC from the ABA code. The statute states:

> A contract may be made by noncompetitive negotiation only when competition is not feasible, as determined by the purchasing officer in writing prior to award, under regulations issued by the secretary of the finance and administration cabinet, and emergency purchases may be made pursuant to KRS 45.400.

This broad provision for noncompetitive negotiated purchases is used rather than incorporating specific exceptions such as sole-source and professional service acquisition in the body of the KMPC. The broad term "noncompetitive negotiation" is not found in the ABA Code.

The ABA Code may provide greater latitude for bid acceptance and bid evaluation than the KMPC. Subsection 5 of Article 3 of the ABA Code states that:

> Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

The accompanying commentary to this section states that this language clarifies that judgmental evaluations of a product may be used in determining its conformity with the specifications outlined in the Invitation for Bids (IFB).

The KMPC also allows for the acceptance of bids on a basis other than price. Pursuant to KRS 45A.080, bid awards can be based on either the lowest bid price or the lowest evaluated bid price. The KMPC defines "evaluated bid price" as:

> The dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, and residual value.

Attorney Larry C. Etheridge, Assistant Project Director for State and Local Implementation of the ABA Model Code and a former member of the ABA Policy Board, was particularly critical of this section of the KMPC in his testimony before the Program Review Subcommittee on State Purchasing in November 1988. He stated that the KMPC definition of "evaluated bid price" does not provide the kind of flexibility needed by purchasing officials. The concept of acceptability in the ABA Code allows for subjective considerations which, in his opinion, would be difficult to make from a legal standpoint under the language that exists in the KMPC.

The ABA Code is more definitive than the KMPC about conditions warranting emergency purchases. The ABA Code authorizes emergency purchases when a threat exists to public health, welfare, or safety. Emergency purchases still require as much competition as is practicable under the circumstances. Furthermore, written documentation of the basis for the emergency and the contract award must be made part of the contract file.

A specific exception allowing for emergency purchases is found outside the KMPC in KRS 45.400. This statute authorizes the FAC to negotiate directly for goods and services when a bona fide emergency exists. Bona fide emergency is not, however, defined within the statute. Betty Bingham, Purchasing Director for Louisville and Jefferson County Government and a former president of the National Institute of Governmental Purchasing, stated in her testimony before the Purchasing Subcommittee in November 1988, that this vague language permits emergency purchasing to be a discretionary procurement technique that may result in poor planning.

The ABA Code establishes competitive selection procedures for specified services. The KMPC has basically adopted the ABA Code in this area, with two exceptions. The first exception involves the ABA Code requirement that competitive selection procedures be used for certain services, such as those of accountants or physicians. These procedures require a public announcement and a form of request for proposals. Kentucky statutes do not provide for competitive selection for these services. They do, however, provide for a review process through the procedures for personal service contracts.

The second exception involves the ABA code requirement for an annual report to the legislature concerning all emergency and sole-source purchases. The KMPC differs by requiring only that this report be "made available" to the legislature. The FAC is currently providing a report of emergency and non-competitive contracts to the Legislative Research Commission. However, this report does not distinguish which contracts are sole-source. They are commingled with the other non-competitive contracts.

Specifications (Article 4)

The ABA Code exempts certain services and commodities from centralized drafting of specifications process. The ABA Code promotes a centralized process for drafting responsibilities for specifications. It recommends that the Policy Office promulgate regulations and that the Chief Procurement Officer implement these regulations and draft the specifications. Commentary contained in the ABA Code states that centralization

enhances the possibility that specifications will be cogent and current; helps insulate specification development from outside influence; and provides continuity and a single location for the collection and dissemination of information on specifications. Nevertheless, the ABA Code does permit specifications for certain supplies, services or construction items to be prepared by the purchasing agency rather than the centralized authority.

The KMPC conforms to the centralization of specification development concept found in the ABA code. Since the KMPC does not contain provisions for a Policy Office, the Chief Procurement Officer (Secretary of the FAC) is responsible for promulgating regulations and the FAC is responsible for issuing specifications. The KMPC, however, does not exempt specified supplies, services or construction items from centralized drafting procedures.

Procurement of Construction, Engineer, and Land Surveying Services (Article 5)

The ABA Code permits more specific clauses for contract adjustments than the KMPC. The recommendations of the ABA Code regarding procurement of construction, architect-engineer, and land surveying services have been adopted in the KMPC, with three exceptions. The first exception concerns price adjustment clauses. The ABA Code provides methods of computing adjustments in price. The KMPC has no language addressing price adjustment clauses.

The second exception is in the area of fiscal responsibility. The ABA Code suggests that construction contract changes in excess of a set dollar amount be certified as to their effect on the total budget by the official monitoring the project. The KMPC fails to include this provision.

The third exception involves the ABA's suggestion that the Policy Office promulgate regulations governing the selection of construction contracting management methods. The KMPC gives this responsibility to the Chief Procurement Officer.

Modifications and Termination of Contracts (Article 6)

The ABA Code is more specific than the KMPC regarding contract clauses and their administration. This section of the ABA Code enables the parties to deal with the effects of changes, temporary work stoppages, and variations in estimated quantities. The ABA Code recommends that the Policy Office promulgate regulations permitting clauses that provide for modification and termination of contracts. These clauses should address adjustments in prices, time of performance, and other appropriate contract provisions. The KMPC has a modification and termination provision, but it is not as specific as the ABA Code. The KMPC, for example, does not address the following clauses recommended by the ABA Code:

- liquidated damages,
- specified excuses for delay, and
- adjustments in price.

The Kentucky Administrative Regulations provide for some additional detail for modification and termination of contracts, but are still not as specific as the ABA Code. Moreover, these regulations are promulgated by the Chief Procurement Officer, rather than the Policy Office, as recommended by the ABA Code.

Cost Principles (Article 7)

The ABA Code requires that cost principle modifications be approved at a policy making level. Cost principles may be used as guidelines for negotiating estimated costs or fixed prices when it is not feasible or possible to use competitive sealed bidding. Both the ABA code and KMPC require that regulations be promulgated regarding the use of cost principles for determining types of costs reimbursable under cost-type contracts.

The ABA and the KMPC differ in two areas. First, the ABA Code contains a provision requiring any modification of cost principles used in a contract to be approved at a policy making level. The KMPC does not contain this provision. Secondly, the ABA Code requires that the Policy Office promulgate regulations. The KMPC delegates this responsibility to the Secretary of Finance.

Supply Management (Article 8)

Supply management for state agencies is addressed in the ABA Code but not in the KMPC. Potential savings to the taxpayer, as well as any other benefits otherwise attainable through responsible procurement practices, may be lost due to poor supply management. The ABA Code addresses supply management by defining terms, requiring regulations and allocating proceeds from sale or disposal of surplus supplies. The KMPC does not address the area of supply management for state procurement practices. The KMPC contains provisions for the allocations of proceeds from surplus supplies, but only for use by local public agencies.

Legal and Contractual Remedies (Article 9)

The ABA Code provides additional avenues of appeals not found in the KMPC. The ABA stresses the importance of participants in the state purchasing system having confidence in the procedures for soliciting and awarding contracts. The ABA believes this can be achieved by providing opportunities for aggrieved vendors to protest solicitations, contract awards or related decisions.

The KMPC and ABA Code are very similar in the procedures required to resolve disputed solicitations and awards. Both allow actual or prospective bidders, offerors, or contractors to submit a written protest. Under the KMPC the Secretary of the Finance and Administration Cabinet has the final determination regarding protests. On the other hand, the ABA Code provides two avenues for appeal. Under the ABA Code an aggrieved vendor or person adversely affected may either appeal to the Procurement Appeals Board

or go to court. Additionally, the ABA Code provides for entitlement costs to protesting bidders when a protest is sustained.

The ABA Code grants the authority to debar and suspend a person from consideration of contract of awards to the Chief Procurement officer or the head of a Purchasing Agency. The ABA Code also outlines the causes for debarment or suspension. The KMPC contains no provisions for debarring or suspending vendors from soliciting contracts. This area is, however, covered in 200 KAR 5:315.

The KMPC and ABA Code contain almost identical provisions concerning the authority to resolve contractual controversies. The ABA Code additionally provides the same appeal process as outlined above.

The KMPC and ABA Code both allow for sovereign immunity to be waived for breach of contract actions. The ABA Code further waives sovereign immunity in relation to actions involving the solicitation and award of contracts, as well as debarment or suspension.

The KMPC provides a one-year statute of limitations for any claim arising from a construction contract executed and administered by the Transportation Cabinet. The statute of limitations begins to run from the time of final payment or from the receipt of a final adverse decision, whichever occurs later. Any other claim must be commenced within one year of the completion date specified in the contract. On the other hand, the ABA Code requires a one-year statute of limitations for contract actions and a six-month statute of limitations for debarments and suspensions for cause. Any actions regarding protested solicitations and awards must be initiated within 30 days of the time the aggrieved person learns of facts giving rise to the action or within 14 days after receipt of final administrative decision.

Three provisions are recommended in the ABA Code that are not included in the KMPC. First of all, the ABA Code requires certain procedures to be used when it has been determined administratively or by judicial review that a solicitation or contract award has been made in violation of law.

Secondly, the ABA Code requires interest to be paid on amounts ultimately determined to be due to a contractor or due to the State. The interest accumulates from the date the claim arose to the date of a decision.

Finally, a Procurement Appeals Board is an optional provision within the ABA Code. The ABA concept of a full-time Procurement Appeals Board provides an independent board with the authority to grant informal, expeditious and inexpensive resolutions for controversies. Additionally, such a board could advance the development and implementation of a uniform set of precedents in procurement law.

Intergovernmental Relations (Article 10)

The ABA code and KMPC allow local governments to utilize state price contracts. The ABA Code allows cooperative purchasing among local and state public procurement units. The intent of cooperative purchasing is to provide lower prices or more favorable deliveries and terms.

The KMPC has incorporated, almost entirely, the ABA recommendations relating to cooperative purchasing. Regarding authorization for cooperative purchasing, KRS 45.365 and KRS 45.430 further outline local governments' ability to participate in all state agency price contracts established by Finance and Administration. The KMPC, however, contains a provision in KRS 45A.310(5) exempting local governments from the KMPC.

Assistance to Small and Disadvantaged Businesses; Federal Assistance or Contract Procurement Requirements (Article 11)

The ABA Code contains requirements not found in the KMPC for mandatory duties of the Chief Procurement Officer to assist small and disadvantaged businesses. The ABA recognizes the widespread problems of small and disadvantaged business. The problems these businesses have in the public procurement system are addressed in the ABA Code by provisions which require the Chief Procurement Officer to assist these businesses. Additionally, the ABA Code requires the Chief Procurement Officer to provide annual reports to the legislature concerning contract awards to small and disadvantaged businesses.

The KMPC has not adopted any of the ABA Code recommendations for assistance to small and disadvantaged businesses. Small business assistance is found in 200 KAR 5:075, which refers to the award of contracts to small businesses as "small business set asides". The Small Business Purchasing Act, KRS 45.470 et.seq., requires the Finance and Administration Cabinet to designate small minority business set aside contracts. While these statutes and regulations may meet the intent of the ABA Code, the duties and responsibilities to be performed by the Chief Procurement Officer are not addressed with the same amount of detail. The KMPC has adopted the ABA Code requirement that public purchasing units comply with any requirements for federal assistance or contracts.

Ethics in Public Contracting (Article 12)

The ABA Code addresses ethics in public contracting in more detail than the KMPC. The ABA Code recognizes that impartiality among public employees is essential to assure fair competitive access for vendors to governmental procurement. Similarly, the non-employees or private citizens participating in the procurement system must be required to meet ethical standards required to maintain the integrity of the state procurement system.

Kentucky addresses ethics in public contracting in various sections throughout the KMPC. While the ABA Code includes a statement of policy regarding standards of conduct for participants in the procurement system, the KMPC contains only one policy statement regarding the policy and intent of the code itself.

The ABA Code provisions for standards of conduct and penalities are scattered throughout the KMPC. Additionally, the KMPC has incorporated the ABA recommendations regarding the use of confidential information and the recovery of value resulting

from a breach of ethical standards. These directives, however, are found only in those statutes (KRS 45A. 345 through 45A. 460) pertaining to local public agencies.

Several ABA recommendations are missing from the KMPC. The KMPC does not provide definitions of terms and no general standards of ethical conduct are included.

The area most neglected by the KMPC is the area of remedies available for a breach of ethical conduct. The KMPC makes no provisions for civil or administrative remedies against employees.

Additionally, the ABA Code requires the Ethics Commission to promulgate regulations implementing the provisions regarding ethics in public contracting. The Ethics Commission may render written advisory opinions regarding the appropriate course of conduct to be followed in proposed transactions.

Kentucky Purchasing Requirements Not Included In The ABA Code

The preceding sections of this paper discuss how each area of the ABA Code is addressed in the KMPC. This section reviews purchasing statutes that do not relate to any area of the ABA Code. Some of the cites below fall outside of the KMPC (KRS 45A), but are still purchasing-related statutes. Following is a list of KRS's that aren't paralleled in the ABA Code:

KRS 45.410	Purchases under fifty dollars Petty cash account.
45.420	Imprest cash funds — Establishment — replenishment.
45.470-510	Small Business Purchasing Act, which allows set aside contracts for small or small minority businesses capable of meeting the need at a fair and reasonable price. (The ABA Code does not recommend set aside contracts, but does recommend assistance to small businesses and monitoring of that type of contract.)
45A.022	States that the KMPC is applicable to insurance contracts unless the Secretary for FAC and Commissioner of Insurance determine otherwise.
45A.040	Allows the Secretary for FAC to distribute procurement functions within the Cabinet.
45A.090	Allows for a negotiated award after competitive sealed bidding when all the bids exceed available funds.
45A.265	Allows only one recovery for breach of contract.
45A.270	Provides for payment of judgment against the state.
45A.275	States that judgments against Commonwealth up to $500,000 are deemed a necessary governmental expense.
45A.343-460	Allows for a Local Government Model Procurement Code and any local public agency to adopt this code at its option.
45A.465-470	Allows for preferential treatment of products made by prison industries, industries for the blind, and agencies of the severely handicapped.

45A.475	Provides that state depositories' services fall under the KMPC.
45A.600	Allows a retired state employee to purchase a handgun that had been issued to him during his employment.

Kentucky Purchasing Statutes Not Consolidated in KRS 45A

A basic intent of the ABA Code is to consolidate procurement in one section of state statutes. The ABA Code provides for statutory and policy guidance for the procurement of supplies, services and construction; administrative and judicial remedies for controversies; and a set of ethical standards for the procurement process. In contrast, Kentucky has several purchasing statutes that fall outside the KMPC. For example, sole-source and emergency purchase provisions are outlined in KRS Chapter 45. Purchasing experts testifying before the Subcommittee in November 1988 suggested that some of the procurement requirements outlined in various sections of the KRS may more rightfully belong in the KMPC. Following is a list of KRS's that are outside the KMPC:

KRS 45.360	FAC-Powers and duties.
KRS 45.365	Central purchasing.
KRS 45.400	Emergency purchases.
KRS 45.410-.420	Pretty and imprest cash purchases.
KRS 45.430	Waiver of law on purchasing from government.
KRS 45.450	Purchase price to be set out in bill of sale or deed.
KRS 45.451	Policy of Commonwealth to pay bills on time.
KRS 45.452	Definition of purchasing agency.
KRS 45.453-.458	Payment procedures.
KRS 45.470-.510	Small Business Purchasing Act.
KRS 45.700-.720	Personal service contracts.
KRS 45.750-.800	Capital construction and equipment financing.
KRS 45.990	Penalties.

CHAPTER IV

ISSUES AND RECOMMENDATIONS

At its June 5, 1989, meeting the Subcommittee reviewed major issues that had been discussed in the previous meetings. The following issue papers presented at the June 5 meeting outline the major issues in areas in which Subcommittee members had expressed some concern. These areas include: 1) Products and Services Exempted Under Kentucky Statutes, 2) Small Purchase Limits, 3) Emergency Purchases, 4) Preferential Treatment, 5) Criteria for Bid Selection, 6) Reporting Purchasing Expenditures, 7) Procurement Organization, and 8) Consolidation of Purchasing Statutes.

The Subcommittee directed the staff to develop recommendations in each of the areas. Immediately following each issue paper are proposed recommendations presented at the July 10, 1989, meeting which express the objective the Subcommittee wanted to achieve in each area, various approaches for meeting the stated objective, and recommendations appropriate for each approach.

A list of the final recommendations accepted by the Subcommittee follow the issue papers and proposed recommendations.

ISSUE: Products And Services Exempted Under Kentucky Statutes

Staff presented information on exempt purchases in the paper entitled "Exempt and Non-Governed Purchases", prepared for the March 6, 1989 Subcommittee meeting (Appendix E). The Kentucky Model Procurement Code (KMPC) advocates competitive sealed bidding as the standard method for acquiring goods and services. However, there are times when it is neither possible, nor feasible to make a purchase on a competitive basis. Exemptions from central purchasing generally fall into two categories: exempt products/commodities or services, and exempt agencies.

The discussion in this paper is limited to service and product exemptions. This key issue raised during committee discussion is:

Should Exemptions Allowed Under the Kentucky Model Procurement Code and KRS Chapter 45 Be Re-Evaluated?

Kentucky Allows Exemptions Under the Model Procurement Code and KRS Chapter 45

Kentucky's statutes exempt a broad range of services and commodities from the competitive bidding process. Pursuant to KRS 45A.055 of the KMPC, acquisition of the following is not required to go through the Finance and Administration Cabinet (FAC):

a. works of art for museum and public display;
b. published books, maps, periodicals, and technical pamphlets; and
c. services of visiting speakers, professors, and performing artists.

In addition, the Attorney General has determined that KRS Chapter 45A does not apply to the Department of Transportation in regard to road construction (OAG 81-349).

The KMPC also allows for noncompetitive purchases such as public utilities and sole-source procurement of certain commodities/services. Additionally, the KMPC exempts petty cash and imprest cash purchases from the competitive bidding process.

In addition to exemptions allowed under the KMPC, the following services and articles are exempted under KRS 45.360:

a. food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies;
b. services or products whose rates are fixed by law or ordinance;
c. library books;
d. commercial items purchased for resale; and
e. interests in real property.

KRS 45.420(1) authorizes the establishment of imprest cash funds for agencies to make purchases which require prompt cash outlay. An additional exemption is found in the provisions on personal service contracts in KRS 45.700 to 45.720, which exempt professional, technical, scientific, or artistic services from the competitive bidding process.

National Associations Limit the Types of Services Exempted

The American Bar Association Code and National Association of State Purchasing Officials limit services exempted. Under the ABA Code, any governmental body may act as a purchasing agency to contract for services rendered by professionals such as accountants, physicians, and lawyers. The purchasing agency is required to consult with the Chief Procurement Officer when procuring such services, make a public announcement, and issue a request for proposal.

The general exemption section of the ABA Code exempts the following supplies, services, and construction from procurement through the Chief Procurement Officer:

a. bridge, highway, or other heavy or specialized construction;
b. works of art for museum and public display;
c. published books, maps, periodicals, and technical pamphlets; and
d. architect-engineer and land surveying services.

The National Association of State Purchasing Officials (NASPO) recommends exemptions for museum displays or other items the legislative body has approved. However, the procurement should be made in accordance with the rules of the purchasing authority.

The ABA Code, as well as NASPO, provides an exemption for single-source procurements. The ABA Code allows a contract to be awarded for a supply, service, or construction item without competition when the Chief Procurement Officer or the head of a purchasing agency determines, in writing, that only one source exists for the item (KMPC 3-205). Additionally, as with emergency procurements, the ABA Code requires that a record of all sole-source purchases be kept and submitted annually to the legislature. NASPO recommends that the same conditions apply to sole-source purchases, but in addition recommends some form of public notice of any intended sole-source purchase of a significant amount, just as sealed bids are required to be publicly announced.

Kentucky's Exemptions Are Broader Than Those Allowed Under the ABA Code

The ABA Code and the Kentucky statutes both provide numerous exemptions for various types of services and commodities. However, the exemptions under the Kentucky statutes are broader than those in the ABA Code. For example, the ABA Code does not exempt items such as those to be used in laboratory and experimental studies, commercial items purchased for resale, interest in real property and personal service contracts.

Kentucky's personal service contract provisions are similar to what the ABA Code has recommended, with two exceptions. Kentucky's procurement statutes do not require public notice and do not require a formal request for proposals. However, personal service contracts are subject to a legislative review process after FAC approval.

In addition, exemptions for petty cash purchases and the establishment of an imprest cash fund are not found in the ABA Code. The only provisions in the ABA Code which are even close are those previously discussed concerning small purchases and emergency procurements.

Examples From Other Jurisdictions

Subcommittee staff reviewed statutes from eight states which make exemptions from competitive sealed bidding procedures, with Alaska being the only state that exempts professional services. Six of these states (Tennessee, Louisiana, South Carolina, Alaska, Virginia, and Indiana) listed specific exemptions from normal competitive sealed bidding procedures. South Carolina and Alaska's exemptions were the most similar to Kentucky's, with South Carolina exempting books and periodicals, works of art, road construction, veterinary supplies, articles for commercial re-sale, and various commissions and authorities. Alaska exempts professional services, lab materials, rates fixed by law, products and services for correctional industries and nonprofit programs for the employment of

the physically or mentally disabled. Road construction materials are exempted by Tennessee, Louisiana, South Carolina, and Indiana. Louisiana also exempts teaching materials and lab equipment procured by the Department of Education. Indiana exempts educational institutions, state fair board, public works projects, and contracts for social services. Virginia exempts goods and services for nonprofit workshops, alcoholic beverages by the Department of Alcoholic Beverage Control, services by expert witnesses, and industrial development authorities. Tennessee exempts informal purchases (not to exceed $5,000) under authority granted by their board of standards, general services administration agreements, and public utility services. Mississippi is unlike Kentucky in that a general exemption is made for items approved by their Commission of Budget and Accounting.

PROPOSED RECOMMENDATION: Restricting Statutory Exemptions

Objective: To maximize competition by limiting Kentucky's statutory exemptions from competitive sealed bidding to those recommended by the American Bar Association's Model Procurement Code (ABA Code).

Approach:

The approach to this objective requires two steps:

- removing specific items not exempted under the ABA Code from Kentucky statutes; and
- recategorizing specific exempt items in the Kentucky statutes into broader categories of exemptions used in the ABA Code.

Nevertheless, this approach could increase the time for acquiring commodities/services that are no longer exempt, since they now would have to go through the competitive bidding process.

Unlike the Kentucky purchasing statutes, the ABA Code does not make provisions for specific exemptions from competition. KRS 45.360 exempts the following services and commodities from competition:

- food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies when judged by the FAC;
- commercial items purchased for resale;
- personal service contracts;
- public utilities;
- library books;
- rates fixed by law or ordinance;
- commodities, services, and instructional materials which, in the judgement of the FAC, are available from only one source; and

- interest in real property.

Under the first step, in conforming with the ABA Code the following exemptions would be repealed:

- food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies when judged by the FAC;
- commercial items purchased for resale; and
- personal service contracts;

The exemption for personal service contracts would be removed and placed under a modified form of competition through a form of request for proposals and public notice as recommended by the ABA Code.

In the second step, remaining exemptions in sections of KRS 45.360 would be repealed and allowed as exemptions in KRS 45A under broader categories used in the ABA Code, as follows:

- public utilities;
- library books;
- rates fixed by law or ordinance;
- commodities, services, and instructional materials which, in the judgement of the FAC, are available from only one source; and
- interest in real property.

Finally, the broad language in KRS 45A.095 allowing noncompetitive negotiation when deemed feasible by the purchasing officer would be modified to establish sole-source and emergency purchases as the only conditions warranting noncompetitive negotiation.

Recommendation 1: Restricting Statutory Exemptions

In order to better ensure maximized competition the General Assembly should:

Amend KRS Chapter 45.360 to repeal exemptions for:

- food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies when judged by the FAC;
- commercial items purchased for resale;
- personal service contracts;
- public utilities;
- library books;

- rates fixed by law or ordinance;
- commodities, services, and instructional materials which, in the judgement of the FAC, are available from only one source; and
- interest in real property.

Amend KRS 45A.095, concerning noncompetitive purchasing, to allow the following exemptions:

- public utilities;
- library books;
- rates fixed by law or ordinance;
- commodities, services, and instructional materials which, in the judgement of the FAC, are available from only one source; and
- interest in real property.

Amend KRS 45.700-.720 to include provisions for competitiveness through a form of request for proposals and public notice as recommended by the American Bar Association Model Procurement Code; and

Amend KRS Chapter 45A.095 to delete provisions for noncompetitive purchasing except for emergency and sole-source purchasing.

ISSUE: Small Purchase Limits

Staff presented information on small purchases in the paper entitled "Exempt and Non-Governed Purchases," prepared for the March 6, 1989 Subcommittee meeting (Appendix E). State agencies can purchase goods and services directly through small purchase procedures, if the dollar amount falls within certain statutory spending limits. Some purchases are too small to justify the administrative time and expense of soliciting competitive sealed bids. In these instances, sealed bidding is waived for practical reasons. The following issue was raised during committee discussions:

Should the statutory small purchase dollar limits be raised?

Small Purchase Limits Are Established By Statute

KRS 45A.100 establishes the following small purchase limits for state agencies:

1. Construction purchases not exceeding $10,000;
2. Purchases by the Transportation Cabinet for equipment replacement parts not exceeding $5,000;
3. All other purchases not exceeding $1,000 made by state agencies other than institutions of higher education, the Department of Parks, the Transportation Cabinet and the Finance and Administration Cabinet (FAC);
4. All other state purchases by institutions of higher education, the Department of Parks, the Transportation Cabinet and the Finance and Administration Cabinet not exceeding $5,000.

Administrative regulations provide additional detail authorizing state agencies to make purchases within the monetary limits without delegation of purchasing authority from the FAC (200 KAR 5:301(2)). Most agencies are limited to $500 on one price quotation or $1,000 with three price quotations. The FAC can buy products/services for itself or on behalf of other state agencies up to $3,000 on one price quotation, or $5,000 with three price quotations.

Kentucky's procurement statute and regulations (KRS 45A.100(2), 200 KAR 5:308(1)) prohibit agencies from splitting purchases over a period of time in order to meet the dollar limitations of the small purchases procedure, without making a purchase request to the Division of Purchases for award of a price contract.

State Agencies Expressed Some Concern Over Small Purchase Limits

A December, 1988, survey by Subcommittee staff asked state agencies to indicate their level of satisfaction with small purchase limits. The options ranged from 1 (not at

all satisfied) to 4 (satisfied). The median response of eighty-four respondants was 2.7, indicating that most agencies are somewhat satisfied with these limits. Nevertheless, agency comments included suggestions to:

- increase limit to $1500 with three phone quotes;
- increase limit to $1000 with one phone quote;
- increase limit to $2000 for Kentucky vendors; and
- increase limit to $2500 for commodities and $25,000 for construction.

Agency panelists testifying before the February 1989 Subcommittee on State Purchasing also expressed the desire to increase the small purchase limits. They stated that small purchase limits in Kentucky have not increased since 1979. Consequently, such factors as inflation and increased responsibility have lessened the practicality of these limits. Nevertheless, at the March 6, 1989, meeting of the Subcommittee the Director of the FAC's Division of Purchases stated that he does not favor raising the limits.

Small Purchase Limits of Other Government Entities Are Higher Than Kentucky's Limits

According to the National Association of State Purchasing Officials, the average small purchase limit allowed for state governments to obtain their own quotations is about $1,800, ranging from $50 to $5,000. Only 5 states do not require competitive quotations as part of their small purchase procedures. There are also 5 states that allow an item to be purchased locally even though that item is available under a contract issued by the central purchasing office. The dollar amount which requires sealed bids ranges from $400 to $15,000, with two states having no designated amount.

County governments in Kentucky do not have formal small purchase procedures. However, a purchase over $7,500 must be made through bidding procedures.

A local public agency that has adopted the Kentucky Model Procurement Code may use small purchase procedures if the contract is under $7,500. If the local agency has not adopted the KMPC, compliance must be made with the general bidding requirements in KRS 424.260 if the purchase exceeds $7,500. Therefore, either route will result in a small purchase limit of $7,500.

The National Institute o Governmental Purchasing 1987 procurement survey of cities, counties, colleges, states, federal, and other purchasing authorities indicated that 70% had small purchase procedures. The majority (77%) indicated that user agencies can not make purchases over $500, 40% indicated a limit less than $100, and 37% indicated a limit of $100 to $500.

Examples From Other Jurisdictions

- County governments in Kentucky have a $7500 small purchase limit.
- Local governments in Kentucky operating under the Kentucky Model Procurement Code have a $7500 small purchase limit.
- According to NASPO, the average small purchase limit for state governments is $1,800, ranging from $50 to $5,000.
- According to a NIGP survey of cities , counties, colleges, states, federal and other purchasing authorities, a majority indicated a small purchase limit of $500 or less.

PROPOSED RECOMMENDATIONS: Small Purchase Limits

Objective: To facilitate the ability of state agencies to make routine purchases in a timely manner.

Approaches:

Three optional approaches are offered for accomplishing this objective. One approach involving the existing authority of the Finance and Administration Cabinet is administrative and will not require statutory changes. Two approaches will require statutory changes.

The administrative approach utilizes the existing authority of the Finance and Administration Cabinet. Under the first approach agencies would be allowed to make routine purchases which exceed the dollar limitation for small purchases through the Finance and Administration Cabinet, under the Cabinet's $5,000 small purchase provision. This, in essence, increases small purchase capabilities of most agencies to $5,000. This provision would not, however, assist higher education, the Department of Parks or the Transportation Cabinet, as they each already have $5,000 small purchase limits.

The second approach requires enhancing the statutory authority of The Finance and Administration Cabinet. Under this approach, the Finance and Administration Cabinet could grant agencies delegated authority to purchase selected items whose costs frequently exceed existing small purchase limits. KRS 45.100 would have to be amended to permit the secretary to allow using agencies to exceed small purchase limits.

Either of these first two approaches will effect only selected agencies with a particular identified need, and will not effect the limits of those agencies that do not have a need for an increase. However, it should be noted that purchasing through the Finance Cabinet could require additional time and paperwork for routine purchases, and additional monitoring of delegated authorities to prevent potential abuse.

Under the third approach, statutory small purchase limits would be raised for selected agencies. Current statutory language allows the Secretary of Finance to make recommendations to the General Assembly regarding small purchase limits. KRS 45A.100 states that the Secretary's recommendation should be based on "intervening changes in the cost of labor and materials". These criteria could be broadened to include other reasons documented by agencies and deemed justifiable by the Secretary. Accordingly, the small purchase limits would then be subject to review by the Cabinet and the General Assembly on a periodic basis.

Recommendation 2 A: Utilize Current FAC Small Purchase Limit

The Finance and Administration Cabinet should encourage any agency that frequently requires routine purchases over their small purchase limit to procure the item through the Finance and Administration Cabinet, under the Cabinet's $5,000 small purchase provision.

Recommendation 2 B: Delegate Increased Limits

The General Assembly should amend KRS 45A.100, to allow the secretary the authority to grant agencies delegated authority to purchase items that are routinely purchased but frequently exceed their small purchase limits.

Recommendation 2 C: Broaden Criteria for Recommended Increase

The General Assembly should amend KRS 45A.100 to include documented agency requests deemed justifiable by the Secretary of the Finance and Administration Cabinet as a statutory basis for recommending an increase in small purchase limits of selected agencies.

Issue: Emergency Purchases

Emergency purchases for Kentucky agencies totaled $1,539,495 for FY '87 and $1,230,885 for FY '88. These dollar amounts should encourage sound and definitive procurement practices and procedures. Three sources provide the Finance and Administration Cabinet directions for emergency purchases. Kentucky Revised Statutes, Administrative Regulations and the Division of Purchases Management Manual of Policy and Procedure address emergency purchase definitions or procedures. The following issues are raised in this paper:

1. **Are Kentucky's emergency purchase directives clear and definitive?**
2. **Are there areas in these requirements which permit abuse?**
3. **Do these requirements promote or allow for any kind of competition?**
4. **Is there adequate monitoring and control by the Finance and Administration Cabinet?**

The Kentucky Model Procurement code does not provide a definition for emergency purchases. Chapter 45 defines emergency situations for two types of purchases: personal services, and capital construction and equipment.

KRS 45.700(1)(b) (Personal Service Contracts) and KRS 45.750(1)(e)(f) (Capital Construction and Equipment Financing) provide situations for emergency purchases. These statutes require the purchase to be made as a result of an unforeseen event, set of circumstances or disaster. The procurement should be made to maintain governmental operations, and prevent or minimize injury or damage.

Chapter 45 does not define emergency purchase situations for commodities. The fact that there is not one definition to be used for the emergency purchases of equipment, services and commodities may result in agencies making emergency purchases that truly are not emergencies but rather the results of poor planning. According to Division of Purchase buyers for commodities, emergency purchases due to poor planning are not uncommon. Additionally, the level of competitive bidding is decreased.

KRS 45.400 sets the procedures for reporting emergency purchases. There is no difference in the procedure to be used for reporting emergency purchases of equipment, personal services or commodities.

While the Finance and Administration Cabinet may negotiate directly for purchases in "bona fide emergencies", the cabinet seldom is involved in the actual purchase.

> . . . The emergency must be fully explained in writing by the head of the agency making the purchase and such explanation must be approved by the secretary of the finance and administration cabinet. The letter and approval shall be filed with the record of all such purchases. (KRS 45.400)

The Administrative Regulations address emergency purchases only to the extent of making them permissible when an emergency has been declared in the manner prescribed in KRS 45.400. The Finance and Administration Cabinet's Policy Manual incorporates the definitions of emergency purchases prescribed in Chapter 45 but does not apply those requirements to emergency commodity procurements.

The American Bar Association's Model Procurement Code makes more definitive provisions for emergency purchases than does the Kentucky Code. The ABA Code provides for emergency procurements when:

> there exists a threat to public health, welfare or safety under emergency conditions as defined in regulations promulgated by the Policy Office.

There are no distinctions for the definition of emergency for the purchases of commodities, services or equipment. Furthermore, the ABA Code requires that as much competition as practical be allowed for. In the area of documentation, the ABA Code recommends that written determinations be maintained in the contract file regarding the basis of the emergency and the selection of the vendor receiving the contract.

The National Association of State Procurement Officers (NASPO) recommendations are even more detailed than those of the ABA. In addition to the ABA Code provisions mentioned above, which NASPO also calls for, NASPO further suggests:

- setting price limits to determine breaking points which allow agencies to purchase and then report to central purchasing, or which require prior approval of central purchasing;
- limiting the quantity to be purchased to that necessary to meet emergency condition;
- issuing solicitations in anticipation of emergency situations; and
- requiring all emergency purchase contract files be public record.

The written determinations recommended by the ABA Code and NASPO require justifications beyond those required by Kentucky statutes. Therefore, while the reporting procedures required by KRS 45.400 may partially address the intent of the ABA Code

and NASPO to ensure as much competition as is practicable in any given (emergency) situation, current practices and documentation do not support this.

A staff review of the Division of Purchases emergency purchase files for the last two FY's noted that documentation was lacking in this area. For example, the files did not always provide an exact cost for the purchase and sometimes did not supply any cost information. In addition, some of the files had no documentation of approval. Lastly, the reviews found that only approximately one-half of the total costs of emergency purchases for FY '87 and FY '88 were documented.

Division of Purchases Director Don Spears provided the Subcommittee with this explanation:

The Division of Purchases does not receive or review those emergency purchases made by delegated authorities. The Transportation Cabinet and the Department for Facilities Management are delegated certain purchasing authority.

According to this response approximately 40% to 58% of the dollar value of emergency purchases receive no review from the Division of Purchases. Neither KRS 45.400, which sets the guidelines for emergency purchase procedures, nor the Finance and Administration Cabinet's Policy Manual grants any exemption for reporting or reviewing of emergency purchases to delegated authorities.

Audits from the Auditor of Public Accounts for FY '86 and FY '87 found that the FAC was lacking in their monitoring of agencies having pre-audit and delegated purchasing authority to determine if they do abide by the restrictions of these delegated authorities. This could further increase the likelihood that emergency purchases would come from poor planning.

Examples From Other Jurisdictions

According to the ABA's Annotations to the Model Procurement Code, eleven of the thirteen states which have adopted some form of the ABA MPC, require there to be a threat to public health,welfare or safety, and require as much competition as is practicable as part of the standards for emergency conditions.

Maine, which has not adopted the ABA MPC, requires the declaration of an emergency situation to be made by the Governor. The Governor then authorizes the Chief Procurement Officer to make the purchase.

While Utah and New Mexico each have adopted ABA-based model procurement legislation, they differ in their requirements for emergency purchases. Utah adopted the ABA recommendation verbatim. New Mexico went a step further by adding provisions recommended by NASPO, as well as a much more detailed definition of an emergency condition.

PROPOSED RECOMMENDATIONS: Emergency Purchases

Objective: To better ensure the legitimacy of emergency purchases by establishing uniform and statutory definitions for emergency purchase situations, and increasing the requirements for appropriate justification, documentation and monitoring of emergency procurements.

Approaches:

Two options are offered for establishing a statutory definition for emergency purchases. One approach provides a single definition for emergency purchases of commodities, personal services, and capital construction and equipment. The second approach calls for establishing a separate definition for emergency purchases of commodities and maintaining separate, but amended, definitions for emergency purchases of personal services and capital construction and equipment. In addition, these definitions would be incorporated into the Kentucky Model Procurement Code (KMPC).

Under the first option a single definition for emergency situations for all procurement by state entities would be established. Currently, no statutory definition exists for emergency situations requiring commodity purchases. However, a definition for emergency situations requiring purchases of personal services, capital construction and equipment is provided in KRS Chapter 45 and the FAC Policy Manual. Under this first approach, emergency purchase definitions for capital construction and equipment and personal service contracts in KRS 45.700 and 45.750 would be deleted and replaced by a single definition for emergency purchase conditions applicable to all types of purchases.

Under the second approach, emergency conditions requiring purchases of commodities would be defined under a new section in Chapter 45A. Furthermore, KRS 45.700 and 45.750, addressing emergency purchases for capital construction and equipment and personal service contracts, would be amended to reduce discretionary language. These provisions would then be incorporated into Chapter 45A. Reporting requirements would also be amended, as discussed under approach one and incorporated into the KMPC.

In both options reporting requirements would be amended and incorporated into the KMPC. Additional requirements for justification, documentation and monitoring are: including the name of the vendor receiving the contract, and a written determination for the selection of the vendor in the report; filing all information pertaining to the transaction with the record of each purchase and making it public record; and reviewing of all emergency purchases by an independent entity.

As emergency purchases are noncompetitive by nature, these recommendations attempt to consolidate these purchasing requirements into the KMPC. However, purchasing officials have stated that requirements beyond what is in statute now will place a burden on the effective operation of agencies. Nevertheless, either of these recommendations will alleviate potential abuse of the current provisions by disallowing poor planning as an excuse to make emergency procurements. Additional requirements for documentation and monitoring will prevent agency use of preferred vendors without proper justification and competition.

Recommendation 3 A: Single Definition of an Emergency

The General Assembly should create a new section of Chapter 45A to define emergency conditions for purchases of commodities , personal services, capital construction and equipment. An emergency condition is a situation which creates a threat to public health, welfare or safety, such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods, and the lack of which would seriously threaten: 1) the functioning of government; 2) the preservation of protection of property; or 3) the health or safety of any person.

The General Assembly should amend KRS 45A.095 to require emergency purchase files to include the name of the vendor receiving the contract and written determination why the vendor was selected. Emergency purchase files should be made public record and be reviewed by an independent entity. Emergency procurements should permit as much competition as is practicable under the circumstances.

Recommendation 3 B: Define Emergency for Commodity Purchases

The General Assembly should create a new section of Chapter 45A to define emergency conditions for the procurement of commodities. An emergency condition is a situation which creates a threat to public health, welfare, or safety, such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten: 1) the functioning of government; 2) the preservation of protection of property; or 3) the health or safety of any person.

KRS 45.700 and 45.750, relating to emergency purchases for capital construction and equipment and personal service contracts, should be amended by changing the requirements for conditions of emergency from discretionary language to inclusive language. Furthermore, these provisions should be incorporated into the Kentucky Model Procurement Code.

The General Assembly should amend KRS 45A.095 to require emergency purchase files to include the name of the vendor receiving the contract and written determination why the vendor was selected. Emergency purchase files should be made public record and be reviewed by an independent entity. Emergency procurements should permit as much competition as is practicable under the circumstances.

ISSUE: Preferential Treatment

Preferential treatment for various sectors of government and/or vendors is not uncommon under public procurement ordinances. In most cases, these are attempts at achieving socio-economic goals through the procurement process. Economic goals are generally pursued through residential preferences such as in-state or "buy American" policies. Social goals are generally pursued through preferences to small, minority or physically disabled vendors. The following issue was raised during committee discussions:

Should preferred treatment granted under the Kentucky Model Procurement Code be extended to other sectors of vendors?

Kentucky Extends Preferential Treatment to Two State Affiliated Agencies

Preferential treatment under the Kentucky Model Procurement Code (KMPC) is limited to products made by the Corrections Cabinet's Correctional Industries and Kentucky Industries for the Blind. State agencies and local governments are able to purchase the products of these agencies from pre-approved contracts established without going through the Finance and Administration Cabinet's (FAC) Division of Purchases.

The KMPC does not provide for preferred treatment for small businesses. However, the Small Business Purchasing Act in KRS Chapter 45 states that the FAC should advertise for bids from small businesses whenever there is a reasonable expectation that a small or small minority business can fulfill a contract. A small businessis defined in administrative regulations as a business with less than 100 employees.

National Associations Discourage Preferential Policies

Preferential treatment under the American Bar Association Code (ABA Code) is limited to assisting small and disadvantaged businesses in learning how to do business with the state. This recommended assistance includes special publications, training programs, and the location of optional assistance offices throughout the state. The ABA Code does not make any recommendations for residential or other vendor preferences.

The National Association of State Purchasing Officials (NASPO) is particularly critical of preferential treatment policies. NASPO advises that these policies undercut the basic principles of public purchasing, i.e., equity, impartiality, open competition and cost savings. NASPO characterizes residential preferences as a costly subsidy to taxpayers, but is more accepting of preference given to the products of the physically disabled and prison industries. NASPO notes that these preferences have general acceptance in the purchasing community.

Vendors Request Consideration of In-State Preference

During vendor testimony at the February, 1989, meeting of the Subcommittee, vendors asked that the committee consider giving some preference to the products of small businesses, to Kentucky businesses, and to vendors with manufacturing facilities within the state which employ Kentucky citizens. Similar comments were received by vendors responding to a December, 1988, survey on state procurement. Dr. Merle Hackbart, Professor of Finance and Public Administration at the University of Kentucky, testified at the November, 1988, Subcommittee on State Purchasing meeting that there may be costs involved whenever a government entity attempts to achieve social goals through the procurement process. He pointed out that the state wants to obtain goods and services at the best value in an equitable manner. Preferential treatment creates some problems in carrying out a good and rational procurement process.

Most States Grant Some Form of Preferential Treatment

According to the Third Edition of State and Local Government Purchasing, published by NASPO and The Council of State Governments, twelve states currently have percentage in-state preference laws. Moreover, at least thirty-seven states have statutory language that hints that some preference should be extended. The typical percentage level of preference is 5%.

Some states have preferences for products produced in the state, such as steel, autos, coal and printing. In addition, approximately twenty states have preferences for vocational or prison industries. Preference is extended in forty-one states to in-state vendors in the case of tie bids. In twenty-six states, preference is made when there is a reciprocal preference in the other state.

Those states which have an in-state preference for bidders or products but do not have provisions for reciprocity are Alaska, Connecticut, Georgia, Hawaii, Indiana, Massachusetts, New Mexico, and South Carolina.

PROPOSED RECOMMENDATION: Reciprocity for Preferential Treatment

Objective: To penalize vendors from other states in accordance with the penalities imposed on Kentucky vendors as a result of enacted preferential treatment laws for home state vendors and/or products.

Approach:

This could be accomplished by establishing reciprocal provisions applicable to states with in-state preference laws. These provisions would only apply, however, to those states that have no reciprocal provision in their statues addressing in-state vendor and/or product preference.

Preferential treatment under the Kentucky Model Procurement Code is limited to that authorized under KRS 45A.470 for products made by prison industries, industries for the blind and agencies of the severely handicapped. The concept of preferential treatment is not endorsed by the ABA or by NASPO. Nevertheless, persons supporting the socioeconomic aspects of preferential treatment suggest that the revenue benefits received from spending tax dollars in state could offset any loss of competition from out-of-state vendors. However, there is no data to substantiate this suggestion. While this provision could encourage some out-of-state vendors to increase their competition for Kentucky business, other out-of-state vendors may reduce their pursuit of Kentucky business.

Recommendation 4: Reciprocal Preference for Kentucky Vendors
The General Assembly should amend KRS 45A.470, regarding preference for prison industries and industries for the blind, to provide for reciprocal provisions for in-state vendor and product preference.

ISSUE: Criteria for Bid Selection

Purchasing officials recognize that ascertaining the "total costs" of a commodity entails consideration of factors other than price. The following issue was raised during committee discussions:

> **Should KRS 45A.080, relating to bid acceptance, be broadened to allow more flexibility for subjective considerations in awarding bids?**

The KMPC allows for the acceptance of bids on a basis other than price. Pursuant to KRS 45A.080, bid awards can be based on either the lowest bid price or the lowest evaluated bid price. The KMPC defines "evaluated bid price" as:

> The dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, and residual value.

The ABA Code may provide greater latitude for bid acceptance and bid evaluation than the KMPC

Subsection 5 of Article 3 of the ABA Code states that:

> Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

The accompanying commentary states that this language clarifies that judgmental evaluations of a product may be used in determining its conformity with the specifications outlined in the Invitation for Bids (IFB).

Attorney Larry C. Etheridge, Assistant Project Manager for State and Local Implementation of the ABA Model Code, was particularly critical of this section of the KMPC in his testimony before the Program Review Subcommittee on State Purchasing in November 1988. He stated that the KMPC definition of "evaluated bid price" does not provide the kind of flexibility needed by purchasing officials. The concept of acceptability found in the ABA Code allows for subjective considerations which, in his opinion, would be difficult to make, from a legal standpoint, under the language that exists in the KMPC.

PROPOSED RECOMMENDATION: Bid Evaluation Criteria

Objective: To broaden the statutory language relating to bid criteria to provide purchasing officers with sufficient flexibility for procuring products of adequate quality at the best price, within legal perimeters.

Approach:

This objective could be accomplished by including a reference to subjective criteria in the statutory definition of evaluated bid price. Both NASPO and the ABA endorse statutory language which permits purchasing officials to consider subjective criteria included in specifications when determining the bid that is most advantageous to the government.

KRS 45A.080 allows for the acceptance of bids on a basis other than price. Section 5 of the statute states that bids shall be awarded based on either the "lowest bid price" or the "lowest evaluated bid price". KRS 45A.070 defines "evaluated bid price" as:

> The dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, and residual value.

The above language directly refers to objective measurable criteria but does not address the issue of subjective criteria which may provide the determining factors by which to determine lowest evaluative bid. A reference to subjective criteria would further substantiate the purchasing officer's authority to use subjective considerations in evaluating bids. However, it could also allow additional political influence on purchasing officials to award contracts to other than the low bidder.

Recommendation 5: Broaden Criteria for Product Acceptability

The General Assembly should amend KRS 45A.070 to broaden the statutory criteria for source selection to include subjective criteria, such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose in determining the acceptability of responsive bids.

ISSUE: Reporting Purchasing Expenditures

Currently, several state agencies in Kentucky have authority to make direct purchases for needed services and commodities. The types of purchases vary according to the agency. The purchasing expenditures for most agencies are processed through the Finance and Administration Cabinet's (FAC) Division of Accounts. Yet the FAC Division of Purchases is primarily responsible for state procurement. The following issue was raised during Subcommittee discussions:

Should the FAC's Division of Purchases (DOP) be apprised of all state purchases?

FAC's Division of Purchases Is Not Apprised of All State Purchases

According to the FAC Division of Accounts, state purchasing expenditures for FY 1988 and FY 1987 were approximately $807 million, and $746 million respectively. These amounts include purchasing expenditures from all agencies in the state's accounting system (STARS), but do not include university expenditures, "small purchases" by state agencies or the expenditures of local governments.

In reference to the expenditures above, transportation and capital construction contracts accounted for about $585 million in FY '88 and $533 million in FY '87. These expenditures are not processed through the Division of Purchases (DOP) and represent 73% of total purchasing expenditures in FY '88 and 71% in FY '87.

There Is No Central Point For Monitoring All State Purchases.

The central point of purchasing authority rests with the state's Chief Procurement Officer, the Secretary of the FAC. The Chief Procurement Officer has designated various divisions within his cabinet to manage state purchasing. The DOP is the division which has the most involvement in acquiring a typical commodity or service, including price contracts and personal service contracts.

The FAC's Department for Facilities Management has various divisions that handle purchases for capital construction and real property. Since the DOP has no responsibility in these areas, they have no knowledge of their purchasing activities. In addition, the DOP is not involved in, and thus not aware of, expenditures incurred by the Transportation Cabinet for road construction or for expenditures by universities.

The Chief Procurement Officer is aware of all the state's purchasing expenditures but is not typically involved in the day-to-day operations. The DOP would be the most logical place for the monitoring of all state purchasing activities, if such a decision were made, since they have the most diversity in state purchases.

The American Bar Association Model Procurement Code (ABA Code) and the National Association of State Purchasing Officials (NASPO) both recommend a centralized purchasing system from the Cabinet level standpoint, but not from the division standpoint, with the exception of universities and road construction.

The Kentucky Automated Purchasing System may deal with this problem once it is established.

PROPOSED RECOMMENDATIONS: Require Purchases To Be Reported To The FAC's Division of Purchases

Objective: To establish a central data source for all governmental purchasing which will enhance the state's ability to use its cumulative purchasing power to lower prices for high volume commodities.

Approaches:

The simplest means for meeting this objective is by establishing additional reporting requirements for some governmental entities. Two approaches are offered, each reflecting different levels of implementation. However, both approaches would require more administrative time by the Finance and Administration Cabinet's (FAC) Division of Accounts (DOA).

The first approach would establish reporting requirements for agencies whose purchases are not processed through the Division of Accounts. Utilizing the existing data in the DOA database, the DOA and the DOP would decide upon a usable format which would best fit the Subcommittee's intent. The format should include dollar amounts, volume, vendor, and other data agreed upon by the DOA and DOP. Under this approach, the Division of Accounts would provide the Division of Purchases with the detailed purchasing data for state agencies that process their purchasing expenditures through the DOA, including purchases by the legislative and judicial branches, the FAC's Division of Engineering, Division of Contracting and Administration, Division of Real Properties, and the Transportation Cabinet's road construction expenditures.

Since it would not include purchasing data for universities, local governments, or other agencies not on the state's accounting system, other statutory changes would be necessary. For example, a general reporting requirement for all other state agencies not in the state's accounting system would be necessary. In addition, KRS 164A.575 and 45.365(1) would have to be amended to require universities and political subdivisions to report their purchasing expenditures to the DOP since DOA does not process their purchases. The only local government purchases that DOP, would be interested in monitoring would be those made from state price contracts.

The second approach establishes similar requirements of the DOA regarding purchasing expenditures by agencies in the state's accounting system. Under this approach, however, universities, local governments, or other state agencies not on the state's accounting system would not be included. Since this approach would still leave the DOP without total knowledge of all governmental purchasing, the first approach appears to be more viable, in that it fully implements the Subcommittee's objective.

Recommendation 6 A: Report Purchases of All State Entities

In order to establish a central data source for all governmental purchasing, which will enhance the state's ability to use its cumulative purchasing power to lower prices for high volume commodities, the General Assembly should:

- **Amend KRS Chapter 45.360 to require the FAC's Division of Purchases to submit an annual report of the purchasing expenditures of all state agencies, including local government price contract purchases, to the Legislature; and**
- **Amend KRS Chapter 45.301 to require the FAC's Division of Accounts to report to the Division of Purchases all purchasing expenditures for state agencies; and**
- **Amend KRS Chapter 164A.575 to require universities to report all purchasing expenditures to the FAC's Division of Purchases; and**
- **Amend KRS Chapter 45.365(1) to require political subdivisions to report price contract purchasing to the FAC's Division of Purchases.**
- **Amend KRS Chapter 45A.050 to require the administrative bodies not in the state's accounting system to submit an annual report of their purchasing expenditures to the FAC's Division of Purchases.**

Recommendation 6 B: Report Purchases to Agencies in STARS

In order to establish a central data source for governmental purchasing, which will enhance the state's ability to use its cumulative purchasing power to lower prices for high volume commodities, the General Assembly should amend KRS Chapter 45.301 to require the FAC's Division of Accounts to report to the Division of Purchases all purchasing expenditures for state agencies. The General Assembly should also amend KRS Chapter 45.360 to require the FAC to report annually to the Legislature purchasing expenditures for all state agencies on the state's accounting system.

ISSUE: Procurement Organization

Staff presented information concerning the organization of the procurement operation at the January and April meetings of the Subcommittee. More detailed information on Procurement Organization is contained in Appendix F. The Secretary of the Finance and Administration Cabinet, and the Cabinet itself are responsible for all aspects of Kentucky's procurement system. The American Bar Association and national organizations emphasize the separation of the policymaking and day-to-day operations as a means of making the procurement function independent and minimizing political considerations. The key issues raised in these discussions:

Should Kentucky's procurement organization structure provide separation of policymaking and day-to-day operations?

Should the procurement operation be elevated to a higher level in the state organizational structure?

The Secretary of Finance and His Administrative Agency Handle All Aspects of Procurement in Kentucky

The Kentucky Model Procurement Code (KMPC) designates the Secretary of the Finance and Administration Cabinet as the Chief Procurement Officer with responsibility for all procurement of the Commonwealth (except as provided by KRS Chapters 175, 176, 177, and 180.) In his role as Chief Procurement Officer, the Secretary has the power and authority to adopt regulations, consider and decide matters of policy and review the implementation of regulations and policy determinations regarding state procurement. However, there are no distinctions made for the roles of policy making, implementation and day-to-day operations.

The Finance and Administration Cabinet's authority varies from recommending regulations and procedures, to establishing and maintaining programs for development of specifications and inspection, testing and acceptance of purchased goods. Two departments within the Cabinet have procurement-related responsibilities. The Department for Admiministration is responsible for purchasing commodities and services; and the Department for Facilities Management is responsible for leasing and capital construction.

National Associations Recommend a Separate Policy Office As An Independent Entity Within the Executive Branch

The American Bar Association and the National Association of State Purchasing Officers (NASPO) both recommend a policy office with sole authority for establishing procurement policy. Both associations limit the authority and duties of the Policy Office to policy development and oversight. The Policy Office does not exercise any authority over the award and administration of particular contracts, or over the resulting disputes, claims or litigation. Additionally, the Policy Office does not establish regulations or

operating procedures governing the management and operation of using agencies or operational procedures governing the Office of the Chief Procurement Officer.

The ABA and NASPO provide a variety of organizational structures for membership of the Policy Office. Various alternatives would establish:

- **A three-member board comprised of three individuals from the private sector appointed by the Governor and confirmed by the Senate for six-year terms;**
- **A three-member board comprised of the Director of General Services or the Director of Finance and Administration and two high-ranking state officials appointed by the Governor for six-year terms;**
- **A "mixed" board comprised of members from both private and public sectors; or**
- **A single public official, either the Director of General Services or the Commissioner of Finance and Administration, serving as the policy maker.**

It should be noted that all of these organizational structures advocate that the Chief Procurement Officer should not be a member of the Policy Office or Board.

Distinct Functional Levels of Responsibility Are Not As Apparent Under the KMPC

On the surface, Kentucky's procurement organization appears to be comparable to those proposed by the ABA and NASPO. Many of the responsibilities and duties of the Chief Procurement Officer are delegated to the Commissioner of Finance or the Director of the Division of Purchases. The Finance and Administration Cabinet could be identified as the "Policy Office" and the Secretary has been designated as the Chief Procurement Officer. However, when the responsibilities, duties and authorities of these entities are reviewed, it is clear athat separating policy and functional operations is not maintained. In addition, there is a difference between the provisions of the Kentucky Code and actual practices, as a result of delegated responsibilities and authorities.

Responsibilities that the ABA and NASPO have designated as daily operations which should be performed by the Chief Procurement Officer have been granted to the Finance and Administration Cabinet (or the Policy Office) by Kentucky statutes. These responsibilities are found in KRS 45A.045 and include purchasing all supplies, services and construction, establishing programs for specifications, testing and inspection, and supervising and controlling warehousing.

The role of the Chief Procurement Officer is clearly defined by the ABA and NASPO as performing and overseeing day-to-day operations. Kentucky statutes, however, involve the Chief Procurement Officer in day-to-day operations, as well as require him to make policy decisions.

Former Kentucky purchasing officials advise that perhaps the concept of a Policy Office should be reevaluated. At the October 3, 1988 meeting, Mike Diehl, former Director of the Division of Purchases, testified that a significant difference between the ABA Code and Kentucky's Code is the fact that Kentucky did not adopt a Policy Office. Mr. Diehl

stated that a policy office would serve as an insulator between political interference and the state procurement system. He also added that care should be given not to over-insulate the system from the legitimate control and oversight of the Governor and the General Assembly.

Likewise, at the November 9, 1988 meeting, Nate Durham, former Assistant Director for Purchasing, stated that the ABA developed the policy office to make the procurement function independent and to minimize influence or political considerations he advised that the concept should be reconsidered by the General Assembly.

Several States That Have Adopted the ABA Model Procurement Code Have Established Procurement Policy Offices

Program Review Staff contacted ten states which indicated in "State and Local Government Purchasing" that they have a statutory board or commission to oversee central purchasing. Three states, (MD, UT, and TX) responded that they do have a statutory board or commission responsible for overseeing purchasing. Each of these states has a board or commission that operates solely in a policymaking role. Texas appears to have the board which encompasses most of the ABA recommendations. The Texas board is comprised of three members, appointed by the Governor, and they meet monthly. Furthermore, Texas was the only state that removes all responsibilities for making policy decisions from the Chief Procurement Officer.

Other States Reviewed Have Procurement Operations Similar in Organization to Kentucky's

Subcommittee staff reviewed the procurement organization of eight states (Tennessee, Louisiana, South Carolina, Alabama, Virginia, Indiana, Mississippi and Arkansas). Although there are various structures, the majority of these states (including Kentucky) have their central purchasing unit organized at a division level under a department, such as the Department for Administration or the Department of General Services. Generally, the chief purchasing official is responsible for supervising the procurement of supplies and services needed by the state. In these structures, public purchasing operates with one or two persons between the chief purchasing official and the chief executive. In Kentucky, the chief purchasing official is the Secretary of the Finance and Administration Cabinet, which is one person from the Governor.

PROPOSED RECOMMENDATIONS: Separating Policymaking and Day-To-Day Operations

Objective: To establish greater distance between the policymaking and day-to-day operational responsibilities of Kentucky's procurement organization, in order to reinforce the independence of the procurement function and minimize political and other influences on purchasing decisions.

Approaches:

Two approaches are offered for accomplishing this objective. One approach would add to the organizational structure of the procurement function by placing policy making responsibilities in a newly created entity. The other approach maintains the same organizational structure, but removes the responsibility for day-to-day operations from the Secretary of the Finance and Administration Cabinet (FAC) by designating another administrator within the Cabinet as the Chief Procurement Officer (CPO).

Under the first approach, a new entity would be responsible for policy. The Secretary of the FAC and his administrative agency handle all aspects of procurement in Kentucky. Under this approach an independent Policy Office would be established with primary responsibility for promulgating regulations and deciding matters of policy. Other duties, such as auditing and monitoring the requirements of the Kentucky Model Procurement Code, could also be given to this body. Although the Policy Office would be an independent body, it would be a unit of the executive branch, and therefore attached to an executive agency for funding and administrative support. The membership of the Policy Office would not include the Chief Procurement Officer, who would still be responsible for day-to-day operations. Membership of the Policy Office could be comprised of various combinations; however, the American Bar Association makes the following compositions:

- **a three-member board appointed by the Governor from the private sector and confirmed by the Legislature, with board members serving six-year terms; or**
- **a three-member board consisting of two cabinet secretaries (or elected state officials) and chaired by the Commissioner of the Department of Administration in the Finance and Administration Cabinet; or**
- **a "mixed" board comprised of members from both private and public sectors.**

The second approach utilizes the existing organizational structure of the Finance and Administration Cabinet but realigns responsibilities. KRS Chapter 45A.030 designates the Secretary of the FAC as the Chief Procurement Officer. Therefore, under various sections of the KMPC he is responsible for promulgating regulations, deciding matters of policy, and for general supervision of the procurement process. Under this second approach the designation of CPO would be removed from the Secretary of the FAC and placed in another administrative position. The Secretary of the FAC would then retain the role of policymaker but not be directly responsible for the day-to-day operations.

Two positions in the FAC are appropriate for conveying the responsibility for the day-to-day operations, either the Director of the Division of Purchases or the Commissioner of the Department for Administration. Either choice would assume the day-to-day operational role as the Chief Procurement Officer and be responsible for supervising the procurement of supplies, services, and construction needed by the state.

This approach would not provide the degree as separation of the first approach. The Director of the Division of Purchases and the Commissioner of the Department for

Administration are both under the Secretary of the Finance and Administration Cabinet and would therefore still be subject to influence from the policymaker.

Recommendation 7 A: Procurement Policy Office

In order to make the procurement function more independent, the General Assembly should create a new section of KRS Chapter 45A to establish a Policy Office within the Finance and Administration Cabinet that would be responsible for promulgating regulations and deciding matters of policy. The Policy Office should be a three-member board appointed by the Governor and confirmed by the Legislature, with board members serving six-year terms. The six-year terms should be staggered, so that one term expires every two years. No member of the Policy Office should be eligible to be the Chief Procurement Officer.

Recommendation 7 B: Designation of Chief Purchasing Officer

In order to make the procurement function more independent, the General Assembly should amend KRS 45A.030(3) to indicate that the Chief Procurement Officer is the Finance and Administration Cabinet's Commissioner of the Department for Administration or the Director of the Division of Purchases. The Chief Procurement Officer should be responsible for the day-to-day operations of Kentucky's procurement function.

PROPOSED RECOMMENDATIONS: Elevate Status of the Procurement Operation

Objective: To elevate the status of Kentucky's procurement organization in the state organizational structure to a level which may be more reflective of the stature necessary to coordinate and act with other agencies in achieving overall mutual goals.

Approaches:

Two options for achieving this objective involve raising the Division of Purchases within the Finance and Administration Cabinet from a division level to either department or cabinet level status.

The first option maintains the same number of departments in the Finance and Administration Cabinet (FAC). However, divisions within the departments are realigned so that all the divisions with procurement responsibilities fall under one department. This approach would be the least costly, since the needed organizational structure is already in place. Money would be saved by not creating a new commissioner and other administrative staff that accompanies a department level status. The two departments appropriate for consolidation would be either the Department for Administration or the Department for Facilities Management, since both have various procurement responsibilities. If procurement-related divisions were combined into the Department for Facilities Management, three divisions (Accounts, Printing, and Occupations and Professions) would be left in the Department for Administration and six in the Department for Facilities Management. If procurement-related divisions were combined in the Department for Administration, two divisions (Telecommunications and Physical Plant) would be left in the Department for Facilities Management and seven in the Department for Administration.

The second approach creates a new department for state purchasing within the FAC. Under this approach, all the divisions of the FAC that have procurement responsibilities would be combined under this new division. Although this approach accomplishes the Subcommittee's intent, it would create a new department. There are currently three departments, eight offices, and other administrative bodies within the structure of the FAC. Creating a new department for the four divisions involved in procurement would require appointing a new commissioner and possibly hiring additional administrative staff.

One approach not offered would place the procurement operation at the highest possible level of Kentucky's governmental structure by creating a new cabinet solely for state purchasing. This cabinet would absorb all roles of the procurement organization. Although this solution would certainly elevate the procurement organization, it would require appointing a new secretary and creating the various positions required by a cabinet level entity. Therefore, the first two approaches seem a more appropriate ways to accomplish the Subcommittee's objective.

Examples From Other Jurisdictions. Subcommittee staff reviewed the procurement organization of eight states (Tennessee, Louisiana, South Carolina, Alabama, Virginia, Indiana, Mississippi and Arkansas). Although there are various structures, the majority of these states (like Kentucky) have their central purchasing unit organized at a division level under a department, such as the Department for Administration or the Department of General Services. Generally, the chief purchasing official is responsible for supervising the procurement of supplies and services needed by the state. In these structures, public purchasing operates with one or two persons between the chief purchasing official and the chief executive. In Kentucky, the chief purchasing official is the Secretary of the Finance and Administration Cabinet, which is one person from the Governor.

Recommendation 8 A: Realign Procurement Division

In order to elevate the status of the procurement organization, the General Assembly should amend KRS Chapter 42.023 to place the FAC's procurement functions in the Department for Administration or amend KRS Chapter 42.027 to place the FAC's procurement functions in the Department for Facilities Management. This department should be responsible for all procurement functions of the Finance and Administration Cabinet, including the procurement of commodities, services, leasing and capital construction.

Recommendation 8 B: Create a New Department for Procurement

In order to elevate the status of the procurement organization, the General Assembly should create a new section of KRS Chapter 42 establishing a new department within the Finance and Administration Cabinet that is responsible for the state's procurement functions, including the procurement of commodities, services, leasing and capital construction.

Issue: Administrative Protest Or Appeal

Presently, vendors who are aggrieved or otherwise dissatisfied with the state's procurement process have only one administrative avenue for appeal of decisions made by purchasing officials within the Finance and Administration Cabinet. However, responses on the Subcommittee's survey of vendors, presented at the February 13, 1989 meeting, and vendor testimony at various Subcommittee meetings indicate that many vendors would prefer an additional administrative route of appeal. The key issue raised during Subcommittee discussions is:

Should Kentucky provide an additional administrative route for procurement review and/or appeals?

The Current Appeal Process Requires Vendors to Protest to the Administrative Body Awarding the Contracts

KRS 45A.285 requires that vendors protesting contract specifications drawn up by the Division of Purchases or the award of a particular bid by the Division file a protest with the Secretary of the Finance and Administration Cabinet. However, fifty-one percent of the vendors responding to the Subcommittee's vendor survey would prefer an alternative administrative appeal process. Testimony from vendors at Subcommittee meetings tended to support survey results and further indicated that that vendors are reluctant to protest decisions about specifications or contract awards to the same administrative body that awards the contracts.

The Finance and Administration Cabinet does not feel that an additional administrative route of appeal is needed. Officials of the Cabinet state that any additional avenue for appeal may cause delays in the procurement process and cause interruptions in services and day-to-day operations.

The American Bar Association's Model Procurement Code Recommends a Procurement Review Board

The ABA Model Procurement Code contains provisions for several types of advisory boards. These boards offer guidance and direction for a variety of areas, such as standards, specifications and ethics. The ABA also suggests that such a procurement review board could help to develop a uniform set of precedents in procurement law.

Other States Have Established Procurement Review Boards

Maryland's State Board of Contract Appeals, composed of three members, is an independent unit of the executive branch. They have jurisdiction over contract formation, breach of contract, vendor performance regarding contract requirements, modification and termination of contracts . The Board's decision is final, subject to judicial review.

Utah's Procurement Appeals Board is also composed of three members. Two members are appointed by the Governor and the third member is designated by the two appointed members on a case-by-case basis. The designated member must possess the technical expertise and experience needed for the proper disposition of the factual issues presented by the case. The two appointed members must be in good standing with the state bar for at least five years and be experienced in contract or commercial matters.

PROPOSED RECOMMENDATION: Procurement Review and Advisory Board

Objective: To provide an independent administrative avenue for vendors seeking advice or clarification on decisions rendered by state officials regarding purchases made under Kentucky procurement statutes; to provide an advisory forum for purchasing officials seeking advice or clarification on state or local procurement policies based upon Kentucky procurement statutes; and to create a review forum for designated transactions under waived or limited competitive circumstances.

Approach

This objective can be accomplished by establishing an independent, autonomous body of public sector appointees with a statutorily designated scope and responsibility. Constitutional restrictions require that this body be a unit of the executive branch. However, independence from the administrative operation of the procurement function would have to be maintained for the board to be effective.

Procurement advisory councils are already permissible under the Kentucky statutes. KRS 45A.065 currently enables the Secretary of the Finance and Administration Cabinet to appoint advisory councils to assist him with matters within his authority. The review of policy matters and procurement decisions is within the scope of the Secretary's statutory authority. In addition, appeal through the Secretary is already established as an administrative route. However, the effectiveness of this proposed body requires more distance between it and the chief procurement office. Accordingly, the use of this statute to establish an independent review board may not be practicable.

Purchasing officials feel that the current appeal process provides adequate relief for aggrieved vendors. However, by acting in an advisory capacity, this proposed board would not interfere with state government purchasing or daily operations. Rather, this board could alleviate vendor apprehension about protesting contract awards or specifications to the same administrative office that is responsible for making these decisions.

Recommendation 9: Procurement Review and Advisory Board

The General Assembly should create a Procurement Review and Advisory Board to act as a review forum for vendors and as an independent avenue for aggrieved participants of the procurement system. The board should issue formal

advisory opinions that could be used as evidence of good or bad faith in the event of court action. The advisory opinions should address: 1) the ethical conduct of purchasing officials or vendors; 2) the propriety of procurement transactions, either before or after they have has occurred.

The board should review all "emergency purchases" and develop standards for ethical conduct for persons involved in the purchasing system.

The board should be available to serve: all state agencies, affiliated boards, commissions, and associations; all political subdivisions (including school districts) which have elected to operate under Kentucky's Model Procurement Code (KRS 45A.345 through 45A.460); and all vendors to the above entities.

The board should be composed of three members from the private sector appointed by the Governor from nominations provided by professional organizations (ABA, NASPO . . .). Appointments should be confirmed by the Senate during regular sessions of the General Assembly. Terms of office should be four years.

The board should forward any determination of wrongdoing or violation of the law to the Attorney General or to the Auditor of Public Accounts for appropriate action.

For administrative purposes, the Procurement Review and Advisory Board should be attached to the Office of the Auditor of Public Accounts.

ISSUE: Consolidation of Purchasing Statutes

National associations recommend that purchasing laws be consolidated in one location, suggesting that purchasing statutes that are piecemealed may be inadequate and repetitive. The Subcommittee also heard testimony at the November 1988 meeting that the procurement ordinance should be a "cradle to grave" document, covering the full cycle of acquisition and disposal of property. The following issue was raised during committee discussions:

Should Kentucky's procurement statutes be consolidated into one location in the Kentucky Revised Statutes?

Kentucky's Purchasing Statutes Are Contained in KRS Chapter 45 and 45A

Prior to the adoption of the Kentucky Model Procurement Code (KMPC), Kentucky's purchasing statutes had been predominantly located in KRS Chapter 45. When Kentucky adopted the American Bar Association Model Procurement Code (ABA Code) in 1979, KRS Chapter 45A was created as the state's purchasing ordinance. However, there are still many procurement-related cites in KRS Chapter 45. These include:

- personal service contracts,
- emergency purchases, and
- surplus property.

In addition, KRS Chapter 56 deals with leasing real property and KRS Chapters 175, 176, 177 and 180 deal with road construction.

There are numerous overlaps between Chapters 45 and 45A. These include provisions dealing with the role of the Finance and Administration Cabinet, penalties, and non-competitive negotiation. In testimony at the November, 1988, Subcommittee meeting, Larry Etheridge, assistant project director for implementing the ABA Code, recommended the merger of Chapters 45 and 45A to reduce repetitive language.

Examples From Other Jurisdictions

Thirteen states, the District of Columbia and the Territory of Guam have enacted a procurement code as of October 1, 1987, according to the ABA's Annotations to the Model Procurement Code. In addition, at least nineteen local jurisdictions have adopted a procurement code. The states that have adopted a procurement code have done so in a comprehensive manner, although some are in greater detail that others. For instance, Maryland's general procurement law addresses purchases from the Republic of South Africa and procedural requirements that other states cover in administrative regulations. Other

states, such as Tennessee, Mississippi and Alabama, have not adopted a "code" but have most of their procurement statutes consolidated in one area.

PROPOSED RECOMMENDATION: Merge Procurement Statutes Into Model Procurement Code

Objective: To merge Kentucky's procurement statutes into the Kentucky Model Procurement Code (KMPC) for purposes of clarifying purchasing laws and reducing repetitiveness.

Approach:

There is one approach to meeting this objective. This approach would fully implement the objective by repealing all procurement sections of KRS Chapter 45 that are duplicated in KRS Chapter 45A and merging the remaining procurement sections into Chapter 45A.

Under this approach, all repetitive procurement statutes in KRS Chapters 45 and 45A would be deleted from KRS Chapter 45. The remaining procurement-related statutes in KRS Chapter 45 would then be merged into either existing or newly created sections of KRS Chapter 45A. Kentucky would then have a more consolidated and comprehensive procurement ordinance, in that the responsibilities of the Finance and Administration Cabinet, non-competitive purchases, surplus property, and other functions of the procurement cycle would all be addressed under one chapter of the Kentucky Revised Statutes.

Recommendation 10: Consolidate Procurement Statutes

In order to clarify Kentucky purchasing laws and reduce repetitiveness, the General Assembly should repeal all procurement-related statutes in KRS Chapter 45 and merge appropriate sections into KRS Chapter 45A as follows:

Statute	Action
45.430 relating to waiver of law on purchases from government	**Delete**
45.452 relating to definition of "purchasing agency."	**Delete**
45.360(1) (a-h) relating to powers and duties of the FAC	**Merge to 45A.095**
45.360(2) relating to powers and duties of the FAC	**Merge to 45A.300**
45.360(3) relating to powers and duties of the FAC	**Merge to 45A.055(6)**

Statute	Action
45.360(4) relating to powers and duties of the FAC	Merge to 45A.035(i)
45.360(5) relating to powers and duties of the FAC	Merge to 45A.045(5)
45.360(6) relating to powers and duties of the FAC	Merge to 45A.045
45.360(7) relating to powers and duties of the FAC	Merge to 45A.045(4)
45.360(8)-(9) relating to powers and duties of the FAC	Merge to 45A.045
45.360(10) relating to powers and duties of the FAC	Merge to 45A.165
45.360(11) relating to powers and duties of the FAC	Merge to 45A.180
45.360(12) relating to powers and duties of the FAC	Merge to 45A.045
45.360(13) relating to powers and duties of the FAC	Merge to 45A.045
45.365 (1)—(4) relating to political subdivisions	Merge to 45A
45.400 relating to emergency purchases	Merge to 45A.095
45.990(3) relating to penalties	Merge to 45A.990(3)
45.990(5) relating to penalties	Merge to 45A.990(4)
45.990(6) relating to penalties	Merge to 45A.990(5)
45.410 relating to petty cash purchases	Merge to 5A
45.420(1)—(6) relating to imprest cash funds	Merge to 45A
45.450 relating to purchase price to be set out in bill of sale or deed	Merge to 45A
45.453 relating to when payment shall be made	Merge to 45A

Statute	Action
45.454 relating to penalty for late payment	Merge to 45A
45.455 relating to transmissions of approved invoice to Finance and Administration Cabinet	Merge to 45A
45.456 relating to warrant for payment	Merge to 45A
45.457 relating to check for payment	Merge to 45A
45.458 relating to payment of interest penalty	Merge to 45A
45.470-.510 relating to Small Business Purchasing Act	Merge to 45A
45.700-.720 relating to personal service contracts	Merge to 45A
45.990(4) relating to penalties	Merge to 45A

SUBCOMMITTEE ACTION ON PROPOSED RECOMMENDATIONS

The following recommendations were accepted by the Subcommittee:

Recommendation 1: Amended to delete the establishment of sole-source and emergency purchases as the only conditions warranting noncompetitive negotiation; and to provide a definition of a sole-source situation. Accepted as amended.

LIMIT STATUTORY EXEMPTIONS FROM COMPETITION

In order to better ensure maximized competition, the General Assembly should amend KRS Chapter 45.360 to repeal exemptions for: food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies when judged by the FAC; commercial items purchased for resale; personal service contracts; public utilities; library books; rates fixed by law or ordinance; commodities, services, and instructional materials which, in the judgement of the FAC, are available from only one source; and interest in real property. Amend KRS 45A.095, concerning noncompetitive purchasing, to allow the following exemptions: public utilities; library books; rates fixed by law or ordinance; commodities; services; and instructional materials which, in the judgement of the FAC, are available from only one source; and interest in real property. Amend KRS 45.700-720 to include provisions for competitiveness through a form of request for proposals and public notice as recommended by the American Bar Association Model Procurement Code; and Amend KRS Chapter 45A.095 to provide for and define sole-source purchases as a condition for noncompetitive negotiation.

Recommendation 2B: Accepted as submitted.

DELEGATE INCREASED LIMITS

The General Assembly should amend KRS 45A.100, to allow the Secretary the authority to grant agencies delegated authority to purchase items that are routinely purchased but frequently exceed their small purchase limits.

Recommendation 3A: Accepted as submitted.

SINGLE DEFINITION OF AN EMERGENCY PURCHASE

The General Assembly should create a new section of Chapter 45A to define emergency conditions for purchases of commodities, personal services, capital construction and equipment. An emergency condition is a situation which creates a threat to public health, welfare or safety, such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten: 1) the functioning of government; 2) the preservation or protection of property; or 3) the health or safety of any person.

The General Assembly should amend KRS 45A.095 to require emergency purchase files to include the name of the vendor receiving the contract and written determination why the vendor was selected. Emergency purchase files should be made public record and be reviewed by an independent entity. Emergency procurements should be made with competition as is practicable under the circumstances.

Recommendation 5: Accepted as submitted.

BROADEN CRITERIA FOR PRODUCT ACCEPTABILITY

The General Assembly should amend KRS 45A.070 to broaden the statutory criteria for source selection to include subjective criteria such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose in determining the acceptability of responsive bids.

Recommendation 6B: Accepted as submitted.

REPORT PURCHASES BY AGENCIES IN STARS

In order to establish a central data source for governmental purchasing, which will enhance the state's ability to use its cumulative purchasing power to lower prices for high volume commodities, the General Assembly should amend KRS Chapter 45.301 to require the FAC's Division of Accounts to report to the Division of Purchases all purchasing expenditures for state agencies. The General Assembly should also amend KRS Chapter 45.360 to require the FAC to compile an annual report of purchasing expenditures for all state agencies on the state's accounting system.

Recommendation 8B: Accepted as submitted.

CREATE A NEW DEPARTMENT FOR PROCUREMENT

In order to elevate the status of the procurement organization, the General Assembly should create a new section of KRS Chapter 42 establishing a new department within the Finance and Administration Cabinet that is responsible for the state's procurement functions, including the procurement of commodities, services, leasing and capital construction.

Recommendation 9: Amended to establish compensation for members at $100 per meeting and to require that operations and need for the board be reevaluated after its initial two years. Accepted as amended.

PROCUREMENT REVIEW AND ADVISORY BOARD

The General Assembly should create a Procurement Review and Advisory Board to act as a review forum for vendors and as an independent avenue for aggrieved participants of the procurement system. The board should issue formal advisory opinions that may be used as evidence of good or bad faith in the event of court action. The advisory opinions

should address: 1) the ethical conduct of purchasing officials or vendors, and 2) the propriety of procurement transactions either before or after the transactions have occurred.

The board should review all "emergency purchases" and develop standards for ethical conduct for persons involved in the purchasing system.

The board should be available to serve: all state agencies, affiliated boards, commissions, and associations; all political subdivisions (including school districts) which have elected to operate under Kentucky's Model Procurement Code (KRS 45A.345 through 45A.460); and all vendors to the above entities.

The board should be composed of three members from the private sector appointed by the Governor from nominations provided by professional organizations (ABA, NASPO . . .). Appointments should be confirmed by the Senate during regular sessions of the General Assembly. Terms of office should be four years. Members should be compensated $100 per meeting, plus expenses.

The board should forward any determination of wrongdoing or violation of the law to the Attorney General or to the Auditor of Public Accounts for appropriate action.

For administrative purposes, the Procurement Review and Advisory Board should be attached to the Office of the Auditor of Public Accounts.

The operation of and need for the board should be reevaluated after its initial two years.

Recommendation 10: Amended to delete merging KRS 45.453 to 45.458 into KRS Chapter 45A. Accepted as amended.

CONSOLIDATION OF PROCUREMENT STATUTES

In order to clarify Kentucky purchasing laws and reduce repetitiveness, the General Assembly should repeal all procurement-related statutes in KRS Chapter 45 and merge appropriate sections into KRS Chapter 45A.

SUBCOMMITTEE ACTION ON OTHER RECOMMENDATIONS

Recommendation 4: Reciprocal Preference for Kentucky Vendors, and Recommendations 7A: Procurement Policy Office, 7B: Designation of Chief Purchasing Officer, and 7C: Term of Chief Purchasing Officer, were rejected by the Subcommittee.

Chapter V

STATE LEASING OF SPACE

On May 19, 1989, the Capital Projects and Bond Oversight Committee asked the Subcommittee on State Purchasing to review state leasing statutes (KRS Chapter 56). The letter to the Chairman of the Subcommittee stated that the Capital Projects and Bond Oversight Committee had identified several problems in the leasing statutes and had discussed either a revision of KRS Chapter 56 or incorporating leasing provisions from that Chapter into KRS Chapter 45A as possible resolutions to the problems. **(A memo outlining the concerns of the Capital Projects and Bond Oversight Committee is contained in Appendix H.)**

The Subcommittee held a special meeting on July 31, 1989 to discuss state leasing of office space. As a result of that discussion, two additional recommendations were proposed.

The following staff papers presented to the Subcommittee on July 31, 1989 outline Kentucky's leasing statutes and practices and report the results of a survey of other states' approaches to leasing office space. Two recommendations proposed for consideration by the Subcommittee follow the staff papers.

Kentucky Real Property Leasing Statutes And Practices

The statutes for the lease of property for state use are contained in KRS Chapter 56. KRS 56.800-830 sets out the guidelines concerning:

- agency request for space;
- advertisement for space;
- responses to advertisement;
- inspection of proposed properties;
- awarding the lease contract; and
- judicial review.

These statutes and the Finance and Administration Cabinet's Policy and Procedure Manual are the guidelines by which the state's leasing practices are governed.

Kentucky Leasing Statutes

Prior to 1989, 200 KAR 6:035, pertaining specifically to lease modifications and rent calculation, was in effect. This regulation also repeated provisions in KRS 56.800-820. The regulation was codified, however, under KRS 56.830 by the 1988 General Assembly.

As a result, most sections of KRS 56.830 are repetitious of provisions in KRS 56.800-820.

The statutes require the following:

- The Finance and Administration Cabinet shall be responsible for the lease of all real property. The administration of real property leases is conducted through the Department of Facilities Management and the Division of Real Properties.
- Whenever an agency determines that it will need office or other space, it shall submit a request for acquisition for such space to the Department of Facilities Management.
- The Department for Facilities Management is directed to first review each agency request to determine whether space is available in a state-owned or occupied building. If no space in such a building is available, the Department shall advertise for space in newspapers.
- Newspaper advertisements are not required if suitable space is determined to be available for lease in a building owned by federal government, by a political subdivision or municipal corporation of this state or if the space is requested as the result of a bona fide emergency.
- The advertisements shall contain general requirements for the property such as the general location of the property in the specified county and the number of square feet needed. The advertisments shall also state the last time, date and place responses will be received.
- Responses to the advertisements for bids may be made by any person in writing on or before the time and date designated.
- The space proposed to be leased by each person submitting a proposal will be inspected to determine its suitability to the reasonable needs of the requesting agency. A report of the findings about each property inspected shall be submitted to the Commissioner of the Department for Facilities Management, who, after consultation with the head of the agency requesting the space, shall determine the best proposal.
- Leases may grant the state successive options for automatic renewal of the lease upon the same terms and conditions for additional renewal periods of 24 months each not to exceed 3 such automatic renewal periods. A lease in which the final automatic renewal period has expired, or will expire as of the end of the then current term, may be renewed upon the same terms and conditions without newspaper advertisements for space.
- The Secretary of the Finance and Administration Cabinet shall provide by regulations, for the manner of calculating compensation to persons leasing real

property to the state, and for the negotiation of any modifications or changes in terms and conditions of any such leases.

- Any modification to an existing lease less than $50,000 is reported to the capital construction and equipment purchase oversight committee within 30 days after execution. Any modification to an existing lease exceeding $50,000 is reported to the capital construction and equipment purchase oversight committee within 30 days before execution.
- Whenever the owner of property leased to the state is a corporation, partnership, business trust or organization, a list of the names of all persons owning 5% or more of the shares in such entities, and the names of all partners, including silent and limited partners, shall be furnished to the Finance and Administration Cabinet prior to the execution of the lease agreement.
- Officers or employees of any state agency are forbidden to disclose any information prior to the advertisement for proposals to lease property.
- Judicial review of such decisions and actions of the cabinet and commissioner in the award of leases shall be limited to determining whether the award of a lease by the state was procured by fraud.
- Any lease with an annual rental cost exceeding $200,000 shall be reported to the capital construction and equipment purchase oversight committee.

Kentucky Leasing Practices

The Finance and Administration Cabinet's Policy and Procedure Manual numbers BO-252-10-0 through BO-253-11-01 designate actions to be followed in leasing real property and the state entity or official responsible for such actions. These policies and procedures are in accordance with the Kentucky Revised Statutes.

To determine the actual step-by-step process involved in acquiring a lease for real property, Program Review staff reviewed forty-two lease files maintained by the Division of Real Properties. These are delineated in Appendix A. The documentation in these files provided a "trail" that could be tracked from the initial agency request for space to the completed lease agreement between the lessor and the Commonwealth. Staff reviewed the following information in the files:

- the lessor and the requesting agency;
- the county in which the property is located;
- the amount of square footage requested and received;
- the number of proposals received;
- the number of property proposals inspected;

- whether the property selected provided the low bid; and
- the documentation of the procedures followed by staff of the Division of Real Properties.

Of the forty-two files, thirteen were "pending" project files in various stages of the lease process and were not completed transactions at the time of review. Twenty-nine were "active" files and did contain lease agreements which were in effect at the time of review.

Program Review staff found that in most all files reviewed, the lease agreements were awarded in compliance with those procedures set out in KRS 56.800-830 and the Finance and Administration Cabinet's Policy Manual. Any exceptions to these provisions will be noted in the following discussion of the actual process followed by the Division of Real Properties.

Agency Request

All files reviewed contained the agency request for space. While the FAC Policy Manual states that the Division of Real Properties will conduct a more extensive feasibility study on requests exceeding 25,000 square feet, there was no documentation of such a study in the lease file. However, the agency request provided an explanation for the need for the amount of space requested. The Division is responsible for locating property if space is not available in a state-owned or occupied building. However, the determination that there is not suitable space available in a state-owned building was not consistently documented in the files.

Advertisement For Space

The Division places public advertisements for the requested space in area newspapers. The advertisements contain general information, such as: the county in which the property is to be located and a general location within the county, the type of space required, the number of square feet needed and the time, date and place that responses will be received. The files reviewed contained a standardized advertisement with the aforementioned general specifications. Additional documentation included xerox copies of the newspaper advertisements and the invoices for payment from the newspaper. The following two exceptions were noted:

Franklin County, PR 3460: Parkland Properties, owned by Bill Crumbaugh and Lively Wilson, began leasing Building C of Perimeter Park West, located on US Highway 60 in Frankfort, to the Department of Workers' Compensation on November 9, 1988. The leased property contains 31,820 square feet and 126 parking spaces, rented at $7.25 per square foot, without utilities or janitorial services, for a total of $230,695 annually. The

file noted that a decision was made by the Division to forego public advertisement since Building C of Perimeter Park West was the only respondent to three recent advertisements for other agencies seeking similar square footages. One of the advertisements was dated September 1987; the other two were dated January 1988. According to documentation in the file, the Division's decision to not advertise was based on their knowledge that this was the only building in the Frankfort market with this amount of available square footage.

Pike County, PR 3465: Summit Engineering, owned by John Rasnick, began leasing office space located on Huffman Avenue in Pikeville to the Cabinet for Human Resources on February 1, 1989. The leased property contains 6,400 square feet, rented at $9.38 per square foot, without utilities or janitorial services, for a total of $60,000 annually. The file noted that since there had been two recent advertisements seeking similar square footages no public advertisement was made for this space. The two advertisements were dated July 1987 and January 1988. Four property inspections were conducted in February 1988. The CHR request for 5,625 square feet was made in August 1988. The file noted that Pikeville is traditionally an area in which adequate office space is difficult to locate and that it would prove fruitless to advertise for space for CHR. The proposal accepted was not the lowest bid.

Responses To Invitation To Lease

Responses received after the designated time and date are disqualified and are not considered for a lease award. Responses received by the appropriate time and date are publicly opened and read. The files contain a summary sheet of of all responses received. All late responses are also noted in the file. In the file review, staff found that there was an average of four responses to each invitation to lease. The following exception was noted:

Jefferson County, PR 2936: The Correction Cabinet's Probation and Parole Office has leased space in the Legal Arts Building in Louisville since 1983. The lease was to expire in June, 1987. The lessor, Mr. Jack Stern, did not want to renew the lease and therefore newspaper advertisements for the space were placed.

The Division of Real Properties placed three advertisements that ran on three separate occasions from October, 1986 to December 1987. The lessor, Mr. Stern, did not respond to any of the advertisements in writing prior to the deadlines set forth in the advertisements. Therefore, Mr. Stern was apparently no longer in consideration for the lease, since he did not meet any of the deadlines. A lease agreement was sent to another respondent for his signature. However, in the meantime, an agreement was reached with Mr. Stern for the office to remain in the Legal Arts Building and a lease renewal was processed.

Review And Inspection Of Proposed Lease Properties

While KRS 56.802(3) states that the property proposal submitted by each party by the appropriate time and date shall be inspected to determine suitability, the Division of Real Properties may make cuts from the initial responses. If the Division determines from the response that the property is unsuitable (i.e., not meeting the general specifications stated in the newspaper advertisement), an on-site inspection is not conducted. On-site inspections are conducted for those properties that meet those general requirements set forth in the public advertisements. The files reviewed by staff indicated that the Division of Real Properties conducted an average of three on-site inspections for each invitation to lease. On-site inspections are documented by standardized inspection worksheets, with details of the property, and often include photographs of the building and property. Often representatives from the agency requesting space will accompany Division of Real Properties personnel to the on-site inspections to offer input.

The results of the on-site inspections are summarized, along with agency input and preference. Properties that are still determined suitable after this process will receive more detailed specifications, as well as a proposed floor plan. These specifications may include items such as:

- central heating and air conditioning;
- neutral colored commercial grade carpet;
- adequate florescent lighting;
- floor-to-ceiling walls painted a neutral colored latex semi-gloss enamel paint;
- electrical and telephone outlets;
- water fountain; and
- adequate parking.

In addition, buildings must meet all life safety and handicapped accessibility regulations as enforced by the Department of Housing, Buildings and Construction. At this point, the Division asks the proposed lessors to submit proposals for the terms and duration of the lease, as well as indicating the amount of time needed to complete any renovations.

Submission Of Lease Bids

Lease bids are then submitted to the Division of Real Properties by property owners. Some bid proposals may or may not include the cost of utilities and/or janitorial services. The Division of Real Properties applies standardized rates to proposals which do not contain those services within their bid proposal, to estimate a projected cost. Utilities and janitorial services are estimated at one dollar and sixty cents per square foot, respectively.

Awarding Of Lease Agreement

There is no written requirement that lease agreements be awarded to the low bidder. Nevertheless, on reviewing lease files, Program Review staff did try to determine whether the low bid received the award. For several reasons this was not always possible. For example, in the 1970's leases were not advertised and there were no competing bids. Other reasons include the lack of a requirement for advertisement if space is available from a political subdivision, and the fact that many bidders drop out of the process by the final stages. Staff was able to clearly distinguish competing bids in thirteen lease files. Of these files, the low bid was awarded for nine of the thirteen leases. Explanations given for not awarding the lease to the low bidder included: location in a flood plain, inaccessibility to the handicapped, inadequate parking, and agency preference. KRS 56.830 (5)(a) provides:

> After all requirements have been met for selecting property to be leased, the division of real properties shall determine the amount of rent to be paid for leased property by negotiating with the property owner or owner's authorized representative. In such negotiation, the secretary or his designee shall seek to obtain the lowest rate possible.

If further negotiations occur after the lease price is submitted by the owners, there is no documentation in the files. The following exception was noted:

Pike County, PR 3465: This lease was previously discussed above. CHR had occupied 4,725 square feet in a building owned by Dr. S. R. Malempati. The lease term was $10.50 per square foot, for an annual cost of $49,613, which included utilities. Upon a request by CHR for additional space, Dr. Malempati offered an additional 900 square feet at the same terms and conditions, making a total of 5,625 square feet. The Division of Real Properties indicated that this square footage would allow for little or no future expansion. The Division also concluded that it would be fruitless to readvertise for the space since similar square footage needs had been advertised for the Natural Resources and Environmental Protection Cabinet(NREPC). Three responsive proposals were considered for the leases for CHR and NREPC, with annual lease rates of $49,500 (David Adams), $51,000 (Fleetwood Johnson), and $60,000 (John Rasnick).

The $49,500 proposal for 6,000 square feet was not accepted by NREP or CHR for the following reasons:

- space would be on second and third floors;
- potential parking problem;
- some concern over floor withstanding weight of files and equipment; and
- location was about 2 miles from Pikeville city limits.

The $60,000 proposal (6,400 sq.ft.) was leased by CHR for the following reasons:

- new concrete and glass building;
- desirable location;
- favorable eight-year lease term.

This lease was effective February 1, 1989.

The $51,000 proposal for 6,000 sq. ft. was leased by the Natural Resources and Environmental Protection Cabinet for the following reasons:

- favorable five-year lease term;
- location and adequate parking; and
- one-story building

This lease was not effective at the time of the Program Review staff review.

Survey of State Approaches to the Leasing of Office Space for State Use

A list of states to contact was developed and included California, Connecticut, Illinois, Louisiana, Minnesota, Montana, Ohio, Pennsylvania, Texas, Utah, Virginia, and Washington. These states were chosen for two reasons. First, they provide geographical diversity. Second, according to a 1981 survey generated by a Louisville think tank, and previous research, these states pursue diverse approaches to the leasing of office space for state use.

Staff collected information about the leasing systems in the twelve states selected for the survey. Understanding of these leasing systems may be flawed for three connected reasons. First, as a general rule, state leasing laws are skeletal. They usually give very general guidance to the executive branch and then permit the executive branch to come up with the great bulk of the details necessary for implementation. Therefore, state leasing officials, rather than state leasing laws, provided most of the understanding of how these state leasing systems operate. Second, leasing officials usually defend their leasing systems. After all, they are administering systems that they have helped to shape. Third, communication with these leasing officials was conducted mainly by way of telephone interviews, which are inherently problematic.

In this report, the descriptions of and opinions on leasing systems and lease elements come exclusively from telephone interviews with leasing officials and from research into state laws, regulations, and written procedures.

The first comment on this research does not belong to the main thrust of this report but may be of special interest to this Subcommittee. This research has identified some states with the Model Procurement Code in place. It would appear that a sizable majority of these states exclude the leasing of office space for state use from the Model Procurement Code. However, it would also appear that at least two states, Louisiana and Utah, place the leasing of office space for state use under their Model Procurement Code. In Louisiana, this results in leases being obtained through Bid and Competitive Negotiation. In Utah, this means that leases are obtained through Request for Proposal. So state leasing may be placed under a Model Procurement Code. It is another question as to whether that is desirable.

The most important thing discovered about state leasing of office space is that when one constructs a state leasing system, the goals or results that the system is to achieve should be a primary consideration.

Leasing goals or results frequently cited are:

1. Take into account that each lease project and each unit of office space is unique.
2. Have a consistent system which is fair to all landlords.
3. Obtain the cheapest adequate office space.
4. Meet the needs of the Commonwealth, user agency, and the public.
5. Do not break the budget of the lease department that runs the system or the user agency.

These goals or results are often in conflict. For example, when a leasing system takes into account the needs of a user agency, that inevitably leads to the user agency influencing the system. As a general rule, the more influence that a user agency has on a lease system the more expensive will be the office space chosen. Clearly, there is a conflict between obtaining the cheapest adequate office space and meeting a user agency's needs.

A leasing system must resolve this conflict between competing goals. Sometimes resolution takes the form of compromise. Other times it takes the form of choosing between competing goals.

So in constructing a leasing system one should have in mind not only what goals or results one wants that system to achieve but also how to resolve conflict between competing goals.

These twelve states can be grouped under one of four leasing systems, each of which takes a different approach to determining what goals or results to achieve and how to resolve conflict between competing goals. The leasing systems are as follows:

Bid—California, Louisiana, and Texas;
Request for Proposal—Connecticut, Pennsylvania, and Utah;
Competitive Negotiation—Illinois, Minnesota, Ohio, and Washington; and
Agency Control/Lease Department Oversight—Montana and Virginia.

The following section of this report lists and describes qualities that you might expect to find in each leasing system, followed by a discussion of the strengths and weaknesses of each leasing system and how to address the weaknesses. Please keep in mind that the actual systems are not being described. No systems like those described exist. Also, please keep in mind that many leasing elements can be placed under more than one system. Some leasing elements have been placed under one system rather than another, because one system seemed to be more likely to contain certain elements than another system.

Bid

- The state places ads stating what property is desired in what location. The state also has an inventory of available space and has its agents drive the territory where the building will be located to look for prospective landlords.
- Landlords have a certain length of time to respond to the ads and request standard specifications. The specifications are for the most part boilerplate, but they do contain some flexibility and vary slightly from project to project. If a landlord fails to respond to the ads on time, the landlord is out of the process.
- A landlord has a certain length of time to fill out a specification form (which is sometimes quite lengthy) and turn it in. If the form is not turned in on time, the landlord is out of the process.
- The state lease department and perhaps the user agency check to see if the landlords meet specifications or, if they do not meet specifications, whether they are able to come up to specifications. If landlords do not meet specifications or are unable to come up to specifications, they are excluded from the process.
- Landlords submit bids.
- The bids of the landlords are opened in a formal setting.
- The lease department then awards the lease to the lowest bidder or the lowest responsive bidder. In either case, the bidder must either meet specifications now or be able to meet specifications in the future. When the successful bidder claims that he will meet specifications in the future, the lease is not final until he meets specifications. Sometimes the lease is not awarded.
- The lease is not awarded when the lowest bid price is still too high, the space is unsuitable for the user agency, or the bid form is not completed properly.

- When the bid is not awarded, the process is run through again while the state goes to a month-to-month lease with the current landlord. If there is a boom economy, that month-to-month lease may be jeopardized by the landlord wanting to move in another tenant.
- A user agency has some influence on the process, but the process is not driven by the needs of a user agency.

A Bid system has the strength of providing standards for the conduct of leasing. These standards should keep politics out of leasing, produce buildings of a consistent quality, and establish rights for landlords.

There are the following problems with a Bid system:

1. For all parties involved, a Bid system costs more in terms of time and money than any other system. Landlords may not want to participate in the system because of these costs.
2. The demanding standards of a Bid system exclude some landlords.
3. The difficulties for landlords described in Items 1 and 2 are exacerbated for rural landlords who may lack the resources of urban landlords.
4. Since there is no negotiation, landlords are tempted to do no more than meet minimum specifications. States must be careful to make sure that the minimum specifications describe decent office space. The quality of the specifications is critical.
5. A state has to be prepared to deal with a situation where there is not much competition. When there is not much competition, a landlord may know this, be the only individual to submit a bid, and submit a high bid. A state can accept the bid, reject the bid and begin the process again, or negotiate with the individual.
6. Since these states are not absolutely committed to accepting the low bid, politics and excessive user agency influence may creep into the system.
7. Since landlords have rights under a Bid system, they may be litigious if they are provided with a formal administrative appeals process. This has proven to be true in Louisiana.

Bid states use two methods to address these problems.

First, these states do not use Bid for all leases. Texas uses Bid, but at the discretion of the leasing official may use Competitive Negotiation. Louisiana and California use Bid, but only for medium to large leases. (Louisiana uses Bid for leases over 2,500 square feet. California uses Bid when the rent exceeds $15,000 per month.) The time and expense which landlords and a state must devote to a Bid system is more justified for medium

and large leases. Competitive Negotiation is used for smaller rentals. California creates exceptions to this general rule, depending on how much competition there is. If there is little competition for a large lease, California will use Competitive Negotiation. If there is a great deal of competition for a small lease, California will use a Bid process.

Second, even when these states use the Bid system, there is no absolute guarantee that the lease will go to the low bidder. The low bidder is the prohibitive favorite to get the lease, but it is not a sure thing. Also, in these states, leasing officials have the discretion to rerun the process.

These two methods make clear that states shy away from relying solely on Bid.

Request For Proposal

The Request for Proposal approach to leasing is very similar to the Bid approach up to the point where proposals are submitted.

- Once proposals are submitted, they are evaluated by the lease department working with the user agency. The lease department and user agency select finalists.
- The lease department evaluates the finalists, using a weighted evaluation system.
- The lease department negotiates with the finalists.
- The lease department then awards the lease to the landlord with the lowest and best offer that meets specifications (or will meet specifications) and the needs of the user agency and the public. Since several factors are taken into account in the awarding of the lease, it does not always go to the landlord with the cheapest office space. Significantly, a user agency has more input under this system than under a Bid system.
- The lease department has the discretion to repeat the process.

A Request for Proposal system is really a compromise between a Bid system and a Competitive Negotiation system. A Request for Proposal system strikes a balance between the two other systems. While its virtues are not as strong as the virtues of the two other systems, its faults are not as great either.

Competitive Negotiation

There is not much in the way of formal standards in a Competitive Negotiation system.

- A lease department may advertise for space. If the advertisement states a deadline, the lease department does not hold landlords to it.

- Landlords who respond to an advertisement do not have to comply with standard state specifications. At some point in the process, specifications are drawn up for each building that is being considered seriously. Thus, the lease department has great flexibility in finding a building.
- The lease department and the user agency select finalists.
- The lease department negotiates with the finalists.
- The lease department awards the lease to the landlord that the lease department thinks will provide the best deal. This is done at the discretion of the lease department. Cost may not be the decisive factor in determining the best deal.
- At the discretion of the lease department, all bids may be rejected and the process run again.
- The user agency has as much influence on the process as under Request for Proposal, maybe more.

When a Competitive Negotiation system is run correctly it can work quite well. Lease department officials can use their broad discretion to produce the best deal, whatever that may be. But that is where the problems with Competitive Negotiation begin. Lease department officials have only their judgment to determine what the best deal is.

The problem with a Competitive Negotiation system is that it lacks some of the standards which promote consistency, fairness, and other goals. Leasing officials under a Competitive Negotiation system have broad discretion in choosing their goals. Therefore, leasing under Competitive Negotiation tends to be handled on a case-by-case basis. This case-by-case system may result in some negative consequences. Leasing officials may have lapses in judgment. Politics may affect the system. Prospective landlords may have difficulty knowing if they have any rights, and if they have rights, what they are exactly. This difficulty in turn will hamper a landlord when he airs his grievances. He will have trouble identifying standards, the violation of which may have caused him injury.

Some Competitive Negotiation states take steps to address problems that arise under their system.

1. Illinois requires that its lease department use forms throughout its Competitive Negotiation process. There are landlord response forms, building evaluation forms, and forms for stating the reason why buildings are rejected. These forms add consistency to the process and create a record which can be read and understood by the legislature, landlords, and auditors.
2. The Illinois lease department is audited.
3. Illinois requires that the executive director of an executive branch board approve leases before they take effect.
4. Ohio requires that a legislative board approve leases before they take effect.

User Agency Control/Lease Department Oversight

Unlike the other leasing systems, this system is not dominated by a central lease department. The user agency runs the process, and the lease department provides oversight. The oversight may be strong (Virginia) or relatively weak (Montana). The approach outlined below is mainly the Virginia approach.

- The user agency places an advertisement to solicit interest.
- Interested landlords obtain the standard state specification and submit proposals.
- The user agency evaluates the proposals to see if they meet the standard state specification and the user agency needs.
- Once the user agency has identified the property it wants and arrived at a lease agreement, the user agency submits the lease agreement to the lease department for review.
- The lease department reviews the lease for technical problems. The lease department also checks to make sure that the rental cost is not exorbitant. There are at least two methods to do this. One method is to compare the cost with the rental costs paid by other business tenants in the area. Another method is to ask the user agency to justify not selecting the cheapest office space and provide the lease department with information on cheaper office space that was not selected.

The approach of User Agency Control/Lease Department Oversight has the advantage of producing for the agency office space with which it is satisfied.

This leasing system has the strengths and weaknesses of whatever leasing approach (Bid, Request for Proposal, or Competitive Negotiation) the user agency follows.

This system has two additional weaknesses unique to it. First, since the user agency runs the process and user agencies have a tendency to want office space that is too expensive, this approach may produce overly expensive rental property. Second, since a user agency does not do leasing on a regular basis, a user agency may be ignorant of the subtleties of leasing.

These two weaknesses may be addressed through lease department efforts. As noted earlier, a lease department can impose certain requirements to hold down costs. Also, a lease department may help a user agency cope with leasing subtleties.

As the preceding analysis shows, different leasing systems achieve different goals and differently resolve competing goals. However, examining leasing systems as systems does not tell us everything we need to know about leasing systems and their goals.

Much can be learned by examining individual lease elements, most of which may be placed under any of the four systems (Bid, Request for Proposal, Agency Control/Lease Department Oversight).

Listed below are some lease elements and some goals or results which they help to achieve.

Lease Elements

1. The state has a plan coordinating the leasing and buying of office space.
2. The state has an inventory of all space leased and owned, with costs included.
3. When a user agency requests space, the request is thoroughly checked to determine whether the user agency needs the space now and in the future and whether the user agency's budget is adequate to pay for the space.
4. The lease department aggressively solicits the interest of landlords, using such means as: advertisement in state and local newspapers, bid list, inventory of available space, and surveying the relevant geographical area. The more aggressive the lease department is, the more landlords there are in the process, resulting in stronger competition.
5. The state has standard specifications which vary only slightly from lease project to lease project. Standard specifications should produce buildings of a consistent quality. At the same time, standard specifications exclude some landlords, especially in rural areas.
6. The state sets deadlines in the lease process and expects landlords to meet them. If this element is in place, it creates an orderly process that excludes landlords who fail to meet deadlines. However, landlords cannot attack this orderly process as being unfair.
7. The state requires that its lease department justify the decisions it makes at the most important steps in the lease process. If a lease department is required to justify the decisions it makes at the three or four most important steps in the lease process and to keep those justifications on forms in files, auditing of the process will be easier. Furthermore, disgruntled landlords will be able to review files and determine whether they have a valid grievance.

Illinois (a Competitive Negotiation state) uses a set of forms which document the decisions made throughout the lease process with regard to site evaluation, rejection of property, and choosing a landlord.

8. The lease department has the appropriate amount of discretion to stop the

lease process and start it over again. Just how much discretion is appropriate is a difficult question to answer. Any number of problems might come up which may justify starting the process over again. There may be community protest; bids may appear to be too high; buildings may be inadequate. It is tough to decide when running through the process again is justified.

9. Landlords are required to submit detailed formal proposals by a certain date. This lease element makes possible the comparison of lease proposals in an orderly and fair manner. This lease element also excludes some landlords from the process.
10. A group of factors, some of which are emphasized, go into the awarding of a lease. Some factors which may be considered are: rental cost, moving cost, conformity of office space to a standard state specification, location and accessibility of office space to the public, meeting a user agency's needs, and meeting applicable state fire, health, safety and sanitation requirements.

There are ways to emphasize one or more of these factors. For example, emphasizing the rental of the cheapest office space can be done in at least three ways:

A. The lease department can be forbidden to lease office space at higher than the market rate. (This standard should be easy to meet. States are usually good tenants, so landlords offer states good deals, as a general rule.)
B. The lease department can be required to justify to the legislature a decision not to lease the cheapest office space.
C. The lease department can be required to supply to the legislature information on the cheaper proposals that were rejected in favor of a more expensive proposal.

11. The lease department may be required or permitted to use different lease methods, depending on the circumstances. When a lease department can use different methods, it gains flexibility. California and Louisiana use Bid or Competitive Negotiation. Pennsylvania uses Sole-Source Negotiation, Noncompetitive Negotiation, and Request for Proposal.
12. User agencies are permitted an appropriate amount of influence and no more. Generally speaking, the more input a user agency has, the more expensive the building will be.
13. The lease department is subjected to financial and performance audits. Audits come after the fact and frequently go no farther than a spot check.

However, if the procedures described in Item 7 are put in place, an audit will be more meaningful.

14. Oversight may be provided by the executive branch, legislature or attorney general. Oversight can come before a lease is final or after.
15. A formal administrative appeals process gives disgruntled landlords a forum where they can air their grievances. A formal administrative appeals process also encourages litigation.
16. Once a disgruntled landlord exhausts administrative appeals, he may go to court. To prevail in court, a disgruntled landlord must meet an appropriate standard. The question becomes, what is an appropriate standard? If a disgruntled landlord must meet a high standard such as fraud, he will be discouraged from pursuing his claim. If a disgruntled landlord must meet a lower standard, such as the arbitrary or capricious standard or the greater weight of the evidence standard, he will be less likely discouraged from pursuing his claim.

The Kentucky Leasing Process

Currently, Kentucky has a Competitive Negotiation lease process. Kentucky has a skeletal statute and virtually no regulations. This means that there are few formal requirements. Kentucky leasing officials, like leasing officials in several other states, have broad discretion in leasing office space for state use.

Formal requirements could be added to the Kentucky leasing system in one of two ways. First, the Kentucky system could be changed to a more formal system, such as the Bid, Request for Proposal, or a combination of systems. Second, individual lease elements could be added to the current system.

If either option is pursued, it is quite likely that some cost, delay, and performance standards would be added to the Kentucky system. The Finance and Administration Cabinet, user agencies and prospective landlords would all be affected by these consequences. While it is fairly obvious how the Finance and Administration Cabinet and the user agencies would be affected, it is less obvious how prospective landlords would be affected.

Because of the added cost, delay, and performance standards associated with extra requirements, some landlords may not attempt to participate in the system, not qualify under the system, or drop out after having gone part way through the system. This exclusion of landlords from the system may be exacerbated in Kentucky because of two facts: Kentucky leases are prohibited from lasting longer than two years, and Kentucky is a rural state. Some landlords may not want to accept additional requirements for such a short-term lease. Moreover, landlords in the rural part of the state may not be able to meet additional requirements.

So, adding requirements to the Kentucky leasing system would pose some difficulties.

Proposed Recommendations: State Leasing of Space

Recommendation:

The Kentucky General Assembly should amend the Kentucky Revised Statutes to require that any space rental by the Commonwealth for an annual rental cost which will exceed $200,000 be identified and authorized in the biennial executive budget.

Recommendation:

KRS Chapter 56 should be rewritten to eliminate duplications and clarify subtle contradictions. The leasing statute should be amended to require increased documentation and reporting of various stages of the leasing process. The Auditor of Public Accounts should be required to audit the Finance and Administration Cabinet's compliance with KRS 56.800 to 820 at least once every two years and to report his findings to the Capital Projects and Bond Oversight Committee. Furthermore, the judicial standard of review for vendors seeking relief from the decisions or state leasing officials should be lowered.

APPENDIX A

COMPARISON OF THE ABA MODEL PROCUREMENT CODE TO KENTUCKY PURCHASING STATUTES

ABA CODE		KENTUCKY MODEL PROCUREMENT CODE	
Section		YES	NO
	ARTICLE 2—PROCUREMENT ORGANIZATION		
Part A	State Procurement Policy Office		
2-101	Procurement Policy Office		X
2-102	Authority & Duties of Policy Office		X
Part B	Chief Procurement Officer		
2-201	Chief Procurement Officer	45A.030(3)	
2-202	Appointment & Qualifications		*1
2-203	Tenure, Removal & Compensation		*1
2-204	Authority of Chief Procurement Officer	45A.035-45A.055	
2-205	Delegation of Authority	45A.045 45A.035 45A.360(1)	
Part C	Organization of Public Procurement		
2-301	Centralizing of Procurement Authority	45A.050(1)	
2-302	Authority to Contract for Certain Services		*2
2-303	Exemptions	45.050(2)	
Part D	Procurement Regulations		
2-401	Procurement Regulations	45A.035 45A.045 45A.055	*3
Part E	Coordination, Training and Education		
2-501	Data Collection RE Public Procurement		
2-502	Procurement Advisory Council	45A.065	*4
2-503	Procurement Institute		X
Part F	Duties of the Attorney General		
2-601	Duties of Attorney General		X
	ARTICLE 3—SOURCE SELECTION & CONTRACT FORMATION		
Part A	Definitions		
3-101	Definitions of Terms Used in this Article	45A.030 45A.070	
Part B	Methods of Source Selection		
3-201	Methods of Source Selection	45A.075 45A.080	
3-202	Competitive Sealed Bidding	45A.080	
3-203	Competitive Sealed Proposals	45A.085-45A.090	
3-204	Small Purchases	45A.100	
3-205	Sole Source Procurement	45.360(1) 45A.095	
3-206	Emergency Procurements	45.400 45A.095	
3-207	Competitive Selection Procedures for §2-302		X
Part C	Cancellation of IFB's or RFP's		
3-301	Cancellation of IFB's or RFP's	45A.105	

Part D	Qualifications and Duties		
3-401	Responsibility of Bidders & Offerors	45A.110	
3-402	Prequalification of Suppliers	45A.035(2) 45A.115	
3-403	Cost or Pricing Data	45A.120	
Part E	Types of Contracts		
3-501	Types of Contracts	45A.125 45A.130	
3-502	Approval of Accounting System	45A.140	
3-503	Multi-Term Contracts	45A.145	
Part F	Inspection of Plant and Audit of Records		
3-601	Right to Inspect Plant	45A.150	
3-601	Right to Audit Records	45A.150	
Part G	Determinations and Reports		
3-701	Finality of Determinations	45A.155	
3-702	Reporting of Anticompetitive Practices	45A.160	
3-703	Retention of Procurement Records		*5
3-704	Record of Sole Source and Emergency	45A.165	*6
	ARTICLE 4—SPECIFICATIONS		
Part A	Definitions		
4-101	Definitions of Terms Used in this Article (definition of "specifications)		X
Part B	Specifications		
4-201	Duties of the Policy Office		X
4-202	Duties of the Chief Procurement Officer		*7
4-203	Exempted Items		X
4-204	Relationship with Using Agencies		X
4-205	Maximum Practicable Competition	45A.170(2)	
4-206	Specifications Prepared by Architects & Engineers		X
	ARTICLE 5—PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER, AND LAND SURVEYING SERVICES		
Part A	Definitions		
5-101	Definitions of Terms Used in this Article	45A.175	
Part B	Management of Construction Contracting		
5-201	Responsibility for Selection of Methods of Construction Contracting Management	45A.180	
Part C	Bonds		
5-301	Bid Security	45A.185	
5-302	Performance Bonds	45.190	
5-303	Bond Forms and Copies	45A.195	
Part D	Construction Contract Clause and Fiscal Responsibility		
5-401	Contract Clauses & Their Administration	45A.200	(Partial)
5-402	Fiscal Responsibility		X
Part E	Architect-Engineer & Land Surveying Services		
5-501	Architect-Engineer & Land Surveying Services	45A.205	
	ARTICLE 6—MODIFICATIONS AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES		
6-101	Contract Clauses and Their Administration	45A.210	
	ARTICLE 7—COST PRINCIPLES		
7-101	Cost Principles Regulations Required	45A.215	

ARTICLE 8—SUPPLY MANAGEMENT

Part A	Definitions		
8-101	Definitions of Terms Used in the Article		X
Part B	Regulations Required		
8-201	Supply Management Regulations Required		X
Part C	Proceeds		
8-301	Allocation of Proceeds form Sale or Disposal of Surplus Supplies		X

ARTICLE 9—LEGAL AND CONTRACTUAL REMEDIES

Part A	Pre-Litigation Resolution of Controversies		
9-101	Authority to Resolve Protested Solicitations and Awards	45A.285 45A.290	
9-102	Authority to Debar or Suspend		*8
9-103	Authority to Resolve Contract and Breach of Contract Controversies	45A.230 45A.235	
Part B	Solicitations or Awards in Violation of Law		
9-201, 9-202,203	Remedies Prior and After Award Interest		X
9-301	Interest		X
Part D	Waiver of Sovereign Immunity		
9-401	Waiver of Sovereign Immunity	45A.245 45A.250	
9-402	Time Limitations on Actions	45A.260	*9
Part E	(OPTIONAL PART) Procurement Appeals Board		
9-501	Procurement Appeals Board		X
9-502	Terms and Qualifications		X
9-503	Rules of Procedure		X
9-504	Decisions of the Procurement Appeals Board		X
9-505	Jurisdiction of the Procurement Appeals Board		X
9-506	Protest of Solicitations or Awards		X
9-507	Suspension or Debarment Proceedings		X
9-508	Contract and Breach of Contract Controversies		X
9-509	No Finality to a Decision on an Issue of Law		X
9-510	Appeal and Review of Procurement Appeals Board Decisions		X
9-511	Discontinuance of Contractor's Appeal		X

ARTICLE 10—INTERGOVERNMENTAL RELATIONS

Part A	Definitions		
10-101	Definitions of Terms Used in this Article	45A.295	
Part B	Cooperative Purchasing		
10-201	Cooperative Purchasing Authorized	45A.300(1)	
10-202	Sale, Acquisition or Use of Supplies by a Public Procurement Unit	45A.300(2)	
10-203	Cooperative Use of Supplies or Service	45A.300(3)	
10-204	Joint Use of Facilities	45A.300(4)	
10-205	Supply of Personnel, Information and Technical Services	45A.305	
10-206	Use of Payments Received by a Supplying Public Procurement Unit	45A.310(1)	
10-207	Public Procurement Units in Compliance with Code Requirements	45A.310(2)	
10-208	Review of Procurement Requirements	45A.310(3)	
Part C	Contract Controversies		
10-301	Contract Controversies		*10

ARTICLE 11—ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES			*11
Part A	Definitions		
11-101	Definitions of Terms Used in this Article		X
Part B	Assistance to Small & Disadvantaged Businesses		
11-201	Statement of policy and Its Implementation		X
11-202	Mandatory Duties of the Chief Procurement Officer		X
11-203	Discretionary Duties of the Chief Procurement Officer		X
11-204	Business Assistance Offices		X
11-205	Report to the Policy Office and the Legislature		X
Part C	Federal Assistance		
11-301	Compliance with Federal Requirements	45A.320	
ARTICLE 12—ETHICS IN PUBLIC CONTRACTING			
Part A	Definitions		
12-101	Definitions of Term Used in this Article		X
Part B	Standards of Conduct		
12-201	Statement of Policy	45A.010, 45A.330	
12-202	General Standards of Ethical Conduct		X
12-203	Criminal Sanctions	45A.990 45.990	
12-204	Employee Conflict of Interest		*12
12-205	Employee Disclosure Requirements		X
12-206	Gratuities and Kickbacks	45A.340, 45A.990(4) 45A.990(5)	
12-207	Prohibition Against Contingent Fees	45A.990(4), 45A.340(6)	
12-208	Restrictions on Employment of Present and Former Employees	45A.340(6)	
12-209	Use of Confidential Information		X
Part C	Remedies		
12-301	Civil and Administrative Remedies Against Employees		X
12-302	Civil and Administrative Remedies Against Employees		X
12-303	Recovery of Value Transferred or Received in Breach of Ethical Standards		X
Part D	Ethics Commission		
12-401	Ethics Commission		X
12-402	Appeal of Decisions of the Ethics Commission		X

*1 Chief Procurement Officer is the Secretary of the FAC, which is appointed by the Governor.

*2 Partially addressed by Personal Service Contracts KRS 45.700-720.

*3 The ABA MPC recommends that all procurement regulations should be promulgated by the Policy Office, since Kentucky doesn't have a Policy Office the regulations are promulgated by the Chief Procurement Officer.

*4 KMPC allows for such Council but the Council doesn't meet as an on-gong body.

*5 Addressed in KRS 171.530.

*6 ABA MPC requires record to be sent to Legislature vs. KMPC which states that such report is to be "made available."

*7 KRS 45A.170 state spec responsibilities be with the FAC, not the Chief Procurement Officer as the ABA states.

*8 KMPC doesn't cover but 200 KAR 5:315 does.

* 9 KMPC has a uniform 1 year limitation on claims vs. the ABA Code which provides for various time limits depending on the claim.

*10 Partially covered in KRS 45A.315.

*11 Kentucky does have a Small Business Purchasing Act (KRS 45.470-.510) which allows for set aside contracts but this doesn't meet the ABA MPC's assistance to small and disadvantaged businesses.

*12 Partially covered in KRS 45A.340.

Source: Compiled by Program Review staff from the American Bar Association's, April, 1986, 3rd printing of the Model Procurement Code for State and Local Governments and KRS 45, 45A.

APPENDIX B

Survey Summary of State Agencies on State Purchasing

As part of the Subcommittee on State Purchasing review of the state's procurement system staff conducted a survey of state agencies to obtain their input and experiences. The development of sound purchasing policies depends on a balanced input of the parties involved in the purchasing process. In obtaining the agencies' input, the survey was designed to solicit responses of good or bad experiences in their purchasing activities. The remainder of this memo summarizes the agencies' responses. Attachment A lists responding and nonresponding agencies to the survey.

The survey was mailed to 92 state agencies with 86 responding (92%). A full copy of the survey with summary results is contained in Attachment B. The survey obtained the agency and cabinet name along with the major purchases made from vendors. The average reported dollar amounts of purchases for the last three fiscal years are shown below:

YEAR	AMOUNT	AGENCIES RESPONDING
1986	$2,022,591	67
1987	3,311,180	68
1988	2,221,352	69

General Satisfaction

The state's procurement system was established to secure necessary goods and services. We asked agencies how adequately their needs were being met and 92% indicated that they felt a "somewhat adequate" to "adequate" job was being done.

Agencies indicated that they felt a "somewhat adequate" job was being done securing products and services in a timely fashion. They also noted that a "somewhat adequate" to "adequate" job was being done obtaining products and services at the best price and of sufficient quality.

Satisfaction of Price and Quality of Contract Products

In its preliminary study of state purchasing, the Program Review staff found that some agencies interviewed felt that items on price/purchase contracts could be purchased cheaper if obtained on the open market. In contrast, the agency survey reveals that 58% (fifty agencies) indicate that they feel items on price contracts are "seldom" cheaper on the open market, while 69% (59 agencies) indicate the same for items on purchase contracts.

Satisfaction with Central Stores

The survey results indicated that 74% of the time agencies "always" utilize Central Stores for their products and felt that their prices were lower than outside vendors 93% of the time. Some of the negative remarks (12 agencies) regarding Central Stores included poor quality of items they carry, didn't carry needed supplies, that their items sit on the shelves too long, and that no one from Central Stores contacts their agency to determine what items should be carried.

DOP vs Agency Responsibilities

Agencies were asked in what areas they felt that Finance's Division of Purchases (DOP) should be more active. Responses included: writing specifications, handling complaints, and testing products. Written responses in the "other" category of this question included allowing an agency to purchase from a local vendor instead of having to go through a higher priced vendor.

Agencies were also asked in what areas they themselves should be more active. Agencies felt they should be more active in selecting vendors, awarding of contracts, and soliciting bids.

Development of Specifications

Agencies were asked who played the primary role in developing product specifications. Forty-two percent indicated that their own staff did, while 33% said the product salesperson did. Another point in this area is that 84% (74 agencies) noted that the product salesperson provided assistance in developing specifications. Agencies list suggested vendors when making a purchase requisition "often" (56%) or "always" (31%). The role of the product sales-person is further noted by 50% of the agencies reporting that they "often" have contact with product sales representatives prior to a bid award.

Thirty-three percent (27) of the agencies indicated that DOP had rejected product specifications they submitted at one time or another. The most frequent reason for the rejection was that the specifications were not clear or detailed enough.

Most agencies (86%, 70 agencies) felt that brand name products met their needs better than generic products.

Use of Non-routine Purchasing

Agencies were asked how often in the last three years that they made delegated purchases, single source purchases, and emergency purchases. The following chart shows the ranges for these type purchases:

TYPE PURCHASES	YEAR	AGENCY RANGES			TOTAL AGENCIES RESPONDING
		Less Than 10	11-31	50-140	
Delegated	1986	46	5	2	53
Delegated	1987	47	5	2	54
Delegated	1988	47	5	2	54
		Less Than 10	12-40	50-220	
Single Source	1986	42	11	3	56
Single Source	1987	43	13	3	59
Single Source	1988	48	10	5	63
		1 or less	2-5	6-21	
Emergency	1986	52	10	3	65
Emergency	1987	53	10	3	66
Emergency	1988	50	10	4	64

The most frequent reasons agencies noted for emergency purchases was time restrictions (27 agencies), public safety (19 agencies), and various other individual cases (10 agencies), such as failure of a heating system in cold weather or vehicle breakdown.

Use of Correctional Industries and Industries for the Blind

Kentukcy statues give Correctional Industries and Industries for the Blind preferred vendor status. We asked agencies to rate their satisfaction with the quality of products/service from these preferred vendors, based on a point scale of 1 to 4, with 1 being "very dissatisfied" and 4 being "very satisfied." The mean for Correctional Industries was 2.9 and for Industries for the Blind 3.3. Some of the reasons for dissatisfaction with Correctional Industries were that the products were not of commercial quality and didn't last as long, and that delivery was slow.

We also asked agencies how often they purchased products from outside vendors when they could have made the purchase from a preferred vendor. Agencies responding to this question for Correctional Industries indicated that 51% (41 agencies) of the time they "seldom" go to outside vendors, but 33% (26 agencies) of the time they "often" go to outside vendors, while in the case of Industries for the Blind, the response was 46% (33 agencies) "seldom" and 25% (18 agencies) "often.". It should be noted though that 17 agencies were not aware of products/services that Correctional Industries offered and 31 agencies were not aware of products/services offered by Industries for the Blind.

Satisfaction with Vendors

When agencies were asked what type of problems they have had with vendor's products/services the first response was late deliveries (63 agencies), followed by shortages (34 agencies), poor quality (25 agencies), price increases (19 agencies), and substitutions (13 agencies). In the "other" category , written answers included shipping damages and incorrect billings. These problems were primarily handled by the agency contacting the vendor directly. A formal complaint has been lodged against a vendor by 47 of the 82 agencies (57%) responding to this question. When asked if complaints had been handled to the agencies' satisfaction, 61% said "always," while 38% said "sometimes."

Suggestions for Improvement

When asked about the current dollar limits established for small purchases, only 24% (20 agencies) indicated they were "satisfied," while the remainder responded with some degree of dissatisfaction. Written suggestions were made by 34 agencies to raise the limits.

When asked what suggestions the agencies could make for improving the purchasing system, the more frequent responses were: to increase the small purchase limits; to make agencies more aware of vendor performance among agencies; and to streamline the requisition process for items already on a state price contract. Attachment C lists all the agency suggestions as they were submitted.

APPENDIX C

RETURN TO: Office for Program Review, LRC, State Capitol

SURVEY OF STATE AGENCIES ON STATE PURCHASING
Conducted by Legislative Research Commission

Functional Responsibilities

1. The state's procurement system was established to secure necessary goods and services for state agencies in an efficient and effective manner. Following the scale below are various areas involved in the procurement process. On the space next to by each area, please indicate the number from the scale below which best reflects how adequately your agency's needs are being met.

Inadequate	Not very adequate	Somewhat adequate	Adequate
1	2	3	4

# Responding	Mean	
86	3.5	Meeting agency procurement needs
85	3.1	Securing products and services in a timely fashion
84	3.5	Securing products and services at the best price
85	3.5	Securing products and services of sufficient quality
83	3.5	Resolving problems
3	2.7	Other _____

2. In which, if any, of the following areas do you feel the Division of Purchasing should be more active? (Please check all that apply)

25	Writing specifications
16	Selecting vendors
11	Soliciting bids
11	Awarding contracts
24	Handling complaints
19	Testing products
8	Inspecting products upon receipt
9	Other_____

3. In which, if any, of the following areas do you feel your agency should have more responsibility? (Please check all that apply)

14 Writing specifications
39 Selecting vendors
19 Soliciting bids
24 Awarding contracts
8 Handling complaints
12 Testing products
14 Inspecting products
3 Other_____

Product Price and Quality

4. Do you feel that the items you get on **price contracts would be cheaper if you could purchase them on the open market? (Please circle the response that best reflects your judgment)**

Never	Seldom	Often	Always
1	2	3	4

 # Responding = 86 Mean = 2.4

5. Do you feel that the items you get on **purchase contracts** would be cheaper if you could purchase them on the open market? (Please circle one)

Never	Seldom	Often	Always
1	2	3	4

 # Responding = 85 **Mean** = 2.2

6. How satisfied are you with the authorized dollar limits established for small purchases? (Please circle one)

Not at all satisfied	Not very satisfied	Somewhat satisfied	Satisfied
1	2	3	4

 # Responding = 84 **Mean** = 2.7

6A. What changes would you suggest in the small purchase procedures? _____

_____

7. In developing product specifications which of these resources do you use for technical assistance? (Check all that apply)

74 Product sales persons
42 Division of Purchases
73 Own staff
23 Other agencies (such as _____)
40 Product comparison guides or industry standard recommendations

7A. If you checked more than one, who plays the primary role? (Check one)

27 Product sales persons
8 Division of Purchases
34 Own staff
2 Other agencies (such as _____)
3 Product comparison guides or industry standard recommendations

8. Has the Division of Purchases ever rejected the product specifications submitted by your agency? 32.5% YES 67.5% NO

 # Responding = 83

If yes, why? _____

_____

9. Do you feel you get products that better meet your needs when you specify brand names rather than generic specifications? 86% YES 14% NO

 # Responding = 81

9A. How often do you specify brand name products? (Please circle one)

Never	Seldom	Often	Always
1	2	3	4

 # Responding = 87 **Mean = 3.0**

Procurement Activity:

10. How often in the last 3 years have you used **delegated** purchasing authority? (Please indicate the number of times on the space before each year)

	Ranges						
— 1986	0—10	46	11—30	5	50—120	2
— 1987	0—10	47	11—31	5	50—130	2
— 1988	0—10	47	11—31	5	50—140	2

11. How often in the last 3 years have you used **single source** authority? (Please indicate the number of times on the space before each year)

	Ranges						
— 1986	0—10	42	13—30	11	100—150	2
— 1987	0—10	43	12—31	13	100—165	2
— 1988	0—10	48	14—31	10	50—220	2

For what product(s)? _____

_____

12. How often in the last 3 years have you used your authority to make emergency purchases? (Please indicate the number of times on the space before each year)

	Ranges						
— 1986	0—1	52	2—5	10	6—12	3
— 1987	0—1	53	2—5	10	6—21	3
— 1988	0—1	50	2—5	10	6—16	4

12A. For what reasons? (Please check all that apply)

# Responding	
27	Time restrictions
19	Public safety or health hazard
9	Other_____
1	Other_____

13. Do you purchase any goods or services other than by small, delegated or emergency purchases without going through the Division of Purchases? 16% YES 67% NO

 # Responding = 83

If YES, please list_____

_____

Experience With Preferred Vendors:

14. In the last three fiscal years, has your agency purchased any of the following products or services from Correctional Industries? (Please check all that apply)

 # Responding

57 Office furniture
39 Printing services
38 Re-upholstery
22 Office panels
10 Institutional furnishings
34 Lockers, shelves
28 Signs
8 Clothing
36 Cleaning supplies
1 Other _____
9 No purchases at all

14A. How would you rate your satisfaction with the quality?
(Please circle one)

Very Dissatisfied	Dissatisfied	Very Satisfied	Satisfied
1	2	3	4

 # Responding = 73 **Mean = 3.0**

14B. If DISSATISFIED, please explain _____

15. In the last 3 fiscal years, have you purchased any of the following products or services from Industries for the Blind? (Please check all that apply)

2 Textiles
37 Janitorial (mops, brooms, etc.)
1 Highway flags
_ Packaging
_ Parts assembly
1 Other _____

15A. How would you rate your satisfaction with the quality?
(Please circle one)

Very Dissatisfied	Dissatisfied	Very Satisfied	Satisfied
1	2	3	4

 # Responding = 35 **Mean = 3.0**

15B. If DISSATISFIED, please explain _____

16. How often in the last 3 fiscal years have you purchased items from other vendors that were available from Correctional Industries? (Please circle one)

Never	Seldom	Often	Always
1	2	3	4

 # Responding = 80 **Mean = 2.2**

17. How often in the last 3 fiscal years have you purchased items from other vendors that were available from Industries for the Blind? (Please circle one)

Never	Seldom	Often	Always
1	2	3	4

 # Responding = 72 **Mean = 2.0**

18. Why have you not utilized these agencies on these occasions? (Check all that apply)

	# RESPONDING		
Correctional Industries		**Industries for the Blind**	
5	Unacceptable price	2	Unacceptable price
19	Poor quality	5	Poor quality
23	Availability of product	12	Availability of product
14	Poor delivery terms	2	Poor delivery terms
12	Bad prior experience	1	Bad prior experience
4	Reputation of agency	—	Reputation of agency
24	Do not meet specifications	5	Do not meet specifications
17	Not aware of products/ services	31	Not aware of products/ services
15	Other _____	16	Other _____

19. How frequently do you utilize Central Stores for products they have available? (Please circle one)

Never	Seldom	Often	Always
1	2	3	4

 # Responding = 84 **Mean = 3.8**

19A. In general, how are the prices at Central Stores compared to private vendors? (Please circle one)

Lower	The Same	Higher
1	2	3

 # Responding = 79 **Mean = 1.1**

19B. In general, how is the quality of products at Central Stores compared to private vendors? (Please circle one)

Worse	The Same	Better
1	2	3

 # Responding = 81 **Mean = 2.0**

19C. Please explain any of your answers if negative

_____

_____

Experience With Vendors

20. How often do you list suggested vendors when making a purchase requisition? (Please circle one)

Never	Seldom	Often	Always
1	2	3	4

 # Responding = 84 **Mean = 3.2**

21. How often do you have contact with product sales representatives prior to a bid award? (Please circle one)

Never	Seldom	Often	Always
1	2	3	4

 # Responding = 84 **Mean = 2.5**

22. What role does your agency have in determining who the contract is awarded to? (Please circle one)

9 Primary, we usually choose the vendor we feel is best from list of those bidding
34 Secondary, we usually are given a chance to raise objections to the choice of the Division of Purchases
37 Division of Purchases chooses the bidder without consulting us

23. Do you have formal agency policies and procedures related to the inspection of products you receive? 57% YES 43% NO

 # Responding = 82

23A. How often do you inspect the products you receive? (Please circle one.)

Never	Seldom	Often	Always
1	2	3	4

 # Responding = 81

23B. Is a particular office or individual in your agency designated for receiving and inspecting all products received? 64% YES 36% NO

 # Responding = 84

24. What types of problems have you had with products or services from vendors? (Please check all that apply)

 # Responding

63 Late deliveries
34 Shortages
13 Substitutions
19 Price increases
25 Unacceptable product or service quality
10 Other _____

_____

_____

24A. How were these problems handled? _____

_____

_____

24B. Have you ever lodged a formal complaint against a vendor with the Division of Purchases? 57% YES 43% NO

 # Responding = 82

24C. Are complaints handled to your satisfaction by the Division of Purchasing? (Please circle one)

Always	Sometimes	Never
1	2	3

 # Responding = 66 **Mean = 1.4**

If sometimes or never, please explain _____

_____

_____

25. Do you feel the state has adequate procedures in place to deal with vendor problems? 84% YES 18% NO

 # Responding = 63

25B. What suggestions would you make for improving the purchasing system? _____

_____

_____

_____

_____

_____

_____

_____

General Information:

26. Cabinet: _____

Agency: _____

Employee name filling out survey: _____

Are you responsible for all procurement needs of your agency?
57.5% YES 42.5% NO (which are you _____

 # Responding = 80

Are others in your agency authorized to make purchases? 79% YES 21% NO
(Indicate individual and types of purchases) _____

_____

 # Responding = 80

27. What are your major purchases from vendors?

Products _____

_____

Services _____

_____

28. Please estimate the dollar amount of purchases for the last three fiscal years in the spaces provided below:

Means		# Responding
$2,022,591	1986	67
$3,311,180	1987	68
$2,221,352	1988	69

ATTACHMENT C
TO APPENDIX C

Small Purchases

We need a better system of tracking vendor performance with more concrete legal remedies for enforcement of quoted delivery dates and quality of goods and services. Increase the small purchase limits to $2,500 for commodities and $25,000 for construction. Implement an Automated Purchasing System that will provide management with fast and accurate data in purchases. Upgrade purchasing personnel who have demonstrated a high level of expertise and professionalism in the field. Teach purchasing courses in our state universities and carry at least one of them on KET for broadcast statewide. Currently no purchasing courses are being taught at any of our state-supported schools or colleges. (38715)

Raise small purchase limit. (31415)

Need better means to "streamline" a particular request if properly justified, i.e., item over $1,000 limit but within Div. of Pur. small purchase limitation. Should have a specific contact in Purchases to follow-up. (34569)

Increasing the amount in which you need 3 quotes. (31035)

Vendor Information

Require vendors to submit documentation of price increases to agencies prior to submitting invoices for payment. The documentation is needed to submit to accounts with the invoice for payment. (31250)

Often an agency doesn't know if another agency has used a vendor with negative results—but this vendor continues to be requested. Agencies need to know more about vendor performance. (33535)

Agencies need to utilize the vendor complaint system when necessary. (39776)

When a vendor fails to fulfill a contract three times in one year, that vendor should be removed from the bid list for a minimum of one year. Re-occurring failure to fulfill contracts should result in permanent removal from the bid list. The time frame from submission of a requisition by our agency to awarding of the contract sometimes takes three months - this process needs to be shortened. (33012)

Price Contracts

Being able to buy products locally at a cheaper price instead of having to buy from Price Contract at a higher cost. (39050)

Agencies seldom get much product info with price contracts. Often you do not even know products on contract. Give agencies more discretion. (37705)

I believe the Div. of Pur. is a good dept. to protect agencies and the state. I wish the process was faster. I believe agencies would do price comparisons; and if a price

and service can be attained from a vendor not on price contract, an agency should be allowed to use that vendor, with proof of comparisons (just as small purchases 500-1,000) without the purchase requisition process. I believe that DIS is a detriment to Purchases and to State Agencies. In September, we sent a computer purchase requisition to DIS, as mandated. It didn't get to Purchases until mid November! If a PC is on contract, why can't I buy it like other purchases, why through DIS? Why computer maintenance cts. through them? (31395)

Price contract items should be available by computer to all agencies linked to the state information network. All purchase requisitions for automated scheduled buying should be accounted for to assure that all agencies have their intentions known. (33541)

Add more manufacturing products to photo supply contract. (36645)

Automation and Communication

Automate purchasing procedures, purchasing procedures hinder Federal programs to provide timely services for agencies. (33539)

Improve (shorten) the item necessary to receive contracts. Some of the delay is caused by encumbrance process in accounts; Eliminate encumbrance accounting for some or all CT type contracts. This would expedite payments and advices of change. (42825)

Increase the local purchasing authority and fully automate the purchasing system. (33004)

With the planned computerization of the system any improvements to the old system would be wasted. (33667)

Streamline the communication link between purchases and the purchasing agency. (33002)

Miscellaneous

Allow agencies to obtain printing with three bids as opposed to requiring state printing. (31150)

(1) More authority given at local level; (2) streamline approval process. Too many people must approve before requisition reaches Purchases; (3) Make exceptions to Purchases made for goods, services and equipment that are purchased to meet needs of contracts we have with other agencies. Sometimes contract almost over before we get what we need. (33006)

Central Stores seems to frequently be out of stock of commonly used items. Toilet paper is one item that comes to mind. They may need more space to store adequate supplies. (31100)

(1) Do not see need for requisitions on items already on state price contract; (2) Requisition process takes too long; (3) Do not see need to process printing requisitions through Div. of Printing when both Purchases and agency know Div. of Printing can't do that particular job; (4) Raise small purchase limit in statute. (20025)

Strive for faster turn around time on awarding contract(s). (33535)

Some input from the individual agencies. (37680)

Increase the local purchasing authority. (33014)

Speed up time it takes to award contracts and accomplish delivery. (33015)

APPENDIX D

Survey Summary of Vendors on State Purchasing

As part of the Subcommittee on State Purchasing review of the state's procurement system, staff conducted a survey of state agencies to obtain their input and experiences. The development of sound purchasing policies depends on a balanced input of the parties involved in the purchasing process. In obtaining the vendors' input, the survey was designed to solicit responses of good or bad experiences in their purchasing activities. The remainder of this memo summarizes the vendors' responses.

The survey was mailed to 831 vendors, randomly chosen from Finance's Division of Purchases bid list. Two hundred and eighty-nine vendors responded, a response rate of 29%; however, not every respondent completed the entire questionnaire. Fifty-six percent of the vendors indicated they had a headquarters in Kentucky, and 72% of the vendors responding (273) noted that they were a small business. Attachment A contains summary results of the survey.

Level of Activity with State

Businesses were asked how they learned about becoming a state vendor. The most frequent response was that they "didn't recall" (28%, 80 agencies) but 73 agencies (25%) learned from a solicitation from Finance's Division of Purchases (DOP). Several agencies (67) made written remarks in the "other" category of this question that frequently included the vendor calling on DOP or standard in house program to get on all state's bid lists.

The following chart lists the results of vendors being asked how frequently they had tried to obtain state contacts:

YEAR	TRIED TO OBTAIN STATE CONTRACT (MEDIAN)	VENDORS RESPONDING	AWARDED A STATE CONTRACT (MEDIAN)	VENDORS RESPONDING
1986	11	198	4	140
1987	12	218	5	146
1988	13	237	5	165
	36		14	

Based on the median values it appears that vendors that tried to get a state contract were awarded a contract 39% (14/36) of the time. If the mean values were used the percent of contracts award would be around 30%.

Vendors indicated that on average their contracts are continued for 2.3 years without having to rebid and that local governments infrequently utilize the state contracts.

There were 25 vendors that reported a total of 37 instances in which they had the low bid but were not awarded the contract between 1986-1988. Vendors indicated that the reasons given were that they weren't responsive to the bid specifications or there was a technicality, such as failing to sign the bid.

Level of Satisfaction with State

The survey asked vendors to rate how satisfied they were with being a vendor to the state, based on a scale of 1 to 5, with 1 = "not at all satisfied" and 5 = "very satisfied". The overall average was 3.3.

Eighty-nine percent (222 vendors) of the vendors felt that there were advantages in doing business with the state, most often noting that the state was a low risk customer, source of steady business, and timely payments.

Thirty-six percent (91 vendors) of the vendors reported that they had encountered problems in doing business with the state, most often noting that price, not quality, gets the contract and that bids had restrictive specifications. In the "other" category (38 vendors), the most frequent problem listed was not receiving invitations to bid, followed by not having enough time to prepare the bid.

Experience with State Purchasing Policies and Procedures

Vendors were asked to rate how competitive they felt the state's procurement process is, based on a scale of 1 = "not at all competitive" and 5 = "very competitive". The mean for 233 vendors responding was 3.7.

The most frequent (202 vendors) means by which a vendor learns an agency needs their product is by "invitations for bid" sent by the DOP. Some vendors (42) were made aware through informal contact with DOP, while others (36) noted they learned from informal advice from the state agency actually needing the product.

The Kentucky procurement system was established to secure necessary goods and services in an efficient and effective manner . The survey solicited a rating (based on scale below) of how vendors felt that the DOP is doing in the following areas:

Inadequate 1	Not Very Adequate 2	Somewhat Adequate 3	Adequate 4

Area	Mean	Number Responding
Identifying vendors	3.5	217
Writing Specifications	3.3	215
Soliciting bids	3.5	216
Awarding contracts	3.6	195
Resolving Problems	3.6	184

Vendors (254) rated their concern that product specifications are too restrictive as 2.6, with 2 = "not very concerned" and 3 = "somewhat concerned." Sixty-six percent of the vendors (172) said that agencies "never" asked for advice on specifications, 22% said "infrequently", and 12% said "frequently." Responses to how often DOP asked for advice on specifications were: 77% (200 vendors) "never", 21% (54 vendors) "infrequently", and 2% (5 vendors) "frequently".

Protest Experience

Ninety-three percent of the vendors (243) said they had never protested or appealed an award decision by DOP, but it should be noted that only 45% indicated they they were satisfied with current protest procedures. Twenty-nine percent indicated that they favor protest to an independent board instead of the Secretary of Finance and Administration Cabinet. Twenty-two percent indicated they would favor an independent board as an avenue to appeal decisions of the Secretary of the Finance and Administration Cabinet.

The survey also asked vendors how comfortable they would be complaining to DOP about product specifications being too restrictive. The mean for 259 vendors was 3.16, indicating they were "somewhat comfortable".

Improvement Suggestions

We asked vendors what they would suggest for Kentucky's purchasing process and the main areas they indicated were: preferential treatment for small and Kentucky businesses, consideration of quality when awarding contracts, and allowing more time for invitations for bid. Attachment B list all the vendor suggestions as they were submitted.

APPENDIX E

SURVEY OF VENDORS ON STATE PURCHASING
Conducted by Legislative Research Commission

SECTION I. Level of activity with Commonwealth of Kentucky:

1. Kentucky's Division of Purchases is in the process of updating the bidders list. Have you decided to continue on the bidders list? (Please check one) 95% YES 5% NO

2. How did your business learn about becoming a vendor in Kentucky? (Check all that apply)

 # Responding

22 Official bid notice in newspaper
32 Referral by another business
73 Presentation or solicitation from Ky. Division of Purchases
29 Trade or professional association
11 State or local Chamber of Commerce
80 Do not recall
67 Other _____

_____

3. How many times did your business bid for a Kentucky contract in each of the last 3 years?

5.1	1986	5.5	1987	5.8	1988	
198		218		237		= # Responding

4. How many of these bids resulted in your business being awarded a contract? (If none, skip to Question 8)

1.4	1986	1.7	1987	1.8	1988	
140		146		165		= # Responding

5. How many of the contracts that you received were the result of the lowest bid?

2.8	1986	3.2	1987	2.8	1988	
95		96		101		= # Responding

6. How often did local governments utilize the contract? (Circle one)

Never	Infrequent	Frequently
1	2	3

 # Responding = 142 **Mean = 1.7**

7. Generally, how long was your contract(s) continued with the state of Kentucky without having to re-bid?

___ 1 year ___ 2 years ___ 3 years Other _____

 # Responding = 127 **Mean = 2.3**

8. During the last three years, how many of your bids were the lowest bid, but you still did not receive the contract?

.2	1986	.2	1987	.3	1988	
95		99		106		# Responding

9. Have any of your bids been rejected for reasons other than not being the lowest price? 16% YES 84% NO

 # Responding = 197

If YES, what were the reasons? _____

_____

_____

_____

SECTION II. Level of satisfaction with Commonwealth of Kentucky:

10. How satisfied are you with being a vendor to the state of Kentucky? (Circle the number on the scale below which best represents your level of satisfaction)?

Not at all Satisfied				Very Satisfied
1	2	3	4	5

 # Responding = 244 **Mean = 3.3**

11. Do you think there are advantages in doing business with the state of Kentucky? 89% YES 10% NO

 # Responding = 248

12. If yes, what are they? (Check all that apply)

 # Responding

103 Timely payments
91 Large volume orders
142 Low risk customer
115 Source of steady business
81 Reputation as Ky. vendor helps get other business
17 Other _____

13. Has your business encountered problems in doing business with the state of Kentucky?
36% YES 64% NO

 # Responding = 255

14. If yes, what problems did your business encounter? (Check all that apply)

 # Responding

14 Too much paperwork
9 Slow payment by state of Kentucky
14 Complicated bid forms
19 No consideration for past performance
54 Price NOT quality gets contract
18 Don't know who to contact with questions
17 Lower volume of sales than anticipated
30 Restrictive specifications
10 Requested delivery location and/or time
— Higher volume of sales than anticipated
38 Other _____

SECTION III. Experience with Commonwealth of Kentucky purchasing policies and procedures:

15. An effective purchasing system fosters competition among vendors. In general, how competitive is Kentucky's procurement process? (Circle the number on the scale below which best reflects your judgment)

Not at all competitive				Very competitive
1	2	3	4	5

 # Responding = 233 **Mean = 3.7**

16. How have you been made aware that a Kentucky state agency needed your product?

# Responding	
42	Informal contact with Division of Purchases personnel
36	Informal advice from state agency personnel
15	Newspaper ad
202	Invitation for bid from the Division of Purchases
37	Other (Please explain)

_____

_____

17. The Kentucky procurement system was established to secure necessary goods and services for state agencies in an efficient and effective manner. Following the scale below are various areas involved in the procurement process. On the space next to each area, please indicate the number from the scale which best reflects how adequately you feel Kentucky's Division of Purchases is doing.

Inadequate	Not very adequate	Somewhat adequate	Adequate
1	2	3	4

# Responding	Mean	
217	3.5	Identifying vendors
215	3.3	Writing specifications
216	3.5	Soliciting bids
195	3.6	Awarding contracts
184	3.6	Resolving problems
34	___	Other _____

18. To what degree are you concerned that product specifications are written too restrictive? (Circle one)

Not at all concerned	Not very concerned	Somewhat concerned	Concerned
1	2	3	4

 # Responding = 254 **Mean = 2.6**

19. How often have you been asked for advise on the development of product specifications by agencies interested in your product?

Never	Infrequently	Frequently
1	2	3

 # Responding = 261 **Mean = 1.5**

20. How often have you been asked for advise on the development of product specifications by Kentucky Division of Purchases' buyers?

Never	Infrequently	Frequently
1	2	3

 # Responding = 260 **Mean = 1.3**

21. Kentucky bid forms ask vendors to review product specifications and advise if there are any problems. How comfortable would you feel about complaining to the Division of Purchases about product specifications?

Not at all comfortable	Not very comfortable	Somewhat comfortable	Comfortable
1	2	3	4

 # Responding = 259 **Mean = 3.2**

General Information:

22. Do you have your headquarters or an office in Kentucky? 56% YES 43% NO

23. What type of business do you have?

 # Responding

60 Large (more than 100 employees)
195 Small (less than 100 employees)
5 Minority

24. Please list the type(s) of product(s) or service(s) you have provided to the state of Kentucky:
General commodity _____
Specific commodity _____
Construction _____
Professional Service _____

25. Have you ever protested or appealed an award decision by Kentucky's Division of Purchases? 7% YES 92% NO

 # Responding = 262

26. The American Bar Association suggests an optional independent Procurement Appeals Board for handling vendor protests. Currently, there is no such board in Kentucky and protests are submitted to the Secretary of the Finance and Administration Cabinet. If unresolved, the next step would be court action. Please indicate below your feelings about the protest procedure:

 # Responding

98 Satisfied with current protest procedure

63 Would favor protests to an independent board instead of the Secretary of Finance and Administration Cabinet

47 Would favor an independent board as an avenue to appeal decisions of the Secretary of Finance and Administration Cabinet

9 Other _____

27. What improvements, if any, would you suggest for Kentucky's purchasing process?

_____

28. Would you like to appear before the subcommittee to discuss your feelings and expressions? ____ YES ____ NO
If YES, please fill in optional information below

29. Would you mind if we contacted you for additional follow-up information if needed? ____ YES ____ NO
If YES, please fill in optional information below

The following questions are optional:

30. Name of business:

_____

31. Address:

_____

RETURN TO: **Office for Program Review**
Legislative Research Commission
State Capitol
Frankfort, KY 40601

Attachment B
to Appendix E

Specifications

Have specific spec's for all products that any vendor supplying the requested product can provide. Add more. Give all vendors a chance to bid when products are needed. We have not had many chances to provide prices or products for your state. We are on almost every states bid list and are given more opportunity to bid in other states. (145)

That specs not be so restrictive. (635)

Price vs. Quality

Develop criteria for purchasing equipment and services that is not based solely on price. Price is only one factor in the decision making processes and is not in the long term best interest of the state or vendor. We do not actively seek business from the state for this reason. (293)

Consideration for actual use cost should be accounted for, not just bottom line price. (723)

Don't take low price. Check bidders work and be consistent in enforcing job specs. (380)

Pricing is important but so is quality and specifications of product. Quality needs to be re-established as an equal partner to price. (805)

The ability to measure and evaluate job quality on a service contract. (273)

Establish a standards program for furniture, fixtures and equipment. Concentrate on quality of purchases, not price. In the long run it's a better value for the state and it's tax payers. (376)

Own tax dollars should be spent on quality equipment not on price. Specs should be written so that the inferior product would be written out. Quality cost more money and last longer. (465)

More technical evaluations along with price considerations. (591)

More decision making ability from the actual "on premise" user and or engineer. Possible letter of preference form to the buyer from the end user. (210)

Preferential Treatment for Small and Kentucky Businesses

Assuming all things are equal give preferential treatment or set aside to Kentucky-made products. (545)

Help local people like myself for things in their area to be purchased. (333)

Small business needs more chances to bid. (232)

Give priority to a vendor based in Kentucky. We just lost an $11,000 bid by $65 to a firm in Atlanta, GA. If the $11,000 was spent in Kentucky, much of that money would be re-circulated throughout Kentucky. How much of the $11,000 that went to Atlanta will end up in Kentucky? NOTE: Our salesman demonstrated the equipment to the agency. We train on-site, and often provide 'loaner' equipment to an agency if their equipment breaks down. Also, this particular firm has marketed their products using the "no sales tax" pitch to many Kentucky clients. Yes, they have been turned in for this. No results. (375)

It is advantageous for the state of Kentucky to do its business within its boundaries as we have been told that Kentucky does; however, we act as agent of the State of Kentucky in collecting and paying sales tax for the State of Kentucky and we feel we should be considered as a supplier and given a chance to bid on your needs. (195)

Set aside certain procurements to small firms, **excluding Big 8 and other National** firms. (814)

Notification and Information on IFB's

More information on requirements for state aviation support fish and game division. (343)

Earlier old notice on seasonal items. (201)

Make sure bids are sent out with enough time to reply. (031)

We have never received any bid packages from Kentucky. (042)

We would like to be notified of upcoming RFP's. We haven't been sent any info on upcoming state RFP's dealing with complexes or software for Kentucky state agencies. (094)

Our company has only been added to the bid list for state purchases within the past five (5) months. To date, we have been invited to bid on only one contract and we were forced to "no-quote" due to the ambiguity of the specific category. However, we intend to pursue these effort further. (221)

Have reference materials referred to made available, give location where specs can be found, i.e. highway & road signs. (381)

Explanations of bids more thoroughly would help. And an explanation of the contract if awarded. (420)

Vendor Selection

Have more categories for products so that unrelated items are not erroneously sent to vendors to bid on. (103)

Make sure all vendors receive a bid for the commodity they are offering. (138)

Do not group by manufacturers with request for percent off list. Many of our product lines have varied discount structures. I would prefer line item bidding. (142)

We do not as a rule receive bid requests for material we handle. We receive bid requests for alien material 95% of the time. Why??? (275)

To honor vendors request to have the opportunity to quote on Kentucky requirements. (614)

We never receive much when it comes to bids and we would like to see more of these. (611)

Time Constraints

We would appreciate having more time to process bid proposals. Many small businesses have only 2-3 people who can estimate pricing for large contracts. When we have 5-10 states needing estimates at th same time, this necessitates quite a few hours of overtime. An extra 7-10 work day would be nice. Thank you. (630)

Vendors receiving invitation to bid on their particular items in sufficient time to negotiate with manufacturers. (167)

Miscellaneous

Eliminate long term contracts. Allow some flexibility in bids. Insure that more than one vendor can meet specifications. (122)

We do not receive bids on the smaller IBM perpherals under $5 to $10 million. (565)

Multi-year contracts. (716)

We really have no basis for making recommendations in as much as we have never had an opportunity to bid even though we have actively requested same. (657)

Buy some of our product and USE it. Start with at least 10 units. (786)

I'm not really sure. I think part of the reason we get little or any work from the Commonwealth is my fault. We are a custom fabricator of metal and actually have few products, per se, to sell. Whenever an inquiry reaches us it is specified so strictly that only one company can manufacture it. It would be nice if Kentucky could use all Kentucky vendors. (267)

Use more up-to-date prevailing wage rates. The ones now used are from 1985 to old. (303)

Would favor an independent board as an avenue to appeal decisions of the Sec. of Finance and Administration Cabinet. (310)

To make more vendors aware. (522)

To point someone who knows just what they are buying. (531)

Use more microfilm. (563)

Let quotes be specified to industry standards. (581)

Satisfied With the System

We at Modern Inc. are well pleased with our experience with the state of Kentucky. (762)

Satisfactory purchasing process. However, Letcher County is seldom seen on Bids. (448)

Am satisfied. (339)

I think y'all are doing just great! (570)

APPENDIX F

DOCUMENTATION AND MONITORING

Documentation of purchase transactions and periodic monitoring for compliance with purchasing statues and regulations are important safeguards for the integrity of public procurement systems. According to the National Association of State Purchasing Officers (NASPO), proper documentation entails a suitable procurement statute supplemented by written policies and procedures, adequate records on each transition, and public access to records. The association also points out that various types of audits and monitoring are important to maintain the integrity of the program. Specifically, the central purchasing official should have the authority to request an audit of the records of contractors and subcontractors as they relate to the performance of a specific contract. Secondly, periodic systematic fiscal and compliance audits should be conducted, usually by another government entity. Finally, the central purchasing agency should have oversight authority of the purchasing operations of using agencies, including review of pertinent records. However, audits of invoices and accounts payable should be the function of the purchasing jurisdiction's accounting office and not the central purchasing agency.

The American Bar Association's Model Procurement Code (ABA MPC) also emphasizes the importance of documentation. This Code states that written determinations shall be retained in the appropriate contract file and that procurement information be made a public record. This includes information such as the name of each bidder, the amount of each bid, the requirement of the contract, etc. In addition to the normal documentation, special consideration must be given to certain types of purchases, such as sole-source and emergency purchases. When making sole-source purchases, the head of the purchasing agency must determine in writing that there is only one source. When emergency purchases are made, a written determination explaining the situation must be included in the file. Furthermore, a record of all sole-source and emergency purchases should be submitted to the legislature annually.

This paper addresses how Kentucky's purchasing system deals with documentation, auditing, and monitoring.

Purchasing Reports

The Kentucky Model Procurement Code (KMPC) requires various reports on purchasing activity. KRS 45A.165 requires that the Secretary of the Finance and Administration Cabinet (FAC) compile a report of all noncompetitively negotiated contracts on an annual basis and that this be made available to the legislature. The FAC is also required to make summary reports of all purchases made under its authority to the Secretary of the FAC, the Governor, and the General Assembly. The FAC is also to report cost trends and savings realized by improved practices to these same authorities (KRS 45.360(10)).

Two reports are sent to the legislature, one for "emergency" purchases and one for "special authority" purchases. These two reports basically comply with the recommendations of the ABA MPC. There is a difference in the special authority printout. The ABA MPC recommends a report on single-source purchases. Kentucky's special authority report commingles these single-source purchases with other non-competitively bid purchases. These reports are currently being sent to the LRC but the KMPC only requires that they be made available, as opposed to the ABA MPC, which requires the reports to be submitted.

Documentation

The Kentucky Model Procurement Code is similar to the ABA MPC regarding documentation of purchasing transactions. The KMPC calls for every determination required by the code to be

in writing and retained in the official contract file. The KMPC also requires that emergency purchases be fully explained in writing by the agency head. Furthermore, KRS 45.400 requires that this explanation and Finance and Administration Cabinet's approval be filed with the purchase record. However, no statutory provision is specifically made to account for the contractor selected. Also, the KMPC requires that all noncompetitively negotiated contracts be made only when competition is not feasible, as determined in writing by the purchasing officer (KRS 45A.095).

Further documentation is required in administrative regulations promulgated by the FAC and in the Cabinet's Policy Manual. The Kentucky Administrative Regulations (KAR's) reenforce the KMPC in calling for every determination for procurement activities to be in writing (200 KAR 5:303). Two sections of the KAR'S require more specific documentation. Each agency is required to maintain a small purchase file that records price quotations and comments concerning the basis for placing the order (200 KAR 5:308(2)). Also, section 2 of 200 KAR 5:311 requires that an advice of change in order be filed in the contract file denoting any changes or modifications to the contract. The reason and basis for the change must be documented by the purchasing official.

The FAC Policy Manual expands upon the statutory and regulatory requirements. It requires that agencies maintain records to support each purchasing transaction and retain such records at least seven years (BO-111-28) . The Policy Manual, like the KAR's, calls for proper documentation of small purchases to be maintained by the agency (BO-111-55) and directs agencies to file vendor complaint reports to the DOP, which maintains files on the vendors (BO-111-42). The Policy Manual echoes KRS 45.400 in regard to proper documentation for emergency purchases (BO-111-39); Policy number BO-111-10 requires written justification and prior DOP approval for some single-source purchases exceeding $3,000, such as service agreements and instructional materials.

Program Review staff has reviewed one hundred randomly selected "invitation for bid" (IFB) files, maintained by Finance's Division of Purchases (DOP), and generally found the following types of documentation:

- The purchase requisition from the agency—The purchase requisition lists the items to be procured, the specifications and often has suggested vendors.
- The IFBs that are returned to Division of Purchases (DOP)—The IFB may or may not contain a bid from the vendor. If the vendor chooses not to submit a bid, the returned IFB is indicated as a no bid but counted by the DOP buyer as a response.
- A bid file recap—The bid file recap is a summary document of the procedures and statistical information. The recap contains the number of IFBs mailed, the number of IFBs mailed to minority and female-owned business, the number of IFBs received from minority and female-owned business, total number of IFBs received, number of responsive and no bids. The contract number and vendor is listed along with remarks relating to award.
- A bid list and data sheet for the requested commodity—This is a copy of the mailing labels of those available vendors for the requested commodity. Those vendors sent IFBs are marked on the list.
- A tabulation form—This form summarizes all vendors' bids and lists the following information: the brand/model, unit price, total price and delivery terms.
- The purchase contract between the agency and the selected vendor.

A staff review of the DOP's emergency purchase files for the last two FY's noted that documentation was lacking in this area. For example, the files did not always provide an exact cost for the purchase and sometimes did not supply any cost information. In addition, some of the files had no documentation of approval. We were not able to determine what is actually being documented for single-source purchases. There are no separate files for these purchases. In other

words, these files are commingled with other IFB files and would take some time to isolate and review.

Auditing and Monitoring

As recommended by NASPO, Kentucky statutes grant FAC the right to audit or inspect any contractor's (or subcontractor's) place of business under any state contract (KRS 45A.150(1)). The FAC is only allowed to audit the records connected with cost or pricing data submitted by the contractor (KRS 45A.150(2)). This right to audit is extended for 3 years from the date of final payment (KRS 45A.150(3)).

The Auditor of Public Accounts (APA) performs annual audit examinations for state agencies. These reports contain comments and recommendations on internal control and financially related compliance matters. As part of these audits, the APA reviews agency purchasing and receiving of goods. Primarily the Auditor's Office reviews these functions as to proper accounting and procedural practices. The most common agency problems found by the auditor's office relate to agency internal controls and are listed as follows:

- No supervisory control and/or review of purchase documents;
- The use of signature stamps for approval;
- Improper or no pre-audit procedures;
- Missing buyers' signatures authorizing purchases or requisitions;
- Improperly maintained record logs;
- No separation between staff responsibilities for purchasing and receiving goods; and
- Improper procedures for establishing personal service contracts.

Further staff review of APA audits for the Finance and Administration Cabinet noted concerns about FAC's monitoring of pre-audit and delegated purchasing authority. For example, the audit for FYE June 30, 1986, noted that, "The Finance and Administration Cabinet (FAC) did not have procedures in effect to determine if those agencies to whom FAC had delegated the authority to contract for the purchase of certain items or to pre-audit expenditure documents had complied with regulations accompanying that authority." The auditor's report recommended that FAC implement controls to ensure that agencies with delegated pre-audit or purchasing authorities meet the same or comparable standards met by FAC. The Auditor's Office report for year end June 30, 1987 reported that this problem was not resolved. Comments from the Auditor's Office staff indicate that this situation was not resolved by FYE June 30, 1988.

According to a second recommendation of NASPO, the central purchasing office should be authorized to oversee the purchasing operations of using agencies, including review of pertinent records. To establish appropriate checks and balances, the audit of invoices and accounts payable should be the function of the state's accounting office and not the state's purchasing office . FAC's Division of Accounts has a section that is responsible for a "pre-audit" function of expenditure documents before they are processed for payment. These documents are reviewed for items such as:

- proper signatures;
- necessary documentation (receipts, invoices, etc.);
- proper coding (fund, cabinet, dept., etc.);
- math errors; and
- completeness.

Some agencies have been delegated this "pre-audit" function. Not all agencies have been given a blanket pre-audit authority but rather a specific assigned delegation, such as travel vouchers.

The attached schedule lists the various agencies and their pre-audit authority. The APA was critical of FAC's monitoring of this delegated "pre-audited" authority, citing a lack of supervision by the Cabinet. Failure to adequately pre-audit claims could result in improper or inefficient use of the Commonwealth's resources.

APPENDIX G

EXEMPT AND NON-GOVERNED PURCHASES

The American Bar Associations Model Procurement Code and the Kentucky Model Procurement Code both advocate competitive sealed bidding as the standard method for acquiring goods and services. However, maximized competition by use of this method is not always practical. In fact, there are times when it is neither possible nor feasible to make a purchase on a competitive basis. Effective procurement systems recognize these possibilities. This paper reviews general circumstances or conditions which call for exemptions from central purchasing, limited competition, and/or waiver of competition and the procedures established for handling procurement under these conditions.

Exemptions

Exemptions from central purchasing generally fall into two categories: exempt products/ commodities or services, and exempt agencies. The agency exemption, delegated authority, is not technically labeled as an exemption, but has the same net effect. The ABA Code and the Kentucky Code both provide numerous exemptions for various types of services and commodities. In addition, both codes allow for the delegation of purchasing authority.

Exempt Services and Commodities

Kentucky exempts all professional, technical, scientific, or artistic services from the competitive bidding process under its Model Procurement Code (KRS 45.360). These types of contracts, however, must be reviewed and approved in accordance with the provisions on personal service contracts found in KRS 45.710 to 45.720. Kentucky's procurement statutes also exempt specific commodities. However, these exemptions under the Kentucky Code are somewhat broader than those in the ABA Code.

The ABA Code allows any governmental body to act as a purchasing agency and contract for the services of accountants, clergy, physicians, lawyers, dentists etc. MPC 2-302. The purchasing agency is required to consult with the Chief Procurement Officer when procuring such services. Additionally, contracts for legal services must be approved by the Chief Procurement Officer. The exact procedures governing these types of service contracts are found in MPC 3-207. The general exemption section of the ABA Code is found in MPC 2-303. This section exempts the following supplies, services, and construction from procurement through the Chief Procurement Officer:

a. bridge, highway, or other heavy or specialized construction;
b. works of art for museum and public display;
c. published books, maps, periodicals, and technical pamphlets; and
d. architect-engineer and land surveying services.

The comments to this section explain that these are mere suggestions for the types of procurements a state may wish to exempt and recommend a more centralized purchasing system.

Kentucky's procurement statutes exempt a broader range of services and commodities than those listed above. The following services and articles are exempted under KRS 45.360 from the competitive bidding process in Kentucky:

a. Food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies;
b. services or products whose rates are fixed by law or ordinance;
c. library books;
d. commercial items purchased for resale;
e. interests in real property.

Additionally, pursuant to KRS 45A.055 acquisition of the following are not required to go through the Finance and Administration Cabinet:

a. works of art for museum and public display;
b. published books, maps, periodicals, and technical pamphlets; and
c. services of visiting speakers, professors, and performing artists.

Although this section does not specifically exempt road building as does the ABA Code, the Attorney General has determined that KRS Chapter 45A does not apply to the Department of Transportation (OAG 81-349).

Architectural and engineering services are also exempted from the traditional competitive bidding process in Kentucky. These contracts must be negotiated on the basis of demonstrated competence of a fair and reasonable price (KRS 45A.205). The procedure for procuring these types of contracts is similar to the procedure under MPC 2-303 of the ABA code for procuring legal, medical . . . etc.

Delegated Purchasing

KRS 164A.575 gives Kentucky's public universities the option of purchasing their own products/services. According to purchasing officials, all universities have elected to enter into purchase or price contracts on their own behalf. All other purchasing delegations to state agencies are authorized under the Model Procurement Code. KRS 45.360(1) and 45A.035 outline the Finance and Administration Cabinet's power to delegate purchasing authority to the various cabinets, departments, institutions, and other agencies of state government.

Kentucky administrative regulations (200 KAR 5:301(1)) distinguish "temporary delegations" and long-term delegations (referred to as "standing delegations"). "Temporary delegations" are made by the Commissioner of Administration of the Finance and Administration Cabinet for pre-established and limited periods of time. "Standing delegations" are made by the Secretary of the Finance and Administration Cabinet for a particular type of procurement activity or function along with any limitations or restrictions on the exercise of such authority.

Currently, the Transportation Cabinet is the only cabinet to be granted a standing delegation of authority based upon KRS 45.360 (1) and KRS 45A.035 (2); following are examples of items the Transportation Cabinet is delegated to purchase:

- guard rails
- paving cement (resinous)
- reflective material (sheeting, tape, powder, etc.)
- traffic cones
- traffic paint
- treated lumber
- signal boxes
- lightning arrestors, contractors and transformers

DOP personnel advised that there have only been two temporary delegations in the last two years. One was to the Corrections Cabinet for mattress ticking. The other was to the Kentucky Fair and Exposition Center to contract for food and beverage services.

The DOP's monitoring of delegated authority seems to be lacking. DOP does not monitor to be sure the Transportation Cabinet is purchasing only those items that they have been delegated.

The authority to delegate in the ABA code is found under MPC 2-205. This section allows the chief procurement officer to delegate authority to any department, agency or official.

LIMITED COMPETITION

Competitive purchases fall into three broad categories: competitive sealed bidding, competitive quotation, and competitive negotiation. Competition is maximized under competitive sealed bidding procedures, while the other two categories limit competition to some extent. The competitive quotation process is a variation of competitive sealed bidding that may limit competition by the absence of requirements for public notice and bid opening procedures. Competitive negotiation initially provides for full competition among bidders, but then allows for formal negotiations with potential suppliers. It also allows for modifications of both specifications and price during the bid evaluation process.

Competitive Quotation

Competitive quotation is a method of maintaining some degree of competition in the face of price and/or time limitations. Although procedurally different, the objectives of the competitive quotation process are the same as those for competitive sealed bidding. Specified goods and services of adequate quality are to be obtained at the best price under fair and equitable conditions. According to a survey of states by the National Association of State Purchasing Officers (NASPO), competitive quotations are customarily required when making small purchases and, to the extent that time and circumstances permit, are appropriate when making emergency purchases.

Emergency Purchasing

Both the Kentucky Model Procurement Code and the ABA Model Procurement Code provide for exemptions for emergency purchases. Kentucky statutes provide for emergency purchases in KRS 45.400. A bona fide emergency is not defined in the statutes for commodity/service purchases but it is for personal service and capital construction. This section allows the Finance and Administration Cabinet to negotiate directly for the purchase of contractual services, supplies, materials or equipment in bona fide emergencies. The Director of the DOP stated that FAC rarely negotiated directly for emergency purchases; rather, agencies usually make the purchase themselves. The Kentucky Code requires that the emergency be fully explained, in writing, by the agency head and be approved by the Secretary of the FAC. This letter and approval must be filed with the record of the purchase. In any event, every effort should be made to effect a competitively established price.

The ABA Code is more definitive in regard to what constitutes an emergency situation. It provides that emergency purchases can be made under the existence of a threat to public health, welfare or safety under emergency conditions as defined by regulation (MPC 2-306). This provision allows for awards to be made without competition but requires as much competition as is practicable in a given situation. Additionally, a record must be kept of all contracts made under this section to be submitted annually to the Legislature (MPC 3-704).

KRS 45A.165 requires that the chief purchasing officer compile a record of emergency contracts in an annual report to be made available to the Legislature.

Emergency purchases for FY '87 were $1,539,495, compared to $1,230,885 for FY '88.

These amounts were less than 1% of total purchases in those years.

Staff reviewed the Emergency Purchase file maintained by FAC for 1987 and 1988. Information was gathered for four areas: 1) the dollar amount of the purchases; 2) the type of emergencies; 3) the commodities purchased; and 4) the level of authority granting approval.

The staff review revealed that approximately one-third of the dollar amount of emergency purchases for 1987 and approximately one-half of the dollar amount spent in 1988 on emergency purchases were documented in the FAC file.

Costs for items procured under emergency purchases ranged from $487 for printing to $275,000 for equipment rental. The files did not always provide an exact cost for the purchase and sometimes listed a range. A few memorandums requesting approval for purchases did not supply any cost information.

While statutes require the Secretary's approval before payment can be made, the documentation in FAC files indicated that approval was granted by the Commissioner of Administration or Director of Purchasing for 81% of the requests. Five percent of the requests had no documentation of approval.

Memorandums from agencies seeking emergency purchase approval generally outlined the circumstances requiring emergency status. Accordingly, staff placed the types of emergencies into three categories as reported below:

	1987	1988	Total
Act of God	15	3	18
Deteriorated	22	30	52
Other	34	34	68
	71	67	138

Commodities procured under emergency purchase authority include: repair service, equipment rental, correctional shop materials, infant car seats, chemicals and security services.

Kentucky administrative regulations do not address emergency purchases in any detail. However, the DOP's policy manual states that emergency purchases are those due to an unforeseen event for continuity of operations or protection of personnel or citizens. The policy manual further outlines the policies of emergency purchasing.

Small Purchases

State agencies can make some procurements directly through small purchase procedures if the dollar amount falls within certain spending limits. Pursuant to KRS 45A.100, the following may be considered small purchases in Kentucky:

1. Construction purchases not exceeding $10,000;
2. Purchases by the Transportation Cabinet for equipment replacement parts not exceeding $5,000;
3. All other purchases not exceeding $1,000 made by state agencies other than institutions of higher education, the Department of Parks, the Transportation Cabinet and the Finance and Administration Cabinet;
4. All other state purchases by institutions of higher education, the Department of Parks, the Transportation Cabinet and the Finance and Administration Cabinet not exceeding $5,000.

Kentucky's exemption of small purchases is essentially the same as the exemption recommended by the ABA, only Kentucky's statute is more explicit. The ABA Code provides that

procurements not exceeding an amount to be established by the state, may be made in accordance with small purchasing procedures.

Administrative regulations authorize all state agencies to make purchases within the monetary limits without specific delegation of purchasing authority from the Finance and Administration Cabinet (200 KAR 5:301(2)). Most agencies are limited to $500 on one price quotation or $1000 with three price quotations. The Finance and Administration Cabinet can buy products/services for itself or on behalf of other state agencies up to $3000 on one price quotation, or $5000 with three price quotations. Agency survey results indicated that most agencies would like to see the small purchase limits increased.

The small purchases area has a lot of potential for abuse. For example, agencies may at times be tempted to split large purchases so that they fall within the small purchase limits. In addition, the requirement to seek competitive quotations may sometimes be regarded as a matter of convenience rather than principle. The NASPO recommends that all quotations be documented regardless of the degree of informality. Accordingly, if oral quotations are the only practicable means of seeking competition, they should be recorded and maintained with all other quotations for audit purposes and for the public record. The association further recommends that potential abuse of small purchase limits be safeguarded by continuous surveillance of purchase regulations and copies of purchase orders issued by using agencies.

Like the ABA Code, Kentucky's procurement statutes and regulations prohibit agencies from splitting purchases over a period of time in order to meet the dollar limitations of the small purchase procedure (KRS 45A.100(2), 200 KAR 5:308(1)). Agencies requiring a certain item that will exceed the limits over a period of time are supposed to make a purchase request to the Division of Purchases for award of a price contract. Nevertheless, small purchases are not processed through the DOP; rather they go to Finance's Division of Accounts (DOA) for "pre-audit" to be reviewed for split purchases and to see if the item might already be on a price contract. There is some concern that this procedure might not be working too well. Since DOA doesn't write the price contracts, they aren't as likely to catch something that might already be on a price contract. It would also be difficult to note split purchases due to the large number of small purchase documents processed. Neither the DOP, FAC's Division of Accounts, nor the agencies we interviewed could tell us the dollar amount of small purchases made.

Competitive Negotiation

Competitive negotiation differs from competitive sealed bidding in two major areas. First of all, competitive negotiation allows for the use of judgmental factors to evaluate competing proposals. Under the competitive sealed bid method, judgmental factors can only be used to determine if the item or service bid meets the purchase description. Therefore, a bid under the competitive negotiation method can be awarded to the provider whose proposal is overall the most advantageous to the state. Secondly, competitive sealed bidding does not allow the provider to change the bid once it has been opened. Competitive negotiation allows for discussions and subsequent changes in proposals.

According to KRS 45A.085(a), when the purchasing officer determines that competitive sealed bidding is not practical, a contract may be awarded by competitive negotiation. This statement is repeated in 200 KAR 5:306(1). Contracts may be competitively negotiated when the purchasing officer sees that sealed bids aren't reasonable or the requirements couldn't be independently reached in open competition (KRS 45A.085 (3)). Contracts can also be competitively negotiated if competitively sealed bids exceed available funds (45A.090). The regulations state that competitive negotiation is to be used if the procurement is of a complex or technical nature or when specifications cannot be fairly and objectively prepared so as to permit competition in the invitation for sealed bids (200 KAR 5:307(1)).

Pursuant to KRS 45A.070(5) a "request for proposal" (RFP) is sent out in the same manner as the "invitation for bids" in the competitive sealed bid method. The award is made to the offeror whose proposal is the most advantageous to the state considering price and the evaluation factors (KRS 45A.085(5)).

An evaluation committee usually evaluates the technical aspect of the bids to obtain an objective and unbiased review of each proposal. The members of this committee usually do not have any knowledge of costs proposed by the offeror. The committee's evaluation scores are a major factor in determining the successful offeror. The evaluation committee is not aware of the price, but does know the name of the company when evaluating the proposals. DOP personnel do not suggest competitive negotiation for contracts estimated to be less than $25,000, due to the amount of staff time involved.

DOP personnel estimate that ten to twenty contracts per year result from competitive negotiation. These are usually high dollar contracts with specifications written for performance. In FY 88, ten RFP's were awarded, for an estimated $10,000,000. Interviews with agency personnel indicated that few contracts are by RFP and were items such as an out-of-state collection agency and private prisons.

The ABA code contains provisions for negotiation of purchasing contracts in the procedure known as competitive sealed proposals. This procedure is to be used under circumstances similar to those outlined for competitive negotiation and has no major differences.

WAIVER OF COMPETITION

Competitive sealed bidding is the preferred method for contracting, but other selection methods may be appropriate in specified situations. There are certain commodities/services that have only one source, negating any competition. A true sole-source item is rare and should be avoided in order to maximize taxpayer's money.

Single-Source Purchasing

The statutory authority for making single-source purchases is contained in KRS 45.360, which allows an exemption from competitive bidding for items available from only one source, such as instructional materials. Additionally, contractual services where no competition exists, such as telephone service, electrical energy and other public utility services, are exempted from competitive bidding under this same statute. NASPO points out that "sole-source" refers to the source and not the product or service. Therefore, logistical requirements, such as delivery dates and locations, or willingness to make on-site repairs, can create a sole-source condition. Additionally, NASPO recommends some form of public notice of any intended sole-source purchase of a significant amount, just as sealed bids are required to be publicly announced.

Pursuant to the DOP policy manual, the following items are exempt from sealed bidding and can be acquired from a single-source, provided that the using agency supports the purchase by written justification:

- Supplies and equipment for laboratory or experimental studies;
- Instructional materials or services for which only one source of supply is available;
- Patented equipment for which a single-source of supply is available;
- Proprietary equipment and supplies;
- Equipment lease or rental for which a single-source of supply is available (excluding passenger vehicles);
- Proprietary service and maintenance agreements;
- Advertisements and public media;
- Dues and organizational fees;
- Gasoline and motor fuels;
- Computer software which is copyrighted and available from only one source; and
- Other commodities, equipment and service available from only one source.

Prior approval by the Director of Purchases is required on all purchases exceeding $3,000. No public notice is made as suggested by NASPO.

The ABA Code also provides an exemption for single-source procurements. The ABA Code allows a contract to be awarded for a supply, service, or construction item without competition when the "Chief Procurement Officer" or the head of a purchasing agency determines, in writing, that only one source exists for the item (MPC 3-205). Additionally, as with emergency procurements, the ABA Code requires that a record of all sole-source purchases be kept and submitted annually to the legislature.

As with emergency purchases, KRS 45A.165 requires the chief purchasing officer to retain records of sole-source purchases on an annual basis and make the report available to the Legislature. The record that is sent to the legislature includes all "special authority" type purchases. These special authority purchases include single-source purchases and purchases exempt from sealed bidding by specific law or regulation. They also include items the Division of Purchases determines are not practical for competitive sealed bidding. These expenditures totaled $31.2 million in FY '88, down from $35.7 million in FY '87, which equates to approximately 17% of purchases processed by the DOP in FY '87 and 14% in FY '88.

Imprest Cash Purchasing

The Kentucky Code, unlike the ABA Code, contains provisions exempting petty cash and imprest cash purchases from the competitive bidding process. KRS 45.420(1) authorizes the establishment of imprest cash funds for agencies to make purchases which require prompt cash outlay. A custodian, who is designated by the agency and certified by the Finance and Administration Cabinet, administers the fund for these types of purchases that are pre-authorized by the Division of Purchases (KRS 45.420(2)). Money is provided by the state treasurer to the custodian but the agency head is responsible for authorized expenditures. The Management Manual outlines what types of purchases can and cannot be made from imprest cash funds (BO-111-56-01). Agencies can make purchases for items such as:

- honoraria;
- fresh produce;
- utilities; and
- items on price contract (less than $1,000/vendor).

Agencies cannot use imprest cash funds for items such as:

- salaries or wages;
- travel expenses; and
- legal fees.

The DOP is not involved once the account and authorized purchases have been established. DOP personnel estimate that 80% of state agencies have imprest cash accounts. DOP relies on the DOA "pre-audit" for monitoring of correct purchases.

KRS 45.410 allows agencies to make petty cash fund purchases on the open market up to fifty dollars. These petty cash funds are considered sub-imprest cash accounts and are to be used for the following purposes (BO-111-56-02):

- postage;
- freight and express;
- governmental publications; and
- local purchases less than $15.00.

"Purchases of less than fifty dollars, at the discretion of the Finance and Administration Cabinet, may be made on the open market by cash payments from petty cash accounts set aside for that purpose" (KRS 45.410). The amount of the petty cash account of each state agency is determined by the Finance and Administration Cabinet and is inspected annually by the Cabinet. Agencies cannot exceed the total amount in petty cash for such purchases and may not split purchases to qualify this exemption.

Similar exemptions for petty cash purchases and the establishment of an imprest cash fund are not found in the ABA Code. The only provisions in the ABA Code which are even close are those previously discussed concerning small purchases and emergency procurements.

APPENDIX H

SENATE MEMBERS
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Majority Floor Leader
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Majority Caucus Chairman
Dr. Jack Trevey
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Ken Harper
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Kenny Rapier
Majority Whip
Bill Lile
Minority Whip

MEMORANDUM

TO: State Purchasing Subcommittee Members

FROM: Program Review Staff

DATE: November 30, 1988

RE: ABA Procurement Policy Office and Chief Procurement Officer Recommendations

The American Bar Association's Model Procurement Code for State and Local Governments recommends that a Procurement Policy Office be established to separate the policy making and day-to-day operational functions of procurement. The Policy Office should consist of a procurement board composed of private citizens, high-level state officials or a mix thereof. The Chief Procurement Officer should not be a member of the Policy Office.

The Policy Office should have responsibility for promulgating regulations governing the procurement and disposal process and should also have the power to audit and monitor the implementation of its regulations. The Policy Office should not have direct authority in awarding contracts or settling disputes.

The Council of State Governments in conjuction with the National Association of State Purchasing Officials issued a publication titled "State and Local Government Purchasing". In a fifty state survey for this publication, the question, "Is there a statutory board or commission whose primary responsibility is to oversee and/or enforce state purchasing procedures?" was posed to all fifty state purchasing officials. Program Review staff contacted those states indicating that they did have such a board in place for additional information regarding their central purchasing.

Three of the ten states responding to staff contacts stated that they did have a statutory board or commission to oversee central purchasing. Four states had boards or commissions formed to advise on standards and specifications. It should be noted that Kentucky responded yes as to having a board to oversee central purchasing. Kentucky statutes have the permissive language for such a board but there is not a board operating in this capacity. Additionally, the ten states were asked about the role of their Chief Procurement Officer. A summary of the questions and answeres is as follows:

Boards and Commissions

1. Do you have a statutory board or commission whose primary responsibility is to oversee central purchasing?

Yes — 3	states	Md., Ut., Tx.
No — 3	states	Mt., Ok., Or.
Other— 4	states	Connecticut, Maine and New Mexico have advisory committees for standards and specifications. Mississippi has a board in place to approve contracts over $100,000.

2. Does the board or commission operate in a policy making role?

Yes — 3	states	Md., Ut., Tx.
No — 2	states	Me., Ms.
Other — 1	state	New Mexico's board makes recommendations on policy matters to the purchasing officials.

3. How active is your board or how often does it meet?

Annually	— 2	states	Me., Md.
Semi-Annually	— 1	state	Ct.
Quarterly	— 1	state	Ut.
Monthly	— 2	states	Ms., Tx.
Other	— 1	state	New Mexico's board does not have a standard meeting schedule, purchasing officials indicated the board is very active.

4. How are board or commission members selected?

Appointed by Governor	— 4	states	Me., Ms., Tx.
Selected by agencies	— 3	states	NM., Ct., Ut.
Other	— 1	state	Maryland's board is selected by the Board of Public Works.

5. What is the tenure of board or commission members?

Governor's Term	— 2	states	Ct., Me.
Governor's Pleasure	— 1	state	Ms.
Other	— 4	states	Maryland, New Mexico and Utah's boards are appointed/selected by various agencies and have no designated tenure for office.

6. How many members are on the board or commission?

3 members	—2 states	Ms., Tx.
4 members	— 1 state	Md.
7 members	—2 states	Me., Ut.
10 members	— 1 state	Ct.
11 members	— 1 state	NM.

Chief Procurement Officer

The American Bar Association's Model Procurement Code for State and Local Governments recommends that there be a Chief Procurement Officer who:

- serves as the central procurement officer for the state; is appointed by the Policy Office or Governor to serve for a set term;
- meets or exceeds minimum qualifications and experience;
- can be removed only upon a showing of just cause; and
- may adopt operational procedures for the internal functions of his office.

In addition to those implied above, the Chief Procurement Officer should be assigned the following duties:

- procurement or supervision of the procurement of all supplies, services, and construction;
- general supervision and control over all inventories;
- disposal of surplus supplies; and
- establishment and maintainenance of inspection, testing, and acceptance programs for supplies, services and construction.

1. What are the roles of the Chief Procurement Officer?

Policy: Yes	— 8 states	Ct., Md., Ms., Mt., NM., Ok., Ut. Maine's Chief Procurement Officer role has an emphasis on policy matters.
No	—1 state	Tx.
Other	—1 state	Oregon's Chief Procurement Officer serves as a policy liasion between agencies and the Director of General Services.
Daily Operations:		
Yes	—10 states	Ct., Me., Md., Ms., Mt., NM. Ok., Or., Tx. Utah's Chief Procurement Officer's role has an emphasis on daily operations.

2. Are there specific qualifications for the Chief Procurement Officer?

Yes	—4 states	Connecticut's position was a civil service position until the 1970's. The qualifications remained the same. Maryland requires seven years of experience in purchasing management and certification from CPM or CPPO. Oklahoma has a minimum age requirement (28), requires a college degree and five years of commodity government purchasing or ten years of private sector purchasing experience. Utah requires a minimum of eight years experience with large scale procurement.

No	—5 states	Me., Ms., Mt., Or., Tx.

3. Is the Chief Procurement Officer appointed?

Yes	—7 states	Ct., Me., Ms., Mt., NM., Ok., Ut.
No	—3 states	Md., Or., Tx.

4. If the Chief Procurement Officer is appointed, who makes the appointment?

Governor	—2 states	Ct., NM.
Director/Commissioner	—5 states	Me., Ms., Mt., Ok. Utah's Chief Procurement Officer is appointed by the Executive Director of Administrative Services with the Governor's consent. The Policy Board makes the recommendation to the Director.

5. If the Chief Procurement Officer is appointed how long is the tenure?

Governor's Pleasure	—2 states	NM., Connecticut's Chief Procurement Officer can return to a civil service position of a similar or equivalent nature to that one previously held.
Director's Pleasure	—3 states	Ms., Mt., Ok.
Four Year Terms	—2 states	Me., Ut.

APPENDIX I

STATE PURCHASING ACTIVITIES: PRELIMINARY REPORT

Prepared for the
Program Review and Investigations Committee

by

Program Review Staff

September 27, 1988

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STATE PURCHASING ACTIVITIES: PRELIMINARY REPORT

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by

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September 27, 1988

INTRODUCTION

At the August meeting of the Program Review and Investigations Committee, staff presented an overview of the state's purchasing laws, policies and procedures. The governing statute, the Model Procurement Code, calls for a procurement process that is fair and open. The Code established the Secretary of Finance and his administrative agency as the central purchasing agency for the state, with the following charge:

- To control state expenditures for goods and services while maintaining an acceptable level of quality in the products procured;
- To promote the level of public confidence in government through maintaining honesty and integrity in government procurement; and
- To serve in an efficient and effective manner in securing necessary goods and services for state agencies.

An effective procurement system that succeeds in providing quality goods at the best price while enhancing fairness, equity and integrity in the system must have competition as its cornerstone. Moreover, it is essential that an effective system foster price competition, vendor competition and product competition. A comprehensive report, State and Local Government Purchasing, published by the Council of State Governments in 1982 on behalf of the National Institute of Governmental Purchasing (NIGP) and the National Association of State Purchasing Officers (NASPO), states that "fundamentally fostering competition is more of an attitude than a procedure or mechanism." Nevertheless, the extent to which a system fosters competition among vendors can be judged by the manner in which:

- Vendors' lists are compiled and maintained,
- Bids are solicited, and
- Bids are awarded.

The extent of product competition promoted in a system is demonstrated by:

- The manner in which specifications are written and
- The degree of product testing and inspection.

This paper will review the administrative procedures established by the Division of Purchases and the Finance Cabinet to balance their responsibilities for providing a service to state agencies in an effective and expedient manner, for providing quality while controlling costs, and for maintaining honesty and integrity in the system.

STATE PURCHASING VOLUME FOR FISCAL YEARS 1987—1988

Program Review staff reviewed state purchasing expenditures in the following categories: 1) contracts; 2) Central Stores; and 3) Correctional Industries and Industries for the Blind.

State Purchasing for Commodities and Services Amounted to $807 Million in Fiscal Year '88, up from $745 Million in Fiscal Year '87

State purchasing, other than small purchases, rose 8% to $807.3 million in FY '88. The following table lists the dollar volume of state purchasing contract expenditures for FY '87 and FY '88 and the percentage change from FY '87 to FY '88.

TABLE 1.

STATE PURCHASING EXPENDITURES FOR FISCAL YEARS 1987-88

TYPE OF CONTRACT	FY '87	FY '88	PERCENTAGE INCREASE <DECREASE
Price Contracts	$129,227,946	$126,568,331	< 2%
Purchase Contracts	24,641,410	19,852,403	< 19%
Emergency Purchases	1,539,495	1,230,885	< 20%
Special Authority	35,730,558	31,183,527	< 13%
Transportation Contracts	467,984,202	490,247,445	5%
Capital Const. Contracts	65,031,632	94,892,207	46%
Personal Service Contracts	21,585,925	43,278,031	<100%
TOTAL	$745,741,168	$807,252,82	8%

SOURCE: Division of Accounts, FAC

These amounts include contract expenditures from all agencies in the state's accounting system (STARS). They do not include universities, counties, local governments, or small purchases made by state agencies. The contracts that increased from FY '87 to FY '88 were Transportation, Capital Construction, and Personal Service Contracts.

Price contracts are used when agencies have a continuing need for a commodity or service over a fixed period of time. Expenditures on price contracts were $126.6 million in FY '88, down from $129.2 million in FY '87. Attachment 1 lists the dollar volume broken down by agency for the last two fiscal years.

Purchase contracts are executed when the Commonwealth obligates itself to purchase a specific quantity at a specific price. Expenditures on purchase contracts were $19.9 million in FY '88, down from $24.6 million in FY '87. Attachment 2 lists the dollar volume broken down by agency for the last two fiscal years.

Emergency purchases are defined in the Division of Purchases Management Manual as purchases "for which immediate need was created by an unforeseen event or set of circumstances and which are necessary for maintenance of governmental operations or to prevent or minimize injury or damage". Expenditures for emergency purchases were $1.2 million in FY '88, down from

$1.5 million in FY '87. Attachment 3 lists the dollar volume broken down by commodity/service for the last two fiscal years.

Special Authority purchases include single-source purchases and purchases exempt from sealed bidding by specific law or regulation. They also include items the Division of Purchases determines are not practical for competitive sealed bidding. These expenditures totaled $31.2 million in FY '88, down from $35.7 million in FY '87. Attachment 4 lists the dollar volume broken down by commodity/service for the last two fiscal years.

There were three areas of contract expenditures that increased from FY '87 to FY '88. Transportation purchases are for purchases made by their delegated authority. These were $490.3 million in FY '88, up from $467.8 million in FY '87. Capital construction contracts are related to state building projects. Expenditures in this area were $94.9 million in FY '88, up from $65 million in FY '87. Personal Service contracts relate to professional services to state agencies. Expenditures in this area were $43.2 million in FY '88, up from $21.6 million in FY '87.

Central Stores Sales Were $4.8 Million in Fiscal Year 1988

One of the economic benefits expected from an effective purchasing system is based on a prevalent belief that volume purchasing ultimately results in cost reduction. Kentucky utilizes volume purchasing in its Central Stores system. The Central Stores Branch of the Division of Purchases stocks some of the more common commodities used by state agencies. Any county or local government or non-profit organization can purchase the products available at Central Stores. The price contract system is utilized in procuring the products warehoused by Central Stores. Interviews with Central Stores officials indicated that agencies' biggest complaint was that they sometimes wanted certain brand names not carried by Central Stores. Central Stores officials felt a big improvement could be made with a larger building. Interviews with DOP buyers also concluded that a larger facility was needed for storage to cut turn-around time for orders from agencies. Buyers also indicated that a larger building would facilitate storage of additional items, such as desks and other office furniture. Total sales from Central Stores for FY '88 and FY '87 were $4.8 million and $4.3 million respectively.

Correctional Industries Sold $8.9 Million to State Agencies, While Industries for the Blind Sold $.2 Million in Fiscal Year 1988

The Kentucky Model Procurement Code requires that all state agencies give first preferences to the products made by the Corrections Cabinet's Correctional Industries. Second preference is to be given to the Kentucky Industries for the Blind and agencies of the severely handicapped. All products/services produced by Correctional Industries are available to state agencies, as well as local governments and the private sector, via price contracts. State agencies do not have to go through the Department of Purchases to obtain these products/services and will generally use the interaccount method of payment when buying from Correctional Industries. Attachment 5 lists the dollar amounts of purchases made from Correctional Industries by cabinet/department for the last two fiscal years.

Correctional Industries officials are not satisfied with their volume of purchases by state agencies. Specifically, they feel that in some cases they are not being solicited for bids on price contracts established by the Division of Purchases. In addition, they feel that state agencies frequently bypass their products in preparing purchase requisitions to submit to the Division of Purchases. Division of Purchases officials agree that agencies do frequently bypass Correctional Industries when requesting products and state that product quality is generally the reason cited. The Division states, however, that Correctional Industries are sent IFBs and that agencies are reminded to use Correctional Industries products when applicable.

Correctional Industries concedes that product quality and delivery problems have been the major complaints against them in the past. However, the current management has established a program for quality control and has leased additional warehouse space as a means of addressing these concerns. Correctional Industries officials are hopeful that the volume of sales to state agencies will increase. They feel that their plants can produce at twice the current volume. The state benefits from such sales, in that all profits are kept in state government. In addition, the state is able to fulfill a federal mandate to produce more labor needs for inmates.

Products produced by Industries for the Blind are available in the same manner as Correctional Industries products. They do not offer competing products. A catalog is distributed to state agencies, showing products available, which includes brooms, floor brushes, mops, squeegees, and door mats. State agencies account for about 25% of receipts, while the majority of business comes from the federal government and industrial contracts. Attachment 6 lists the dollar amounts of purchases made from Industries for the Blind by cabinet/department for the last two fiscal years.

Interviews with Industries for the Blind officials indicated that they felt state agencies were supportive and that a good rapport had been established.

Interviews in the Division of Purchases did not indicate any problem areas in Industries for the Blind.

STATE PURCHASING PRACTICES

Program Review staff reviewed the following state purchasing practices: 1) compilation, maintenance and purging of Kentucky's vendor list; 2) contract bid solicitation; 3) bid selection for contract awards; 4) product/service specification determinations; and 5) formal testing and inspection.

Kentucky's Vendor List Is Compiled Mainly From Applicants; Screening And Solicitation Is Limited

According to the CSG and NASPO, an effective purchasing system requires "adequate competition", a term which is not easily quantified. However, "adequate competition" may be construed as having a number of known, qualified suppliers consistent with the size and nature of an intended purchase. The vendors list should provide buyers with potential sources for various categories of services and supplies, making solicitations as efficient as possible. Accordingly, the vendors list is not merely a mailing list; more specifically, it is a list which should elicit competition. This calls for a systematic plan for identification, categorization and removal of vendors from the lists, as a means of avoiding unproductive and wasteful solicitations.

Prequalification for inclusion on Kentucky's vendors list is limited to completing an "Application to be Placed on Vendors List". According to administrative regulations, the application is reviewed by the Finance Cabinet in terms of performance ability, character, reputation and experience; prior experience with Kentucky state government; and previous compliance with health rules and regulations. Purchasing officials within the Division of Purchases state that only three things may prevent a vendor who submits a completed application from being placed on the list: previous suspension from the list by the state, inclusion on the federal debarred list, and/or the state's previous history of dissatisfaction with the vendor. Purchasing officials noted, however, that buyers would favor more stringent prequalification requirements as a means of improving performance.

Responses to the "Application to be Placed on Vendors List" are the primary way in which Kentucky's vendors list is compiled. However, "adequate competition", as previously defined, in an effective purchasing system requires regular efforts to locate additional qualified suppliers to

add to the vendors list. The Division of Purchases does not have a formal process for supplementing the vendors list. Purchasing officials state that they do encourage buyers to "bring in new blood". However, any effort towards this end is left up to the individual buyers.

Five out of the thirteen buyers for the division indicated in interviews that the number of vendors available on the list per commodity is seldom a problem. However, on those occasions where there are low numbers of vendors for a commodity, buyers stated that they consult trade publications, buyer's guides, newspaper ads and the user agency, as means to identify additional sources. The vendors list is not the only means of identifying bidders. Contracts exceeding $10,000 are advertised in the Lexington Herald Leader and Louisville Courier Journal. Additionally, some national trade publications which publish bid opportunities, such as The Thomas Register, routinely collect and publish announcements of Kentucky's IFBs.

Efforts to keep Kentucky's Vendors Lists limited to active or currently interested vendors are sporadic. KARs allow removal of a vendor for failing to respond to three consecutive bids, falsifying invoices, collusion, or mailing false representation on the applications. Buyers indicate they do not have the time to track failures to respond. However, typically an increase in returned postage from mailing to vendors has been an indicator of the need to purge. The decision to purge is made by the Division director. Division officials have stated that the last purge of the vendor listing in fiscal year '81 reduced the vendor listing from 7,000+ down to 3,000. Currently, there are over 7,500 vendors on the list.

As part of the development of a computerized purchasing information system, the vendor listing is again being purged and will also be computerized. Division officials expect that the list will be reduced by half or more but will quickly expand again with the passing of time. The new listing will be used to better identify the goods and services offered by the vendor. The past vendor listing did not lend itself to geographic bidding, nor did it totally define the product/service offered by the vendor. The new listing will describe the commodity or service offered by a vendor in much greater detail and will specify geographic location. According to CSG, geographic bidding is practiced by over 60% of the states. This is in order where the nature of the item is local in character. These factors should increase effectiveness in mailing out IFBs.

Contract Bids Are Solicited by Newspaper Advertisements and Mailings to Some or All Firms on a Vendors List

The CSG publication State and Local Government Purchasing states that bid solicitations should "seek full competition for all purchases and provide fair and equal opportunity for all qualified persons or firms to compete." This applies to all categories of competitive purchases, i.e., competitive sealed bidding or competitive negotiation. The Code requires that contracts which are estimated to exceed $10,000 be advertised in newspapers with statewide circulation. Otherwise, competitive sealed bids are solicited through formal Invitations for Bids (IFBs) and competitive negotiated bids through Requests for Proposals (RFPs).

The individual buyers are responsible for mailing the IFBs. Division management feel that it is not cost effective to mail IFBs to all vendors of a particular commodity area, due to mailing costs and evaluation time. Therefore, the Division's policy is to mail IFBs to all minorities and to otherwise let the buyers use their judgment in determining who they feel will be responsive to a bid.

The five buyers interviewed stated various ways in which they select the vendors to receive IFBs. Most stated that an IFB would automatically be sent to the incumbent vendor and the vendor suggested by the user agency. The rest of the vendors chosen would be determined from those who had historically been responsive. In some cases, IFBs are rotated among responsive buyers. On occasion, an IFB may be sent to an identified vendor not on the vendors list.

Program Review staff reviewed a judgmental sample of 100 IFB files (see Attachment 7) from the last two fiscal years (FY '87, '88) to determine the number of vendors contacted. On

the average, there were 101 vendors available for a commodity or service, and of those, an average of 20 receiving IFBs. The range of possible vendors was from 3 to 401. The percentage of eligible vendors mailed IFBs ranged from 2% to 100%. There was an average of eight responses returned by the vendors; of these eight, there were three that did not desire to bid and five that actually did submit a bid. This reflects a response rate of approximately 25% usable bid (5 of 20).

In State and Local Government Purchasing, the CSG and NASPO are critical of the practice of arbitrarily limiting the number of IFBs mailed and of rotating IFBs among qualified potential bidders. The two groups conclude that while concerns about preparation and mailing costs may be justifiable, the loss of adequate competition may in the long run contribute to increased costs. A survey of state procurement agencies by the CSG and NASPO and published in State and Local Government Purchasing polled the states on the use of any formal or informal method of rotating vendors. Kentucky was one of 14 states that responded in the affirmative. However, four of these states, including Kentucky, said that this is an infrequent practice.

Bid Selection Was Based on the Lowest Price Submitted in 72% of a Sample of 100 IFBs

The criteria outlined in the Kentucky Model Procurement Code for awarding a bid under competitive sealed bidding is that "The Contract shall be awarded with reasonable promptness to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price (45A.080(5)). In purchasing terms, "responsive" relates to conformity in all material respects to the IFB, so that all bidders stand on equal footing as to the substance of what is being bid upon. "Responsible", on the other hand, relates primarily to the ability of the bidder to successfully carry out the proposed contract. And "evaluated bid price" refers to the dollar amount of a bid after price adjustments for factors such as the reliability, maintainability, useful life and residual value of a product. KRS 45A.070(3) states that all such price adjustments shall be made based on measurable criteria set forth in the Invitation for Bids.

Of the 100 IFB files reviewed (see Attachment 7), the low bid was accepted in about 72% of the cases. Seven percent of the files indicated that only one bid was received. The remaining 21% of the files indicated that the absolute low bid was rejected for various reasons. Some of the reasons included:

- specifications not met;
- bid not complete;
- IFB wasn't signed (or other technicality); and
- vendor did not provide enough literature or samples to prove product equality.

State agencies generally submit a suggested vendor(s) with their purchase requisition. During our file review, we found that "suggested vendors" were awarded contracts about 41% of the time. Of these, 73% were lowest bidders as well. The buyer usually refers bids to the agency for review and recommendation, but it is the responsibility of the buyer to make the final award determination. The contract is signed by the buyer and the branch manager, but the signature of the branch manager does not necessarily indicate a review process of the selection. The award decision is generally not reviewed unless the buyer feels it is necessary.

Purchasing Needs and Specifications Are Primarily Determined by Each Agency

Viewing itself as a service provider, the Division of Purchases relies on the agencies to determine their needs and product specifications. According to the CSG, the overall purpose of specifications should be "to provide a basis for obtaining a product or service which will satisfy a particular need at economical cost", and to "invite maximum reasonable competition".

A good purchasing system requires cooperation between the agency and the central purchasing authority. However, the central purchasing agency should be ultimately responsible for the competitiveness and suitability of the specifications. This enhances the probability of

consistency of specifications for the same commodities among agencies. This also reduces the chances that specifications will encourage, not discourage, competition and that they will not specify features that are not necessary for an item's intended use.

An effective approach that several states have used to fulfill their ultimate responsibility for purchasing specifications is the establishment or standardization programs and policies regarding various types of specifications, development of standard specifications and the establishment of qualified products lists (QPL).

Desired specifications are listed in the purchase requisition submitted by the agency to the buyer who handles the particular commodity or service. A purchasing official indicated that agencies often specify brand names, which may cause a problem for other vendors in meeting that quality standard. Buyers indicated that agency knowledge of drafting specifications is a problem, in that some requisitions have too restrictive specifications, while others have too loose specifications. However, some buyers said they would send back a requisition if they felt the agency specifications were too restrictive. Nonetheless, Division officials see the DOP as primarily a service agency for procurement functions, not controlling user agency expenditures. Therefore, the DOP relies upon the agency to determine their needs and specifications.

Kentucky's Procurement System Does Not Include a Program for Testing and Inspection

Authorities in purchasing have indicated that a testing program of purchases is important. Kentucky's DOP does not have a testing and inspection program. DOP officials cite budget and personnel constraints as the reasons we do not have this program.

Kentucky had an inspection and testing section in the late 70's and early 80's, but Division officials feel that this wasn't really a functional unit. Illinois has a testing section, with about eight engineers who test the products for that state. Approximately 70% of the states have testing units which check on the compliance of products received and aid in developing specifications.

According to the CSG, a notable deficiency in many public purchasing systems is the absence or inadequacy of a centrally administered inspection program. More than one-half of the states have, as part of the central purchasing program, some inspection capability for assisting or supplementing inspection of products delivered to using agencies. The DOP has no inspection program and relies on using agencies for inspection of products received. Inspection is a necessary means for assuring that a vendor complies with contract terms.

STATE AGENCIES PURCHASES
PRICE CONTRACT PURCHASES
FISCAL YEAR 1986-87

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Legislative	General Assembly	$ 32,874.88	
	Legislative Research Commission	1,042,290.55	$1,075,165.43
Judicial	Judiciary	2,106,485.21	2,106,485.21
Revenue	Office of the Secretary	210.00	
	Office of PVA's—Accounting	260,359.28	
	Property Taxation	65,824.28	
	Processing & Enforcement	1,278,609.02	
	Professional & Support Service	110,264.51	
	Department 30-109	1,911.63	1,717,178.72
General Government	Unified Prosecutorial System	94,599.61	
	Agriculture	644,233.41	
	Attorney General	311,632.42	
	Auditor of Public Accounts	71,197.15	
	Governor's Office	88,010.61	
	Lieutenant Governor's Office	8,622.37	
	Military Affairs	416,282.56	
	Retirement Systems—Kentucky	212,584.14	
	Office of Secretary to Governor's Executive Cabinet	232.65	
	Local Government	22,907.07	
	Secretary of State	112,566.66	
	Treasury	71,210.67	
	Board of Accountancy	2,898.75	
	Board of Auctioneers	1,181.88	
	Board of Barbering	1,394.42	
	Board of Chiropractic Examiners	387.50	
	Board of Elections	109,380.81	
	Board of Embalmers & Funeral Home Directors	646.08	
	Board of Examiners & Registration of Architects	328.29	
	Board of Hairdressers & Cosmetologists	6,140.14	
	Board of Medical Licensure	28,236.40	
	Board of Nursing Education & Nursing Registration	26,430.94	
	Personnel Board	3,790.87	
	Board of Pharmacy	7,252.05	
	Board of Registration for Professional Engineers and Land Surveyors	8,328.00	
	Board of Veterinary Examiners	10,573.14	
	Commission—School Facilities Construction	131,273.04	
	Commission—Human Rights	38,977.97	
	Commission—Real Estate	58,264.46	

Attachment 1 to APPENDIX I

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
	Council—Higher Education	$ 56,619.67	
	Governor's Office for Policy & Management	42,879.27	
	Office of Program Administration	12,790.04	
	Personnel	4,163,097.30	
	NPP—Daviess County Sheriff	11,055.00	$6,776,005.34
Justice	Office of the Secretary	19,475.50	
	State Police	2,745,715.71	
	Criminal Justice Training	76,729.60	2,841,920.81
Education & Humanities	Commission —Deaf & Hearing Impairment	3,198.97	
	Commission—Kentucky Oral History	4,087.87	
	Council—Kentucky Heritage	8,674.96	
	Council—Vocational Education	1,150.08	
	Blind	529,565.77	
	Education	6,567,224.62	
	Educational Television Authority	357,108.37	
	Historical Society	155,192.13	
	Libraries & Archives	390,954.17	
	Retirement Systems—Teachers	109,872.61	
	Department 33-566	8,099.32	
	Commission—Literacy	3,438.00	8,138,566.87
Natural Resources & Environmental	Protection Commission-Environment Quality	99.00	
	Nature Preserves	37,051.89	
	Office of the Secretary	247,928.65	
	Office of General Counsel	72,437.07	
	Office of Communications & Community Affairs	7,077.10	
	Environmental Protection	875,274.83	
	Natural Resources	3,580,484.31	
	Surface Mining Reclamation & Enforcement	1,028,310.42	5,848,663.27
Transportation	Office of the Secretary	33,537.33	
	Administrative Services	2,533,934.88	
	Fiscal Management	144,078.75	
	Highways	30,928,184.61	
	Vehicle Regulations	734,152.44	34,373,888.01
Economic Development	Office of the Secretary	38,741.55	
	Dept. of Business Development	161,856.20	
	Arts	98,278.44	298,876.19
Public Protection & Regulation	Election Finance Registry	2,355.33	
	Board of Crime Victims Compensaton	4,794.88	
	Commission—Harness Racing	9,326.73	
	Commission—Public Service	140,342.05	
	Kentucky State Racing	29,099.12	
	Public Advocacy	37,730.43	
	Alcoholic Beverage Control	33,956.57	
	Financial Institutions	220,689.35	

Attachment 1 to APPPENDIX I

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
	Housing, Building & Construction	$ 85,248.78	
	Insurance	1,065,455.17	
	Mines and Minerals	82,414.72	$1,711,413.13
Human Resources	Office of the Secretary	234,238.16	
	Office of Personnel Management	7,264.43	
	Office of Communications & Council Affairs	2,333.00	
	Office of Administrative Services	1,633,577.47	
	Office of General Counsel	6,743.66	
	Office of the Inspector General	62,928.38	
	Office of Policy & Budget	30,945.50	
	Office of the Ombudsman	12,617.97	
	Mental Health & Mental Retardation Service	10,205,303.44	
	Commission for Health Economics Control	7,559.04	
	Department 38-732	47.99	
	Health Services	1,247,668.11	
	Commission for Handicapped Children	108,289.29	
	Employment Services	1,084,606.67	
	Social Insurance Administration	1,837,640.28	
	Medicaid Services Administration	6,478,840.69	
	Social Services	1,172,874.48	24,133,478.56
Finance & Administration	Capital Plaza Authority	37,483.10	
	Department 39-060	1,932.01	
	Higher Education Assistance Authority	175,555.61	
	Financial Disclosure Review	226.55	
	Flood Control Advisory	1,380.07	
	Office of the Secretary	516,696.30	
	Office of Legal & Legislative Services	3,856.96	
	Office of Management Services	129,107.11	
	Office of Historic Properties	757.50	
	State Office of Social Security	457.52	
	Administration	5,346,707.35	
	Office of Governmental Services Center	42,385.80	
	Facilities Management	3,921,415.37	
	Information Systems	13,572,489.05	
	Finance Special Accounts	2,258.59	23,752,708.89
Energy	Office of Administration	44,771.11	
	Energy Production & Utilization	34,148.23	
	Energy Research and Development	25,996.92	104,916.26
Corrections	Board of Parole	397.85	
	Office of the Secretary	2,210.13	
	Office of Administrative Services	47,937.17	
	Community Services & Facilities	1,790,367.95	
	Office of Correctional Training	5,016.85	

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
	Adult Institutions	$4,497,451.66	
	Office of General Counsel	4,691.56	$ 6,348,073.17
Tourism	Kentucky State Fair	1,625,743.84	
	Fish & Wildlife	910,764.86	
	Kentucky Horse Park	308,008.09	
	Parks	4,807,569.77	
	Office of the Secretary	976.19	
	Travel Development	596,896.05	$ 8,249,958.80
Labor	Commission—Occupational Safety & Health Review	6,038.96	
	Office of the Secretary	70,472.12	
	Workplace Standards	41,938.16	
	Worker's Claims	274,351.80	392,801.04
Universities	Eastern Kentucky University	8,689.31	
	Kentucky State University	1,169,360.34	
	Morehead State University	144,101.88	
	Murray State University	23,234.66	
	University of Kentucky	5,221.15	
	Western Kentucky University	7,239.38	1,357,846.72
GRAND TOTAL			**$129,227,946.42**

Source: Finance and Administration Cabinet, Division of Accounts Report

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STATE AGENCIES PURCHASES
PRICE CONTRACT PURCHASES
FISCAL YEAR 1987-88

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Legislative	General Assembly	$ 209,838.60	
	Legislative Research Commission	593,159.93	$ 802,998.53
Judicial	Judiciary	2,315,174.25	2,315,174.25
Revenue	Office of the Secretary	9,154.90	
	Workers Comp. Funding Comm.	3,586.45	
	Office of PVA's—Accounting	354,193.53	
	Property Taxation	38,020.99	
	Processing & Enforcement	531,737.10	
	Professional & Support Service	95,396.82	1,032,089.79
General Government	Unified Prosecutorial System	96,185.22	
	Agriculture	522,168.54	
	Attorney General	173,143.56	
	Auditor of Public Accounts	73,257.54	
	Governor's Office	59,880.20	
	Lieutenant Governor's Office	5,161.91	
	Military Affairs	368,875.86	
	Retirement Systems—Kentucky	65,721.41	
	Office of Secretary to Governor's Executive Cabinet	1,763.70	
	Local Government	43,087.45	
	Secretary of State	46,686.06	
	Treasury	133,846.27	
	Board of Accountancy	7,985.00	
	Board of Auctioneers	3,931.00	
	Board of Barbering	89.35	
	Board of Chiropractic Examiners	3,440.00	
	Board of Dentistry	2,768.18	
	Board of Elections	160,711.15	
	Board of Embalmers & Funeral Home Directors	209.15	
	Board of Examiners & Registration of Architects	30,315.70	
	Board of Hairdressers & Cosmetologists	8,429.82	
	Board of Medical Licensure	16,082.80	
	Board of Nursing Education & Nursing Registration	63,682.41	
	Personnel Board	5,613.90	
	Board of Pharmacy	3,053.98	
	Board of Registration for Professional Engineers and Land Surveyors	5,260.18	
	Board of Veterinary Examiners	201.03	

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CABINET	DEPARTMENT	SUBTOTAL	TOTAL
	Commission—Athletic	$ 177.30	
	Commission—School Facilities Construction	152,144.36	
	Commission—Human Rights	100,776.27	
	Commission—Real Estate	52,846.18	
	Commission—Women	157.25	
	Council—Higher Education	55,444.38	
	Governor's Office for Policy & Management	195,115.02	
	Office of Program Administration	13,550.36	
	Personnel	4,957,046.09	
	NPP—Daviess County Sheriff	58,771.95	$7,487,580.53
Justice	Office of the Secretary	108,332.21	
	State Police	4,425,155.44	
	Criminal Justice Training	105,542.32	4,639,029.97
Education & Humanities	Commission—Deaf & Hearing Impairment	3,403.29	
	Commission—Kentucky Oral History	826.00	
	Council—Kentucky Heritage	7,748.13	
	Council—Vocational Education	1,840.09	
	Office of the Secretary	9,260.00	
	Blind	1,393,037.98	
	Education	7,003,466.96	
	Educational Television Authority	375,155.80	
	Historical Society	149,596.07	
	Libraries & Archives	213,763.93	
	Retirement Systems—Teachers	122,132.16	
	Commission—Literacy	11,221.50	9,291,451.91
Natural Resources & Environmental Protection	Nature Preserves	25,789.70	
	Office of the Secretary	100,101.32	
	Office of General Counsel	42,330.03	
	Office of Communications & Community Affairs	26,895.67	
	Environmental Protection	505,694.39	
	Natural Resources	3,123,141.62	
	Surface Mining Reclamation & Enforcement	459,021.29	4,282,974.02
Transportation	Office of the Secretary	19,824.77	
	Administrative Services	2,266,888.61	
	Fiscal Management	114,922.22	
	Highways	31,536,120.28	
	Vehicle Regulations	1,146,300.36	35,084,056.24
Economic Development	Office of the Secretary	83,600.04	
	Dept. of Business Development	129,827.98	
	Arts	114,224.46	327,652.48
Public Protection & Regulation	Election Finance Registry	24,069.17	
	oard of Crime Victims Compensaton	2,766.50	
	Board of Tax Appeals	1,262.50	
	Commission—Harness Racing	2,833.87	

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
	Commission—Public Service	$ 156,154.70	
	Kentucky State Racing	19,649.59	
	Public Advocacy	60,011.86	
	Office of the Secretary	2,162.70	
	Alcoholic Beverage Control	13,134.55	
	Financial Institutions	251,699.73	
	Housing, Building & Construction	39,182.36	
	Insurance	965,658.84	
	Mines and Minerals	682,288.38	$2,220,874.57
Human Resources	Office of the Secretary	306,031.43	
	Office of Personnel Management	5,913.74	
	Office of Communications & Council Affairs	2,553.46	
	Office of Administrative Services	2,322,357.74	
	Office of General Counsel	19,571.77	
	Office of the Inspector General	37,556.74	
	Office of Policy & Budget	17,642.31	
	Office of the Ombudsman	8,717.85	
	Mental Health & Mental Retardation Services	11,190,266.39	
	Commission for Health Economics Control	7,748.96	
	Health Services	1,172,577.84	
	Commission for Handicapped Children	103,584.40	
	Employment Services	534,391.37	
	Social Insurance Administration	2,230,225.50	
	Medicaid Services Administration	7,966,243.82	
	Social Services	1,207,062.03	27,132,445.35
Finance & Administration	Capital Plaza Authority	4,147.90	
	Higher Education Assistance Authority	224,281.46	
	Financial Disclosure Review	597.00	
	Flood Control Advisory	1,056.04	
	Office of the Secretary	1,241,627.48	
	Office of Legal & Legislative Services	3,568.40	
	Office of Managaement Services	131,642.08	
	Office of Historic Properties	2,853.00	
	State Office of Social Security	357.52	
	Appropriations Not Otherwise classified	4,488.98	
	Administration	5,303,324.33	
	Office of Governmental Services Center	32,185.45	
	Facilities Management	3,320,598.80	
	Information Systems	4,635,018.88	
	Finance Special Accounts	103,463.14	15,009,210.46

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CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Energy	Office of Administration	$ 43,326.11	
	Energy Production & Utilization	30,416.59	
	Energy Research and Development	5,784.00	$ 79,526.70
Corrections	Board of Parole	3,185.99	
	Office of the Secretary	8,409.59	
	Office of Administrative Services	43,427.11	
	Community Services & Facilities	1,714,443.69	
	Office of Correctional Training	2,294.24	
	Adult Institutions	5,001,374.02	
	Office of General Counsel	8,230.31	6,781,364.95
Tourism	Kentucky State Fair	1,747,563.43	
	Fish & Wildlife	892,915.84	
	Kentucky Horse Park	232,869.12	
	Parks	5,483,641.23	
	Office of the Secretary	1,697.08	
	Travel Development	642,810.81	$9,001,497.51
Labor	Commission—Occupational Safety & Health Review	2,618.87	
	Office of the Secretary	45,845.11	
	Workplace Standards	121,878.26	
	Worker's Claims	266,018.24	436,360.48
Universities	Eastern Kentucky University	16,828.63	
	Kentucky State University	142,189.35	
	Morehead State University	398,277.17	
	Murray State University	5,365.20	
	Northern Kentucky University	15,237.78	
	University of Kentucky	16,370.08	
	Western Kentucky University	49,775.11	644,043.32
GRAND TOTAL			$126,568,331.06

Source: Finance and Administration Cabinet, Division of Accounts Report

Attachment 1 to APPENDIX I

STATE AGENCIES PURCHASES
PURCHASE CONTRACTS
FISCAL YEAR 1986-87

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Legislative	General Assembly	$ 631.10	
	Legislative Research Commission	21,588.92	$ 22,220.02
Judicial	Judiciary	506,504.56	506,504.56
Revenue	Office of PVA's—Accounting	56,616.12	
	Property Taxation	118,563.23	
	Processing & Enforcement	711,375.76	
	Professional & Support Service	117,771.48	1,004,326.59
General Government	Unified Prosecutorial System	4,242.41	
	Agriculture	114,729.35	
	Attorney General	4,623.34	
	Auditor of Public Accounts	26,098.76	
	Governor's Office	3,918.75	
	Military Affairs	178,804.83	
	Retirement Systems—Kentucky	91,276.21	
	Local Government	1,166.00	
	Secretary of State	2,569.80	
	Treasury	16,100.00	
	Board of Embalmers & Funeral Home Directors	190.50	
	Board of Examiners & Registration of Architects	773.61	
	Board of Hairdressers & Cosmetologists	10,874.30	
	Board of Medical Licensure	7,959.82	
	Board of Nursing Education & Nursing Regis.	32,891.72	
	Board of Physical Therapy	601.05	
	Board of Registration for Prof. Engineers and Land Surveyors	3,626.09	
	Commission—Human Rights	2,909.60	
	Commission—Real Estate	2,580.00	
	Council—Higher Education	817.80	
	Governor's Office for Policy & Management	2,881.00	
	Personnel	80,103.55	589,738.49
Justice	Office of the Secretary	8,261.80	
	State Police	3,458,509.33	
	Criminal Justice Training	101,618.57	3,568,389.70
Education &	Council—Kentucky Heritage Humanities	840.00	
	Blind	52,494.36	
	Education	3,598,185.54	
	Educational Television Authority	30,074.75	
	Historical Society	7,172.14	
	Libraries & Archives	85,274.63	
	Retirement Systems—Teachers	5,182.61	

Attachment 2 to APPENDIX I

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
	Commission—Literacy	$ 1,467.49	$3,780,691.52
Natural Resources & Environmental Protection	Office of the Secretary	34,961.85	
	Office of General Counsel	1,298.97	
	Environmental Protection	376,877.50	
	Natural Resources	776,327.66	
	Surface Mining Reclamation & Enforcement	713,192.62	1,902,658.60
Economic Development	Office of the Secretary	3,208.94	
	Dept. of Business Development	6,297.62	
	Arts	3,973.88	
	Ky. Development Finance Authority	143.55	13,623.99
Public Protection & Regulation	Election Finance Registry	1,830.00	
	Board of Tax Appeals	1,772.16	
	Commission—Public Service	62,024.85	
	Commission—Kentucky State Racing	17,031.20	
	Public Advocacy	5,820.66	
	Alcoholic Beverage Control	16,036.98	
	Financial Institutions	33,459.26	
	Housing, Building & Construction	17,317.85	
	Insurance	640.55	
	Mines & Minerals	326,108.43	482,041.94
Human Resources	Office of the Secretary	13,940.58	
	Office of Personnel Management	24.74	
	Office of Communications & Council Affairs	3,611.82	
	Affairs		
	Office of Administrative Services	234,483.95	
	Office of the Inspector General	1,655.50	
	Office of the Ombudsman	1,062.42	
	Mental Health & Mental Retardation Services	1,419,877.26	
	Commission for Health Economics Control	49.50	
	Health Services	514,656.00	
	Commission for Handicapped Children	46,466.85	
	Employment Services	63,042.82	
	Social Insurance Administration	2,115,201.62	
	Medicaid Services Administration	34,538.46	
	Social Services	682,887.88	5,131,499.40
Finance & Administration	Capital Plaza Authority	$ 6,024.95	
	Higher Education Assistance Authority	36,206.80	
	Office of Management Services	3,868.00	
	State Office of Social Security	693.20	
	Administration	171,712.42	
	Facilities Management	151,275.41	
	Information Systems	655,676.46	$1,025,457.24

Attachment 2 to APPENDIX I

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Energy	Office of Administration	3,687.01	
	Energy Production & Utilization	3,492.85	
	Energy Research and Development	157,217.78	164,397.64
Corrections	Office of Administrative Services	62,897.53	
	Office of Correctional Training	10,274.35	
	Adult Institutions	3,598,709.33	3,671,881.21
Tourism	Kentucky State Fair	199,233.13	
	Fish & Wildlife	1,090,556.92	
	Kentucky Horse Park	58,356.14	
	Parks	865,798.35	
	Office of the Secretary	206.10	
	Travel Development	48,288.18	2,262,438.82
Labor	Occupational Safety & Health Review	1,458.00	
	Office of the Secretary	14,338.50	
	Workplace Standards	32,487.05	
	Worker's Claims	19,592.00	67,875.55
Universities	Kentucky State University	347,234.78	
	Western Kentucky University	100,430.00	447,664.78
GRAND TOTAL			**$24,641,410.05**

SOURCE: Finance and Administration Cabinet, Division of Accounts Report

Attachment 2 to APPENDIX I

STATE AGENCIES PURCHASES
PURCHASE CONTRACTS
FISCAL YEAR 1987-88

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Legislative	General Assembly	$ 25,502.99	
	Legislative Research Commission	167,022.76	$ 192,525.75
Judicial	Judiciary	743,025.19	743,025.19
Revenue	Workers Comp. Funding Comm.	6,562.60	
	Office of PVA's—Accounting	233,765.29	
	Property Taxation	161,889.17	
	Processing & Enforcement	607,795.13	
	Professional & Support Service	186,248.59	
	# 109	446.19	1,196,706.97
General Government	Unified Prosecutorial System	35,491.41	
	Agriculture	48,674.56	
	Attorney General	3,168.00	
	Auditor of Public Accounts	16,009.80	
	Governor's Office	3,427.20	
	Military Affairs	116,869.58	
	Retirement Systems—Kentucky	53,578.73	
	Local Government	2,250.00	
	Secretary of State	3,640.39	
	Treasury	174.15	
	Board of Embalmers & Funeral Home Directors	69.00	
	Board of Examiners & Registration of Architects	234.14	
	Board of Hairdressers & Cosmetologists	7,780.81	
	Board of Medical Licensure	2,762.37	
	Board of Nursing Education & Nursing Regis.	23,180.43	
	Board of Registration for Prof. Engineers and Land Surveyors	3,007.36	
	Commission—Human Rights	4,051.50	
	Commission—Real Estate	5,707.18	
	Council—Higher Education	1,034.16	
	Governor's Office for Policy & Management	15,173.87	
	Office of Program Administration	9,016.55	
	Personnel	22,690.87	377,992.06
Justice	Office of the Secretary	424.00	
	State Police	3,273,243.36	
	Criminal Justice Training	88,891.64	3,362,559.00
Education & Humanities	Commission—Deaf & Hearing Impairment	972.50	
	Blind	123,259.87	
	Education	3,502,455.74	

Attachment 2 to APPENDIX I

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
	Educational Television Authority	$ 93,485.24	
	Libraries & Archives	97,863.75	
	Retirement Systems—Teachers	109,135.47	
	Commission—Literacy	4,635.97	$3,931,808.54
Natural Resources & Environmental Protection	Nature Preserves	686.00	
	Office of the Secretary	18,686.51	
	Office of General Counsel	51,062.19	
	Office of Communications & Community Affairs	6,644.90	
	Environmental Protection	174,264.18	
	Natural Resources	797,281.80	
	Surface Mining Reclamation & Enforcement	114,006.53	1,162,632.11
Economic Development	Office of the Secretary	30,372.03	
	Arts	19,610.25	49,982.28
Public Protection & Regulation	Election Finance Registry	5,263.75	
	Commission—Harness Racing	3,348.00	
	Commission—Public Service	101,643.28	
	Commission—Kentucky State Racing	2,390.48	
	Public Advocacy	1,168.30	
	Financial Institutions	31,660.77	
	Housing, Building & Construction	13,034.80	
	Insurance	79,994.77	
	Mines & Minerals	11,936.17	250,440.32
Human Resources	Office of the Secretary	17,382.90	
	Office of Administrative Services	208,691.90	
	Office of the Inspector General	1,189.00	
	Office of Policy & Budget	1,199.00	
	Mental Health & Mental Retardation Services	1,496,070.08	
	Health Services	237,043.43	
	Commission for Handicapped Children	98,226.35	
	Employment Services	72,766.50	
	Social Insurance Administration	68,367.52	
	Medicaid Services Administration	36,035.00	
	Social Services	509,068.40	2,746,040.08
Finance & Administration	Capital Plaza Authority	4,059.00	
	Higher Education Assistance Authority	126,431.42	
	Office of the Secretary	2,133.00	
	State Office of Social Security	277.42	
	Administration	95,180.47	
	Facilities Management	129,287.22	
	Information Systems	582,377.10	
	Finance Special Accounts	23,755.25	963,500.88

Attachment 2 to APPENDIX I

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Energy	Office of the Secretary	1,414.64	
	Office of Administration	27,877.81	
	Energy Production & Utilization	850.54	
	Energy Research and Development	105,994.41	136,137.40
Corrections	Office of Administrative Services	4,670.00	
	Community Services & Facilities	3,717.00	
	Office of Correctional Training	15,712.00	
	Adult Institutions	2,585,685.42	2,609,784.42
Tourism	Kentucky State Fair	228,921.05	
	Fish & Wildlife	649,469.17	
	Kentucky Horse Park	21,360.19	
	Parks	995,051.54	
	Travel Development	4,509.92	1,899,311.87
Labor	Office of the Secretary	2,535.77	
	Workplace Standards	124,023.90	
	Worker's Claims	31,720.00	158,279.67
Universities	Kentucky State University	46,475.00	
	Western Kentucky University	25,201.20	71,676.20
GRAND TOTAL			**$19,852,402.74**

SOURCE: Finance and Administration Cabinet, Division of Accounts Reports

Attachment 2 to APPENDIX I

EMERGENCY PURCHASES BY COMMODITY FOR 1986-87

COMMODITY	TOTAL
Employee Training (State Employees Only)	$ 2,768.25
Architectural and Engineering Services	758.25
Professional Computer Services	19,253.42
Consulting Services	15,540.82
Miscellaneous Services	2,484.02
Laboratory Test and Analysis Fees	28,445.00
Rental of Equipment	316,830.32
Rentals Not Otherwise Classified	23,701.00
Maintenance of Buildings and Grounds	240,711.31
Maintenance of Equipment	65,871.12
Maintenance of Vehicles	31,243.00
Repairs Not Otherwise Classified	7,262.20
Postage and Postage Meters	781.44
Freight	351.38
Other Parcel Delivery Services	267.60
Printing Paid to Vendor	1,088.40
Insurance Premium (Not Employee Related)	10,288.04
Advertising	524.50
Garbage Collection	2,920.00
Services Not Otherwise Classified	1,763.82
Print Shop Supplies	375.00
Office Supplies	6,952.95
Medical Supplies	4,769.00
Household and Kitchen Supplies	5,267.02
Classroom Supplies	15,683.89
Agricultural & Botanical Supplies	102.85
Building Materials & Supplies	40,539.29
Mechanical Maintenance Materials & Supplies	23,166.09
Other Supplies and Parts	8,588.58
Feeds	2,354.25
Motor Fuels and Lubricants	122,798.03
Firearms and Ammunition	2,377.50
Furniture/Fixture/Office Equip Purchase Under $500	4,195.42
Raw Materials	15,320.59
Library Books Per Unit or Set Cost Under $500	11, 915.24

Attachment 3 to APPENDIX I

COMMODITY	TOTAL
Prior Year Claims	9,418.99
Dues/Subscriptions	150.30
Highway Aggregates	671.90
Highway Posts, Signs, Signals & Lighting	963.90
Highway Miscellaneous	30,178.20
Highway Garage Stock	47,064.79
Highway Reinforcing Steel	4,905.64
Other	13,833.00
Furniture/Fixture/Office Equip (Purchase $500 & Over)	6,805.58
Machinery & Implements (Purchase $500 & Over)	16,720.30
Buildings/Fixed Equipment	9,405.64
Office Automation Equipment	5,194.31
Architect/Engineer Fees	22,070.00
General Construction	269,032.66
Movable Equipment Furnishings	35,392.00
Agency Material and Equipment	30,427.84
GRAND TOTAL	**$ 1,539,494.64**

Attachment 3 to APPENDIX I

EMERGENCY PURCHASES BY COMMODITY FOR 1987-88

COMMODITY	TOTAL
Consulting Services	$ 4,961.00
Security Guard Service	9,105.69
Coal and Coke	3,348.00
Rental of Equipment	1,990.80
Maintenance of Buildings and Grounds	202,254.37
Maintenance of Equipment	77,838.46
Maintenance of Vehicles	1,000.00
Repairs Not Otherwise Classified	10,139.80
Postage and Postage Meters	6.25
Freight	525.23
Other Parcel Delivery Services	389.07
Services Not Otherwise Classified	13,812.35
Expenses Related to Shows, Fairs & Expositions	1,687.50
Telephone Charges Paid to Vendor	40,079.81
Print Shop Supplies	1,360.00
Office Supplies	32,080.87
Chemicals and Laboratory Supplies	2,160.95
Household and Kitchen Supplies	5,442.60
Classroom Supplies	63,261.45
Agricultural & Botanical Supplies	1,997.50
Building Materials & Supplies	152,795.07
Mechanical Maintenance Materials & Supplies	12,035.87
Other Supplies and Parts	107,226.07
Firearms and Ammunition	4,248.12
Furniture/Fixture/Office Equip Purchases Under $500	4,994.91
Instruments & Apparatus Purchases under $500	4,115.87
Raw Materials	19,952.57
Telephone/Telecom Equip Purchases Under $500	19,102.50
Interest Due to Late Payment	60.83
Filing Fees and Court Costs	3,330.00
Prior Years Claims	7,640.00
Highway Bituminous Materials	13,759.14
Highway Culvert Pipe	18,123.22
Highway Miscellaneous	9,676.22
Rehabilitation-Client Service Cost	12,000.00

Attachment 3 to APPENDIX I

COMMODITY	TOTAL
Clothing	1,225.00
Furniture/Fixture/Office Equip (Purchases $500 & Over)	97,719.43
Instruments & Apparatus (Purchases $500 & Over)	27,695.00
Buildings/Fixed Equipment	78,170.42
Other Capital Outlay	2,160.00
Telephone/Telecom Equipment (Purchases $500 & Over)	2,982.00
Lease Purchase (Furniture, Fixtures, Equipment)	8,735.88
Stand Alone/Micro-Mini	1,725.00
Architect/Engineer Fees	24,125.00
General Construction	112,910.16
Agency Material and Equipment	10,935.00
GRAND TOTAL	**$1,230,884.98**

Attachment 3 to APPENDIX I

SPECIAL AUTHORITY PURCHASES BY COMMODITY FOR 1986-87

COMMODITY	TOTAL
Occasional Salaries and Wages	$ 11,596.95
Other Employer's Life Insurance	1.05
Other Employee Related Insurance	1,065.75
Workmen's Compensation	9,386.00
Employee Training (State Employees Only)	41,626.49
Bonds (Surety, Fidelity, Peace Officer, Etc.)	290,700.65
Automobile Liability Insurance	30,457.63
Legal Services	6,902.50
Auditing Serv (Includes Fin Disclosure Revw And)	16,087.50
Architectural and Engineering Services	736.25
Consulting Services	3,551.19
Advertising Services	82,467.48
Appraisal Services	900.00
Miscellaneous Services	143,789.11
Court Reporters	352,532.56
Janitorial Services	7,186.01
Honoraria	2,780.12
Natural Gas	21,216.78
Electricity	15,191.43
Water and Sewage	2,469.39
Fuels Not Otherwise Classified	93.21
Rental of Non-State Owned Buildings and Land	1,948.50
Rental of Equipment	338,107.91
Copy Machine Rental	31,991.79
Computer Rental (Direct Payments to Vendors)	31,227.91
Aircraft Charter (Non State Owned)	803.85
Rentals Not Otherwise Classified	74,459.64
Maintenance of Buildings and Grounds	310,440.24
Maintenance of Equipment	2,601,123.05
Copy Machine Maintenance	324,963.79
Computer Maintenance	552,702.90
Maintenance of Vehicles	429,790.67
Repairs Not Otherwise Classified	86,879.32
Postage and Postage Meters	12,261.07
Freight	252,952.37
Other Parcel Delivery Services	250.76

Attachment 4 to APPENDIX I

COMMODITY	TOTAL
Printing Paid to State Agency (Inter-Account)	$ 250.23
Printing Paid to Vendor	222,510.07
Laundry and Cleaning	7,845.52
Insurance Premium (Not Employee Related)	910,781.26
Advertising	955,974.42
Garbage Collection	14,323.30
Services Not Otherwise Classified	814,483.72
Expenses Related to Shows, Fairs & Expositions	93,191.51
Telephone Charges Paid to State Agency (Inter-Acct)	754.00
Telephone Charges Paid to Vendor	4,131.76
Info Syst-Tech Serv Computer Charges (Restricted)	3,975.00
Info Syst-Professional Supp Charges (Restricted)	940.00
Computer-Canisters	280.00
Computer-Coax-Cable-Ends	1,427.96
Computer-Modem & Line Charges	157,191.88
Computer-Equipment	7,924.97
Computer-Maintenance (Dis Only)	4,626.95
Souvenirs for Resale	182,757.54
Merchandise for Resale	219,236.27
Prepared Food For Resale	132,939.43
Office Supplies for Resale	16,020.00
Textbooks and Student Supplies for Resale	745,395.63
Kentucky Made Handcrafts for Resale	3,510.54
Commercial Supplies	40,359.00
Print Shop Supplies	11,561.14
Office Supplies	94,181.82
Janitorial and Maintenance Supplies	18,535.71
Medical Supplies	85.00
Chemicals and Laboratory Supplies	67,153.72
Household and Kitchen Supplies	32,606.82
Recreational/Athletic Theatrical/Musical Supply	14,227.90
Classroom Supplies	1,633,400.92
Agricultural & Botanical Supplies	2,506.50
Photographic and Related Supplies	3,035.80
Data Processing Supplies	11,813.51
Drugs and Pharmaceuticals	117.03
Motor Vehicle Supplies & Parts	276,450.71
Building Materials & Supplies	34,313.57
Parks Warehouse Supplies	856.38

Attachment 4 to APPENDIX I

COMMODITY	TOTAL
Small Tools	$ 1,059.68
Mechanical Maintenance Materials and Supplies	266,482.45
Copy Machine Supplies	1,860.36
Other Supplies and Parts	390,975.20
Food Products	32,200.33
Feeds	129.11
Motor Fuels and Lubricants	2,333,870.57
License Plates	1,137.50
Firearms and Ammunition	664.95
Furniture/Fixture/Office equip Purchases Under $500	69,101.31
Machinery & Implements Purchases Under $500	14,061.99
Instruments & Apparatus Purchases Under $500	6,421.34
Raw Materials	145,127.90
Library Books-Per Unit or Set Cost Under $500	1,350,703.95
Books for Dept Use (Other Than Dept of Libraries)	837,390.09
Bibliographic Utilities	18,387.76
Telephone/Telecom Equip Puchases Under $500	464.68
Computer Software	12,324.72
In-State Travel	7,427.34
Out-Of-State Travel	24,746.14
Travel for Non-State Employees	5,054.06
Elected County Officials' Expenses	142.56
Interest Due to Late Payment	595.49
Promotional Entertainment Expense	105,146.72
Administration of Examination	34,289.65
Filing Fees and Court Costs	7,031.89
Prior Year Claims	33,460.45
Judgements	63,700.67
Dues/Subscriptions	1,068,594.52
County Costs (Co. Fees)	69,686.42
Highway Vegetation & Vegetation Control Chem	498.75
Highway Posts, Signs, Signals & Lighting	1,614.26
Highway Miscellaneous	49,655.58
Highway Garage Stock	65,222.40
Highway Concrete Materials	1,502.90
Other	159,305.17
Program Administration Costs-Outside Vendors	41,182.81
Grants-In-Aid State	13,887.29
Grants-In-Aid Federal	7,800.00
Free Textbooks	13,504,165.74

Attachment 4 to APPENDIX I

COMMODITY	TOTAL
Rehabilitation-Client Service Cost	122,271.31
Food	142,380.05
Clothing	1,776.00
Medical-Dental	740.00
Other Car & Support	6,120.00
Unemployment Insurance Benefits	114,498.21
(Retitled) Refund of Retirement Contributions	928.58
Furniture/Fixture/Office Equip (Puchases $500 and Over)	211,361.00
Livestock	37,950.00
Machinery & Implements (Puchases $500 & Over)	50,956.43
Instruments & Apparatus (Puchases $500 & Over)	89,593.99
Motor Vehicles	329,210.23
Buildings/Fixed Equipment	55,875.80
Library Books (Per Unit or Set Cost $500 & Over)	3,873.30
Other Capital Outlay	16,670.65
Lease Purchase (Furniture, Fixtures, Equip)	1,465.00
Stand Alone/Micro-Mini	8,826.00
Office Automation Equip	1,890.65
General Construction	450,593.93
Computer Equipment	2,750.71
Movable Equipment Furnishings	94,562.61
Land/Right of Way	89,452.00
Legal & Administrative Costs	468.75
Agency Material and Equipment	6,327.37
Capital Construction Grant	277,240.88
Highway Construction	2,838.00
Highway Legal Admin Right-of-Way	542.25
GRAND TOTAL	**$35,730,557.72**

SPECIAL AUTHORITY PURCHASES BY COMMODITY FOR 1987-88

COMMODITY	TOTAL
Occasional Salaries and Wages	$ 444.22
University's Disability Coverage	133.35
Other Employee Related Insurance	7,925.07
Workmen's Compensation	179,511.00
Employee Training (State Employees Only)	31,369.94
Employee Health Examinations	330.00
Bonds (Surety, Fidelity, Peace Officers, Etc.)	339,294.65
Automobile Liability Insurance	16,149.50
Legal Services	4,085.00
Auditing Services (Includes Fin Disclosure Review And)	19,181.25
Architectural and Engineering Services	1,107.50
Consulting Services	35,590.00
Advertising Services	61,091.02
Artistic Services	1,315.31
Miscellaneous Services	178,316.20
Court Reporters	348,597.86
Security Guard Services	1,248.50
Janitorial Services	12,667.26
Honoraria	10,417.50
University Student Wages	6,000.00
Natural Gas	2,030.73
Electricity	14,358.87
Water and Sewage	2,683.47
Heating Oil	78.62
Fuels Not Otherwise Classified	1,918.90
Rental of Non-State Owned Buildings and Land	6,267.02
Rental of State Owned Buildings and Land (Inter-Acct)	15.00
Rental of Equipment	449,951.25
Copy Machine Rental	21,371.44
Computer Rental (Direct Payments to Vendors)	19,261.04
Rentals Not Otherwise Classified	44,239.03
Maintenance of Buildings and Grounds	331,797.11
Maintenance of Equipment	2,847,877.01
Copy Machine Maintenance	318,218.27
Computer Maintenance	447,705.08
Maintenance of Vehicles	470,349.82

Attachment 4 to APPENDIX I

COMMODITY	TOTAL
Repairs Not Otherwise Classified	129,037.27
Postage and Postage Meters	54,865.11
Freight	218,223.10
Other Parcel Delivery Services	1,113.57
Printing Paid to State Agency (Inter-Account)	1,641.00
Printing Paid to Vendor	126,956.47
Laundry and Cleaning	3,944.77
PInsurance Premium (Not Employee Related)	1,044,191.16
Advertising	851,781.97
Garbage Collection	40,468.70
Services Not Otherwise Classified	877,063.78
Armored Car Services	3,846.00
Expenses Related to Shows, Fairs & Expositions	208,040.52
Telephone Charges Paid to Vendor	27,497.81
Other Telecommunications	9,729.37
Info Syst-Tech Serv Computer Charges (Restricted)	4,018.15
Info Syst-Professional Supp Charges (Restricted)	3,100.00
Computer-Connect Charges	2,505.64
Computer-Modem & Line Charges	185,621.08
Computer-Unscheduled Maintenance	2,453.52
Computer Equipment	1,713.25
Computer-Miscellaneous DTS	112.00
Computer-Maintenance (DIS Only)	1,215.00
Computer-Development	11,041.21
Souvenirs for Resale	312,388.69
Merchandise for Resale	446,778.29
Prepared Food for Resale	219,472.63
Cost of Meals for Employees	5,105.00
Office Supplies for Resale	16,921.05
Textbooks and Student Supplies for Resale	669,223.65
Kentucky Made Handcrafts for Resale	7,050.71
Commercial Supplies	65,956.62
Print Shop Supplies	328.54
Office Supplies	102,400.58
Clothing and Personal Supplies (Non-Employee)	920.90
Janitorial and Maintenance Supplies	15,832.43
Medical Supplies	4,694.34
Chemicals and Laboratory Supplies	43,353.62
Household and Kitchen Supplies	823.25
Recreational/Athletic Theatrical/Musical Supply	78,414.41

COMMODITY	TOTAL
Classroom Supplies	1,437,509.48
Agricultural & Botanical Supplies	3,580.31
Photographic and Related Supplies	7,552.96
Data Processing Supplies	6,220.71
Drugs and Pharmaceuticals	4,432.89
Motor Vehicle Supplies & Parts	248,958.75
Building Materials & Supplies	52,648.31
Small Tools	2,431.83
Mechanical Maintenance Materials & Supplies	198,664.44
Copy Machine Supplies	7,077.07
Other Supplies and Parts	355,307.90
Food Products	36,485.03
Feeds	54.75
Motor Fuels and Lubricants	2,903,055.10
Firearms and Ammunition	660.17
Furniture/Fixture/Office Equip Purchases Under $500	34,055.14
Machinery & Implements Purchases Under $500	3,662.89
Instruments & Apparatus Purchases Under $500	30,876.64
Raw Materials	269,074.35
Library Books-Per Unit or Set Cost Under $500	905,561.36
Books for Dept Use (Other Than Department of Library)	801,598.02
Bibliographic Utilities	73,350.76
Computer Software	60,297.52
In-State Travel	2,028.00
Out-Of-State Travel	21,895.25
Travel for Non-State Employees	6,356.42
Expend Reimbursement Non 1099 Reportable	30.67
Interest Due to Late Payment	535.26
Promotional Entertainment Expense	11,175.74
Administration of Examination	86,239.49
Filing Fees and Court Costs	2,150.75
Prior Year Claims	42,795.45
Dues/Subscriptions	922,510.51
County Costs (Co. Fees)	2,601.77
Highway Aggregates	622.38
Highwy Bituminous Materials	50.00
Highway Posts, Signs, Signals & Lighting	764.00
Highway Miscellaneous	11,434.43
Highway Garage Stock	125.00

Attachment 4 to APPENDIX I

COMMODITY	TOTAL
Other	226,940.97
Program Administration Costs-Outside Vendors	56,156.92
Grants-In-Aid Federal	110,011.54
Free Textbooks	9,023,809.58
Rehabilitation-Client Service Cost	228,229.30
Food	198,071.06
Clothing	9,015.35
Medical-Dental	395.00
Hospitalization	4,173.00
Other Care & Support	6,861.24
Furniture/Fixture/Office Equip (Purchases $500 & Over)	119,434.77
Livestock	23,450.00
Machinery & Implements (Purchases $500 & Over)	43,183.70
Instruments & Apparatus (Purchases 4500 & Over)	90,483.84
Motor Vehicles	90,789.81
Buildings/Fixed Equipment	30,627.00
Other Capital Outlay	9,035.57
Telephone/Telecom Equip (Purchases $500 & Over)	2,019.54
Lease Purchase (Furniture, Fixtures, Equip)	48,555.03
Computer Equipment Main Frame	8,118.00
Stand Alone/Micro-Mini	57,250.00
General Construction	27,938.19
Movable Equipment Furnishings	138,004.88
Agency Labor	535.00
Agency Material and Equipment	40,117.92
Highway Construction	3,145.58
GRAND TOTAL	**$31,183,527.30**

Attachment 4 to APPENDIX I

STATE AGENCIES PURCHASES FROM PRISON INDUSTRIES FISCAL YEAR 1986-87

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Legislative	General Assembly	$ 957.61	$ 957.61
Judicial	Judiciary	57,225.46	57,225.46
Revenue	Office of PVA's—Accounting	2,175.71	
	Property Taxation	989.85	
	Processing & Enforcement	3,779.94	
	Professional & Support Service	3,250.98	10,196.48
General	Government Unified Prosecutorial System	98.62	
	Agriculture	3,035.18	
	Attorney General	9,416.26	
	Auditor of Public Accounts	747.15	
	Governor's Office	391.21	
	Military Affairs	12,705.64	
	Retirement Systems—Kentucky	1,843.16	
	Local Government	8,300.62	
	Board of Barbering	33.25	
	Board of Dentistry	228.86	
	Board of Examiners of Psychologists	79.87	
	Board of Examiners of Social Work	78.36	
	Board of Hairdressers & Cosmetologists	182.76	
	Board of Licensing Hearing Aid Dealers & Fitters	42.36	
	Board of Licensure for Nursing Home Administrators	42.36	
	Board of Medical Licensure	164.88	
	Board of Nursing Education & Nursing Registration	146.96	
	Board of Proprietary Education	99.99	
	Board of Registration for Professional Engineers and Land Surveyors	173.43	
	Commission—School Facilities Construction	104.79	
	Council—Higher Education	382.96	
	Governor's Office for Policy & Management	155.45	
	Personnel	229.83	
	NPP—Jefferson County Sheriff	7,875.76	46,559.71
Justice	Office of the Secretary	749.45	
	State Police	69,247.20	
	Criminal Justice Training	1,158.53	71,155.18

Attachment 5 to APPENDIX I

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Education & Humanities	Commission—Deaf & Hearing Impairment	$ 53.36	
	Council—Kentucky Heritage	718.50	
	Blind	8,875.96	
	Education	54,893.46	
	Educational Television Authority	818.88	
	Historical Society	20.00	
	Libraries & Archives	1,691.93	
	Retirement Systems—Teachers	310.10	
	Commission—Literacy	1,837.93	$ 69,220.12
Natural Resources & Environmental Protection	Office of the Secretary	245.78	
	Office of General Counsel	109.14	
	Office of Communications & Community Affairs	215.52	
	Environmental Protection	11,865.27	
	Natural Resources	7,327.36	
	Surface Mining Reclamation & Enforcement	5,621.49	25,384.56
Transportation	Administrative Services	5,269.87	
	Highways	33,148.23	
	Vehicle Regulations	731,288.69	769,706.79
Economic	Development Office of the Secretary	340.50	
	Arts	2,590.00	2,930.50
Public Protection & Regulation	Election Finance Registry	16,563.59	
	Board of Crime Victims Compensation	584.91	
	Board of Tax Appeals	947.40	
	Commission—Public Service	540.00	
	Commission—Kentucky State Racing	30.11	
	Public Advocacy	937.01	
	Office of the Secretary	462.10	
	Alcoholic Beverage Control	574.52	
	Financial Institutions	454.74	
	Housing, Building & Construction	6,682.13	
	Insurance	3,480.30	
	Mines & Minerals	1,604.25	32,861.06
Human Resources	Office of the Secretary	1,214.70	
	Office of Personnel Management	1,174.25	
	Office of Communications & Council Affairs	170.00	
	Office of Administrative Services	22,142.83	
	Office of General Counsel	1,932.57	
	Office of the Inspector General	5,011.47	
	Office of Policy & Budget	20.00	
	Office of the Ombudsman	3,003.16	

Attachment 5 to APPENDIX I

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
	Mental Health & Mental Retardation Services	85,640.80	
	Commission for Health Economics Control	498.52	
	Health Services	316,241.20	
	Commission for Handicapped Children	5,424.15	
	Employment Services	283,268.55	
	Social Insurance Administration	292,809.60	
	Medicaid Services Administration	60,496.80	
	Social Services	106,437.72	$1,185,486.32
Finance & Administration	Capital Plaza Authority	846.43	
	Higher Education Assistance Authority	3,376.93	
	Office of the Secretary	426.00	
	Office of Management Services	353.54	
	Appropriations not otherwise classified	1,399.10	
	Administration	21,414.48	
	Facilities Management	17,764.52	
	Information Systems	1,570.51	47,151.51
Energy	Office of Administration	3,949.91	
	Energy Production & Utilization	42.27	3,992.18
Corrections	Board of Parole	1,503.29	
	Office of the Secretary	1,604.28	
	Office of Administrative Services	10,441.85	
	Community Services & Facilities	77,117.68	
	Office of Correctional Training	1,158.42	
	Adult Institutions	3,512,606.12	
	Office of General Counsel	2,393.77	3,606,825.41
Tourism	Kentucky State Fair	11,286.88	
	Fish & Wildlife	5,191.35	
	Parks	53,393.02	
	Office of the Secretary	639.99	
	Travel Development	415.68	70,926.92
Labor	Commission—Occupational Safety & Health Review	2,838.16	
	Office of the Secretary	271.57	
	Workplace Standards	542.53	
	Worker's Claims	6,161.65	9,813.91
Universities	Eastern Kentucky University	1,044.12	
	Kentucky State University	6,482.72	
	Morehead State University	7,467.00	
	Murray State University	3,494.70	
	Northern Kentucky University	453.76	
	University of Kentucky	39,984.11	
	University of Lousiville	$ 4,938.48	
	Western Kentucky University	388.10	$ 64,252.99
GRAND TOTAL			**$6,074,646.71**

Source: Finance and Administration Cabinet, Division of Accounts Report

STATE AGENCIES PURCHASES FROM PRISON INDUSTRIES FISCAL YEAR 1987-88

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Legislative	General Assembly	$ 10,818.71	
	Legislative Research Commission	37,373.37	$ $48,192.08
Judicial	Judicial Form Retirement System	48.96	
	Judiciary	39,484.41	39,533.37
Revenue	Workers Comp. Funding Comm.	2,884.68	
	Office of PVA's—Accounting	1,300.76	
	Property Taxation	41,236.33	
	Processing & Enforcement	21,840.19	
	Professional & Support Service	891.94	68,153.90
General	Government Unified Prosecutorial System	12,216.65	
	Agriculture	16,053.44	
	Attorney General	5,781.04	
	Auditor of Public Accounts	1,275.41	
	Governor's Office	579.90	
	Lieutenant Governor's Office	122.00	
	Military Affairs	17,732.38	
	Retirement Systems—Kentucky	274.06	
	Local Government	5,245.61	
	Board of Auctioneers	835.85	
	Board of Barbering	2,281.68	
	Board of Embalmers & Funeral Home Directors	513.36	
	Board of Hairdressers & Cosmetologists	529.32	
	Board of Medical Licensure	146.64	
	Board of Nursing Education & Nursing Registration	113.08	
	Personnel Board	70.56	
	Commission—Athletic	88.72	
	Commission—Real Estate	343.42	
	Commission—Women	1,504.36	
	Council—Higher Education	795.64	
	Governor's Office for Policy & Management	3,080.18	
	Office of Program Administration	156.60	
	Personnel	2,010.60	
	NPP—Jefferson County Sheriff	1,644.70	73,395.20
Justice	Office of the Secretary	849.04	
	State Police	36,809.39	
	Criminal Justice Training	1,565.90	39,224.33

Attachment 5 to APPENDIX I

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Education & Humanities	Commission—Deaf & Hearing Impairment	$ 298.52	
	Council—Kentucky Heritage	992.22	
	Blind	8,602.82	
	Education	340,717.83	
	Educational Television Authority	1,578.74	
	Historical Society	3,089.38	
	Libraries & Archives	13,590.91	
	Retirement Systems—Teachers	5,322.20	
	Commission—Literacy	62.60	$ 374,255.22
Natural Resources & Environmental Protection	Nature Preserves	26.31	
	Office of the Secretary	394.18	
	Office of General Counsel	260.76	
	Environmental Protection	7,113.30	
	Natural Resources	15,611.45	
	Surface Mining Reclamation & Enforcement	6,091.85	29,497.85
Transportation	Administrative Services	159,387.36	
	Highways	39,536.47	
	Vehicle Regulations	2,834,063.53	3,032,987.36
Economic Development	Office of the Secretary	630.00	
	Dept. of Business Development	58,983.83	59,613.83
Public Protection & Regulation	Election Finance Registry	3,300.12	
	Board of Tax Appeals	223.42	
	Commission—Harness Racing	119.55	
	Commission—Public Service	3,329.68	
	Public Advocacy	2,382.20	
	Alcoholic Beverage Control	725.42	
	Financial Institutions	529.68	
	Housing, Building & Construction	7,101.86	
	Insurance	489.50	18,201.43
Human Resources	Office of the Secretary	1,725.11	
	Office of Personnel Management	816.87	
	Office of Communications & Council Affairs	1,789.35	
	Office of Administrative Services	34,787.69	
	Office of General Counsel	611.56	
	Office of the Inspector General	6,492.56	
	Office of Policy & Budget	82.23	
	Office of the Ombudsman	398.30	
	Mental Health & Mental Retardation Services	138,949.50	
	Commission for Health Economics Control	359.26	

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
	Health Services	330,681.94	
	Commission for Handicapped Children	743.69	
	Employment Services	270,310.51	
	Social Insurance Administration	251,976.24	
	Medicaid Services Administration	72,655.98	
	Social Services	75,785.78	$1,188,166.57
Finance & Administration	Capital Plaza Authority	5,924.05	
	Higher Education Assistance Authority	471.77	
	Office of the Secretary	230.41	
	State Office of Social Security	1,000.47	
	Administration	14,149.14	
	Office of Governmental Services Center	100.56	
	Facilities Management	30,970.29	
	Information Systems	1,788.17	54,634.86
Energy	Office of Administration	2,089.56	
	Energy Production & Utilization	5,231.39	
	Energy Research and Development	2,863.62	10,184.57
Corrections	Board of Parole	2,619.28	
	Office of the Secretary	989.63	
	Office of Administrative Services	8,827.64	
	Community Services & Facilities	39,752.10	
	Office of Correctional Training	2,219.13	
	Adult Institutions	3,632,438.63	
	Office of General Counsel	2,946.12	3,689,792.53
Tourism	Kentucky State Fair	15,734.18	
	Fish & Wildlife	41,894.88	
	Parks	99,989.27	
	Office of the Secretary	703.10	
	Travel Development	936.92	159,258.35
Labor	Commission—Occupational Safety & Health Review	515.64	
	Office of the Secretary	1,137.39	
	Workplace Standards	2,354.91	
	Worker's Claims	751.13	4,759.07
Universities	Eastern Kentucky University	511.06	
	Kentucky State University	3,648.40	
	Morehead State University	3,118.21	
	Murray State University	88.88	
	Northern Kentucky University	2,471.49	
	University of Kentucky	28,900.64	
	University of Lousiville	271.50	
	Western Kentucky University	310.01	$ 39,320.19
GRAND TOTAL			**$8,929.170.71**

Source: Finance and Administration Cabinet, Division of Accounts Report

STATE AGENCIES PURCHASES FROM INDUSTRIES FOR THE BLIND FISCAL YEAR 1986-87

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Revenue	Rev.-Professional & Support Services	$ 294.92	$ 294.92
General	Government Agriculture	275.56	
	Military Affairs	3,370.72	
	Council—Higher Education	14.03	3,660.31
Justice	State Police	1,097.84	1,097.84
Education & Humanities	Blind	4,545.80	
	Education	42,870.73	47,416.53
Natural Resources & Environmental Protection	Natural Resources	131.86	131.86
Transportation	Highways	36,246.07	36,246.07
Public Protection & Regulation	Election Finance Registry	41.00	41.00
Human	Resources Office of Administrative Services	5,038.32	
	Mental Health & Mental Retardation Services	3,723.22	
	Social Services	5,130.37	13,891.91
Finance & Administration	Capital Plaza Authority	111.68	
	Administration	548.03	
	Facilities Management	3,903.21	4,562.92
Energy	Office of Administration	635.66	635.66
Corrections	Adult Institutions	45,850.93	45,850.93
Tourism	Kentucky State Fair	7,280.83	
	Fish & Wildlife	1,099.88	
	Parks	9,465.04	17,845.75
Universities	Eastern Kentucky University	12,123.24	
	Kentucky State University	799.14	
	Morehead State University	5,784.80	
	Murray State University	309.60	
	Northern Kentucky University	2,160.00	
	University of Kentucky	33,887.15	
	Western Kentucky University	11,004.41	66,068.34
GRAND TOTAL			**$ 237,744.04**

Source: Finance and Administration Cabinet, Division of Accounts Report

Attachment 6 to APPENDIX I

STATE AGENCIES PURCHASES FROM INDUSTRIES FOR THE BLIND FISCAL YEAR 1987-88

CABINET	DEPARTMENT	SUBTOTAL	TOTAL
Revenue	Rev.-Professional & Support Services	$ 215.28	$ 215.28
General	Government Agriculture	53.64	
	Military Affairs	3,365.80	3,419.44
Justice	State Police	805.76	805.76
Education & Humanities	Blind	2,275.29	
	Education	33,804.27	36,079.56
Natural Resources & Environmental Protection	Natural Resources	69.16	69.16
Transportation	Administrative Services	96.49	
	Highways	28,224.59	28,321.08
Public Protection & Regulation	Public Service	7.55	7.55
Human Resources	Office of Administrative Services	5,319.54	
	Mental Health & Mental Retardation Services	4,068.99	
	Social Services	5,606.81	14,995.34
Finance & Administration	Capital Plaza Authority	206.28	
	Administration	303.37	
	Facilities Management	5,716.89	
	Finance Special Accounts	802.66	7,029.20
Energy	Office of Administration	1,256.06	1,256.06
Corrections	Adult Institutions	34,673.67	34,673.67
Tourism	Kentucky State Fair	10,021.62	
	Fish & Wildlife	398.68	
	Kentucky Horse Park	421.04	
	Parks	11,512.93	22,354.27
Universities	Eastern Kentucky University	12,759.81	
	Kentucky State University	2,453.48	
	Morehead State University	12,723.90	
	Northern Kentucky University	1,948.78	
	University of Kentucky	34,132.79	
	Western Kentucky University	12,888.97	$ 76,907.73
GRAND TOTAL			$ 226,134.10

Source: Finance and Administration Cabinet, Division of Accounts Report

Attachment 6 to APPENDIX I

INVITATIONS FOR BID
FILE REVIEW
1988

COMMODITY	AGENCY	VENDOR AVAIL	#IFB'S MAILED	RESPONSIVE BIDS	NO BIDS
Brake Vacuum System	Voc. Ed.	3	3	1	1
Welding Equipment	Transportation Cabinet	63	12	8	1
Uniforms	Dept. Surface Mining	68	26	7	3
Patrol Boats	Water Patrol	57	14	2	3
Drafting Equipment	Education	97	33	17	0
Van Wheel Chair Lift	Voc. Rehab.	15	12	5	2
Plumbing Supplies	Corrections	131	27	3	2
Insurance	Real Estate Commission	47	27	7	1
Remote Control Vehicle	State Police	5	5	2	2
Physics	Voc. Ed	10	10	4	5
Training Aid	Voc. Ed	37	12	3	3
Hardtop Wagons	Abandoned Lands	130	24	11	1
Poultry	Corrections	6	7	0	0
Gun Belt Equipment	Water Patrol	114	12	6	1
Bedspreads	Parks	102	17	4	2
Packaged Foods	NA	216	74	10	1
Furnish and Install Playgd.	Education	104	22	3	6
St. Police Emblem	State Police	146	18	7	3
Equipment Rental Serv.	Transportation	10	8	3	0
Continuous Forms	Judicial/Environment	37	26	11	4
Cutch Plates	Transportation (Div.)	216	22	8	1
Metering Pumps	Dept. of Health Serv.	33	10	3	2
Machine Shop Supplies	Education (Voc. Ed.)	243	14	2	1
Miscellaneous Machinery	Education	245	20	8	3
Cereal	All State Agencies	220	37	2	1
Lab Instrument System	Education	37	11	2	2
Rotenone	Fish & Wildlife	116	15	3	3
Uphls. Fldng. Chr. w/Tck.	State Fair Board	245	48	3	20
Janitorial Service	CHR Field Service	140	55	5	0
Picnic Tables	Parks	105	22	6	3
Spectrometer Systems	Transportation	28	11	0	8
Welding Cases	Education	66	12	4	2
Building Material	Education	114	17	6	2
Packaged Foods	Agencies	209	55	3	1
Mis. Machinery	Education (Voc. Ed.)	240	13	3	6
Electronic Equip.	Education	160	14	14	1
Lite fix/exhaust fans	Parks	149	49	7	6
Janitorial Service	CHR Field Service	135	62	6	1
Auto Accessories	Transportation	175	14	6	1
Shelled Corn	Corrections	41	11	4	0
Plumbing Supplies	Fish & Wildlife	139	19	2	3
Lithograph Tele. Dir.	Telecommications (Fac)	151	38	3	10
Core Drill Bits	Highways	23	14	6	4
Groceries Parks	Parks	209	71	11	1
Folders	Social Service	4	3	2	2
Lab Equip.	State Police	10	10	1	6
Pressure Washer	State Fair Board	45	11	2	1
Garbage Disposal Service	Transportation	20	15	3	4
Medical Equipment	MH/MR/Corrections	182	22	10	1
Ariel Seeding Service	Wildlife	38	14	3	0
1988 Sum		5,136	1,118	252	137
1988 Average		103	22	5	3
1987-88 Sum		10,075	1,984	484	267
1987-88 Average		101	20	5	3

SOURCE: Invitation for Bid Files, Division of Purchases

Attachment 7 to APPENDIX I

SENATE MEMBERS
Charles W. Berger
Assistant President Pro Tem
Joe Wright
Majority Floor Leader
John D. Rogers
Minority Floor Leader
David K. Karem
Majority Caucus Chairman
Dr. Jack Trevey
Minority Caucus Chairman
Helen Garrett
Majority Whip
Eugene P. Stuart
Minority Whip

APPENDIX J

LEGISLATIVE RESEARCH COMMISSION

State Capitol **Frankfort, Kentucky 40601** **502-564-8100**

John A. "Eck" Rose, Senate President Pro Tem
Donald J. Blandford, House Speaker
Chairmen
Vic Hellard, Jr.
Director

HOUSE MEMBERS
Pete Worthington
Speaker Pro Tem
Gregory D. Stumbo
Majority Floor Leader
William Strong
Minority Floor Leader
Jody Richards
Majority Caucus Chairman
Ken Harper
Minority Caucus Chairman
Kenny Rapier
Majority Whip
Bill Lile
Minority Whip

MEMORANDUM

To: Subcommittee on State Purchasing

From: Scott Varland, Staff Attorney

Date: June 5, 1989

Subject: The Capitol Projects and Bond Oversight Committee's concerns with regard to the state leasing statutes

KRS 56.800-56.830 establishes the law for state leasing of office space. KRS 56.800-56.830 addresses such matters as: fixing responsibility for state leasing of office space with the Finance and Administration Cabinet, the procedure for renewing leases and awarding new leases, including built-to-suit leases, terms of leases, calculation of rent, and lease modification.

However, the heart of KRS 56.800-56.830 can be found at KRS 56.802 which covers most of the procedure for the awarding of a new lease, judicialreview of the awarding of a new lease, and the responsibility of the Capital Projects and Bond Oversight Committee to review a report on any new lease when the annual rental cost exceeds $200,000.

In the course of reviewing a report on the awarding of a new lease, the Capital Projects and Bond Oversight Committee developed several concerns with regard to KRS 56.802. A summary of KRS 56.802 and the committee's concerns about it follows.

In analyzing KRS 56.802, probably the best place to begin is KRS 56.806 which refers to the renewal of a lease. The last sentence of KRS 56.806 reads:

> Subject to the agreement of the lessor, a lease in which the final automatic renewal period has expired, or will expire as of the end of the then current term, may be renewed upon the same terms and conditions without newspaper advertisement for space.

In the situation that the Capital Projects and Bond Oversight Committee reviewed, there was a current lessor or landlord. However, he did not want to renew his lease on the same terms, and so it was appropriate for the Finance and Administration Cabinet to turn to KRS 86.802 which governs the awarding of a new lease.

Relevant KRS 56.802 procedure begins with the Finance and Administrative Cabinet placing advertisements for space. An advertisement "shall state the last time, date and place that responses will be received."

KRS 56.802(2), with regard to the situation that the Capital Projects and Bond Oversight Committee reviewed, the Finance and Administration Cabinet placed three advertisements that ran on three separate occasions from October of 1986 to December of 1987. The current landloard did not respond to any of the advertisements in writing prior to the deadlines set forth in the advertisements.

According to KRS 56.802(3), once a deadling passes the Finance and Administration Cabinet, to determine suitability, shall inspect spaces proposed to be leased and make a report of its findings. I am unawareof the Finance and Administration Cabinet following this procedure with regard to the current landlord's building.

Apparently, the Finance and Administration Cabinet interpreted KRS 56.802(2) and 56.802(3) as not requiring either the Cabinet or a current landlord, in their dealings with each other, to comply with the subsections' provisions, for the Cabinet continued to deal with the current landlord even though it seems that neither he nor the Cabinet had complied with KRS 56.802(2) and 56.802(3).

The Cabinet then set up two tracks of negotiation. One was with the current landlord, and one was with individuals who had complied with KRS 56.802(2) and 56.802(3). The latter negotiation resulted in the Cabinet focusing on one potential landlord. The Cabinet then negotiated with the current landlord and the potential landlord for over a year. During this time, the potential landlord may not have always known what his status was, and whether the current landlord was still in the competition for the lease. Even though at one point the potential landlord signed a preliminary lease, the lease was ultimately awarded to the current landlord. Pursuant to KRS 56.802(4), the Finance and Administration Cabinet had "the broadest possible power and authority" in awarding the lease.

KRS 56.802(4) goes on to establish the means for challenging a Cabinet decision. A losing bidder must take the Commonwealth to court and meet the fraud standard of judicial review. That is, a plaintiff must prove fraud to prevail. Fraud is difficult to prove. If a plaintiff fails to prove fraud, he is liable to the Commonwealth for court costs, including reasonable attorneys' fees. An individual such as the potential landlord in this instance would be discouraged from bringing suit because of the difficulty in proving fraud and the threat of having to pay costs if a suit fails.

Out of the Committee's review of the leasing situation, the Committee developed at least six concerns.

1. Should the leasing procedure begin with competitive sealed bidding?
2. Should procedural requirements apply to a current landlord?
3. Should the Cabinet be required to keep interested parties informed as to the general status? That is, should they be kept informed as to how seriously they are being considered for the lease and who their competition is?
4. Should the Cabinet's discretion in the awarding of leases be narrowed to something less than "the broadest possible power and authority"?
5. Should the fraud standard of judicial review be replaced with a lower standard that will not discourage lawsuits as much?
6. Should the threat of having to pay court costs be removed?

If these questions are answered affirmatively, then the necessary changes in the law should conceivably be brought about in one of two ways. KRS 56.802 could be amended. In the alternate, to streamline the statutes, most, if not all, of KRS 56.800-56.830 would be repealed, and the appropriate landguage would be placed in KRS Chapter 45A.

The fundamental question that needs to be answered before deciding which approach to take is: "Is the leasing of office space so unique that it should have its own body of law, or is it similar enough to other types of procurement that it could be included in KRS Chapter 45A"?

An example of the raising of the fundamental question is that KRS Chapter 45A requires that state contracts be awarded by: competitive sealed bidding, competitive negotiation, noncompetitive negotiation, or small purchase procedures. If this bidding scheme can, in an efficient manner, accommodate the leasing of office space, then that establishes an argument for placing the leasing of office space under KRS Chapter 45A. However, if that bidding system would be unworkable or too cumbersome for the leasing of office space, that eastablishes an argument for amending KRS 56.800-56.830 to address the concerns of the Capital Projects and Bond Oversight Committee. Of course, the leasing of office space could be placed under KRS Chapter 45A in such way as to avoid some problems arising from applying all the general provisions of KRS Chapter 45A to the leasing of office space.

APPENDIX K

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
SUBCOMMITTEE ON STATE PURCHASING
State Purchasing Study
Recommendation Worksheet

RECOMMENDATION 1:
LIMIT STATUTORY EXEMPTIONS FROM COMPETITION

In order to better ensure maximized competition the General Assembly should amend KRS Chapter 45.360 to repeal exemptions for: food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies when judged by the FAC; commercial items purchased for resale; personal service contracts; public utilities; library books; rates fixed by law or ordinance; commodities, services, and instructional materials which, in the judgement of the FAC, are available from only one source; and interest in real property. Amend KRS 45A.095, concerning noncompetitive purchasing, to allow the following exemptions: public utilities; library books; rates fixed by law or ordinance; commodities, services, and instructional materials which, in the judgement of the FAC are available from only one source; and interest in real property. Amend KRS 45.700-720 to include provisions for competitiveness through a form of request for proposals and public notice as recommended by the American Bar Association Model Procurement Code; and Amend KRS Chapter 45A.095 to delete provisions for noncompetitive purchasing except for emergency and sole source purchases.

AGENCY RESPONSE	SUBCOMMITTEE ACTION
Disagrees. This would effectively negate non competitively negotiated contracts for various goods and services that are not practicable to be competitively bid. Competitive acquispetitive acquisition of these items will result in additional costs and a probable increase in agency requests for "sole source" determinations, therein cheapening the competitive procurement process. In addition, the Finance Cabinet's existing personal services contract public notice policy, combined with the LRC's review is at least functionally equivalent, if not in excess, of the ABA personal service contract procedures.	Amended to delete the establishment of sole source and emergency purchasing as the only the only conditions warranting noncompetitive negotiation; and to provide a definition in a sole source situation.

Recommendation 1 as amended was accepted.

RECOMMENDATION 2A:
UTILIZE CURRENT FAC SMALL PURCHASE LIMIT

The Finance and Administration Cabianet should encourage any agency that frequently requires routine purchases over their small purchase limit to procure the item through the Finance and Administration Cabinet under the Cabinet's $5,000 small purchase provision.

OR

RECOMMENDATION 2B:
DELEGATE INCREASED LIMITS

OR

The General Assembly should amend KRS 45A.100, to allow the secretary the authority to grant agencies delegated authority to purchase items that are routinely purchased but frequently exceed their small purchase limits.

OR

RECOMMENDATION 2C:
BROADEN CRITERIA FOR RECOMMENDED INCREASE

The General Assembly should amend KRS 45A.100 to include documented agency requests deemed justifiable by the Secretary of the Finance and Administration Cabinet as a statutory basis for recommending an increase in small purchase limits of selected agencies.

AGENCY RESPONSE	SUBCOMMITTEE ACTION
Agrees with Recommendation 2A. The Cabinet currently encourages agencies in this situation to purchase authorization. This permits the Cabinet to determine whether it might be better to acquire the needed item through small purchase procedures or through competitive bidding. There are no strenuous objections to either Recommendations 2B or 2C. However, implementation of either will in time lead to evasion of the centralized buying system installed by the KMPC.	Accepted Recommendation 2B.

RECOMMENDATION 3A:
SINGLE DEFINITION OF AN EMERGENCY PURCHASE

The General Assembly should create a new section of Chapter 45A to define emergency conditions for purchases of commodities, personal services, capital construction and equipment. An emergency condition is a situation which creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten: 1) the functioning of government; 2) the preservation or protection of property; or 3) the health or safety of any person.

The General Assembly should amend KRS 45A.095 to require emergency purchase files to include the name of the vendor receiving the contract and written determination why the vendor was selected. Emergency purchase file should be made public record and be reviewed by an independent entity. Emergency procurements shall be made with competition as is practicable under the circumstances.

OR

RECOMMENDATION 3B:
DEFINE EMERGENCY FOR COMMODITY PURCHASES

The General Assembly should create a new section of Chapter 45A to define emergency conditions for the procurement of commodities. An emergency condition is a situation which creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten: 1) the functioning of government; 2) the preservation of protection of property; or 3) the health or safety of any person.

KRS 45.700 and 45.750, relating to emergency purchases for capital construction and equipment and personal service contracts, should be amended by changing the requirements for conditions of emergency from discretionary language to inclusive language. Furthermore, these provisions should be incorporated into the Kentucky Model Procurement Code.

The General Assembly should amend KRS 45A.095 to require emergency purchase files to include the name of the vendor receiving the contract and written determination why the vendor was selected. Emergency purchase files should be made public record and be reviewed by an independent entity. Emergency procurements shall be made with competition as is practicable under the circumstances.

AGENCY RESPONSE	SUBCOMMITTEE ACTION
Disagrees. No definition can adequately encompass all of the kinds of circumstances that might result in the creation of an emergency. Although poor planning should not be the basis for an emergency purchase, the fact remains that it does occur and can result in a condition of bona fide emergency. This does not happen regularly and there is no evidence that emergency purchase provisions are abused. The Cabinet does agree that the name of the vendor and a written explanation for the selection of the vendor should be included emergency purchase files. This is currently being implemented in the Policy Manual and legislative action is not required.	Accepted Recommendation 3A.

RECOMMENDATION 4:
RECIPROCAL PREFERENCE FOR KENTUCKY VENDORS

The General Assembly should amend KRS 45A.470, regarding preference for prison industries and industries for the blind, to provide for reciprocal provisions for in-state vendor and product preference.

AGENCY RESPONSE	SUBCOMMITTEE ACTION
Disagrees. In-state preference laws are misguided and do not serve any purpose useful to the general public. Any benefits that may be perceived as flowing to Kentucky vendors from an in-state preference law are not worth the actual cost to Kentucky taxpayers of the administration of such a law.	Rejected Recommendation 4.

RECOMMENDATION 5:
BROADEN CRITERIA FOR PRODUCT ACCEPTABILITY

The General Assembly should amend KRS 45A.070 to broaden the statutory criteria for source selection to include subjective criteria such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose in determining the acceptability of responsive bids.

AGENCY RESPONSE	SUBCOMMITTEE ACTION
Agrees. The Finance and Administration Cabinet has no objections to Recommendation 5.	Accepted Recommendation 5.

RECOMMENDATION 6A:
REPORT PURCHASES OF ALL STATE ENTITIES

In order to establish a central data source for all governmental purchasing which will enhance the state's ability to use its cumulative purchasing power to lower prices for high volume commodities, the General Assembly should: amend KRS Chapter 45.360 to require the FAC's Division of Purchases to compile an annual report of the purchasing expenditures of all state agencies, including local government price contract purchases; and amend KRS Chapter 45.301 to require the FAC's Division of Accounts to report to the Division of Purchases all purchasing expenditures for state agencies; and amend KRS Chapter 164A.575 to require universities to report all purchasing expenditures to the FAC's Division of Purchases; and amend KRS Chapter 45.365(1) to require political subdivisions to report price contract purchasing to the FAC's Division of Purchases; and amend KRS Chapter 45A.050 to require the administrative bodies not in the state's accounting system to submit an annual report of their purchasing expenditures to the FAC's Division of Purchases.

OR

RECOMMENDATION 6B:
REPORT PURCHASES BY AGENCIES IN STARS

In order to establish a central data source for governmental purchasing which will enhance the state's ability to use its cumulative purchasing power to lower prices for high volume commodities, the General Assembly should amend KRS Chapter 45.301 to require the FAC's Division of Accounts to report to the Division of Purchases all purchasing expenditures for state agencies. The General Assembly should also amend KRS Chapter 45.360 to require

the FAC to compile an annual report of purchasing expenditures for all state agencies on the state's accounting system.

AGENCY RESPONSE	SUBCOMMITTEE ACTION
Agrees that the reporting program outlined in Recommendation 6A may enable the Division of Purchases to more accurately gauge commodity utilization under state price contracts and obtain better prices based on volume of usage. The most feasible way to capture and report this data is through the KAPS system. Since KAPS is still in a developmental stage, Recommendation 6B may be more feasibly implemented during the 1990-92 biennium. Once KAPS is operational, the Cabinet can look into expanding it to capture information about imprest cash, university and political subdivisions' purchases.	Accepted Recommendation 6B.

RECOMMENDATION 7A:
PROCUREMENT POLICY OFFICE

In order to make the procurement function more independent the General Assembly should create a new section of KRS Chapter 45A to establish a Policy Office within the Finance and Administration Cabinet that would be responsible for promulgating regulations and deciding matters of policy. The Policy Office shall be a three member board appointed by the Governor and confirmed by the Legislature, with board members serving six year terms. The six year terms shall be staggered so that one term expires every two years. No member of the Policy Office shall be eligible to be the Chief Procurement Officer.

OR

RECOMMENDATION 7B:
DESIGNATION OF CHIEF PURCHASING OFFICER

In order to make the procurement function more independent the General Assembly should amend KRS 45A.030(3) to indicate that the Chief Procurement Officer is the Finance and Administration Cabinet's Commissioner of the Department for Administration or the Director of the Division of Purchases. The Chief Procurement Officer shall be responsible for the day-to-day operations of Kentucky's procurement function.

OR

RECOMMENDATION 7C:
TERM OF CHIEF PURCHASING OFFICER

In order to make the procurement function more independent the General Assembly should amend KRS 45A.030(3) to indicate that the Chief Procurement Officer shall be appointed by the Governor and serve a ten year term. The Chief Procurement Officer shall have a

minimum of eight years procurement experience. The Chief Procurement Officer shall be responsible for the day-to-day operations of Kentucky's procurement function.

AGENCY RESPONSE	SUBCOMMITTEE ACTION
Disagrees. The Finance Cabinet cannot support the separation of procurement policy making from day-to-day procurement operations. If the procurement function is insulated from the political process, the accountability factor that is supposed to inhere in the political process will be lost in the procurement process. As chief procurement officer, the Secretary of Finance is ultimately responsible and accountable for proper administration of the procurement system. Absent a compelling reason, there is no need to change Kentucky's system which combines accountability and administration in a single officer.	Rejected Recommendations 7A, 7B and 7C.

RECOMMENDATION 8A:
REALIGN PROCUREMENT DIVISIONS

In order to elevate the status of the procurement organization the General Assembly should amend KRS Chapter 42.023 to place the FAC's procurement functions in the Department for Administration or amend KRS Chapter 42.027 to place the FAC's procurement functions in the Department for Facilities Management. This department shall be responsible for all procurement functions of the Finance and Administration Cabinet including the procurement of commodities, services, leasing and capital construction.

OR

RECOMMENDATION 8B:
CREATE A NEW DEPARTMENT FOR PROCUREMENT

In order to elevate the status of the procurement organization the General Assembly should create a new section of KRS Chapter 42 establishing a new department within the Finance and Administration Cabinet that is responsible for the state's procurement functions including the procurement of commodities, services, leasing and capital construction.

AGENCY RESPONSE	SUBCOMMITTEE ACTION
Disagrees. The organization of the procurement function in Kentucky has proven both effective and efficient over a period of 15 years. Although both are involved in procurement, there are differences between the functions and duties of the Division of Purchases and Contracting and Administration that experience has taught warrants separation. Reconsolidation of procurement functions in either the Department for Administration or the Department for Facilities Management will not achieve the objective of elevating the status of the procurement organization. In addition, administrative costs will go up if the procurement function is elevated to departmental status.	Accepted Recommendation 8B.

RECOMMENDATION 9:
PROCUREMENT REVIEW AND ADVISORY BOARD

The General Assembly should create a Procurement Review and Advisory Board to act as a review forum for vendors and as an independent avenue for aggrieved participants of the procurement system. The board shall issue formal advisory opinions that may be used as evidence of good or bad faith in the event of court action. The advisory opinions shall address: 1) the ethical conduct of purchasing officials or vendors; 2) the propriety of procurement transactions either before or after the transaction has occurred.

The Board shall review all "emergency purchases"; and develop standards for ethical conduct for persons involved in the purchasing system.

The board shall be available to serve: all state agencies, affiliated boards, commissions, and associations; all political subdivisions (including school districts) which have elected to operate under Kentucky's Model Procurement Code (KRS 45A.345 through 45A.460); and all vendors to the above entities.

The Board shall be composed of three members from the private sector appointed by the Governor from nominations provided by professional organizations (ABA, NASPO_____). Appointments shall be confirmed by the Senate during regular sessions of the General Assembly. Terms of office shall be four years. Members shall receive $100 per meeting and be reimbursed for expenses.

The board shall forward any determination of wrong doing or violation of the laws to the Attorney General or to the Auditor of Public Accounts for appropriate action.

For administrative purposes, the Procurement Review and Advisory Board shall be attached to the Office of the Auditor of Public Accounts.

AGENCY RESPONSE	SUBCOMMITTEE ACTION
Disagrees. Aggrieved, disgruntled or losing vendors would unquestionably view this board as having ultimate control over public procurement and would appeal to it, no matter it, no matter how lacking in merit their claims may be. The board would have considerable authority but no responsibility. The claims of losing offerors do not ordinarily raise allegations of ethical misconduct. Fewer than 20 protests a year have been filed by participants of the process. If the General Assembly chooses to create such a body it should do so on the basis of demonstrated need. There are at least two problems with administrative attachment to the Auditor's Office. First, due to youth and inexperience, the Auditor's staff often lack real knowledge of how government works, and second, Auditors are elected and are not unknown for having political agendas of their own to advance.	Amended to establish compensation for members at $100 per meeting and to require that operations and need for Board be reevaluated after its initial two years. Accepted Recommendation 9 as amended.

RECOMMENDATION 10:
CONSOLIDATE PROCUREMENT STATUTES

In order to clarify Kentucky purchasing laws and reduce repetitiveness, the General Assembly should repeal all procurement related statutes in KRS Chapter 45 and merge appropriate sections into KRS Chapter 45A.

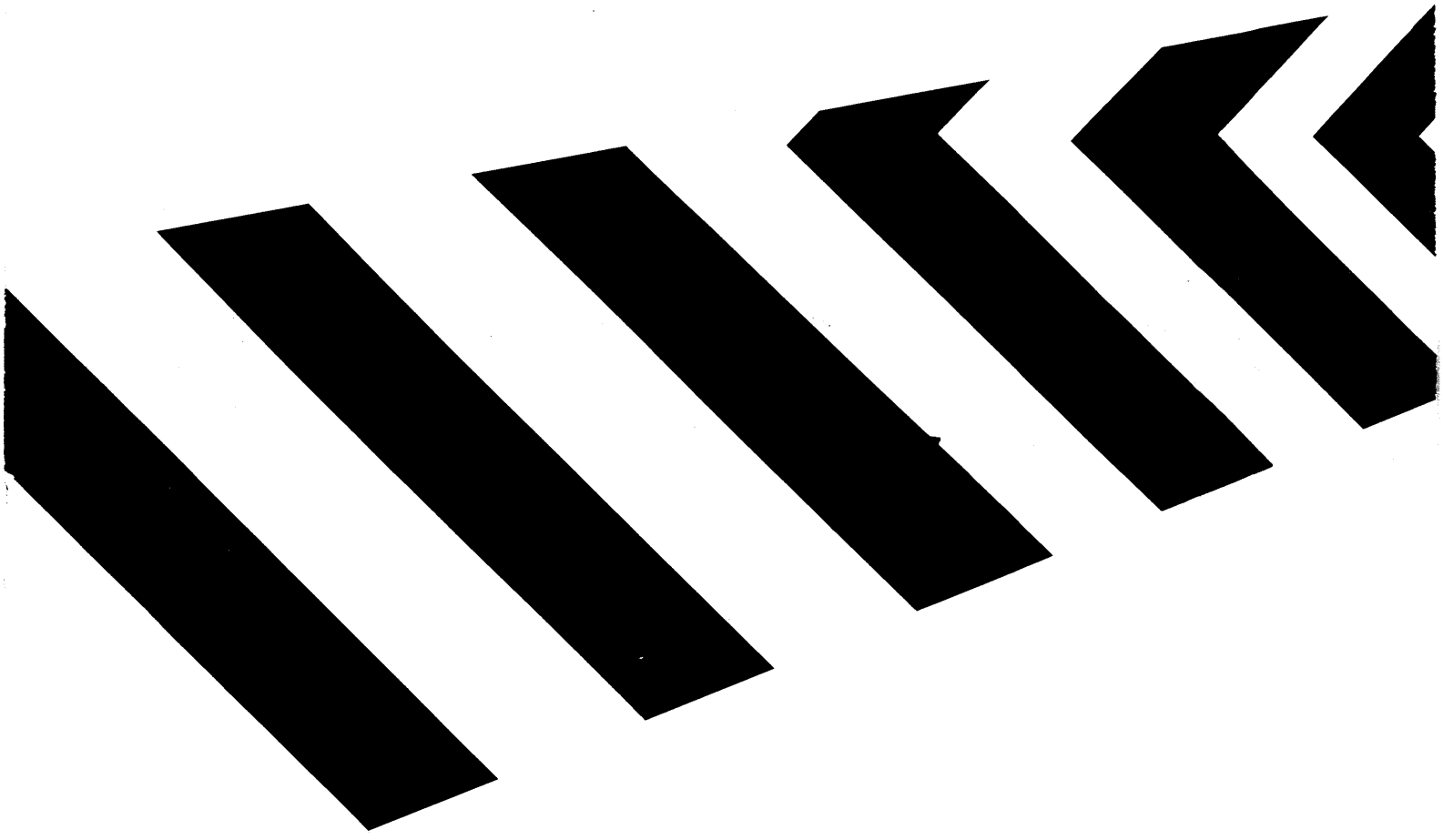
AGENCY RESPONSE	SUBCOMMITTEE ACTION
The Finance and Administration Cabinet had no substantive objection to Recommendation 10. The Cabinet does not concur with the recommendation that KRS Chapter 45.458 to 45.458, relating to "prompt payment," be merged into KRS Chapter 45A, since the prompt payment law relates to financial administration rather than to procurement.	Amended to delete merging KRS 45.453 to 45.458 into KRS Chapter 45A. Accepted Recommendation 10 as amended

PROPOSED RECOMMENDATION:
State Leasing of Space

The Kentucky General Assembly should amend the Kentucky Revised Statutes to require that any space rental by the Commonwealth for an annual rental cost which will exceed $200,000 be identified and authorized in the biennial executive budget.

AGENCY RESPONSE	SUBCOMMITTEE ACTION

PROPOSED RECOMMENDATION:
State Leasing of Space

KRS Chapter 56 should be written to eliminate duplications and clarify subtle contradictions. The leasing statute should be amended to require increased documentation and reporting of various stages of the leasing process. The Auditor of Public Accounts should be required to audit the Finance and Administration Cabinet's complaince with KRS 56.800 to .820 at least once every two years and to report his findings to the Capital Projects and Bond Oversight Committee. Furthermore, the judicial standard of review for vendors seeking relief from the decisions or state leasing officals should be lowered.

AGENCY RESPONSE SUBCOMMITTEE ACTION