

154A.600 Purchase, lease, or lease-purchase of goods or services -- Investigation of prospective contractees -- Disclosure requirements -- Prohibited contracts, exceptions -- Vendor's performance bond, letter of credit or deposit of security -- Liquidated damages -- Laws governing contracts.

- (1) The corporation may purchase, lease, or lease-purchase such goods or services as are necessary for effectuating the purposes of this chapter. Applicable leases, purchases, and lease-purchases shall be reported to the capital projects and bond oversight committee for its review and determination in accordance with the provisions of KRS 45.750 to 45.810. The corporation shall not contract with any person or entity for the total operation and administration of the state lottery, but may make procurements which integrate functions such as lottery game design, lottery ticket distribution to retailers, supply of goods and services, and advertising. In all procurement decisions, the corporation shall take into account the particularly sensitive nature of the state lottery and shall act to promote and ensure security, honesty, fairness and integrity in the operation and administration of the lottery and the objectives of raising net proceeds for the benefit of the public purpose described in this chapter.
- (2) The corporation shall investigate the financial responsibility, security, and integrity of any person who submits a bid, proposal or offer as part of a major procurement. At the time of submitting such bid, proposal, or offer to the corporation, the corporation may require the following items:
 - (a) A disclosure of the vendor's name and address and, as applicable, the name and address of the following:
 1. If the vendor is a corporation, the officers, directors, and each stockholder in such corporation; except that, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of such securities need be disclosed;
 2. If the vendor is a trust, the trustee and all persons entitled to receive income or benefit from the trust;
 3. If the vendor is an association, the members, officers, and directors; and
 4. If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.
 - (b) A disclosure of all the states and jurisdictions in which the vendor does business, and the nature of the business for each such state or jurisdiction.
 - (c) A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including, but not limited to, lottery goods and services, and the nature of the goods or services involved for each such state or jurisdiction.
 - (d) A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a gaming license of any kind, and the disposition of such in each such state or jurisdiction. If any gaming license has been revoked or has not

been renewed or any gaming license application has been either denied or is pending and has remained pending for more than six (6) months, all of the facts and circumstances underlying the failure to receive such a license shall be disclosed.

- (e) A disclosure of the details of any finding of guilt, in a state or federal court, against the vendor for any felony or any other criminal offense other than a traffic violation.
 - (f) A disclosure of the details of any bankruptcy, insolvency, reorganization, or any pending litigation of the vendor.
 - (g) Such additional disclosures and information as the corporation may determine to be appropriate for the procurement involved. If the vendor subcontracts any substantial portion of the work to be performed under the contract to a subcontractor, the vendor shall disclose all of the information required by this subsection for the subcontractor as if the subcontractor were itself a vendor.
- (3) A contract for a procurement with any vendor subject to subsection (2) of this section who has not complied with the disclosure requirements described in subsection (2) of this section shall not be entered into, and any contract with such a vendor is unenforceable. Any contract with a vendor who does not comply with such requirements for periodically updating such disclosures during the tenure of contract as may be specified in such contract shall be terminated by the corporation. This subsection and subsection (2) of this section shall be construed broadly and liberally to achieve the ends of full disclosure of all information necessary to allow for a full and complete evaluation by the corporation of the competence, integrity, background and character of vendors for major procurements.
- (4) A contract shall not be entered into with any vendor who has been found guilty of a felony committed within the preceding ten (10) years, unless the corporation determines that:
- (a) The vendor has been pardoned or the vendor's civil rights have been restored; and
 - (b) Subsequent to such findings of guilt the vendor has engaged in the kind of law-abiding commerce and good citizenship that would reflect well upon the integrity of the lottery; or
 - (c) If the vendor is a firm, association, partnership, trust, corporation or other entity, the vendor has terminated its relationship with the individual whose actions directly contributed to the vendor's guilt.
- (5) Each vendor shall, at the execution of the contract with the corporation, post a performance bond or letter of credit from a bank acceptable to the corporation, in an amount equal to the full amount estimated to be paid annually to the vendor under the contract. In lieu of the bond, a vendor may, to assure the faithful performance of its obligations, deposit and maintain with the State Treasurer securities that are interest bearing or accruing and that, with the exception of those specified in paragraph (a) or (b) of this subsection, are rated in one (1) of the three (3) highest classifications by an established nationally recognized investment rating service.

Securities eligible under this subsection are limited to:

- (a) Certificates of deposit issued by solvent banks or savings associations organized and existing under the laws of this state or under the laws of the United States and having their principal place of business in this state;
 - (b) United States bonds, notes, and bills for which the full faith and credit of the government of the United States is pledged for the payment of principal and interest;
 - (c) General obligation bonds and notes of any political subdivision of the state; or
 - (d) Corporate bonds of any corporation that is not an affiliate or subsidiary of the depositor. Such securities shall be held in trust and shall have at all times a market value at least equal to the full amount estimated to be paid annually to the lottery vendor under contract.
- (6) Every contract entered into by the corporation pursuant to this section shall contain a provision for payment of liquidated damages to the corporation for any breach of contract by the vendor.
- (7) Each vendor shall be qualified to do business in this state and shall file appropriate tax returns as provided by the laws of this state. All contracts under this section shall be governed by the laws of this state.

Effective: December 15, 1988

History: Created 1988 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 17, effective December 15, 1988.