

45A.717 Contingency fee for legal services under personal service contract -- Powers and duties of head of contracting body -- Review of responses to requests for proposals -- Limits on contingency fee -- Payment only from money received pursuant to judgment or settlement -- Standard addendum to contract -- Posting on Web sites -- Records -- Report -- Common law authority abrogated.

- (1) The head of a contracting body, which includes constitutional officers, shall not award a personal service contract for legal services that provides for payment by contingency fee unless, prior to the award, the head of the contracting body determines in writing:
 - (a) The contingency fee is both cost-effective and in the public interest;
 - (b) Sufficient and appropriate legal and financial resources do not exist within the contracting body;
 - (c) The amount of time and labor required to perform the requested services;
 - (d) The novelty, complexity, and difficulty of the matter;
 - (e) The skill required to perform the requested services properly;
 - (f) The geographic area where the legal services are to be provided; and
 - (g) The experience desired for the particular kind of legal services to be provided.
- (2) The head of the contracting body or his or her designee shall participate in reviewing and evaluating the responses to the requests for proposals and discussions with offerors.
- (3) A contingency fee shall not exceed:
 - (a) Twenty percent (20%) of the amount recovered up to ten million dollars (\$10,000,000);
 - (b) Fifteen percent (15%) of the amount recovered between ten million dollars (\$10,000,000) and fifteen million dollars (\$15,000,000);
 - (c) Ten percent (10%) of the amount recovered between fifteen million dollars (\$15,000,000) and twenty million dollars (\$20,000,000); and
 - (d) Five percent (5%) of the amount recovered of twenty million dollars (\$20,000,000) or more.
- (4) A contingency fee shall not exceed twenty million dollars (\$20,000,000), regardless of the number of actions or proceedings or the number of attorneys or law firms involved in the matter, and exclusive of any costs and expenses provided for by the contract and actually incurred by the legal services contractor.
- (5) A contingency fee shall be payable only from money that is actually received pursuant to a judgment or settlement agreement, and any judgment or settlement funds shall be disbursed in accordance with KRS 48.005.
- (6) During the contract period and any extension:
 - (a) The head of the contracting body or his or her designee shall retain control over the course and conduct of the case and shall retain veto authority over any decision made by the contract attorney;

- (b) The head of the contracting body or his or her designee with authority over the contract shall:
 - 1. Attend all settlement conferences;
 - 2. Be personally involved in overseeing the litigation; and
 - 3. Have exclusive decision-making power regarding any settlement of the matter for which the contract was entered; and
- (c) Any opposing party to the matter for which the contract was entered into may directly contact the head of the contracting body or his or her designee with authority over the contract, without having to notify the contract attorney.
- (7) The Finance and Administration Cabinet shall develop a standard addendum to be added to each personal service contract for legal services to include the terms of this section.
- (8) (a) Within five (5) business days after the contract award, the Finance and Administration Cabinet shall post on its Web site each personal service contract for legal services that provides for payment by contingency fee and the accompanying written determinations described in subsection (1) of this section. The contract and accompanying determinations shall remain on the Web site during the duration of the contract and any extension.
- (b) Any payment of contingency fees shall be posted on the contracting body's Web site within fifteen (15) days after the payment of such contingency fees to the legal services contractor and shall remain posted on the Web site for at least three hundred sixty-five (365) days.
- (9) (a) In addition to the information required of each contingency fee contract by the Kentucky Model Procurement Code and KRS 45A.695, a contractor awarded a personal service contract for legal services that provides for payment by contingency fee shall maintain detailed current records, including documentation of:
 - 1. Expenses;
 - 2. Disbursements;
 - 3. Charges and credits;
 - 4. Underlying receipts and invoices; and
 - 5. Any other financial transactions that concern the attorney services rendered under the contract.
- (b)
 - 1. All records described in this subsection shall become public records subject to KRS 61.870 to 61.884 after a judgment or agreement is entered in the case and all appeals have been exhausted, but shall not be public records until that time.
 - 2. Any information that is subject to an evidentiary privilege and is contained within any record described in this subsection shall not be a public record. The privileged information shall be redacted before any public disclosure of the record.
- (10) (a) The Finance and Administration Cabinet and the contracting body shall

submit a joint report to the Government Contract Review Committee by September 1 of each year identifying all contingency fee contracts for legal services:

1. Awarded in the previous fiscal year;
 2. Active in the previous fiscal year, but awarded in prior fiscal years; or
 3. Concluded in the previous fiscal year.
- (b) For each contract, the report shall include:
1. The written determinations made under subsection (1) of this section;
 2. Any determination made that the contract was not to be procured through the request for proposal process; and
 3. Any determination made that the contract may be entered into despite a finding of disapproval by the committee.
- (c) In addition, the report shall describe:
1. The name of the attorney or law firm with whom the contract was made;
 2. The nature and status of the legal matter that is the subject of the contract;
 3. The name of the parties to the legal matter that is the subject of the contract;
 4. The amount of recovery, if any; and
 5. The amount of the contingency fee paid, if any.
- (11) The common law authority of any duly elected statewide constitutional officer is specifically abrogated to the extent it is inconsistent with the provisions of this section.

Effective: July 14, 2018

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