

200 KAR 5:307. Competitively negotiated contracts.

RELATES TO: KRS 45A.085, 45A.090

STATUTORY AUTHORITY: KRS 45A.035, 45A.085

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.085 authorizes the secretary to promulgate administrative regulations concerning contracts awarded by competitive negotiation. This administrative regulation implements the provisions of KRS 45A.085 and 45A.090 relating to competitively negotiated contracts.

Section 1. A contract may be awarded by competitive negotiation if the purchasing officer determines in writing that:

- (1) Due to the complex nature or technical detail of a particular procurement, specifications cannot be fairly and objectively prepared so as to permit competition in the solicitation of sealed bids;
- (2) High technology electronic equipment is available from a limited number of sources of supply and specifications cannot practicably be prepared except by reference to the specifications of the equipment of a single source of supply;
- (3) Solicitation of competitive sealed bids is not practicable; or
- (4) Conditions described in KRS 45A.085(3) or 45A.090(1) exist.

Section 2. (1) If it has been determined that it is not practical to solicit competitive bids as provided in Section 1 of this administrative regulation, except if such determination is based on the existence of the conditions mentioned in KRS 45A.085(3) or 45A.090(1), action to obtain a procurement by competitive negotiations shall commence by solicitation of written proposals in the manner specified by KRS 45A.080(3), 200 KAR 5:306, and 200 KAR 5:307.

(2) A solicitation of proposals for competitive negotiations shall state:

- (a) That the purchasing agency proposes to enter into competitive negotiations with responsible offerors;
- (b) The date, hour and place that written proposals shall be received;
- (c) The type of procurement involved;
- (d) A description of the supplies or services sought;
- (e) Detailed specifications, or the location where detailed specifications may be obtained;
- (f) The evaluation factors to be considered in determining the proposal most advantageous to the Commonwealth;
- (g) The proposed method of award of contract;
- (h) Other information as, in the opinion of the purchasing officer, may be desirable or necessary to reasonably inform potential offerors about the requirements of the procurement or the limits of the competitive negotiations;
- (i) The existence of a funding limitation, if determined to be in the best interest of the Commonwealth; and
- (j) The amount of the funding limit, if it is determined by the Director of the Division of Material and Procurement Services or the Director of the Division of Contracting and Administration for procurements undertaken by those divisions that disclosure of the amount of the funding limit will promote competition and will be in the best interest of the Commonwealth.

(3) If a funding limit has been established, proposals that exceed the funding limit may be rejected.

Section 3. All written proposals received by the purchasing agency in response to a solicitation shall be kept secure and unopened until the date and hour set for opening the proposals. Proposals not clearly marked as such may be opened for identification purposes, and shall be appropriately identified with reference to the particular procurement and resealed until the time for opening proposals.

Section 4. At the close of business on, or at the beginning of the next business day after the date fixed for receiving proposals for competitive negotiations, all proposals received as of the close of business on that date shall be transmitted to the purchasing officer for the procurement for opening. Proposals shall not be subject to public inspection until negotiations between the purchasing agency and all offerors have been concluded and a contract awarded to the responsible offeror submitting the proposal determined by the purchasing officer in writing to be the most advantageous to the Commonwealth, based upon the price and the evaluation factors set forth in the solicitation.

Section 5. (1) The purchasing officer shall examine each written proposal received for general conformity with the terms of the procurement. If it has been provided in the solicitation that an award may be made without written or oral discussions, the purchasing officer may, upon the basis of the written proposals received, award the contract to the responsible offeror submitting the proposal determined in writing to be the most advantageous to the Commonwealth. If, after the proposals have been examined, it is determined that written or oral discussions should be had with the offerors, the purchasing officer shall determine in writing, based on an individual review, those proposals received that are eligible to be selected for award of a contract. Each responsible offeror that is eligible to be selected for award of a contract shall be contacted by the purchasing officer and a meeting scheduled for discussion of the offeror's proposals. The purchasing officer shall not be required to conduct discussions under the circumstances of or relative to the topics enumerated in KRS 45A.085(6)(a), (b) or (c).

(2) Discussions with offerors shall be held informally and may be conducted orally, in writing, or both, as determined by the purchasing officer to be the most advantageous to the Commonwealth. If, after discussions with all responsible offerors have concluded, or after examination of the written proposals initially submitted, it is determined that no acceptable proposal has been submitted, all proposals may be rejected and, in the discretion of the purchasing officer, new proposals may be solicited as provided in Sections 1 to 4 of this administrative regulation, or the procurement may be abandoned.

(3) Procedures for conducting negotiations and for the manner in which proposals will be evaluated shall be established by the purchasing officer for each procurement and shall be set forth in the request for proposals. The purchasing officer may request offerors to submit written clarification or explanation of their proposals and the proposal of any offeror who fails to respond or to request an extension of time to respond within the time requested, may be rejected.

(4) Proposals shall be evaluated based on factors stated in the request for proposals. Numerical or other appropriate rating systems may be used. All evaluation documentation, scoring, and summary conclusions shall be in writing, and made a part of the file records for the procurement.

(5) The purchasing officer may notify offerors that as of a date stated negotiations shall be closed and further negotiations modifications or clarifications of proposals shall not be received.

Section 6. The purchasing officer shall prepare a written summary of all oral discussions in competitive negotiations setting forth both the dates and the general substance of the discussions. Verbatim records of the discussion shall not be required.

Section 7. If, after solicitation for proposals to enter into competitive negotiations only one (1) proposal responsive to the solicitation is received, the purchasing officer may commence negotiations with the single offeror and any resulting contract entered into with that offeror shall be deemed to have been competitively negotiated and awarded in accordance with KRS 45A.085 and this administrative regulation. The terms and conditions of the contract shall not in any material respect deviate in a manner detrimental to the purchasing agency from the terms and conditions specified in the solicitation for proposals. (5 Ky.R. 574; Am. 947; eff. 7-17-79; 9 Ky.R. 1025; 1194; eff. 4-6-83; 18 Ky.R. 1359; eff. 1-10-92; 30 Ky.R. 674; 1463; eff. 1-5-2004; Crt eff. 2-12-2020.)