

200 KAR 5:309. Noncompetitive negotiations.

RELATES TO: KRS 45A.095

STATUTORY AUTHORITY: KRS 45A.035, 45A.045, 45A.095

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.095(1) requires the cabinet to promulgate administrative regulations concerning noncompetitive negotiations. This administrative regulation implements the provisions of KRS 45A.095.

Section 1. Contracts may be awarded on the basis of noncompetitive negotiations only for:

- (1) Telephone, electrical energy, and other public utility services;
- (2) Other services provided within a defined geographic area pursuant to a franchise awarded pursuant to law by a city, county, or other political subdivision authorized to award the franchise;
- (3) Purchase or lease of a telephone system to serve the internal needs of state agencies or institutions;
- (4) Commodities, equipment, or services available from a sole source, as determined by the purchasing officer in writing;
- (5) Instructional materials, equipment, or supplies available from a sole source and necessary to a particular instructional program, as determined by the purchasing officer in writing;
- (6) Special supplies or equipment required for laboratory or experimental studies and necessary to a particular study, as determined by the purchasing officer in writing;
- (7) Contracts or subscriptions for the purchase of published books, maps, periodicals, technical pamphlets, and except for those specially commissioned for use by an agency which shall be contracted for as provided by subsection (9) of this section, recordings, films, and works of art for museum or public display;
- (8) Commercial items purchased from a wholesaler, manufacturer, or producer of the item for, and not requiring modification or alteration prior to, resale to the general public through a resale outlet maintained by a state agency;
- (9) Professional, technical, scientific, or artistic services, or agreements with multiple vendors of medical or health care and related services, and fixed rates of payment for those services as prescribed by state or federal law or administrative regulations, and entered into for the benefit of persons who are wards of the Commonwealth, or who are otherwise entitled pursuant to law to the provision of health care and related services by the Commonwealth;
- (10) Commodities, supplies, equipment, or construction services that would ordinarily be purchased on a competitive basis if an emergency has been declared in the manner prescribed by KRS 45A.095(2) and (3);
- (11) Supplies, equipment or services from the Government of the United States, another state, or a political subdivision of the Commonwealth, or nonprofit organization organized under the laws of the Commonwealth, another state or the District of Columbia, or chartered under an Act of Congress, and lawfully doing business in the Commonwealth of Kentucky, and serving a public purpose of an essentially government, civic, educational or charitable nature;
- (12) Contracts with vendors who maintain a general service administration price agreement with the United States of America, if the contract between the Commonwealth and the vendor does not authorize a price higher than is contained in the contract between general service administration and the vendor;
- (13) Purchase of real property or interests in real property;

(14) Purchase of fresh food and perishable items which cannot reasonably be acquired through competitive sealed bidding; and

(15) Purchase of limited goods or services that cannot reasonably or practically be obtained through competitive sealed bidding as determined by the executive director of the Office of Material and Procurement Services.

Section 2. Contracts for professional, technical, scientific, or artistic services under Section 1(9) of this administrative regulation shall be awarded as provided in KRS 45A.690 to 45A.725, except that contracts for architectural or engineering services shall be awarded in accordance with KRS 45A.800 to 45A.838.

(5 Ky.R. 576; Am. 949; eff. 7-17-79; 18 Ky.R. 1362; eff. 1-10-92; 30 Ky.R. 676; eff.1465; eff. 1-5-2004; 31 Ky.R. 1876; 32 Ky.R. 47; eff. 8-5-05; Crt eff. 2-12-2020.)