

## **200 KAR 5:380. Protests.**

RELATES TO: KRS 45A.170(d), 45A.285

STATUTORY AUTHORITY: KRS 45A.035

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. This administrative regulation establishes a more definitive filing deadline for written protests relative to individual solicitations and defines the information required to be contained in all written protests in order to allow more efficient, expeditious, and on the record resolution of protests.

### **Section 1.**

(1) For purposes of computing the two (2) calendar week deadline for the submission of protests pursuant to KRS 45A.285(2), the following presumptions shall apply:

(a) For protests based upon alleged improprieties in a solicitation for bids or proposals which relate to the solicitation documents themselves, the facts giving rise to the protest shall be presumed to have been known to the protester on the date the solicitation, or a modification to it, was posted to the Commonwealth of Kentucky's eProcurement Web site, [www.eprocurement.ky.gov](http://www.eprocurement.ky.gov). Alleged improprieties in a solicitation for bids or proposals may include disputes arising from specifications requiring items deemed to be equivalent or a sole brand in accordance with KRS 45A.170(d).

(b) For protests based upon alleged improprieties in the award of a contract, the facts giving rise to the protest shall be presumed to have been known to the protester on the date the notice of award of a contract was posted to the Commonwealth of Kentucky's eProcurement Web site, [www.eprocurement.ky.gov](http://www.eprocurement.ky.gov).

(2) The presumption may be overcome by a showing that the facts giving rise to the protest were not and should not have been known to the protester on the date established by subsection (1)(a) or (b) of this section.

Section 2. A protest filed in accordance with KRS 45A.285 shall be in writing and shall contain the following information:

(1) Name, address, fax and telephone numbers, and e-mail address of the protester;

(2) Solicitation or contract number;

(3) Detailed statement of the legal and factual grounds for the protest, including a description of the prejudice resulting to the protester;

(4) Identification of documents which the protestor believes necessary to assess the factual or legal basis of the protest;

(5) Statement as to the nature of relief requested;

(6) The date the facts giving rise to the protest became known to the protester; and

(7) If necessary to rebut the presumption established by Section 1(1) of this administrative regulation, all relevant factual information establishing the timeliness of the protest under KRS 45A.285(2) and purported to be sufficient for a justifiable finding of timeliness under that statutory provision. Failure to comply with this subsection, if necessary, shall conclusively render the protest untimely.

### **Section 3.**

(1) A protest shall be filed with the Secretary of the Finance and Administration Cabinet by personal delivery, U.S. mail, or by a private express mail service. The Secretary of the Finance and Administration Cabinet shall not accept a protest submitted by electronic transmission, including facsimile transmission or electronic mail.

(2) For the purposes of KRS 45A.285, "filed" shall mean actual receipt by the Office of the Secretary of the Finance and Administration Cabinet.

(3) A protest which, on its face, is untimely, fails to establish standing to protest, or fails to include the information required by Section 2 of this administrative regulation, shall be summarily determined and denied.

(31 Ky.R. 2584; 702; eff. 11-5-2004; 35 Ky.R. 2331; 2663; eff. 7-6-2009; Crt eff. 2-12-2020.)