

200 KAR 5:400. Kentucky resident bidder reciprocal preference.

RELATES TO: KRS 45A.050(7), 45A.070(1), 45A.090(2), 45A.180(1), 45A.182(1)(c), 45A.365, 45A.370, 45A.375, 45A.695, 45A.745, 45A.825, 45A.853, 160.303, 162.070, 164A.575, 164A.590, 176.010, 176.082.

STATUTORY AUTHORITY: KRS 45A.494

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.494(6) requires that the Finance and Administration Cabinet promulgate administrative regulations to establish the procedure by which a reciprocal preference shall be given to Kentucky resident bidders. This administrative regulation establishes the procedures by which a reciprocal preference shall be given to Kentucky resident bidders.

Section 1. Definitions.

- (1) "Contract" is defined by KRS 45A.490(1).
- (2) "Nonresident bidder" is defined by KRS 45A.494(3).
- (3) "Public Agency" is defined by KRS 45A.490(2).
- (4) "Resident bidder" is defined by KRS 45A.494(2).
- (5) "Response" means any bid or response submitted to a solicitation.
- (6) "Solicitation" means an invitation for bid, request for proposal, advertisement for bid, or another formal method of soliciting a contract issued by a public agency.

Section 2. Claiming Resident Bidder Status.

- (1) Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its response a notarized affidavit that affirms that it meets the criteria to be considered a resident bidder as set forth in KRS 45A.494(2).
- (2) If requested, failure to provide documentation to a public agency proving resident bidder status shall result in disqualification of the bidder or contract termination.

Section 3. Determination of Residency for Nonresident Bidders.

- (1) The state of residency for a nonresident bidder, for purposes of this administrative regulation, shall be its principal office as identified in the bidder's certificate of authority to transact business in Kentucky as filed with the Commonwealth of Kentucky, Secretary of State.
- (2) If the bidder is not required to obtain a certificate of authority to transact business in Kentucky, its state of residency shall be the mailing address provided in its bid.

Section 4. Applying the Reciprocal Preference.

- (1) Once all responsible and responsive bidders to a solicitation have been scored and ranked, the residency of each bidder shall be identified.
- (2) A preference equal to the preference given or required by the state of the highest evaluated nonresident bidders shall be given to all responsive and responsible resident bidders.
- (3) The responses shall then be rescored and re-ranked to account for any applicable preferences.
- (4) In awarding a contract, resident bidders shall only receive preference against nonresident bidders residing in a state that gives a preference to bidders from that state. This preference shall not be applied against nonresident bidders residing in states that do not give preference against Kentucky bidders.
- (5) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.
- (6) This administrative regulation shall not result in a nonresident bidder receiving a preference over another nonresident bidder.

(37 Ky.R. 1109; Am. 1627; eff. 2-4-2011; Crt eff. 2-12-2020.)

