

200 KAR 5:306. Competitive sealed bidding.

RELATES TO: KRS 45A.080

STATUTORY AUTHORITY: KRS 45A.035, 45A.080

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 implements KRS 45A.080.

Section 1.

(1) The purchasing agencies of the Commonwealth shall provide adequate public notice of solicitations pursuant to KRS 45A.080(3).

(2) In addition to any other public notice given pursuant to KRS 45A.080(3), solicitations shall be posted to the Finance and Administration Cabinet's procurement website.

Section 2. The purchasing officer or other employee of the purchasing agency designated to open the bids shall determine when the time set for opening bids has arrived and shall so declare the time to those present for the bid opening. The purchasing officer or designee shall, in the presence of all persons in attendance, open all bids received as of that date and hour. If practical, the names of the bidders and the amounts of their bids may be read aloud to the persons present. Except if it is deemed impractical, due to the nature or complexity of a solicitation, a bid tabulation summary sheet shall be prepared for each solicitation recording the name of each bidder, a description of the supplies or services bid, and the amounts of the bids received. The bid tabulation summary sheet shall be permanently retained in the solicitation file and shall be available for public inspection. Inspection of bids by interested persons shall not be permitted during the formal bid opening process.

Section 3. The bids shall be examined by the purchasing officer responsible for the procurement for any clerical or technical errors, reviewed for technical compliance with the terms of the solicitation, and the supplies or services bid evaluated for conformity with the specifications contained in the solicitation. A bidder shall, if requested by the purchasing officer responsible for the procurement, clarify, in the format specified by the purchasing officer, any matter contained in the submitted bid about which the purchasing officer has question or believes in good faith needs to be clarified. The bid of any bidder who fails or refuses, within a reasonable time, to give a clarification, if requested to do so by the purchasing officer, shall not be considered further for an award on the basis of that solicitation. The clarification shall be incorporated in any contract awarded on the basis of that bid. After a reasonable bid evaluation period, the contract shall be awarded to the responsive and responsible bidder whose bid offers the best value to the Commonwealth. After evaluation of the bids, including consideration of any clarifying information submitted, the purchasing officer may determine that no satisfactory bid has been received and all bids may be disqualified. At the discretion of the purchasing officer, the solicitation may be cancelled and new bids solicited on the basis of the same or revised specifications, or competitive negotiations undertaken for the procurement. The basis for the disqualification of all bids and subsequent action taken or to be taken with respect to the solicitation shall be recorded and filed in the solicitation file relating to the procurement.

Section 4.

(1) The right to disqualify any bid and to waive technicalities and minor irregularities in bids shall be preserved in the case of all solicitations issued by purchasing agencies within the Finance and Administration Cabinet or pursuant to delegations of purchasing authority by the Finance and Administration Cabinet.

(2) Grounds for the disqualification of bids include:

(a) Failure of a bid to conform to the essential requirements of a solicitation.

- (b) Failure to conform to the specifications contained or referenced in a solicitation, unless the solicitation authorized the submission of alternate bids and the items offered as alternatives meet the requirements specified in the solicitation.
- (c) Failure to conform to a delivery schedule established in a solicitation.
- (d) Imposition of conditions which modify the terms and conditions of the solicitation, or limit the bidder's liability to the state on the contract awarded on the basis of a solicitation.
- (e) Submission of an unreasonable price. Any determination by the purchasing officer that a bid is unreasonable as to price shall be documented.
- (f) Nonresponsibility of a bidder.
- (g) Failure to furnish a bid guarantee if required by a solicitation.
- (h) Other cause as documented by the purchasing officer in a determination and finding.

(3) Technicalities or minor irregularities in bids, which may be waived if the purchasing officer determines that it will be in the Commonwealth's best interest to do so, are mere matters of form not affecting the material substance of a bid or an immaterial deviation from or variation in the precise requirements of the solicitation having no or a trivial or negligible effect on price, quality, quantity, delivery of supplies, or performance of the services being procured, the correction or waiver of which will not affect the relative standing of, or be otherwise prejudicial to other bidders. The purchasing officer may give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in a bid, or waive the deficiency if it is advantageous to the Commonwealth to do so.

Section 5. If a mistake in a bid is claimed, and the purchasing officer determines that a material mistake was made in the bid and that due to this mistake, the bid submitted was not the bid intended, the bidder shall be permitted to withdraw the bid. If a mistake in a bid is claimed after the award and execution of a contract, the contractor shall be required to perform according to the terms and conditions of the contract, unless it is determined in writing by the Finance and Administration Cabinet that a material mistake had been made in the original bid and the contractor will sustain a financial loss if required to perform the contract according to its terms. A reduction or diminution in profit margin shall not be deemed a financial loss under this section. If it is determined that a material mistake has been made in a bid after the award of a contract, and the contractor will sustain a financial loss if required to perform the contract, the contract shall be rescinded and the contractor shall be ineligible to submit a bid upon resolicitation for the commodity or service.

(5 Ky.R. 573; Am. 946; eff. 7-17-79; 18 Ky.R. 1357; 2201; eff. 1-10-92; 23 Ky.R. 1405; 1925; eff. 11-11-96; 24 Ky.R. 929; eff. 12-15-97; 30 Ky.R. 672; 1462; eff. 1-5-2004; Crt eff. 2-12-2020.)