

200 KAR 5:365. Alternative project delivery methods for capital construction.

RELATES TO: KRS 45A.030, 45A.085, 45A.180, 45A.183, 45A.690-45A.725

STATUTORY AUTHORITY: KRS 45A.180, 45A.183

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.180 requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of as many recognized alternative methods of management of construction contracting as are determined to be feasible. This administrative regulation implements the provisions of KRS 45A.180 and 45A.183 relating to alternative construction delivery methods.

Section 1. Definitions.

- (1) "Alternative construction delivery method" means a delivery method other than design-bid-build.
- (2) "Chief purchasing officer" is defined by KRS 45A.030(3).
- (3) "Construction management-at-risk" is defined by KRS 45A.030(6).
- (4) "Construction manager-agency" is defined by KRS 45A.030(5).
- (5) "Construction manager-general contractor" is defined by KRS 45A.030(7).
- (6) "Design-bid-build" is defined by KRS 45A.030(12).
- (7) "Design-build" is defined by KRS 45A.030(13).

Section 2. Use of Alternative Construction Delivery Methods.

- (1) An alternative construction delivery method may be appropriate for a competitive process, consistent with KRS Chapter 45A, if the chief purchasing officer issues a written determination that due to the nature, detail, or circumstances of a project:
 - (a) It is not appropriate to solicit competitive bids using the conventional design-bid-build delivery method; and
 - (b) An alternative construction delivery method is justified. The determination shall include a description of facts justifying use of an alternative construction delivery method, and shall state whether the method to be used shall be one of "construction management-at-risk," "design-build," "construction manager-general contractor," or "construction manager-agency."
- (2) The criteria for determining the utilization of a specific alternative delivery method for a particular project shall include factors, such as the project's:
 - (a) Dollar scope;
 - (b) Anticipated schedule;
 - (c) Type; and (D) Overall complexity.

Section 3.

- (1) If it has been determined that it is not appropriate to solicit competitive bids using the conventional design-bid-build delivery method, action to deliver a capital construction project using a specific alternative construction delivery method shall commence by solicitation of written proposals as provided in this section. A copy of the request for proposals shall be transmitted to the Capital Projects and Bond Oversight Committee staff.
- (2) A solicitation of proposals for competitive negotiation shall state:
 - (a) That the purchasing agency proposes to enter into competitive negotiation with responsible offerors;
 - (b) The date, hour, and place that written proposals shall be received;
 - (c) The type of alternative delivery method involved and the associated requirements;
 - (d) A description of the services sought and the procurement procedures to be followed;
 - (e) Specifications, or the location where specifications may be obtained;

- (f) The specific qualitative and pricing evaluative factors, with associated scoring values or weights, to be considered in determining the proposal most advantageous to the commonwealth, with qualifications and price to be weighted at not less than twenty-five (25) percent and fifty (50) percent respectively;
 - (g) The level or quantity of information required from each offeror to allow for equitable evaluation;
 - (h) The proposed method of award of contract;
 - (i) Other information as may be desirable or necessary to reasonably inform potential offerors of technical, performance, and any other data and requirements of the procurement;
 - (j) The existence of a funding limitation, if determined to be in the best interest of the commonwealth;
 - (k) The amount of the funding limit, if it is determined by the Director of the Division of Contracting and Administration that disclosure of the amount of the funding limit will promote competition and will be in the best interest of the commonwealth; and
 - (l) The level or amount of stipends, if any, to be provided and to whom, contingent upon funding limitations. Stipends shall only be provided if adequate funds are available over and above the required project costs.
- (3) If a funding limit has been established, proposals that exceed the funding limit may be rejected.

Section 4.

- (1) Procedures for the manner in which proposals will be evaluated shall be established by the purchasing officer per the requirements of the competitive negotiation 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.
- (2) Proposals shall be evaluated based upon factors stated in the request for proposals. Numerical rating systems shall be used.

Section 5. The Director of the Division of Contracting and Administration shall appoint an evaluation committee of scoring and nonscoring (technical) members with membership comprised of personnel from the Finance and Administration Cabinet and the user agency for which the project is being constructed. The Director of the Division of Contracting and Administration shall determine, in writing, the number of committee members based upon the financial scope and technical complexity of the subject project, with no less than four (4), nor more than seven (7), scoring members.

Section 6. Interim preproposal meetings may be conducted with potential offerors to allow for questions and clarifications regarding project plans and specifications provided as a part of the request for proposals. A written confirmation of all information presented in these meetings shall become an official addendum to the procurement documents and provided to all potential offerors. The number of preproposal meetings shall be determined by the Director of the Division of Contracting and Administration and stated in the request for proposals.

Section 7. All written proposals received by the procurement agency in response to a solicitation shall be kept secure and unopened by the purchasing officer until the date and hour established for opening the proposals. If a proposal is not clearly marked, it 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 8. At the close of the proposal submission deadline, all proposals received shall be opened by the purchasing officer. The purchasing officer shall examine each written proposal received for general conformity with the terms of the procurement. If, after examination of the written proposals initially submitted, there is a written determination that no acceptable proposal has been submitted:

- (1) All proposals may be rejected and new proposals may be solicited on the basis of the same, or revised terms; or
- (2) The procurement may be abandoned.

Section 9. If, after solicitation of 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 valid as if it was a competitively negotiated contract 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.

Section 10. The purchasing officer shall hold separate any pricing information before forwarding all conforming proposals to the appropriate, designated evaluation committee for qualitative evaluation. Pricing information shall be kept separate and secure until it is combined with the evaluation committee aggregate qualitative scoring to achieve the final score for the procurement process as set forth in the request for proposals.

Section 11. Proposals shall not be subject to public inspection until the procurement process has been completed and a contract awarded to the highest scoring, responsible offeror submitting the proposal determined to be the most advantageous to the commonwealth, based upon the pricing and qualitative evaluation factors set forth in the solicitation.

Section 12. Discussions with offerors by any member of the evaluation committee relative to the procurement shall be discouraged except during the selection committee interview process. Any ex parte communications between offerors and members shall be documented by each member with a written summary of all discussions setting forth both the dates and the general substance of the discussions. Verbatim records of the discussion shall not be required. The written summaries shall become part of the procurement file.

Section 13. An awarded contract utilizing an alternative project delivery method shall be submitted to the Government Contract Review Committee for review in accordance with KRS 45A.690 to 45A.725.

(31 Ky.R. 229; 931, eff. 11-22-2004; 42 Ky.R. 456; 1130; eff. 11-6-2015; TAm eff. 9-12-2018; Crt eff. 3-29-2022.)