

600 KAR 6:060. Professional Engineering and Engineering-related Service Selection Committee.

RELATES TO: KRS 45A.800-45A.835, 23 C.F.R. 172, 23 U.S.C. 112(b)(2)

STATUTORY AUTHORITY: KRS 45A.807(2), 23 C.F.R. 172(1), 23 U.S.C. 112(b)(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering services pursuant to KRS 45A.800 to 45A.835. This administrative regulation establishes the procedure to be used by the Transportation Cabinet when selecting engineering or engineering-related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Establishing a Professional Engineering and Engineering-related Services Selection Committee.

(1) A Professional Engineering and Engineering-related Services Selection Committee shall be selected as set forth in KRS 45A.810(5) and (6).

(2)

(a) The Transportation Cabinet Secretary, or designee, shall annually request voluntary applications from the professional engineering staff in the cabinet for availability to serve in the pool of six (6) professional engineers required by KRS 45A.810(5)(a).

(b) The Transportation Cabinet Secretary, or designee, shall review all applications from which the secretary shall appoint six (6) professional engineers to serve in the pool for a period of one (1) year.

(c) The six (6) appointees shall meet the requirements established in KRS 45A.810(5)(a).

(d) A person serving on the Professional Engineering and Engineering-related Services Selection Committee from this pool shall not be eligible to serve on the same selection committee as a representative of a user division as specified by KRS 45A.810(5)(b).

(3)

(a) The director of the user division responsible for monitoring the professional services shall appoint two (2) professional engineers from either the user division or the same functional area from the highway district offices where the project is located in accordance with KRS 45A.810(5)(b).

(b) If the user division does not have two (2) professional engineering merit employees or if the services in the announcement are for nonengineering but related services, the director shall appoint two (2) employees who have familiarity and experience related to the services that are being contracted.

(c) The director may appoint himself or herself to the committee.

(d) If the cabinet is procuring engineering or engineering-related services in conjunction with another agency or governmental entity or state, that unit outside the cabinet may be designated as a co-user division and be eligible to appoint one (1) member of the selection committee.

(4) An employee of the cabinet shall not involuntarily serve as a member of a Professional Engineering and Engineering-related Services Selection Committee.

(5) Each member of a Professional Engineering and Engineering-related Services Selection Committee shall complete, sign, and return to the committee the following forms:

(a) Form TC 40-9E, Certification of Understanding of Restrictions for Members of Professional Engineering and Engineering-related Services Selection Committee;

(b) Form TC 40-6, "Ex Parte" Disclosure;

(c) Form TC 40-4, Certification of Confidentiality; and

(d) Form TC 40-10, Certification of Conformity with Procurement Process.

(6)

(a) If the individual, randomly selected to serve on a selection committee in accordance with KRS 45A.810(5)(c), is an employee of a consulting firm, that consulting firm shall not be considered for a project which is reviewed by that selection committee.

(b) If a firm submitted a response under the circumstance identified in paragraph (a) of this subsection, the firm's response for that project shall be returned by the selection committee with a letter of explanation.

(7) After issuing approval to advertise for a consultant to perform engineering or engineering-related services, the secretary of the cabinet, or designee, shall establish a Professional Engineering and Engineering-related Services Selection Committee for each project.

(8) The Division of Program Performance shall provide each Professional Engineering and Engineering-related Services Selection Committee with the necessary administrative and technical support and office supplies.

(9)

(a) Each member of a Professional Engineering and Engineering-related Services Selection Committee shall comply with the Executive Branch Code of Ethics established in KRS Chapter 11A.

(b) Each member of a selection committee shall comply with the cabinet's Official Order Number 102295 regarding conflicts of interest.

Section 2. Operation of a Professional Engineering and Engineering-related Services Selection Committee.

(1)

(a) Meetings of a Professional Engineering and Engineering-related Services Selection Committee shall be called by the Division of Program Performance.

(b) The quorum for meetings shall be three (3) of the five (5) voting members. Each quorum shall include at least one (1) member appointed by the user division responsible for monitoring the professional services.

(2) Subsequent meetings.

(a) If needed, a subsequent meeting of a Professional Engineering and Engineering-related Services Selection Committee shall be called:

1. By the chairperson at a mutually convenient time; or

2. Upon a consensus of three (3) of the five (5) voting members of the selection committee.

(b) A motion or decision of the selection committee shall require a simple majority affirmative vote of all members present for passage.

(c) Voting by proxy shall not be allowed.

(3)

(a) The Professional Engineering and Engineering-related Services Selection Committee shall give fair and impartial consideration to each response certified in accordance with KRS 45A.825(5).

(b) The selection committee shall utilize the evaluation factors and weights indicated in the announcement for each project to screen each certified firm response.

(c) Prior to the selection committee determining the three (3) most qualified firms, each voting selection committee member shall review all certified responses and preliminarily evaluate and numerically rate each firm using the weighted evaluation factors that appeared in the procurement bulletin.

(4) In an executive session pursuant to the requirements established in subsections (5) through (13) of this section, the selection committee shall determine the three (3) best qualified firms and develop a ranking of the three (3) by considering the weighted evaluation factors that appeared in the procurement bulletin.

(5)

- (a) Each committee member shall list the three (3) firms he or she ranked highest.
- (b) Each firm included in a list prepared by a committee member shall be placed on the short list of firms.

(6)

- (a) All firms included on the short list shall be individually discussed by the committee with regard to their qualifications, the quality of their proposals, and the evaluation factors.
- (b) Each committee member shall be given the opportunity to provide insight into the reasons for selecting or not selecting each firm for the project.
- (c) A firm shall be eliminated from further consideration by consensus of the selection committee members.

(7)

- (a) Each firm remaining under consideration after the discussion period established in subsection (6) of this section shall be individually ranked by the committee members using secret ballots.
- (b) A new listing of short-listed firms based on the composite rankings of the secret ballots shall be discussed by the selection committee.
- (c) A firm shall be eliminated from further consideration by consensus of the selection committee members.

(8) If at the end of the process established in subsection (7) of this section, more than three (3) firms remain under consideration, the process established in subsection (7) of this section shall be repeated until three (3) firms remain for consideration by the selection committee.

(9) Each of the three (3) firms identified in subsection (8) of this section shall be individually ranked by the committee members using secret ballots.

(10)

- (a) Unless there is a tie between two (2) of the firms, the results of subsection (9) of this section shall determine the ranked order of the three (3) best qualified firms.
- (b) If there is a tie ranking and if one of the firms has indicated that more of its work tasks will be performed in Kentucky, that firm shall be ranked higher than the other with which it had tied.
- (c) If there is a tie ranking and if the work tasks to be performed in Kentucky are equal, the selection committee shall again perform the functions established in subsection (7) of this section until the tie is broken.

(11) If the selection committee elects, it may interview a responding firm to aid in its determination of the best qualified firm.

(12) For a selection committee review involving statewide services advertised in accordance with Section 1(5) of 600 KAR 6:050, the committee shall rank:

- (a) The top three (3) firms; or
- (b) If more than three (3) firms are specified in the procurement bulletin, the number of firms specified in the bulletin.

(13) The evaluations and ratings of the individual selection committee members shall be considered preliminary and confidential working documents and shall not be available to the public.

(14)

- (a) The Chairperson of the Professional Engineering and Engineering-related Services Selection Committee shall notify the Director of the Division of Program Performance, or designee, of the firms determined by the committee to be the three (3) best qualified and the order of their ranking.
- (b) The Division of Program Performance shall send the letters required in KRS 45A.825(7)(c).

(c) The Division of Program Performance shall immediately notify by letter the top-ranked firm of its selection for the advertised project.

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Certification of Understanding of Restrictions for Members of Professional Engineering and Engineering-Related Services Selection Committee", Form TC 40-9E, effective April 2006;

(b) "Ex Parte" Disclosure, Form TC 40-6, effective September 1998;

(c) "Certification of Confidentiality", Form TC 40-4, effective September 1998;

(d) "Certification of Conformity with Procurement Process", Form TC 40-10, effective January 1997; and

(e) The Transportation Cabinet's Official Order Number 102295 regarding Conflict of Interest, June 15, 2004 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Program Performance, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. (22 Ky.R. 1412; 1843; eff. 4-5-1996; 24 Ky.R. 2762; 25 Ky.R. 837; eff. 10-6-1998; 29 Ky.R. 1878; eff. 5-15-2003; 33 Ky.R. 548; 1312; eff. 11-9-2006; Crt eff. 4-1-2019.)