

600 KAR 6:080. Financial records and audit or other engagement of firms.

RELATES TO: KRS 45A.800-45A.835, 23 C.F.R. 172, 48 C.F.R. 30, 31, Chapter 99,23 U.S.C. 112(b)(2)

STATUTORY AUTHORITY: KRS 45A.807(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering or engineering-related services pursuant to KRS 45A.800 to 45A.835. The U.S. Department of Transportation requires all engineering or engineering-related projects that it funds to be subject to the cost principles or accounting standards established in 48 C.F.R. 30, 31, and Chapter 99. This administrative regulation establishes the methodology to be used by a cabinet auditor for an engineering or engineering-related service agreement entered into by the cabinet pursuant to KRS 45A.800 to 45A.835; establishes the requirements for keeping financial records; and requires all firms contracting with or prequalified by the cabinet to comply with the federal regulations.

Section 1. Definitions.

- (1) "Common control" means a situation in which a related party has direct or indirect control over the management, operating, or financial policies of the related entity, and may exist by ownership, contract, or other methods even if a related party owns less than fifty (50) percent of the related entity.
- (2) "Other engagement" means an examination, review, or agreed-upon procedures engagement or a compilation conducted in accordance with Government Auditing Standards available at the Government Accountability Office, www.gao.gov, or the standards issued by the American Institute of Certified Public Accountants, www.aicpa.org, including:
 - (a) Statements on Auditing Standards;
 - (b) Statements on Standards for Attestation Engagements; or
 - (c) Statements on Standards for Accounting and Review Services.

Section 2. Financial Records of Firms.

- (1) A firm that has requested prequalification, been prequalified, or been selected to provide professional engineering or related services to the Transportation Cabinet shall maintain and allow the cabinet access to all books, records, and accounts related to the scope of the audit.
- (2)
 - (a) A firm shall maintain financial records including payroll time records for all employees, including the firm's principals, in accordance with 48 C.F.R. Parts 30, 31, and Chapter 99.
 - (b) The financial records of a firm shall be retained and made available to the Transportation Cabinet for three (3) years after the end of the firm's fiscal year.
 - (c) For a post audit or other engagement, a firm that has worked on a cabinet project shall retain the financial records pertaining to the project for three (3) years following the date of the final payment from the cabinet.
- (3)
 - (a) If a firm is notified by the Transportation Cabinet of a pending audit or other engagement, the firm shall send the information requested by the auditor by mail or electronic mail. minutes from the director or stockholder meetings, the firm shall allow the auditor to make a copy of books, records, and accounts related to the firm's operations if necessary for the audit or other engagement.
 - (b) With permission from the consultant, the auditor may:
 1. Copy income tax returns or minutes from the director or stockholder meetings; or

2. Review the income tax returns or minutes from the director or stockholder meetings without removing them from the firm's premises.

Section 3. Recommended or Approved Indirect Cost Rate.

(1) If the cabinet has not audited the firm in the previous twelve (12) months, the last available recommended or approved indirect cost rate shall be used for determination of the fee specified in the contract with the understanding that a contract modification shall be processed if an audit or other engagement by the cabinet reveals substantial differences in overhead rates, wage rates, or direct project expenses.

(2) Annually, the External Audit Branch of the Transportation Cabinet shall perform a risk assessment and determine the number of audits or other engagements to be performed on lump sum contracts for which the final pay estimates have been submitted and paid.

Section 4. Standards and Regulations.

(1) The cabinet shall conduct an audit or other engagement pursuant to the following:

- (a) Government Auditing Standards;
- (b) 48 C.F.R. Part 31;
- (c) 48 C.F.R. Part 30;
- (d) 48 C.F.R. Chapter 99; or
- (e) Uniform Audit and Accounting Guide.

(2) Common control shall be determined to exist if, in the relationship between a consultant firm and another company that is involved in real property renting, leasing arrangements, or joint ventures:

- (a) A principal or person with management responsibilities or significant influence in the consultant firm:
 - 1. Owns twenty (20) percent or more of the other company;
 - 2. Is also a principal or person with management responsibilities or significant influence in the other company;
 - 3. Has a family member whom he or she might control or influence because of the family relationship and who is a principal or has management responsibilities or significant influence in the other company; or
 - 4. Has a family member who might control or influence him or her because of the family relationship and who is a principal in, or has management responsibilities or significant influence in, the other company; or
- (b) The interrelationship that exists between business entities makes it appear that the same persons control or have significant influence in those businesses.

Section 5. Audit Findings.

(1)

- (a) Prior to the issuance of a final audit report, the auditor shall present preliminary findings to the firm.
- (b) A comment from the firm in response to the auditor's preliminary findings shall be submitted in writing within fifteen (15) calendar days of the firm's receipt of the preliminary findings.
- (c) The firm's comments shall be taken into consideration in the issuance of the final report.

(2)

- (a) A firm shall have thirty (30) calendar days from the date the final report is received by the firm to request a review of the final report.
- (b) The request for a review shall be in writing and clearly state all of the concerns with the final report and the reasons for the concerns.

(c) If the concerns and the reasons for the concerns are not clearly stated, the request for review shall be returned.

(d)

1. The firm may submit a supplement to the request for review.

2. The supplement shall be submitted in writing within the thirty (30) calendar days established in paragraph (a) of this subsection.

(3) The External Audit Review Committee shall evaluate the request for review and the final report.

(4) The External Audit Review Committee shall consist of the following:

(a) Executive Director of the Office of Budget and Fiscal Management, Chair;

(b) Deputy State Highway Engineer for Project Development; and

(c) Executive Director of the Office of Legal Services.

(5) A committee member may appoint a proxy to serve on this committee.

(6) The External Audit Review Committee may request the firm or the auditor to answer questions in person, by electronic communication, or in writing.

(7)

(a) The firm shall have thirty (30) calendar days from its receipt of the committee's decision to appeal the decision to the Secretary of the Transportation Cabinet.

(b) An administrative hearing to hear the appeal shall be held pursuant to the provisions of KRS Chapter 13B.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Government Auditing Standards", Comptroller General of the United States, July, 2007; and

(b) "Uniform Audit and Accounting Guide", American Association of State Highway and Transportation Officials (AASHTO), 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Professional Services, External Audit Branch, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328.

(22 Ky.R. 1419; 1633; 1849; eff. 4-5-1996; 24 Ky.R. 2765; 25 Ky.R. 350; 839; eff. 10-6-1998; 29 Ky.R. 1885; 2494; 2888; eff. 6-3-2003; 33 Ky.R. 557; 1319; eff. 11-9-2006; 38 Ky.R. 1052; 1315; eff. 1-25-2012; Crt eff. 10-8-2018; Crt eff. 2-18-2019; Crt eff. 2-18-2019.)