FINANCE AND ADMINISTRATION CABINET
MANUAL OF POLICIES AND PROCEDURES

Revised: January 2006

INCORPORATED BY REFERENCE AS AN ADMINISTRATIVE REGULATION PURSUANT TO 200 KAR 5:021

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GENERAL CONDITIONS AND INSTRUCTIONS FOR SOLICITATIONS AND CONTRACTS

The following general conditions shall be incorporated by reference in each Solicitation and resulting contract for commodities or services issued by the Commonwealth of Kentucky.

By submitting a bid to the Commonwealth, a bidder agrees to these conditions.

1. DEFINITIONS:

a. "Bid" means an offer, proposal, solicitation response, or quotation.

b. "IFB" means an Invitation For Bids.

c. "Offer" means a bid or a proposal.

d. "Online Bid Response" means an electronic offer in the state's procurement system, if authorized by the solicitation for electronic response, which is in formal bid status.

e. "RFI" means a Request for Information.

f. "RFP" means a Request for Proposals.

g. "RFQ" means a Request for Quotations.

h. "Solicitation" means an IFB, RFI, RFP, or RFQ.

i. "Tiered Pricing" means a determination of price based on volume, where the larger the volume, the larger the discount offered.

2. PREPARATION OF OFFERS:

a. An offeror shall examine the drawings, specifications, schedule, and all instructions.

b. An offer shall set forth full, accurate, and complete information as required by the solicitation. An offer that contains terms and conditions in conflict with the terms of the solicitation or Commonwealth statutes and regulations may be rejected.

c. An electronic or facsimile offer shall not be considered unless authorized by the solicitation. An offer may be modified by electronic or facsimile notice, if notice is received prior to the hour and date specified for receipt of offers. An electronic or facsimile modification shall not mention unit prices or total price; but shall only refer to percentage change or numerical change.

d. At the discretion of the Commonwealth, an offer may be submitted online in the state's procurement system, in accordance with section 5. If authorized by the solicitation, an online response shall be accepted and is the preferred method of bidding. If the offeror elects to submit a hard copy, the offeror shall sign the hard copy solicitation in ink and type or print in ink his name, firm, address, telephone number, and date. The person signing the offer shall initial an erasure or other change in ink.

e. Unit price for each unit offered shall be shown and shall include packing, unless otherwise specified. A total shall be entered in the amount column of the schedule for each item offered. In case of discrepancy between a unit price and extended price, the unit price shall govern.

f. Cash discounts shall not be considered in making the award of the contract.

g. Trade discounts, if offered, shall be deducted by the vendor in calculating the unit price quoted, unless otherwise stated.

h. Quantity discounts, if offered, shall be included in the price of the item. The unit price shown on the contract shall be the net price less the discount unless otherwise stated. Tiered pricing may also be used.

i. Time discounts shall be considered if the Office of Material and Procurement Services or the purchasing agency deems it in the Commonwealth's best interest.

j. An offer for supplies or services other than those specified shall not be considered unless authorized by the solicitation.

k. An offeror shall state a definite time for delivery of supplies or performance of services unless otherwise specified in the solicitation.

l. Time, if stated as a number of days, shall include Saturdays, Sundays, and holidays.

3. **OFFEROR CLARIFICATION - REQUEST AND RESPONSE:** Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation drawings or specifications shall be requested via electronic or written communication not less than seven (7) calendar days prior to the bid opening date. Oral explanations or instructions given before the award of the contract shall not be binding. Any information given to a prospective offeror concerning a solicitation shall be furnished to all prospective offerors as a modification to the solicitation, if such information is necessary to offerors in submitting offers on the solicitation or if the lack of such information would be prejudicial to uninformed offerors.

4. **ACKNOWLEDGMENT OF MODIFICATIONS TO SOLICITATIONS:** Receipt of a modification to a solicitation shall be acknowledged by the offeror. Written or electronic acknowledgment shall be received prior to the hour and date specified for receipt of offers. Verbal acknowledgment shall not be accepted. Failure to acknowledge a modification shall cause the bid to be considered non-responsive, unless waived in accordance with 200 KAR 5:306 § 7. Acknowledgment of the most recent modification shall constitute acknowledgment of all prior modifications.

5. **BID SUBMISSION COMPLIANCE AND PROVISIONS:** A bidder shall:

a. Submit a bid or quotation in legible form via electronic or hard copy Solicitation or Request For Quotation form, respectively.

b. Ensure that a bid response submitted using the online bid response feature of the state's procurement system contains all required information for the solicitation. An online bid response that is incomplete or not marked as formal and authenticated by the vendor with an electronic signature shall be considered non-responsive and shall not be eligible for award. A vendor who submits an online bid response may subsequently submit an exact hard copy of the response. If any discrepancies exist between the online bid response and the hard copy, the bid may be considered non-responsive and may not be eligible for award. If submitting a hard copy of the bid response after an online bid submission, the vendor shall send the following hard copy documents to the issuing agency by the closing date and time.

(i) Copy of the online bidding confirmation page that shows a formal bid status and confirmation number of the bidder's online solicitation response.

(ii) Paper copy bid submission, signed in ink, which complies with all statutes, administrative regulations and policies.

c. Ensure the hard copy is signed by a proper agent of the firm prior to the bid opening. No hard copy bid shall be considered valid unless filled out in ink or typewritten and signed in ink in the space provided on the Solicitation. An electronic bid shall be authorized by the proper agent of the firm, prior to sending, and shall include the appropriate authentication code recognized by the Office of Material and Procurement Services.

d. Specify brand name, trademark, model number and catalog number for each item bid, if appropriate.

e. Offer only one price for each item bid and offer only one product for each item of the Solicitation, unless the Solicitation specifically states that more than one product may be bid for a single item of the contract. Offering more than one product for any item of the Solicitation shall constitute multiple bidding and shall automatically disqualify the entire bid, unless multiple bids are requested by the Solicitation.

f. Extend prices for items, if applicable, and provide an extended total and a grand total, if appropriate. If an error is made in an extension of prices, the unit price shall prevail.

g. Quote prices F.O.B. destination, freight prepaid and included in the unit pricing, unless otherwise stated in the Solicitation. "F.O.B. Factory-Freight Allowed" or other such terms shall not be quoted.

h. Provide technical specifications and any other data the Office of Material and Procurement Services needs to properly evaluate the brands of products offered as equal to those specified in the Solicitation prior to the date the Solicitation is closed, and state clearly, on the bid proposal or in an electronic attachment, any deviation from the brand specified.

i. Not include federal excise taxes, Kentucky sales or Kentucky use taxes in the bid.

j. Provide new and current commodities and latest models, unless otherwise specified in the Solicitation.

k. Provide firm prices, unless otherwise stated in the Solicitation.

l. Ensure the bid response is submitted as a formal online bid in the state's procurement system or arrives in the Office of Material and Procurement Services before the time specified in the Solicitation. The time shown in the Bid Receipt Room in the Office of Material and Procurement Services for hard copy responses shall be considered the correct time. A late bid response shall not be considered unless it is postmarked before the date specified in the Solicitation and is the only responsive bid received. A hand-delivered bid shall not be considered unless it is delivered before the time and date specified in the Solicitation. An online bid response shall be assigned a date and time stamp from the state's procurement system at the time of final approval and formal submission by the vendor. The state's procurement system will not allow submission of an online response after the published date and time for bid closing. The Commonwealth conducts business in different time zones. The vendor shall be aware of the current time zone for the Solicitation to which the vendor responds. Closing times for all Solicitations that permit online bidding shall be deemed to be Eastern time.

m. Maintain a bid as a firm offer with respect to price, terms and conditions for the period of time specified in the Solicitation. After closing, a bid may be withdrawn in accordance with 200 KAR 5:306(6). Prior to opening, a bid shall be withdrawn at the vendor's request.

n. Accept any contract awarded on the terms and conditions stated in the Solicitation.

o. Submit a bid bond or check, if specified in the Solicitation. A bid may be rejected for failure to comply with conditions or specifications regarding either bonds or checks.

p. Comply with the Solicitation Instructions and requests regarding the submission of samples, and pay shipping costs for samples either sent to or returned from the Office of Material and Procurement Services. Samples shall become the property of the Commonwealth unless a bidder requests return within 30 days after award of a contract. If not destroyed by testing, samples shall be returned at an offeror's request and expense, unless otherwise specified by the solicitation.

q. Make available records, papers, books, or other documents during performance or in connection with a preliminary investigation of bidder's financial status. Information to be made available shall be limited to the information generally available to the public, if it satisfactorily indicates the bidder's ability to perform as specified in the contract. If the initial investigation does not reasonably satisfy the Office of Material and Procurement Services that the bidder can perform the contract, the Office may request additional information before a contract is awarded.

r. File a performance bond, if requested by the Office of Material and Procurement Services, whether or not a bond was required by the Solicitation. The bidder shall sign the bond as principal and shall have the bond signed by a surety company authorized to do business in the Commonwealth of Kentucky. If the surety has its authority to do business in Kentucky revoked or withdraws from doing business in the Commonwealth, the bidder shall promptly obtain another surety on the bond. A bond furnished shall be conditioned upon the full performance of all obligations imposed on the bidder by his contract with the Commonwealth and shall provide for recovery by the Commonwealth of all damages suffered by it by reason of the bidder's failure to perform any contract obligations. Recovery shall be permissible from the bidder and the surety, or either of them.

s. Obtain a bond meeting the requirements of the Solicitation from the bidder's source of supply, if requested to do so by the Office of Material and Procurement Services. If a bond is required, it shall be issued to the Commonwealth of Kentucky and shall be conditioned on the source of supply making available to the bidder such equipment or products as will enable the bidder to fulfill its obligations under the contract with the Commonwealth.

t. Submit the required bonds in a form approved by the Office of Material and Procurement Services.

u. Not assign any interest, right or duty in any contract with the Commonwealth without the written consent of the Commonwealth, except that an assignment of benefits may be executed in accordance with FAP 120-08-07. If an assignment of benefits is a partial assignment, the warrant issued by the Division of Statewide Accounting Services shall be payable jointly to the vendor and the assignee and shall be forwarded to the assignee. An assignee shall be subject to the set-off rights of the Commonwealth provided in KRS 371.040 and KRS 44.030.

v. Indicate the Solicitation number, opening date, and time on the lower left corner of the response envelope for a hard copy bid.

w. If state offices are closed on days other than scheduled holidays, bid openings scheduled for that day shall be held on the next normal working day at the scheduled hour. The Commonwealth may modify the Solicitation to extend the bid closing date and time to accommodate online bid responses. If revised, the bid closing date and time shall be posted on the Commonwealth's eProcurement web site.

x. If operating hours of the issuing office are delayed, bid openings at the issuing office shall be delayed by the same amount of time. The closing date and time for online bid submissions shall not be extended.

y. If a power outage or system failure occurs within the Commonwealth's eProcurement web site that prevents online bid responses or opening, bid closing may be delayed by modifying the Solicitation and posting the revised closing date and time on the Commonwealth's eProcurement web site.

6. **COMPLIANCE WITH STATE AND FEDERAL LAW:** In addition to any other remedies at law or in equity, the Office of Material and Procurement Services may cancel any contract if there is sufficient evidence to show that:

   a. The contract was obtained by fraud, collusion, conspiracy or other unlawful means, or

   b. The contract conflicts with any statutory or Constitutional provision of the Commonwealth of Kentucky or of the United States.

7. **GOVERNING LAW:** The laws of the Commonwealth of Kentucky shall govern contracts or orders placed as a result of the offer. The rights and obligations of the parties shall be determined in accordance with the laws of the Commonwealth of Kentucky. An offer conditioned upon governance by the laws of a state other than Kentucky shall not be considered.

8. **COMPENSABLE DAMAGES FOR BREACH:** The following items shall be included as compensable damages to the Commonwealth of Kentucky for any breach of contract with the Commonwealth:

   a. Replacement costs.

   b. The cost of repeating the competitive bidding procedures.

   c. Expenses incurred as the result of delay in obtaining replacements.

   The enumeration of compensable damages contained in this section is not intended to be exclusive and shall not operate to bar recovery by the Commonwealth for any other damages occasioned by the vendor's breach of contract. However, if the contract provides for liquidated damages, the liquidated damages shall be in lieu of all other damages, including those enumerated.

9. **DELIVERY, TRANSPORTATION AND PACKAGING:** If awarded a contract, the bidder shall:

   a. Make delivery as stated in the contract. Delivery shall be made by the end of the state's fiscal year in which the contract is awarded unless otherwise specified in the contract.

   b. Make delivery during normal working days and hours to the point or points specified in the Solicitation. Normal working hours are 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

   c. Pay all packing, transportation, and delivery charges to the delivery point specified by the using agency. If the delivery point specified is changed by the using agency, the vendor shall be entitled to reimbursement for any increased cost of transportation from the F.O.B. point shown in the contract document to the delivery point utilized by the agency.

   d. Adequately pack all commodities and equipment, according to accepted commercial practice and the packaging and marketing instructions in the contract document. No charges shall be made for packing cases, bailing, crating, barrels, drums, bags or other containers, except that if the bid so specifies, the vendor may make a memorandum charge and require the using agency to return the containers for credit with transportation costs paid by the vendor or pay for the containers if not returned in a reasonable length of time.

10. **REPORTING COMPLIANCE OR BREACH:** Upon being declared the successful bidder, the contractor or vendor shall complete an Equal Employment Opportunity (EEO) template designed by

the Finance and Administration Cabinet. The EEO form shall provide a breakdown of the bidding party's existing workforce, indicating the race, sex, age, position held, county and state of residence, and date of employment of each employee.

A successful bidder shall submit data as required by KRS 45.550 to 45.640 and a statement of intent to comply in full with all requirements of the Kentucky Civil Rights Act.

11. **FAILURE TO COMPLY:** Failure to comply with any provisions of KRS 45.550 to 45.640 shall constitute a material breach of contract.

12. **ADDITIONAL EQUAL EMPLOYMENT PROVISIONS UNDER CONTRACTS UTILIZING FEDERAL FUNDS:** The contractor shall comply with all provisions of Presidential Executive Order 11246 (41 CFR, Part 60-1.4) as amended.

13. **TERMINATION OF CONTRACTS:** A contract may be terminated for default by the vendor, for the convenience of the Commonwealth, or for lack of appropriation in accordance with 200 KAR 5:312.

14. **CONTRACT DISPUTES:** A dispute concerning a question of fact arising under a contract between the Commonwealth and a contractor, if not disposed of by mutual agreement, shall be decided in accordance with KRS 45A.230 and 45A.235. Pending final decision of a dispute, the contractor shall proceed diligently with the performance of the contract.

15. **EQUAL EMPLOYMENT COMPLIANCE:** During the performance of a contract, the contractor or vendor shall:

    a. Not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin.

    b. Take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age, disability, or national origin. However, if layoffs occur, employees shall be laid off according to seniority with the most recently hired employee being laid off first. Employees shall be recalled in the reverse of the way the employees were laid off.

    c. State in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age, disability, or national origin.

    d. Post notices in conspicuous places, available to employees and applicants for employment, setting forth the provision of the nondiscrimination clauses required by this section.

    e. Send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses.

16. **COMPLIANCE WITH FEDERAL REQUIREMENTS:** If a procurement involves the expenditure of federal assistance or contract grant funds, the awarded contractor shall comply with federal law and authorized regulations that are mandatorily applicable and that are not set forth in the Solicitation.

17. **TERMS FOR PROMPT PAYMENT:** A bill shall be paid within 30 working days of either the receipt of correct invoice, or receipt of goods or services in satisfactory condition. A penalty payment of one percent (1%) per month shall be added to the amount due the vendor for each full or partial month that the payment exceeds 30 working days. As an incentive for earlier payment, bidders for state contracts are encouraged to offer discounts for payments made in less than the prescribed 30 days.

18. **MODIFICATION OR WITHDRAWAL OF OFFERS:** An offer may be modified or withdrawn by electronic or written notice received prior to the hour and date specified for receipt of offers. An offer may also be withdrawn in person by an offeror or his authorized representative, if his identity is made known and he signs a receipt for the offer, but only if the withdrawal is made prior to the hour and date set for receipt of offers. A vendor may withdraw or modify an online bid response before the time set for opening bids by applying the appropriate electronic signature and following the procedure in the state's procurement system.

19. **LATE OFFERS AND MODIFICATIONS:** The state's procurement system will not allow submission of online responses after the published date and time for bid closing. A hardcopy offer or a modification of an offer received at the office designated in the solicitation after the hour and date specified for receipt shall not be considered for an award of contract, unless:

    a. No bids are received other than the late bid; and

    b. The need of an agency is determined to preclude the re-solicitation of bids; and

    c. The offer is evaluated and found to serve the best interest of the Commonwealth.

20. **MULTIPLE AND ALTERNATE BIDS:** A bidder shall submit one response to the solicitation and shall not propose more than one model and brand for each bid item. Except for tiered pricing, multiple or alternate bids offering more than one bid price in total or by line-item shall be cause for rejection, unless specifically called for in the Solicitation.

21. **AWARD OF CONTRACT:**

    a. A contract shall be awarded to the responsible offeror whose offer conforming to the solicitation provides the best value.

    b. The Commonwealth reserves the right to reject any offers and to waive informalities and minor irregularities in offers received.

    c. An electronic or a written award furnished to the successful offeror within the time for acceptance specified in the offer shall constitute a binding contract, without further actions by either party.

    The Commonwealth only notifies the successful offeror of an award. Any other interested party may view contract awards posted on the Commonwealth of Kentucky's eProcurement web site. The date the contract award is posted to the Commonwealth of Kentucky's eProcurement web site shall serve as the official notification of award for actions pursuant to KRS 45A.285(2).

22. **CONTRACT MODIFICATIONS:** During the period of the contract, a modification shall not be permitted in any of its conditions and specifications, unless the contractor receives electronic or written approval from the Office of Material and Procurement Services. If the contractor finds at any time that existing conditions make modification in requirements necessary, the contractor shall report the matter promptly to the Office of Material and Procurement Services for consideration and decision. All contract modifications shall be subject to the provisions of 200 KAR 5:311.

23. **SELLER'S INVOICES:** Invoices, if required, shall be prepared and transmitted to the agency receiving the goods or services. One copy shall be marked "original" unless otherwise specified. Each invoice shall contain at least the following information:

    a. Contract and order number;

    b. Item numbers;

c. Description of supplies or services;

d. Sizes;

e. Quantities

f. Unit prices; and

g. Extended totals.

FAP 111-08-00
COMPETITIVE BIDDING EXCEPTIONS: SPECIFIED BY LAW OR REGULATION

The following purchases are exempt by law from competitive bidding and may be purchased without prior approval from the Finance and Administration Cabinet, Office of Material and Procurement Services:

1. **Contractual services where no competition exists,** such as electrical energy, telephone service, and other public utility services. KRS 45A.095(1)(a); 200 KAR 5:309(1)

2. **Works of art for museum and public display.** KRS 45A.050(2)(a)

3. **Services of a visiting speaker, professor, expert witness, or performing artist.** KRS 45A.095(1)(f)

4. **Rates fixed by law or ordinance.** KRS 45A.095(1)(b)

5. **Commercial items purchased for resale to the general public through a resale outlet maintained by a state agency.** The items shall:

   a. be purchased only from a wholesaler, manufacturer, or producer; and

   b. not require modification or alteration before sale. KRS 45A.095(1)(d); 200 KAR 5:309(6)

6. **Subscriptions for the purchase of periodicals in either paper or electronic format.** A subscription may include a professional journal, newspaper, or other required publication. KRS 45A.050(2)(b); 200 KAR 5:309(5)

7. **Copyrighted material in either paper or electronic format for which only one source of supply is available.** Items commonly covered under this section include:

   a. Library books. KRS 45A.095(1)(c)

   b. Published books, maps, periodicals, and technical pamphlets. KRS 45A.050(2)(b)

   c. Department of Education, Free Text Book Program.

8. **Cooperative purchases** made between state agencies, political subdivisions, state universities, agencies of other states, or agencies of the federal government. KRS 45A.300; KRS 45A.660; 200 KAR 5:309(9)

FAP 111-09-00
COMPETITIVE BIDDING EXCEPTIONS: STANDING DETERMINATION OF NOT PRACTICABLE OR FEASIBLE

The Office of Material and Procurement Services has determined that the following specific items are not practicable or feasible for competitive bidding. Only the specific goods or services listed are exempt from competitive bidding. Except when noted below, an agency shall not exceed its small purchase authority without the prior approval of the Office of Material and Procurement Services.

1. **Fresh meat, fresh dairy, fresh produce, fresh seafood and fresh eggs.** KRS 45A.035(2)(d); 200 KAR 5:309(12)

2. **Transcripts.** Purchase of court reporter services to furnish originals and copies of transcriptions of court proceedings, depositions, hearings and other legal proceedings, or public stenographer for public forums and meetings if minutes or verbatim records are required.

3. **Advertisements, public media, public displays, billboards, signage, and booths.** Dissemination of information and the purchase or rental of promotional related items for official agency use.

4. **Insurance and bonds under $10,000.** The purchase of insurance and bonds of $1,000 or more requires prior approval by the Office of Insurance, the Office of Policy and Audit, and the Office of Material and Procurement Services. A Master Agreement or contract shall be created by the agency in the state's procurement system to document the selection and forwarded through the Office of Insurance, the Office of Policy and Audit, and the Office of Material and Procurement Services for electronic approval prior to a purchase of insurance or bonds. (KRS 45A.022 and KRS 42.0245)

5. **Equipment repair service and parts.** If the cost exceeds its small purchase authority, an agency shall submit multiple written quotes for the repair and explain why the repair cost is reasonable. If repairs will be made by agency personnel, repair parts may be obtained up to a replacement total of the agency's small purchase authority. If the repair cost represents a substantial percentage of equipment market value, an agency shall justify incurring repair expense versus the purchase of new or used equipment.

6. **Short-term equipment rental.** Lease of non-proprietary equipment for no more than six (6) months.

7. **Airfare, discount travel tickets.** An agency may purchase discount airfare or travel tickets for authorized employee travel requirements. All provisions of state travel regulations are applicable. (200 KAR 2:006)

8. **Supplies and equipment for laboratory or experimental studies.** Food, clothing, equipment, supplies or other materials to be used in laboratory and experimental studies. An electronic statement setting forth the need in relation to the studies, and justifying the procurement of such supplies or equipment on a sole source basis is required. (200 KAR 5:309(4))

9. **Vehicle motor fuels.** Vehicle motor fuels shall be purchased for use in state-owned vehicles and machinery only by credit cards provided and issued by the vendor awarded the current applicable Master Agreement. The state procurement card may be used for out-of-state motor pool vehicle fuel purchases, in accordance with FAP 111-58-00.

10. **Deaf Interpreters.** Purchase of the services of deaf interpreters for public meetings, training sessions, or as needed to meet the requirements of the Americans with Disabilities Act.

11. **Foreign language interpreters.** Purchase of the services of foreign language interpreters for public meetings, training sessions, or as needed to meet the requirements of the agency to provide service to the public in the execution of official duties of the agency.

12. **Other goods and services.** An agency may present electronic justification for purchases under this policy to the Office of Material and Procurement Services. Prior approval of the executive director of the Office of Material and Procurement Services shall be obtained if the cost exceeds the agency's small purchase authority.

Related to: KRS 45A.080(1); KRS 45A.095(1); 200 KAR 5:309

FAP 111-10-00
COMPETITIVE BIDDING EXCEPTIONS: SOLE SOURCE

A procurement shall be exempt from competitive bidding if there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, supplier, or market condition. The following items have been specifically determined to be exempt from bidding provided the using agency supports the purchase by written justification clearly substantiating the fact that the sole source item is the only item that will meet the needs of the agency. Prior approval of the electronically sent justification by the executive director of the Office of Material and Procurement Services is required for all purchases over $5,000 or the agency's single quote small purchase authority, whichever is less, for the items listed below:

1. **Instructional materials, equipment, supplies, or services.** An electronic statement describing the need in relation to a particular program is required. Items commonly covered by this policy include classroom and training aids such as films, special books, maps, tests and testing services.

2. **Patented equipment.** An electronic statement describing the need in relation to a particular service or equipment that justifies the procurement on a noncompetitive basis is required.

3. **Proprietary equipment and supplies.** Items that must be compatible with existing equipment or systems and which are available from one source only. An electronic statement describing the need in relation to a particular existing system or piece of equipment that justifies the procurement on a noncompetitive basis is required. The Office of Material and Procurement Services shall make the final determination as to whether:

   a. the equipment or supplies are proprietary; and

   b. the amount exceeds the lesser of $5,000 or the agency's designated single-quote small purchase limit.

4. **Equipment lease or rental, excluding passenger vehicles.**

5. **Proprietary service and maintenance agreements.** Preventative, scheduled, and unscheduled maintenance or service agreements with either manufacturer or authorized service agent. Justification shall identify provider as manufacturer or authorized service agent.

6. **Dues and organizational fees.** Fees payable to a professional society or national organization engaged in established activities related to the agency's authorized function in state government. Payment of an individual employee's dues to local organizations is not authorized under this policy.

7. **Computer software that is copyrighted and available from only one source.** Copyrighted software, if only that software will meet the need of the application. See FAP 111-15-00 for other approval requirements.

8. **Other commodities, equipment and services available from only one source.** All purchases in excess of agency small purchase authority shall receive prior approval of the executive director of the Office of Material and Procurement Services.

(KRS 45A.095 (1))
(200 KAR 5:309)

FAP 111-11-00
MODIFICATION OF SOLICITATIONS AND CONTRACTS

1. A Modification shall be used to make corrections or changes to a Solicitation or contract. A Modification shall not be used to:

   a. initiate a major change outside the original scope of the contract; or

   b. effect a new buy that normally would be placed by competitive bid.

2. An increase in quantity in excess of ten (10) percent shall not be permitted unless authorized in the Solicitation. Unit prices shall not be increased unless prescribed in the contract. A Modification shall not be used to increase the dollar amount of a contract to an amount exceeding an agency's small purchase authority limit.

3. The Office of Material and Procurement Services shall initiate a Modification to an All State Agency Master Agreement or Catalog Master Agreement, issued by the Office of Material and Procurement Services. For other contracts issued by the Office of Material and Procurement Services, an agency may request a Modification and forward supporting documentation to the Office of Material and Procurement Services for approval and issuance. An agency shall provide sufficient information to support the basis for modification and provide a requested effective date for the Modification.

4. A Modification shall be used to extend or amend a Personal Service Contract.

5. An agency may initiate a Modification to a Non-Professional Services Master Agreement or Award/Contract for $20,000 or less and forward it to the Office of Material and Procurement Services for approval. The "Reason for Change" shall fully support the basis for the modification and cite an appropriate contract provision. Supporting documentary evidence that validates the change shall be attached in an electronic attachment.

6. Upon approval by the Office of Material and Procurement Services and, if required, encumbrance of funds, a Modification shall be mailed to the vendor and made available electronically in the state's procurement system.

(KRS 45A.030(2); KRS 45A.210(1))
(200 KAR 5:311)

FAP 111-12-00
PRINTING AND PHOTOCOPYING PROCUREMENT

Pursuant to KRS 57.091, all work under the provisions of KRS 57.011 shall be performed under contract, awarded to the lowest responsible bidder whose bid offers the best value, and approved by the Governor.

1. Printing may be ordered from the Finance and Administration Cabinet's Division of Printing Services, using an Order for Printing, a Quick Copy Center transmittal, or approved electronic document. The Division of Printing Services may:

   a. fill those orders, or

   b. place those orders with the Division of Correctional Industries, if it determines that Correctional Industries can address the agency requirements in terms of price, quality, and delivery, or

   c. recommend that the requesting agency seek private sector services through the Office of Material and Procurement Services.

2. Agencies of the Department of Education and the Transportation Cabinet may order printing services from their respective agency print shops.

3. Printing may be ordered directly from the Division of Correctional Industries, in accordance with that entity's ordering procedures.

4. All printing not performed in-house, by a state agency, as outlined above shall be procured by a Purchase Request through the state's procurement system or other approved electronic format. Purchase Requests for printing of all kinds and classes shall be submitted by the using agency to the Finance and Administration Cabinet, Office of Material and Procurement Services for award of contract or for purchase from a current Master Agreement. **No order for printing, for any amount, shall be placed with any firm except through the Finance and Administration Cabinet's Office of Material and Procurement Services.**

5. A Purchase Request shall specify the number of copies to be purchased and contain complete specifications. The Purchase Request shall affirm that ownership of any plates, artwork or negatives shall be in the name of the ordering agency, Commonwealth of Kentucky, and return of the original and any copies shall be required upon agency request.

6. The following are not included in the definition of printing and shall not be subject to this policy: the silk screening process and imprinted specialty items like, but not limited to, mugs, pens, decals, vinyl bags, buttons, metal signs, flags, t-shirts, notebooks, placemats, match books, hats, and banners.

7. Photocopying is defined as a copy of printed or other graphic material made by a device that photographically reproduces the original, or short run color reproduction on color laser or inkjet copier equipment from reflective copy or electronic data. Photocopying services may be purchased from the private sector only by agencies with offices located outside Franklin County. Photocopying services within Franklin County, unless provided within the agency or by the agency's designated representative, shall be ordered from the Finance and Administration Cabinet, Division of Printing Services.

KRS 42.023, KRS Chapter 45A, KRS Chapter 57

FAP 111-13-00
COPIER PROCUREMENT AND DISPOSAL

1. An agency desiring to rent or renew the rental of a copier, or to enter into a cost per copy agreement, shall not sign a vendor supplied copier agreement form. The Initial Rental Agreement form attached to a Catalog Master Agreement in the state's procurement system shall be signed and issued to the vendor upon or during the installation of the equipment. The Initial Rental Agreement shall become the source document for establishing the effective date for a rental.

2. Rental payment shall be initiated in the state's procurement system and shall reference the established Catalog Master Agreement for that copier.

3. Purchase of equipment shall be from an established Catalog Master Agreement and shall be made by Catalog Delivery Order, which may be issued by the agency.

4. Existing equipment owned by the Commonwealth may be traded in to the seller of the new equipment in exchange for a credit, if a trade-in is in the Commonwealth's best interests. An agency shall comply with applicable requirements of FAP 220-19-00, State Owned Surplus Property, Declaration and Disposal, if trading in existing equipment.

FAP 111-15-00
COMPUTER HARDWARE, SOFTWARE AND RELATED SERVICES PROCUREMENT

1. **DEFINITIONS**

   a. Computer hardware means mainframe, server, desktop computer, terminal, printer, disk or tape storage equipment, voice and data communications equipment, cabling for Local Area Network, Wide Area Network or building cabling scheme, and repair or replacement parts.

   b. Computer software means enterprise software, licensed package software, communications software, and software trade-ins. See FAP 111-10-00.

   c. Contractual service means software development or modification, programming support service, database or computerized bibliographic services, training, and dial-up access to remote computer systems.

   d. Hardware and software maintenance agreement means service from Master Agreements and Catalog Master Agreements, as well as proprietary service agreements.

2. **COMMONWEALTH OFFICE OF TECHNOLOGY (COT) REVIEW REQUIREMENTS**

   a. A procurement of computer hardware, software and related services, excluding hardware maintenance, which totals less than $50,000 per line item or $200,000 for the entire order, may be processed without COT review and approval if the hardware, software and related services are in accordance with and procured as part of the most recent list. All other computer hardware, software, and related services procurements shall be submitted to the Office of Material and Procurement Services (OMPS) for COT review.

   b. A hardware maintenance agreement may be processed without COT review and approval if procured from a vendor who holds a competitively bid Master Agreement or Catalog Master Agreement for maintenance. All other maintenance procurements shall be submitted to OMPS for COT review.

FAP 111-16-00
FOOD PURCHASING, TESTING, AND INSPECTION

1. **General Policy:** Standard specifications for various types of food products shall be developed in cooperation with state agencies and with the technical assistance of the United States Department of Agriculture (USDA).

2. **Acceptable Brands:** In order to provide a method of determining food product compliance with established specifications and to ensure quality standards, the Commonwealth may require USDA product certification or the required testing procedure, as stated in Section 3. Only food products that are USDA certified shall be requested in or accepted on the Solicitation issued by the Office of Material and Procurement Services.

3. **Product Testing:** The Commonwealth may conduct periodic testing of food products by a Food Procurement Team (FPT) composed of knowledgeable representatives from the using agencies, including employees in food preparation classifications, and the Office of Material and Procurement Services. The FPT shall be responsible for the scheduling of all product testing and criteria for all tests. The FPT shall review and update food procurement activity and shall submit findings to the Office of Material and Procurement Services.

   The Office of Material and Procurement Services or the FPT leader shall notify vendors of upcoming test dates, specific items to be tested, test location, test fees, and other instructions for submission of test samples. Vendors shall furnish samples that meet or exceed the specifications for each item submitted for testing. Shipments shall be the same product as certified, tested, or approved.

   Procedures for periodic blind testing shall include the following:

   a. Samples to be tested shall be received and recorded by vendor name, item specification, can or container code, and brand names;

   b. Each sample item shall be coded and identifying labels removed from the containers;

   c. Each sample item shall be tested on the established standard specification, taste, appearance, and other appropriate criteria;

   d. The results of each item tested shall be recorded and a determination of acceptance or rejection made; and,

   e. Approved products shall be eligible for bidding the next bid cycle, added to existing contracts, or procured under an agency's small purchase authority.

4. **Bidding and Contracting:** An award shall be made to the responsive and responsible bidder offering approved products whose bid provides the best value to the Commonwealth. An agency shall procure food products from a Master Agreement awarded by the Office of Material and Procurement Services, if available.

   An agency may purchase food items, not exceeding its small purchase authority, from non-contract sources. An agency shall make every reasonable effort to buy certified or tested and approved products. If specific food items are not successfully bid, state agencies shall make every effort to generate local market competition. Vendors that have access to Solicitations and do not submit responsive offers shall not be solicited in local market purchases unless the product is not available from any other source. An agency shall submit a food Purchase Request in excess of its small purchase authority, in accordance with FAP 111-38-00.

5. **Inspection:** The Office of Material and Procurement Services and using agencies reserve the right to inspect and test for contract compliance all food product purchases. Inspections may be conducted at the vendor's place of business or at the receiving agency. Any food product found not to be in complete compliance with the state contract may be rejected. State agencies are encouraged to establish and implement sound inspection and receiving procedures to ensure acceptability of all items delivered.

   The following guidelines shall be utilized, as applicable, by agencies in regard to inspection of food products:

   a. A specific person shall be designated to be responsible for receiving, and inspection.

   b. Products delivered shall be compared with the applicable contract and with the delivery ticket. Any damaged cartons or containers shall be refused. Products shall be routed to a proper storage area immediately.

   c. Products shall be weighed, counted, and "spot checked" when received.

   d. A driver's delivery ticket shall not be signed unless it agrees with quantities and weights received. Inferior products shall be rejected on the spot and returned to the vendor. If attempts to resolve a vendor complaint cannot be achieved at the agency level, a Vendor Tracking document shall be entered into the state's procurement system and submitted to the Office of Material and Procurement Services for final resolution.

   e. A written "Field Inspection Report" shall be maintained and transmitted to the vendor and agency after each visit to an agency by the Meat and Food Inspector.

   All food products ordered or delivered under contract with the Commonwealth shall be subject to random sampling and testing through the USDA. Vendors shall be liable for all testing expense or price adjustment if contract food items fail the USDA testing program. Severe or frequent violations of contract requirements may result in disciplinary action against the vendor in accordance with 200 KAR 5:315.

(KRS 45A.060; KRS 45A.150; KRS 45A.170)

FAP 111-17-00
MICROGRAPHICS EQUIPMENT AND SERVICES PROCUREMENT

1. A Purchase Request for the purchase, lease/purchase, or rental of micrographic equipment or for contracted micrographic services shall receive review and approval by the Kentucky Department for Libraries and Archives (KDLA) prior to purchase. The agency shall send a Purchase Request to the Public Records Division, KDLA, for review. Prior to giving approval, KDLA, in cooperation with the agency's appointed records officer, shall conduct an assessment of the need for the required equipment or services and forward its findings, together with the Purchase Request, to the Office of Material and Procurement Services. Items requiring KDLA approval include:

   a. Microfilm cameras, including rotary, planetary, engineering, microfiche, and other specialized cameras.

   b. Microfilm duplicating equipment including that appropriate for silver, diazo and vesicular film copying, for roll to roll, card to roll, and microfiche, duplication.

   c. Microfilm processors, including deep tank equipment.

   d. Indexing equipment, such as computer assisted retrieval (CAR) systems, used in association with a micrographic system. Requests for such equipment shall require joint review by KDLA and the Commonwealth Office of Technology (COT), if the procurement includes a line item more than $50,000 or $200,000 for the total order.

   e. Contractual services, including agreements for microfilming, microfilm processing, and microfilm duplication.

   f. Other optical recording technologies that an agency may be considering for transferring its records, including optical disk and imaging systems.

2. An agency may purchase items listed below that are within its small purchase authority without KDLA approval.

   a. Standard ANSI silver, diazo, or vesicular film.

   b. Reader printer supplies, including paper, toners, and machine covers.

   c. Upgrades to agency owned equipment previously approved by KDLA for the agency's application.

   d. Chemicals for film processing.

3. A Purchase Request exceeding the agency's small purchase authority shall be submitted directly to the Office of Material and Procurement Services.

(KRS 45A.045; KRS 171.410 - 171.520)

FAP 111-18-00
SHREDDING AND BAILING EQUIPMENT PROCUREMENT

1. All Purchase Requests for shredding and bailing equipment, excluding equipment on Master Agreements and Catalog Master Agreements, shall be routed through the Environmental and Public Protection Cabinet (EPPC), Department for Environmental Protection, Division of Waste Management for approval. The Division of Waste Management shall review Purchase Requests to ensure the equipment is appropriate and compatible with the Commonwealth's material recovery and recycling program. Agency purchases within an agency's small purchase authority shall be routed to EPPC for approval prior to purchase payment by the agency.

2. Cut-off shredders and disintegrators shall not be purchased for paper document destruction unless it can be demonstrated that:

   a. it is necessary for the material to be processed in this manner; and

   b. the material can be processed and included in the material recovery program; and

   c. the material is compatible with existing infrastructure capabilities for recovery.

3. Except as outlined in paragraph 2, all office shredders costing less than an agency's small purchase authority are exempt from this policy. However, the agency shall comply with KRS 224.10-650.

FAP 111-19-00
MINORITY, SMALL AND FEMALE BUSINESS PROCUREMENT

1. "Small business concern" means an established firm, including its affiliates, that is:

   a. independently owned and operated;

   b. not dominant in the field of operation in which it is bidding; and

   c. complies with the size standards established in 13 CFR §121.

2. "Small minority owned" means a firm that meets the federal criteria for a small business concern and is owned by fifty-one percent (51%) or more females or persons of minority races. Minorities are limited to:

   a. Black: All persons having origins in any of the Black racial groups of Africa and not of Hispanic origin.

   b. Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin.

   c. Asian or Pacific Islanders: All persons having origins in any of the original peoples of the Far East, Southeast Asia, and Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

   d. American Indian or Alaskan Native: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

3. Firms that qualify as small or small minority business concerns shall receive a portion of the contracts awarded for goods, equipment, or services requested by state agencies.

   A contract shall not be set aside for small or small minority business firms if less than three small or small minority business firms are considered capable of meeting the bid terms and specifications. In a solicitation set aside for small or small minority business firms, a contract shall not be awarded if the lowest and best bid results in an unreasonable cost to the agency.

4. State agencies shall consider small, female-owned, and minority-owned business concerns when making purchases within the limitation of their small purchasing authority.

5. Sources for small, female-owned, and minority-owned business purchasing are readily obtainable from the Small and Minority Business Division, Cabinet for Economic Development, the Office of EEO/Contract Compliance, Finance and Administration Cabinet, and the Kentucky Commission on Women.

(KRS 45A.665 - KRS 45A.685)
(200 KAR 5:076)

FAP 111-20-00
VEHICLE PURCHASES

1. Except for agencies exempted by Kentucky Revised Statute or Kentucky Administrative Regulation, passenger vehicles shall be purchased by the Finance and Administration Cabinet, Office of Material and Procurement Services or by the Transportation Cabinet for the discharge of the authorized duties and functions of the various agencies of the state. Passenger vehicles shall include vehicles with a weight rating of 3/4 ton or less such as cars, sport utility vehicles, trucks, and vans. State-purchased vehicles shall be used for official purposes only.

2. The assignment of a passenger motor vehicle to a specific individual shall be discouraged, but may be made upon approval by the secretary of the Finance and Administration Cabinet. The head of the requesting agency shall submit a written request for the assignment to the secretary of the Finance and Administration Cabinet. The request shall explain why the assignment is necessary and, if the vehicle is to be parked at a private residence, include sufficient justification.

3. Passenger vehicles shall be delivered to the Transportation Cabinet where licensing, identification and other required markings shall be performed.

4. State agencies shall create a Catalog Delivery Order, if the vehicle is available in the electronic catalog in the state's procurement system. If the vehicle is not in the electronic catalog, the state agency shall electronically submit Purchase Requests for passenger vehicles under the control of the Transportation Cabinet, Division of Fleet Management in the state's procurement system for review and approval by the director of Division of Fleet Management. The request shall include the following:

    a. Name of the requesting agency;

    b. Description of the requested vehicle;

    c. Intended use of the vehicle;

    d. Number of vehicles requested;

    e. Estimated annual vehicle mileage;

    f. If the vehicle is a replacement or a program expansion;

    g. Source of funds for the purchase;

    h. If funding for the vehicle was approved in the budget;

    i. If the vehicle will be assigned to a motor pool, and if not, an explanation of its planned uses; and

    j. The name, address, telephone number, and signature of the person in the agency authorized to request the purchase.

5. Purchase Requests for passenger vehicles that are to be owned by or assigned to the agency and are not part of the fleet require prior approval by the requesting cabinet secretary, the Transportation Cabinet's director of Fleet Management, and the secretary of the Finance and Administration Cabinet.

6. Exempted agencies that are permitted by statute or administrative regulation to purchase vehicles are required to submit an annual inventory report to the Transportation Cabinet. Exempted agencies shall purchase motor vehicles from contracts established by the Finance and Administration Cabinet, Office of Material and Procurement Services, and shall create orders in the state's procurement system.

7. State agencies purchasing non-passenger vehicles not on a contract established by the Finance and Administration Cabinet, Office of Material and Procurement Services, shall create Purchase Requests in the state's procurement system and submit the Purchase Request to the Office of Material and Procurement Services for solicitation of bids to establish a contract.

8. An agency shall not lease a motor vehicle from a private individual or business without prior written approval of the secretary of the Finance and Administration Cabinet.

FAP 111-21-00
ENERGY EFFICIENT PROCUREMENT

It is in the best interests of the Commonwealth to procure energy-efficient and cost-effective products. Therefore, when purchasing energy-consuming products, all state agencies authorized to procure such products shall include Energy Star labeling, as designated by the federal Department of Energy and Environmental Protection Agency, as one of the best value scoring criteria.

FAP 111-24-00
CONCESSION CONTRACTS

1. All contracts permitting the establishment and operation of concession services at state operated facilities shall be awarded through the Office of Material and Procurement Services, unless the contract is within the agency's small purchase authority.

2. Concession services consist of, but are not limited to, vending machines, coin-operated laundry equipment, rental golf carts, ice vending equipment, catered food service, and food refreshments sold by others at facilities accommodating civic, social, cultural, sporting, or other entertainment or business events. Contracts providing concession services shall **not** convey rights in real property to a vendor during the contract term.

3. A request for a concession contract shall be submitted on a state's procurement system Purchase Request describing the type of service desired and providing sufficient information to solicit the vendor community and secure services.

(KRS 45A.080; KRS 45A.100)
(200 KAR 5:306)

FAP 111-25-00
CLOSING FISCAL YEAR PURCHASES

1. The Finance and Administration Cabinet shall notify by memorandum all state agencies of the deadline dates for submission of each type of document affecting old-year business transactions processed in the state's procurement system, and the earliest date for submitting new-year documents for processing.

2. Documents submitted for purchase with new-year funds shall not be processed until the chart of accounts information is loaded into the state's accounting system for the new-year. Purchase Requests arriving before the chart of accounts information is available shall be held in the Office of Material and Procurement Services until the chart of accounts for the new-year is complete.

3. Purchase Requests requiring competitive bidding that arrive after the established deadline shall be accepted only if the agency provides sufficient justification as to why the cutoff date could not be met. Competitive bids from old-year funds shall be approved only if there is sufficient time to guarantee delivery before June 30. A Purchase Request that arrives after the established deadline shall be processed only upon the approval of the executive director of the Office of Material and Procurement Services.

4. Payments for goods and services from current or old-year funds shall be received no later than June 30. Goods and services received after June 30 shall be paid from new-year funds.

5. If the Office of Material and Procurement Services is unable to assure the delivery of goods and services by June 30 on an old-year Purchase Request, the using agency may:

   a. Authorize, in writing, the award of the contract for encumbrance on new-year funds;

   b. Cancel the requirement and issue a new Solicitation in the new year; or

   c. Cancel the Purchase Request in its entirety.

FAP 111-26-00
TAX EXEMPTION FOR PURCHASES

1. KRS 139.470(7) provides that the Kentucky sales and use tax shall not apply to purchases of tangible personal property or services made by any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the Commonwealth. This exemption applies only to purchases of property or services for use solely in the governmental function. A purchaser not qualifying as a governmental agency or unit is not entitled to the exemption even though such purchaser may be the recipient of public funds or grants.

2. The exemption applies only to sales made directly to units of state government and cannot be claimed by a contractor purchasing property to be used in fulfilling a contract with the Commonwealth.

3. Under the provisions of KRS 139.495, schools, colleges, and universities are exempt from the sales and use tax on purchases that are used within the educational function of the institutions. Organized athletics conducted by an exempt educational institution are an integral part of the educational activities and the exemption is extended to the purchase of athletic equipment and supplies by an exempt institution.

4. Each unit of state government that performs a specific function and makes purchases in its own name shall file an application for exemption. "Application for Purchase Exemption Sales and Use Tax", Revenue Form 51A125 shall be completed and returned to the Department of Revenue.

5. Units of state government qualifying for exemption shall obtain an authorization letter bearing an exemption number. A copy of that letter shall be supplied to vendors upon request. Every invoice shall show that delivery was made to a unit of state government and shall bear the unit's exemption number.

(KRS 139.470(7) - KRS 139.495)

FAP 111-27-00
BONDING REQUIREMENTS FOR VENDORS

1. The Office of Material and Procurement Services or an agency may require the successful bidder to file a performance bond in a designated amount with the Office of Material and Procurement Services or the agency, if it appears to be in the best interest of the Commonwealth. The vendor shall be liable for any damages caused the Commonwealth by failure to file a bond. Failure to submit a bond if required shall be grounds for rejecting the bid.

    a. A performance bond may be required in an amount up to one hundred percent (100%) of the amount of the contract, depending upon the nature of the transaction.

    b. A successful bidder shall have the bond signed by a surety company authorized to do business in the Commonwealth of Kentucky. A list of surety companies may be obtained from the Office of Insurance. If the surety's authority to do business in Kentucky is revoked, the bidder shall promptly obtain another surety on the bond.

    c. A bond shall be conditioned on the bidder's complete performance of all obligations imposed by the contract. A bond shall provide that if the bidder fails to perform an obligation, the Commonwealth may hold the bidder and his surety jointly and severally liable for damages resulting from the breach of the contract.

    d. If the bidder does not have stock of the commodity or equipment to be purchased in the amount sought, nor the facilities to produce the item in an amount to guarantee satisfactory service, the Office of Material and Procurement Services or agency may require the bidder's source of supply to file a performance bond, with surety, conditioned on the sources supplying the bidder as stated in the bid.

(KRS 45A.190; KRS 45A.195)
(200 KAR 5:305)

FAP 111-28-00
RETENTION OF PROCUREMENT DOCUMENTS

1. **Files and Records - General**

   a. Each agency shall maintain records necessary to support each purchasing transaction. An agency is not required to retain hardcopies of electronic documents maintained in the state's procurement system. Agency files shall contain the following if applicable:

      (1) Copy of each best value calculation, tabulation and award justification.

      (2) Copy of any correspondence related to any procurement transaction, including the agency's complaints about vendor performance and the vendor's response.

   b. The above records shall be available for any authorized audit.

   c. An agency's filing system shall be set up so that any transaction can be referenced easily and audited from the initial purchase request within the agency to completion and payment.

2. **Maintenance Cost Record**

   Agencies shall maintain a record of the maintenance costs of each major item of motor or mechanical equipment. The records for vehicles shall contain maintenance and operating expenses.

FAP 111-34-00
CONTRACT AWARDS

1. Contracts shall be awarded to the responsive qualified bidder meeting all specifications and conditions of the Solicitation whose bid offers the best value to the Commonwealth.

    a. **Time Discounts** - Time discounts shall be considered in making the award of a contract, if the Office of Material and Procurement Services or the purchasing agency deems it in the Commonwealth's best interest.

    b. **Trade Discounts** - Trade discounts, if offered, shall be deducted by the vendor in calculating the unit price quoted, unless otherwise stated.

    c. **Quantity Discounts** - Quantity discounts, if offered, shall be included in the price of the item. The unit price shown on the contract shall be the net price less the discount, unless otherwise stated. Tiered discounts for Master Agreements and Catalog Master Agreements may be included.

    d. **Cash Discounts** - Cash discounts shall not be considered in making the award of the contract.

    e. **Cost of Freight** - Freight charges, FOB destination, shall be included in the price of each item, unless otherwise specified by the Commonwealth.

    f. **Unit Price Governs** - In case of a discrepancy in the extension of a price, the unit or item price shall govern over the total price of all items.

    g. **Awards on an Aggregate, Group or Individual Line Item Basis** - An award may be made to a bidder for all items, a group of items, or on an individual item basis, whichever is deemed to be in the Commonwealth's best interest. The Solicitation shall state the method of award and how the bid will be evaluated.

2. A bid shall be rejected if:

    a. The bid or proposal does not conform to the requirements of the Solicitation and the General Conditions applicable to all bids; or

    b. The bid contains material alterations or erasures not initialed in ink by the bidder.

3. **Responsibility of the Bidder** - The Office of Material and Procurement Services may, at any time, make a supplemental investigation of the responsibility of any bidder, even though the bidder is a registered vendor. This may include investigation of the bidder's financial responsibility, capacity to produce or source of supply, performance record in the business or industry, compliance with state health rules and regulations, and any other matter relating to the bidder's probable ability to deliver in the quantity and at the time required by a contract.

    a. If the Office of Material and Procurement Services concludes on the basis of all available evidence that a particular bidder does not appear sufficiently responsible to assure adequate performance, the bidder's response may be rejected.

    b. If there is some doubt as to the responsibility of a bidder, but the Commonwealth's interest will be adequately protected by the filing of a performance bond, the bidder may be required to file a bond whether required by the Solicitation or not.

4. **Collusive Bids** – If it is determined in writing by the Office of the Controller there are reasonable grounds to believe that bidders have agreed to restrain competitive bidding by establishing a fixed price on commodities or equipment sought to be purchased by the Commonwealth, or by any other

means, the bids of all such bidders shall be rejected, and the bidders barred from further bidding for a period of time considered appropriate.

a. If collusion is suspected among any bidders or offerors, a written notice of the facts giving rise to such suspicion shall be transmitted to the Attorney General.

b. All documents involved in any procurement in which collusion is suspected shall be retained by the agency until the Attorney General gives notice that they may be released, and shall be made available to the Attorney General or his designee upon request.

5. **Rejection of All Bid Responses** - If it is in the Commonwealth's best interest, as determined in writing by the Office of Material and Procurement Services or the authorized purchasing agency, a Solicitation may be cancelled and a Solicitation reissued containing the same or revised specifications, terms and conditions. If time does not permit or if an emergency exists, the agency may purchase the items on a negotiated basis. The rejection of all bids and selection of the negotiated method of purchase shall be fully documented in the bid file.

(200 KAR 5:306)

FAP 111-35-00
COMPETITIVE SEALED BIDDING

1. **Competitive Bid Requirement:** Competitive sealed bids shall be solicited in the state's procurement system. Competitive sealed bidding shall be required for all purchases, except purchases made in accordance with KRS 45A.100 or KRS 45A.085. Unless otherwise permitted by law, only the Office of Material and Procurement Services or an agency with delegated authority or limited special authority may issue a competitive Solicitation or Request for Proposal. Purchases of major items of equipment estimated to cost $100,000 or more and equipment projects that constitute a computer or telecommunications system, as defined by 14 KAR 1:010, estimated to cost $400,000 or more, shall receive prior approval of the Governor's Office for Policy and Management (GOPM) pursuant to KRS 45.750 - 45.810.

2. **Competition Among Vendors:** A Solicitation shall be distributed to the vendor community by posting it to the Commonwealth's eProcurement web site.

3. **Bid Publication:** The Office of Material and Procurement Services or an authorized agency may advertise a Solicitation in a major newspaper of general circulation in the Commonwealth, to be designated by the Office of the Controller. The advertisement shall contain not less than the following information:

   a. The Solicitation or proposal number.

   b. The name of the using agency.

   c. A general description of items or services to be purchased.

   d. The date, time, and place at which Solicitation responses shall be opened.

   e. An address or phone number from which the Solicitation or proposal may be requested.

   The notice, if advertised, shall be published at least seven (7) days prior to the opening of bids.

4. **Best Value Procurement:** In accordance with KRS 45A.080, contracts issued in response to competitive sealed bids shall be awarded on the basis of best value criteria, as defined in KRS 45A.070(3). A Solicitation shall clearly identify the procurement as a best value award, shall contain the measurable best value criteria, and shall clearly explain how the criteria shall be used in the evaluation and award process. Best value shall be based on objective and quantifiable criteria that shall include price.

5. **Minimum Times to be allowed for Bid Response:** Bid openings shall be held no sooner than seven (7) days after Solicitations are uploaded electronically to the Commonwealth's eProcurement web site.

6. **Submission of Bids:**
   a. A bidder shall submit one response to a Solicitation and shall not propose more than one model and brand for each item listed in the Solicitation, except for tiered pricing. Multiple or alternate bids offering more than one bid price in total or by line item shall be rejected unless specifically called for in the Solicitation.

   b. An envelope used for the hard copy submission of a bid shall bear the following information:

      (i) The date and time of the bid opening; and

(ii) The bid or quotation number.

c. A bid response submitted using the online bid response feature of the state's procurement system shall contain all required information for the Solicitation. An online bid response that is incomplete or not marked as formal and authenticated by the vendor with an electronic signature shall be considered non-responsive and shall not be eligible for award.

d. A vendor who submits an online bid response may submit an exact hard copy of the response as backup, in accordance with FAP 110-10-00(5)(b).

7. **Use of Facsimile (FAX) Equipment:** A faxed response to a Solicitation for competitive sealed bids shall not be accepted.

8. **Bid Changes or Withdrawals:** A vendor may withdraw or change a bid if a request is made before the time set for opening bids. Withdrawal of a bid after opening shall be permitted only if clear and convincing evidence indicates that a bidder has made a bona fide error in the preparation of a bid and the error will result in substantial loss to the bidder. Proof shall be submitted to substantiate error and loss to the reasonable satisfaction of the Office of Material and Procurement Services. The withdrawal of any bid under this paragraph shall be completed on a method of award basis as set forth by the Solicitation, for example line item, group, and total Purchase Request.

9. **Receipt of Bids:**
   a. Online bid responses shall be assigned a date and time stamp from the state's procurement system at the time of final approval and submission by the vendor. The state's procurement system will not allow submission of online responses after the published date and time for bid closing. Online bid responses shall be secured electronically and shall not be viewable by the Commonwealth until the published date and time for bid closing.

   b. All competitive bids, in hard copy, shall be time and date stamped by the Office of Material and Procurement Services or authorized agency upon receipt. All bids shall be filed by Solicitation number in a secure place to protect the integrity of the bid process. No information shall be disclosed as to the number of bids received or the identity of the bidders.

10. **Opening of Bids:** At the time designated for bid opening, online and hardcopy bids shall be opened and may be read or otherwise made available to the public. No late online bid responses shall be received or considered. A hardcopy bid received after the time specified in the Solicitation shall not be considered, unless no other bids are received. For morning bid opening, no late bid shall be considered unless it is postmarked or logged into the courier tracking system on or before the day before the bid opening. For afternoon bid opening, no late bid shall be considered unless it is postmarked or logged into the courier tracking system on or before 12 noon of the day of the bid opening.

11. **Bid Evaluation:** State agencies shall award each competitively solicited contract from a bid evaluation in the state's procurement system.

(KRS 45A.080)
(200 KAR 5:306)

FAP 111-37-00
CONTRACT TYPES

1. **Award/Contract:** An Award/Contract is established to purchase a specific quantity or amount at a specific price.

   a. Partial payment is not permitted on an Award/Contract unless authorized by the Finance and Administration Cabinet's Office of Material and Procurement Services or other issuing agency, on the document. A Receiving Report indicating partial or final delivery shall be used to authorize payment for commodities on a purchase order. Payment for services may be made without a Receiving Report. All payments against a contract shall be made in the state's procurement system, using a Receiving Report or Invoice that references the contract.

   b. If a delivery time is specified and the goods or services are not delivered on time, the agency shall contact the vendor and, if the vendor fails to resolve the problem, the agency shall file an official Vendor Tracking document with the Office of Material and Procurement Services.

   c. When delivery is made, the agency shall inspect the product for compliance with contract specifications, completeness, and condition, explaining any exposed damage on the bill of lading or waybill before accepting delivery. The agency shall notify the vendor and the delivering carrier of any concealed damages, within seven (7) days after delivery, and note any damage or discrepancies in the Receiving Report.

2. **Purchase Order:** This type of contract is established by a state agency to purchase a specific quantity or amount at a specific price from another state agency.

3. **Catalog Master Agreement:** A Catalog Master Agreement shall establish a price agreement, for use by two or more state agencies, with a vendor for supplying specific goods and services at specific unit prices during a specified time period. An "All State Agency" Catalog Master Agreement may be used by any state agency. A Catalog Master Agreement may contain an option to renew for an additional time period.

   a. A state agency shall buy from a Catalog Master Agreement unless exempted in the contract terms by the Office of Material and Procurement Services or the issuing agency, or as stated in subsection (c) and FAP 111-55-00.

   b. A Catalog Master Agreement may be issued by the Office of Material and Procurement Services if the **annual** estimated expenditure exceeds $20,000. In this instance, the Office of Material and Procurement Services may issue an "All State Agency" Catalog Master Agreement.

   c. Items covered by an "All State Agency" Catalog Master Agreement may be purchased locally, not from the Catalog Master Agreement, if the aggregate dollar amount of the total requirement is less than $1,000 or the amount stipulated in the Catalog Master Agreement.

   d. Procurement requirements shall not be parceled or split over a period of time in order to subvert the intent of this policy.

   e. A Catalog Master Agreement shall be issued by the Office of Material and Procurement Services or the Transportation Cabinet's Division of Purchases. An agency shall not add additional items to a Catalog Delivery Order or Invoice that are not listed on a Catalog Master Agreement.

4. **Master Agreement**: A Master Agreement shall establish a price agreement between an individual agency and a vendor for supplying specific goods and services at specific unit prices during a specified time period. A Master Agreement may contain an option to renew for an additional time period.

a. Partial payments may be made against a Master Agreement. An agency may initiate payment against a Master Agreement by using an Invoice that references the document in the state's procurement system.

b. A Master Agreement in which the annual estimated expenditure exceeds $20,000 shall be issued only under the authority of the Office of Material and Procurement Services, with the exception of a Personal Service Contract, Memorandum of Agreement, or grant agreement.

(KRS 45A.135)

FAP 111-38-00
PURCHASE REQUEST

1. **Submission:** An agency desiring to place an order for the purchase of commodities or services in excess of its delegated small purchase authority shall prepare a Purchase Request document in the state's procurement system and transmit the document to the Office of Material and Procurement Services immediately upon identification of the need for the purchase. A Purchase Request may contain multiple commodities if the commodities are related. If the commodities are not related, a separate Purchase Request shall be submitted for each class or category of commodities. A Purchase Request that contains insufficient information or that mixes items of different classes shall be returned to the agency.

2. **Lead-Time:** An agency shall submit a Purchase Request in sufficient time to allow the Office of Material and Procurement Services to process the request and the vendor to deliver. Normal processing time is 45 days for a sealed bid and 120 days for a Request for Proposal.

3. **Item Description:** Prime consideration shall be given to specifications and standards when preparing a Purchase Request.

   a. "Specification" means a description of dimensions, types of materials, performance and functions. Specifications shall include requirements applicable to the product or service needed, including applicable best value criteria. Bidding or quoting instructions, contract terms, and conditions shall be included as separate narrative. A specification shall identify and include minimum and basic requirements, describe functional features and include variables such as color, grade, and size, or provide measurable performance specifications. It shall include any other items such as requests for warranty, labeling, packaging, equipment set-up, and an operating manual.

   b. "Standard" means an established measure of extent, quality, or value or any type, model or example for comparison. To establish a level of quality, the exact product of one or more suppliers of typical workmanship may be designated, with the right to approve any other as equal or acceptable.

4. **General:** A purchase description shall set forth the essential physical and functional characteristics of the commodity or service required. As many of the following characteristics as are necessary to express the minimum requirements of the Commonwealth shall be used in preparing purchase descriptions:

   a. common nomenclature

   b. kind of material, i.e., type, grade, alternatives

   c. principles of operation

   d. restrictive conditions

   e. dimensions, size or capacity

   f. intended use, including:

      (1) location within an assembly

      (2) essential operational conditions

   g. equipment with which the item is to be used

h. other pertinent information that further describes the item, material or service required

i. measurable criteria for determining best value, which may include:

(1) inspection;

(2) testing;

(3) quality;

(4) workmanship;

(5) delivery;

(6) training;

(7) total cost of ownership;

(8) warranty

(9) vendor responsibility;

(10) inventory;

(11) years in business;

(12) facilities;

(13) personnel;

(14) service;

(15) life cycle cost;

(16) suitability for a particular purpose; and

(17) other relevant criteria.

5. **Restrictive Descriptions:** Purchase descriptions shall not be written so as to specify a product or a particular feature of a product specific to one manufacturer or vendor, unless it is determined that the particular feature is essential to the Commonwealth's requirements and other vendors lack the essential feature necessary to meet the Commonwealth's need. An agency shall provide documentation to support the determination.

a. **Brand Name or Approved Equal:** The identification of a requirement by the use of a brand name followed by the words "or approved equal" shall be used only if an adequate specification or more detailed description cannot feasibly be provided. Citing of a brand name in no way indicates a preference.

b. **Essential Products:** The words "or approved equal" shall not be added if it has been determined that only a particular product meets the essential requirements of the Commonwealth.

c. **Brand Name Products:** The term "brand name product" means a commercial product described by a brand name and make or model number or appropriate description by which such product is offered for sale by the particular manufacturer, producer or distributor. If feasible, all known acceptable brand name products shall be referenced.

6. **Use of the "Or Approved Equal":** Brand name or approved equal purchase descriptions shall describe those most important characteristics of the referenced products essential to the needs of the agency. Purchase descriptions shall contain the following information to the extent available, and include other information necessary to describe the item required:

   a. complete common generic identification;

   b. the most current applicable model, make or catalog number for each brand name product;

   c. name of the manufacturer, producer or distributor of each brand name product; and

   d. an adequate commercial catalog description or extracts therefrom, to identify the item being required.

7. **Evaluation and Award - Brand Name or Approved Equal:** Bids offering products that differ from brand name products referenced in a brand name or approved equal purchase description shall be considered for award if the buyer determines in accordance with salient criteria that the offered products are equal in all material respects to the products referenced. Bids shall not be rejected because of minor differences in design or features that do not affect the suitability of the products for their intended use.

8. **Service Descriptions:** Descriptions of services to be procured shall outline to the greatest degree practicable the specified services the vendor is expected to perform. The buyer shall assure that all factors of the service that affect the vendor and his cost calculations are fully detailed in the description. Every aspect of the desired service shall be listed in order to insure valid competition between vendors.

9. **Suggested Sources:** Agencies are encouraged to recommend sources as part of the Purchase Request. The agency shall include the firm's full name, address, phone number, fax, zip code, and federal identification number.

10. **Delivery:** A reasonable delivery period after receipt of contract that will meet the agency's need shall be stated in the Solicitation. If a delivery period of less than 30 days is essential, the agency shall support the requirement since a contract may be placed on delivery ability and restrict full competition. Date required shall not be stated in such terms as "ASAP" or "RUSH." Purchase Requests with unreasonably short delivery requirements shall be returned to the agency as unworkable.

11. **Purchase Request Preparation:**

   a. After determining the requirements for commodities, equipment or services, the agency shall formulate specifications and complete a Purchase Request in the state's procurement system. An agency shall place supporting documentation for specifications and standards, best value criteria, and item descriptions in attachments to the Purchase Request and shall forward, in electronic format, the basic document and all attachments, to the Office of Material and Procurement Services.

   b. An agency shall provide full explanation on the Purchase Request document if:

      (1) a specific brand name or model of equipment is required; or

      (2) equipment is required to be compatible or interchangeable with existing equipment. See FAP 111-10-00.

c. Agencies shall designate the correct procurement units in relation to the quantities desired. If other than market items are desired, care shall be taken to correctly identify those items requiring special fabrication, and the agency shall describe those items in detail. If feasible, drawings shall accompany the Purchase Request for those items that require special fabrication.

d. Purchase Requests that are inaccurate, unclear, unnecessarily restrictive, or discourage maximum competition shall be returned to the agency for correction.

FAP 111-39-00
EMERGENCY PURCHASES

1. An "emergency condition" is defined at KRS 45A.095(3). In an emergency, an agency shall procure goods or services that are within the agency's small purchase authority without prior approval from the Finance and Administration Cabinet.

2. The provisions of KRS 45A.095(4) shall apply if the cost of an emergency purchase exceeds an agency's small purchase authority.

   a. The initial determination that an emergency condition exists shall be made by the head of the using agency. Upon this determination and if the purchase will exceed the agency's small purchase authority, the using agency shall confer with the Finance and Administration Cabinet prior to making a purchase, if time permits or if possible. If the emergency makes it impractical to consult in advance with the Finance and Administration Cabinet, the head of the using agency may make the required emergency purchase. The final determination for an emergency purchase, which exceeds an agency's small purchase authority, shall be approved by the secretary of the Finance and Administration Cabinet or his designee.

   b. After an emergency purchase that exceeds an agency's small purchase authority has been made, the emergency purchase shall be fully documented by the agency head in a letter to the secretary of the Finance and Administration Cabinet or in an electronic communication, attached to an ordering or payment document in the state's procurement system, routed to the executive director of the Office of Material and Procurement Services. The communication shall include:

      (1) an explanation of the emergency condition;

      (2) name of vendor selected;

      (3) amount of procurement;

      (4) other price quotations obtained; and

      (5) basis for selection of vendor.

   c. Upon approval of the emergency purchase by the secretary of the Finance and Administration Cabinet or his designee, payment shall be made.

(KRS 45A.095)
(200 KAR 5:309)

FAP 111-41-00
DELIVERY AND RECEIVING

1. A delivery under an order placed by the Commonwealth may be complete or partial depending upon the terms of the contract. The initial purchase document shall indicate whether partial delivery and partial payment is acceptable. Acceptance of any late deliveries shall not constitute a waiver of any of the Commonwealth's rights under its contract with the vendor.

   a. **Delivery Point** - All deliveries shall be made to the destination specified in the Order.

   b. **Freight** - The cost of freight shall be a consideration in every order. An agency shall conserve freight costs by ordering minimum quantities that allow freight-free shipping, if feasible. F.O.B. Destination Freight Prepaid and Allowed is the preferred freight term for purchases by state agencies. If F.O.B. Destination Freight Prepaid and Allowed is not available and if separate freight charges apply, an agency shall insist upon the freight terms of F.O.B. Destination, Freight Prepaid.

   c. **Liability for Delivery** - Liability for delivery to an agency is governed by the freight terms specified in the Order.

      (1) "F.O.B. Destination Freight Prepaid and Allowed" means the vendor or shipper owns all goods in transit and is liable for delivery to the point of destination. The vendor or shipper is responsible for filing any claims with the delivering carrier for breakage or other loss and for any damage resulting from transportation. **The vendor shall include the cost of freight in the unit price.**

      (2) "F.O.B. Destination, Freight Prepaid" means the vendor or shipper owns all goods in transit and is liable for delivery to the point of destination and shall prepay all handling, crating, and transportation charges to the location of the using agency. The vendor shall bill the using agency for reimbursement for the cost of transportation from the shipping point to the delivery point, by submitting the prepaid and receipted freight bill with the invoice for the items shipped. A receipt for delivery service and parcel post shipments is not required.

      (3) "F.O.B. Origin or Shipping Point" means the agency owns the goods in transit, pays freight charges and shall file any claims with the delivering carrier for losses or damages.

2. **Packaging and Crating:** All commodities or equipment shall be packed and delivered according to accepted commercial practices and the packaging and marking instructions in the contract. A charge shall not be made for packing cases, bailing, crating, barrels, drums, sacks, or other containers. If the contract specifies, the vendor may make a memorandum charge and require the using agency to return containers for credit, with transportation costs paid by the vendor, or to pay for them if not returned within a reasonable time.

3. **Delivery Hours:** All deliveries shall be made during normal business hours or as designated by the Commonwealth on the contract or Delivery Order.

4. **Penalty for Late Delivery:** In addition to being cause for disciplinary action against a vendor, a delivery not made within the time provided by the contract may create an emergency situation requiring the commodity to be obtained from some other source. If an emergency situation is created, an agency may enter the open market and purchase the commodity sought under the contract. The vendor who fails to make delivery as specified in the contract shall be charged with any increase in price incurred by the Commonwealth and the cost shall be deemed a debt owed by the vendor to the Commonwealth of Kentucky.

5. **Freight Claims:**

a. An agency receiver of goods delivered shall note shortages or apparent damages on the delivering carrier's freight bill and obtain the delivering driver's signature below this notation before forwarding it to the agency procurement supervisor or designee.

b. The agency procurement supervisor or designee shall request an inspection by the delivering carrier's adjuster on an official Freight Claim-Request for Inspection form. After receiving an official inspection report offering a compromise offer of settlement, the agency procurement supervisor or designee shall forward a copy of the report, along with a copy of the freight bill, to the vendor immediately.

Concealed damages shall be reported to the delivering carrier within seven (7) calendar days after receipt of delivery.

c. If a vendor fails to handle a freight claim or repair or replace damaged materials promptly, the agency shall file an official Vendor Tracking Document with the Office of Material and Procurement Services.

6. **Receiving:**

a. An agency is responsible for prompt receiving, inspecting, and acceptance of goods for all agency requirements, unless otherwise specified in the contract.

b. An agency shall designate responsible personnel to certify that the listed materials were received, that quantities were as stated, that condition was satisfactory unless noted, and that payment is due.

c. An agency shall notify the Office of Material and Procurement Services using the electronic Vendor Tracking document if a vendor fails to comply with the delivery terms and conditions of a contract established by the Office of Material and Procurement Services.

d. To the maximum extent possible, all state agencies shall use receiving reports in the state's procurement system to document items received.

FAP 111-42-00
VENDOR COMPLAINTS

1. If a state agency experiences a minor problem or difficulty with a vendor, the agency shall contact the vendor directly and attempt to informally resolve the problem. If the vendor does not act promptly and satisfactorily, the using agency shall immediately file a Vendor Tracking Document in the state's procurement system. If an agency experiences a major problem, a Vendor Tracking Document shall immediately be entered into the state's procurement system. A Vendor Tracking Document shall be filed on a timely basis and shall fully document the nature of the problem. **An agency shall not allow vendor complaints to accumulate or go unreported until a crisis exists.**

   Upon receipt of a Vendor Tracking Document, the appropriate purchasing officer in the Office of Material and Procurement Services shall review the information submitted. An agency may be asked for further clarification or supporting documentation. The purchasing officer shall then forward a copy of the complaint to the vendor for a response or corrective action. The complaining state agency shall be copied on all communications between the Office of Material and Procurement Services and the vendor.

   Upon receipt of the vendor response to a complaint, the purchasing officer shall consult with the using agency to determine if the proposed corrective action is satisfactory or if alternatives offered by the vendor are acceptable. If persistent or chronic problems with a given vendor are documented, or the vendor fails to respond, the Office of Material and Procurement Services may initiate disciplinary action.

2. If goods are delivered by a vendor that do not conform to the order, the agency shall notify the vendor promptly. If the vendor does not replace rejected materials within thirty (30) days **after written notice**, the agency may sell the rejected items and submit the proceeds to the vendor, less expenses.

3. The Vendor Tracking Document and any attachment filed in the state's procurement system shall contain:

   a. The contract number.

   b. Vendor name.

   c. Commodity or service involved.

   d. Name of purchasing officer.

   e. Brief description of the complaint.

   f. Action taken to date by the using agency.

   Copies of all Vendor Tracking Documents, supporting documentation, and subsequent communications shall be placed in the state's procurement system document file maintained by the Office of Material and Procurement Services.

(KRS 45A.110)
(200 KAR 5:304 – 200 KAR 5:315)

FAP 111-43-00
PERSONAL SERVICE CONTRACTS

1. An agency shall procure a Personal Service Contract by issuing a Request for Proposal for Personal Service Contract.

   a. An agency desiring to procure a professional service shall issue a Request for Proposals (RFP) in the state's procurement system. An agency shall post the RFP to the Commonwealth's eProcurement web site for a minimum of seven (7) days. At the discretion of the agency and if stated in the RFP, a vendor may respond via the online bidding feature of the state's procurement system, in accordance with FAP 110-10-00.

   b. The agency shall review the proposals received and record a determination of the qualification rankings of the offerors based on the evaluation factors set forth in the RFP. The determination shall be documented in the Bid Evaluation of the state's procurement system by the contracting agency.

   c. After determining the best proposal received, the agency may negotiate a fair and reasonable compensation with the selected offeror.

   d. The agency shall award a contract electronically from a bid evaluation in the state's procurement system. The contract shall include all terms and conditions agreed upon; the sworn statement regarding campaign finance laws required by KRS 45A.110(2) and 45A.115; the statement regarding revealing of violations of and compliance with certain KRS chapters required by KRS 45A.485; the Legislative Research Commission (LRC) Proof of Necessity (PON) form; language regarding access to documents required by 200 KAR 5:314; and language of KRS 45A.695(7) regarding payment and cancellation clause required by 45A.695(1). If any changes are made to the agreement along the electronic route, a new copy shall be forwarded to the second party for agreement to the changes.

   e. A vendor wishing to exempt proprietary information from disclosure as stated in 200 KAR 5:314 shall submit a request to the secretary of the Finance and Administration Cabinet for approval before executing a contract. The request shall specifically describe the information requested to be exempted.

   f. The agency shall maintain the original contract, signed by both parties, and the contract shall be available for review upon request. The electronic contract shall be forwarded through the agency and the Finance and Administration Cabinet for appropriate approvals. The Finance and Administration Cabinet shall file the contract with LRC.

2. A Personal Service Contract for auditing services shall not be established until the Auditor of Public Accounts has declined in writing to perform the service or has failed to respond within thirty (30) days to a written request for an audit. (KRS 45.149).

3. Exemptions from the requirements of KRS 45A.690 – 45A.725 and this policy may be approved by the secretary of the Finance and Administration Cabinet, or his designee, if an emergency condition exists or if a sole source provider is identified. To request exemption, the requesting agency shall submit a letter to the secretary of the Finance and Administration Cabinet with the following information:

   a. Approval of the agency head or secretary of the requesting cabinet or agency;

   b. A description of the needed service and sole source justification, or a description of the emergency conditions;

c. An estimate of the planned amount of work involved;

d. An estimate of the contract cost per fiscal year or biennium, including anticipated amendments;

e. Identity of an agency contact person; and

f. Verification of the unavailability of Commonwealth personnel or the non-feasibility of utilizing Commonwealth personnel to perform the service.

4. If a governmental emergency, as defined by KRS 45A.690, requires that a vendor begin work prior to the contract being filed with LRC, the agency shall submit a letter to the secretary of the Finance and Administration Cabinet requesting an emergency effective date, and describing the circumstances that required the vendor to start work prior to filing the contract with LRC.

5. Modification to a Personal Service Contract shall be processed in the same manner as the original contract in the state's procurement system. A modification shall be used if the parties to an established Personal Service Contract agree to increase or decrease funds, revise the scope of work, extend the time for performance within the current biennium, or any other change.

6. If an agency creating a Personal Service Contract does not have legal counsel in-house, the agency shall submit the original document to the Personal Service Contract Office of the Office of Material and Procurement Services. The Personal Service Contract Office shall review the agreement, secure the signature of an attorney for the Finance and Administration Cabinet, and return the original to the agency to be retained.

(KRS 45A.080)
(KRS 45A.690 - KRS 45A.725)

FAP 111-44-00
MEMORANDUM OF AGREEMENT

1. A Memorandum of Agreement shall not cross over the biennium, unless wholly funded by federal road fund monies.

2. All Memoranda of Agreement shall be created in the state's procurement system. The contract shall include all terms and conditions agreed upon: the sworn statement regarding campaign finance laws required by KRS 45A.110(2) and 45A.115; the statement regarding revealing of violations of and compliance with certain KRS chapters required by KRS 45A.485; the Legislative Research Commission (LRC) Proof of Necessity (PON) form; language regarding access to documents required by 200 KAR 5:314; and language of KRS 45A.695(7) regarding payment and cancellation clause required by 45A.695(1).

3. After the contract is created, the agency shall secure the signatures of the first and second parties and electronically route the agreement to the Personal Service Contract Office of the Office of Material and Procurement Services. The document shall be reviewed and approved electronically by the Finance and Administration Cabinet, Office of General Counsel, and the secretary of the Finance and Administration Cabinet. The Finance and Administration Cabinet shall file the contract with the Government Contract Review Committee. After approval, the agreement shall be routed electronically back to the agency to retain as a permanent document. If any changes are made to the agreement along the electronic route, a new copy shall be forwarded to the second party for agreement to the changes.

4. If an agency creating a Memorandum of Agreement does not have legal counsel in-house, the agency shall submit the original document to the Personal Service Contract Office of the Office of Material and Procurement Services. The Personal Service Contract Office shall review the agreement, secure the signature of an attorney for the Finance and Administration Cabinet, and return the original to the agency to be retained as a permanent document.

5. A Modification to a Memorandum of Agreement shall be processed in the same manner as the original document. A Modification shall be used if the parties to an established agreement agree to increase or decrease funds, revise the scope of work, extend the time for performance within the current biennium, or any other change.

(KRS 45A.300; KRS 45A.660; KRS 45A.690)

FAP 111-45-00
PAYMENT DOCUMENTS

1. **GENERAL:** Contracts, including Award/Contracts, Purchase Orders for internal vendors, Personal Service Contracts, Memoranda of Understanding, Memoranda of Agreement, Master Agreements (MA), and Catalog Master Agreements (CMA) are special purpose documents used for authorizing purchases and payments for commodities and services procured by the Commonwealth.

2. An Award/Contract, MA, or CMA may be established by:

   a. Competitive Sealed Bid (KRS 45A.080, FAP 111-35-00);

   b. Competitive Negotiation (KRS 45A.085, FAP 111-57-00);

   c. Noncompetitive Negotiation (KRS 45A.095, FAP 111-08-00, FAP 111-09-00, FAP 111-10-00,FAP 111-39-00);

   d. Special Authority (FAP 111-08-00, FAP 111-09-00, FAP 111-10-00); or

   e. Small Purchase (KRS 45A.100, FAP 111-55-00).

3. An Award/Contract, MA, or CMA shall not be required for the following items:

   a. Transactions that can be made by Journal Voucher;

   b. Items that can be purchased or paid by Imprest Cash or Procurement Card under the agency's small purchase authority;

   c. Transactions that can be handled by inter-account.

4. A vendor invoice may be required for payments against an Award/Contract, MA, or CMA, if specified in the purchasing document. The original vendor invoice, if required, shall be retained in the agency for the period of time required by the appropriate document retention schedule. The invoice shall be on the official invoice form of the vendor.

5. An agency shall ensure that adequate funds are available for immediate payment before placing an order.

6. An agency shall select the appropriate payment method for all goods and services. For payments against a document that has been entered into, and encumbered funds within, the state's procurement and accounting systems, an agency shall process an electronic invoice that will liquidate the encumbrance when payment is authorized. If exercising small purchase authority, or if specifically authorized in the terms of the contract, an agency may make payments using a Procurement Card. All payments referencing contracts and awards established in the state's procurement system shall be made in the state's procurement system and reference the appropriate award.

7. If an agency pays a vendor more than thirty (30) working days after receipt of both satisfactory goods or services and satisfactory invoice, the agency shall determine under the provision of KRS 45.451 – KRS 45.458 whether the Commonwealth owes the vendor a penalty. The agency shall pay the penalty in accordance with FAP 120-05-00.

FAP 111-51-00
CONTRACT ADMINISTRATION

1. **General:** The Office of Material and Procurement Services shall rely on the using agency to ensure the contract is being completed or executed as written. If any post-contract problem, deviation, change, or delay arises that is not provided for in the contract, the matter shall first be handled between the using agency and vendor. If the using agency cannot reach a satisfactory resolution with the vendor, the agency shall refer the matter to the Office of Material and Procurement Services in accordance with the provisions of FAP 111-42-00, Vendor Complaints.

2. **Authorities:** An using agency shall not allow any change to the terms of a contract without proper authorization from the issuing agency. Agencies shall document problems that may require contract changes, price adjustments, quantity variations, alternate items or delinquent deliveries, and forward the documents to the issuing agency. The issuing agency shall then initiate any necessary action or contract change with the vendor.

(KRS 45A.035)

FAP 111-52-00
LEASE OR RENTAL OF EQUIPMENT AND SERVICES

1. **General:** Equipment and service requirements, which are contemplated for lease or rental, are not within the requirements of FAP 111-09-00(6), and are not otherwise covered by an established contract, shall be thoroughly evaluated on the basis of need, economy and the best interest of the Commonwealth and conform to this policy. Such factors as lease or rental versus purchase, long term costs, future needs, depreciation, penalties, and other considerations shall be analyzed by an agency to propose a lease or rental arrangement. If possible, a lease agreement shall be solicited and awarded on a competitive basis. A lease agreement shall not be formalized between the Commonwealth and any lessor for the intended purpose of circumventing the requirements of competitive bidding and normal purchasing procedures.

2. **Lease Agreement within an Agency's Small Purchase Authority:** An agency may formalize a lease or rental agreement, which does not exceed its small purchase authority without prior approval from the Office of Material and Procurement Services.

3. **Lease Agreements that Exceed an Agency's Small Purchase Authority:** If a contemplated lease agreement exceeds an agency's small purchase authority, the agency shall forward a Purchase Request to the Office of Material and Procurement Services in the state's procurement system with an accompanying electronic attachment or electronic notepad supporting the need and reasons for entering into the agreement. This request shall be subject to the approval of the executive director of the Office of Material and Procurement Services.

   Upon review and approval by the executive director, the Office of Material and Procurement Services shall issue the appropriate contract document in the state's procurement system. The document shall be the authority basis for the agency to order items on the contract and make payments to the vendor.

4. **Contract Administration:** The agency shall administer the terms of the contract, ensuring that the vendor is billing according to the contract terms, and providing any maintenance or other requirements according to the contract terms.

5. **Post-Contract Agreements:** Unless provided in a contract, an agency shall not enter into any further agreement, lease, company order, or other document to complete or initiate the terms and conditions of a contract already in effect and awarded via a competitive solicitation. Any "post-contract" signed agreement shall be considered non-binding upon the Commonwealth of Kentucky and cause for breach of contract.

6. **Lease with Purchase Option:** A purchase option in a lease shall be exercised only if the lease containing the option was placed by competitive bidding, competitive negotiation or small purchase procedures, or if the leased equipment is the only product that can meet the Commonwealth's requirements, as determined in writing by the agency head and approved by the Office of Material and Procurement Services.

   a. Before exercising a purchase option in the lease, the agency shall:

      (1) Investigate alternative means of procuring comparable equipment,

      (2) Compare costs and benefits associated with the alternative means and the exercise of the option, and,

      (3) Document the basis and justification for exercising the purchase option.

b. A request for a purchase option in a lease shall be submitted on a Purchase Request in the state's procurement system and shall describe the equipment desired giving all pertinent details and supporting the basis for exercising the option.

(KRS 45A.035)

FAP 111-53-00
PRE-OWNED AND RECONDITIONED EQUIPMENT AND PRODUCTS

1. An agency desiring to purchase pre-owned, reconditioned, or demonstrator-type products or equipment that exceeds its small purchase authority shall request from the Office of Material and Procurement Services a one-time authorization to purchase under FAP 111-09-00(12).

2. The Office of Material and Procurement Services may approve the purchase of pre-owned, reconditioned, demonstrator, or "factory-seconds" products or equipment if:

   a. The purchase is fully justified;

   b. The products or equipment are of proven value to and meet the needs of the agency;

   c. The products or equipment are available at fair market prices;

   d. An independent appraisal of the products or equipment, attesting to the current market value, accompanies the request. Complete data and descriptions, model numbers, serial numbers, brand names, and accessories shall also be included; and

   e. The purchase is in the best interest of the Commonwealth.

3. If the executive director of the Office of Material and Procurement Services approves a request to purchase pre-owned, reconditioned, demonstrator, or "factory-seconds" products or equipment, the Office of Material and Procurement Services may issue the authority for a purchase in accordance with FAP 111-09-00(12).

Relates to: KRS 45A.035; 200 KAR 5:309

FAP 111-54-00
TRADE-IN PURCHASES

1. An agency may trade in state owned personal property for the purchase of new equipment or products, if the property is declared surplus in accordance with FAP 220-19-00.

2. A Purchase Request submitted to the Office of Material and Procurement Services or an agency Solicitation sent to vendors shall note that a trade-in is included, and shall include a complete description of the item to be traded, including inventory identification number and serial number, if applicable. The agency shall specify the method by which potential respondents may inspect the property.

3. The executive director of the Office of Material and Procurement Services shall approve in advance a proposed purchase with trade-in that will not be competitively procured.

4. The agency property officer shall update inventory records upon completion of the transaction.

(KRS 45A.035)

FAP 111-55-00
SMALL PURCHASE PROCEDURE FOR GOODS AND NON-PROFESSIONAL SERVICES

1. This procedure shall not be used for printing or professional service contracts. The small purchase procedure may be used for other purchases by an agency if the cost is estimated to be no more than the amounts listed in Table I.

2. Procurement requirements shall not be parceled, split, divided, or scheduled over a period of time in order to subvert the intent of this procedure. An agency shall make its purchases based on sound business planning with the goals of economy and efficiency in mind and shall consider storage capacity and product shelf life when purchasing commodities. If an agency's projected needs for like items will cost more than what it can purchase under its small purchase limit, the agency shall submit a Purchase Request to the Finance and Administration Cabinet, Office of Material and Procurement Services for commodities and services. Quotes may be obtained by telephone, fax, or by posting a Solicitation to the Commonwealth's eProcurement web site. Refer to FAP 220-10-00 for the small purchase procedure for construction services.

Table I, Quotations Required for Commodity and Service Purchases

Agency Small Purchase Limit	One Quote Request for Purchases Equal to or Less Than	At Least Three Quotes Requested or Posted to the Commonwealth's e-Procurement Web Site if Between
$1,000	$1,000	N/A
$3,000	$1,000	$1,000 and $3,000
$5,000	$3,000	$3,000 and $5,000
Higher than $5,000	$5,000	Over $5,000

3. An agency shall maintain a small purchase order file containing the price quotations requested, quotations received, a tabulation of prices offered, and comments by the agency handling the small purchase concerning the basis for placing the order. The agency shall retain these records for audit and review purposes.

4. Agencies of the Finance and Administration Cabinet shall request quotations as detailed in Table II for commodity and service purchases of less than $20,000.

Table II, Price Quotes Required for Finance and Administration Cabinet Agencies,

Number of Quote Requests Required	For All Purchases, Other than Construction, Costing
One	Less Than $5000
At Least Three (3) or *Posted the Commonwealth's eProcurement Web Site	Between $5000 and $20,000

*The posting of a request for quotes on the Commonwealth's e-Procurement web site shall satisfy the above requirements.

5. **Master Agreement (MA) and Catalog Master Agreement (CMA) Items**. Items available on MA or CMA may be purchased under small purchase authority from another vendor if the aggregate dollar amount of the total requirement is less than either $1,000 or the higher amount required for a minimum order in a specific MA or CMA.

6. **Solicitation Procedure for Non-professional Services for Agencies with Small Purchase Limits Less than $20,000.** If a non-professional service totals between an agency's small purchase limit and $20,000, an agency may solicit services as detailed in table II. A Master Agreement or Award/Contract shall be created by the agency in the state's procurement system and forwarded to the Office of Material and Procurement Services, along with supporting documentation containing the request for quotations, the number of quotations requested, a tabulation of quotations received and award justification, for electronic approval prior to a purchase of services.

7. **Procedure For Agencies Seeking Delegated Higher Small Purchase Limits**
The secretary of the Finance and Administration Cabinet may grant to a state agency, with a justifiable need, the limited delegated authority to purchase specific items whose costs frequently exceed the agency's small purchase limit provided in KRS 45A.100(1), in accordance with 200 KAR 5:302.

8. The Office of Policy and Audit may perform periodic procurement audits of the various agencies for compliance with the provisions of KRS 45A and the Finance and Administration Cabinet Manual of Policies and Procedures, and, if an agency demonstrates deficiencies in procurement expertise or practice, shall recommend that the secretary revoke or amend any delegations granted under this policy.

KRS 45A.100
200 KAR 5:302

FAP 111-56-00
IMPREST CASH FUNDS

Subject to the provisions of KRS Chapter 45A, a budget unit, if provided for by appropriation or if authorized by the Finance and Administration Cabinet, may establish one (1) or more imprest cash funds for the purpose of making disbursements requiring prompt cash outlay, and to carry out the provisions of KRS Chapter 45A. The agency head shall assume full responsibility for the proper use of the imprest cash funds. The custodian shall administer the fund. An agency requesting imprest cash funds shall contact the Office of Insurance to determine the amount of individual bonds that may be required.

1. **PROPER USE OF IMPREST CASH FUNDS:** The preferred methods of payment for all expenses are the state's procurement and accounting systems and the state procurement card. An agency shall use imprest cash funds only if it is impractical or impossible to make payments through one of the preferred methods.

2. **IMPREST CASH SHALL NOT BE USED FOR THE FOLLOWING PURPOSES:**

   a. Salaries or wages for Commonwealth employees.

   b. Travel or any expense relating to travel or entertainment.

   c. Legal fees.

   d. Printing.

   e. Lease or purchase of real property.

   f. Freight or express if the vendor is obligated to pay freight or express

   g. Payments on existing contracts.

   h. Refund of fees or other receipts.

   i. Purchase of scheduled items in excess of $500 per category during the scheduled period.

   j. Bond or Insurance Premium, except notary bonds.

3. **PETTY CASH FUNDS:** Petty Cash Funds not to exceed $50.00, except with special approval of the of the Office of Material and Procurement Services, may be used for purchases in which cash payment is necessary. Such funds may be established as sub-imprest cash funds and are authorized for the following purposes:

   a. Postage.

   b. Freight and Express. Expenses for incoming freight and express shall not be paid if shipping instructions were F.O.B. agency. An explanation shall be made to show the purpose for each payment.

   c. Governmental Publications.

   d. Local market purchases of supplies, materials, services or fees, not to exceed $25 per purchase except with special authorization from the executive director of the Office of Material and Procurement Services.

4. **HOW TO ESTABLISH IMPREST CASH FUNDS:**

a. An agency shall submit a letter requesting an imprest cash fund to the Office of Material and Procurement Services. The request shall contain the following information:

   (1) The amount of funds desired. This amount shall be approximately the sum of two months of estimated imprest cash expenditures.

   (2) A list of items that the agency wishes to pay for from the imprest cash fund (See Section 1).

   (3) An explanation of the need for imprest cash fund purchases rather than other established procedures.

   (4) A proposed custodian and alternate. Only one custodian and one alternate shall be authorized unless need for an additional alternate is justified.

   (5) The period for which imprest cash funds shall be appropriated.

   (6) A statement that requires a bond to be executed immediately upon establishment of the fund.

b. The Office of Material and Procurement Services shall evaluate the request and, if approved, prepare an imprest cash authority indicating the items approved for payment from the imprest cash fund and any financial restrictions applicable thereto.

c. Upon receipt of a copy of the approved authority, the Division of Statewide Accounting Services shall prepare a warrant for the amount of the fund. The State Treasurer shall issue a check in the approved amount payable to the custodian of the fund.

d. The agency custodian shall establish a bank account for the Imprest Cash Fund at the Commonwealth's depository bank and order checks. The custodian shall write checks to make payments authorized by the authority and prepare an agency imprest cash voucher. The custodian shall also prepare a summary of disbursements and requests for reimbursement per instructions of the Division of Statewide Accounting Services.

5. REVISION OF IMPREST CASH FUNDS: An agency shall submit a request for changes in an imprest cash authority in writing to the Office of Material and Procurement Services. This request shall include the imprest cash authority number, the custodian and custodian I.D. number, and a complete explanation and justification of the requested changes. If approved, the Office of Material and Procurement Services shall prepare an amendment to the authority indicating the items changed.

Relates to: KRS 45A.095; KRS 45A.650-KRS 45A.655

FAP 111-57-00
COMPETITIVE NEGOTIATIONS

1. A contract may be awarded by competitive negotiation if, under regulations issued by the secretary of the Finance and Administration Cabinet, the purchasing officer determines in writing that the use of competitive sealed bidding is not practical.

2. The Finance and Administration Cabinet, Office of Material and Procurement Services shall use a Request for Proposal (RFP) for solicitations by competitive negotiation. The RFP shall include comprehensive performance requirements, technical provisions, separate cost provisions, and specific evaluation criteria for evaluating offers. Contract awards shall be based upon cost and technical evaluation criteria set forth in the RFP.

3. a. An agency needing to purchase services or commodities by RFP shall forward a Purchase Request and a copy of the supporting documentation electronically to the Office of Material and Procurement Services. The supporting documentation shall include, at a minimum, information on specifications, performance requirements, and evaluation criteria. An agency shall contact the Office of Material and Procurement Services to receive a copy of the standard format as soon as possible after identifying the requirement for an RFP.

   b. A purchase involving computer-related services or equipment shall receive prior approval from the Commonwealth Office of Technology in accordance with FAP 111-15-00.

   c. The Office of Material and Procurement Services shall review the agency Purchase Request and supporting materials and return the draft document to the requesting agency with comments if clarifications, revisions or additions are needed.

   d. The requesting agency shall make any necessary changes or modifications to the draft document and prepare the draft RFP. The requesting agency and the Office of Material and Procurement Services shall review the entire proposal and make any necessary final changes.

   e. The Office of Material and Procurement Services shall put the material in final RFP format and distribute the RFP to prospective offerors. Posting the RFP to the Commonwealth's eProcurement web site shall satisfy the distribution requirement. State agencies shall suggest possible offerors or vendors to be solicited.

   f. The requesting agency shall nominate a technical evaluation committee, and if applicable, a cost evaluation committee for the project and submit the nomination to the Office of Material and Procurement Services for confirmation. The committees shall be comprised of members who are state employees, unless approval for appointment of non-state employees is granted by the secretary of the Finance and Administration Cabinet.

   g. Vendors shall submit all responses to RFPs to the Office of Material and Procurement Services. Following receipt of responses to the RFP, the Office of Material and Procurement Services shall determine which offers have met the general conditions of the RFP and are acceptable for award. The technical proposals for those offers determined acceptable for award shall be transmitted to the technical evaluation committee for evaluation. If applicable, the cost proposals determined acceptable for award shall be transmitted to the cost evaluation committee. The evaluation committees shall review and evaluate all offers determined to be acceptable for award in accordance with the criteria set forth in the RFP. Members of the evaluation committees shall forward their signed evaluations and comments to the Office of Material and Procurement Services.

   h. Upon receipt and review of the evaluations and scores, the Office of Material and Procurement Services shall determine if "Best and Final Offers" are appropriate. If used, the call for "Best and

Final Offers" shall be sent only to those firms determined acceptable for award. After best and final responses are received, the Office of Material and Procurement Services shall award the contract in accordance with the award methodology stated in the RFP.

4. An agency having a project that may be best handled by competitive negotiation shall contact the Office of Material and Procurement Services for further coordination and guidance on procedures.

(KRS 45A.085)
(200 KAR 5:307)

FAP 111-58-00
PROCUREMENT CARD PROGRAM

PROCUREMENT CARD PROGRAM DEFINITIONS

"Agency" means a spending unit.

"Agency Head" means an individual who oversees the operations of the agency.

"Agency Site Administrator" means an individual responsible for processing the Procurement Card documents, including receiving and reconciling receipts with transactions and ensuring payment to issuing bank is on time.

"Authorized Signer" means an individual authorized to communicate with issuing bank, with respect to changes in the procurement card program for a specific agency.

"Cardholder" means a Commonwealth of Kentucky employee who has a procurement card issued in their name and is the only person authorized for use of the card.

"Custodial Card" means a shared procurement card issued to a functional unit.

"Custodian" means a Commonwealth of Kentucky employee who has a custodial card issued in their name and has the responsibility of ensuring the compliance of procurement procedures for the card.

"Functional Unit" means a location designated by the agency and approved by the Office of the Controller to utilize a Custodial Card.

"Procurement Card Program Administrator" means a designated individual within an agency who is responsible for overseeing and administering the functions of the Procurement Card Program.

"Supervisor" means an individual who has a cardholder and/or custodian who reports to them.

A procurement card may be used by a state employee for both the purchasing of goods and services, and the payment for those purchases. Use of this card shall be in accordance with the Commonwealth's procurement laws, regulations, policies and procedures and the Executive Branch Code of Ethics, except as modified herein. Each agency shall ensure that its employees adhere to this policy. Additionally, each agency shall take appropriate disciplinary actions whenever any violation of this policy is identified, and report such violation(s) and action(s) to the Office of the Controller. A violation may result in action at the discretion of the Finance and Administration Cabinet in accordance with Kentucky Revised Statutes.

A procurement card is deemed to be the official purchasing card for the Commonwealth. No other purchasing cards should be used without prior approval by the Finance and Administration Cabinet.

1. A participating agency shall sign and accept the terms and conditions of the Commonwealth of Kentucky Procurement Card Site Agreement. A procurement card may be issued to a Commonwealth of Kentucky employee, a custodian, or a Kentucky National Guard member as authorized in section 2 of this policy.

2. A card may be issued to a Kentucky National Guard member, if the Governor orders the Kentucky National Guard into active duty pursuant to KRS 38.030. Each participating National Guard member shall sign and accept the terms and conditions of the Commonwealth of Kentucky Procurement Card Cardholder Agreement. The procurement card program administrator of the Department of Military Affairs shall retain the card in a central location when not being used by the Kentucky National Guard member on active duty. The card shall be cancelled at the conclusion of the Guard member's active duty.

3. The procurement card may be used for the following transactions, if within the card limit:

    a. Any purchase not prohibited in section 4 of this policy, and not otherwise allowed by subsections b-h of this section, that is no greater than the limit established for the card or the agency's small purchase authority, single quote limit; whichever is less.

    b. Any purchase from a Master Agreement or Catalog Master Agreement, with the exception of 4 (g).

    c. Any utility payment, regardless of the dollar amount.

    d. Registration fees for employee training and conferences.

    e. Out of state purchases of fuel for motor pool vehicles only if the state fleet management fuel card is not accepted. The cardholder shall attach an approved authorization for travel outside of Kentucky and a statement that the fleet management card was not accepted by the vendor to the vendor's invoice and submit with supporting documentation.

    f. Photocopying costs if the employee's agency is located outside of Franklin County.

    g. Purchases from Kentucky Correctional Industries.

    h. Purchases from the Department of Education's online bookstore, or other allowable online work-related websites.

4. The procurement card **shall not** be used for the following transactions:

    a. Travel and entertainment related expenses, except the Office of the Controller may authorize cards for the purchase of airline tickets or similar costs, with prior justification.

    b. Alcoholic beverages.

    c. Automotive gasoline, except as stated in subsection 3 (e) above.

    d. Cash Advances.

    e. Salaries and Wages.

    f. Legal Services.

    g. Lease purchases, unless expressly authorized by the Office of the Controller, in accordance with Section 49 of the Kentucky Constitution.

    h. Insurance premiums and bonds.

    i. Services covered by Personal Service Contract statutes and regulations.

    j. Printing services, unless expressly authorized by the Office of the Controller, in accordance with Section 247 of the Kentucky Constitution.

    k. Purchase from another Commonwealth agency, except if expressly permitted by the Finance and Administration Cabinet.

    l. Used equipment, unless expressly authorized by the Office of the Controller.

m. Purchase from an auction, unless expressly authorized by the Office of the Controller.

5. Purchases shall be for the use of the Commonwealth. No personal purchases shall be allowed.

6. **Agency Responsibilities**:

   a. Each head of an agency that is issued a procurement card shall select an agency procurement card program administrator who shall administer the program. To ensure proper separation of duties, the agency procurement card program administrator shall not be a cardholder.

   b. Each cardholder and procurement card user shall be informed about the level of supervisory approval needed for various purchases.

   c. An agency shall maintain the documentation for all transactions in accordance with the General Schedule for State Agencies, FAP 111-28-00 and FAP 120-21-00. Receipts for source documentation shall include the vendor's name, date of purchase, description of each item purchased, price of each item purchased, total cost, cardholder name or card number Purchasing items from the Internet or telephone does not negate the need for keeping supporting documentation.

   d. An agency shall ensure that the proper accounting structure is charged for the purchase.

   e. An agency shall process payments in the state's procurement system in sufficient time to pay the issuing financial institution. If authorization is not received in sufficient time, the agency shall be responsible for payment of interest charges.

   f. An agency shall ensure that all 1099 reportable purchases are coded to the proper object codes.

   g. An agency shall comply with its Internal Control Plan established in accordance with 200 KAR 38:070 in regard to procurement card transactions.

7. **Procurement Card Program Administrator Responsibilities:** The agency procurement card program administrator shall manage the overall agency operation of the agency's procurement card program, including oversight of duties performed by the agency site administrator. Duties to include but not be limited to the following:

   a. Ensure that agency procurement card program administrators, authorized signers and agency site administrators attend training on the implementation and operation of the procurement card program as directed and provided by the Finance and Administration Cabinet.

   b. Upon consultation with agency management will determine the agency's employees who will become cardholders and custodians.

   c. Approval and execution of each Cardholder Agreement.

   d. Development and provision of mandatory training for each cardholder and custodial card custodian prior to issuance of the procurement card. Employees who may use a custodial card shall be trained prior to use of the card. The cardholder training shall cover duties, responsibilities and procurement policies.

   e. Oversight and coordination with the cardholder of the disputed charges process.

f. Coordination of the payment process to ensure that timely remittance is made.

g. Assurance that purchased items required to be included in the fixed asset inventory are reported to the agency property officer or fiscal officer.

h. Serve as the authorized signer with the financial institution providing instructions to the bank on the associated controls for their procurement cards.

8. Cardholder Responsibilities: A cardholder shall sign and accept the terms and conditions of the Commonwealth of Kentucky Procurement Card Cardholder Agreement provided by the Finance and Administration Cabinet. The cardholder is responsible for all activity on the card and responsibilities include but are not limited to the following:

a. The cardholder should not share or loan the card to any other individual.

b. A cardholder shall, as an agent of the Commonwealth, ensure the proper use of the Commonwealth's tax exempt registration number.

c. A cardholder shall properly inspect all shipments. In case of returns, a cardholder shall coordinate the return directly with the supplier and contact the agency procurement card program administrator with any unresolved issues. Returns for cash are not permitted.

d. A cardholder shall report a lost or stolen card immediately to the issuing bank and the agency's procurement card program administrator. A card that has been reported lost or stolen that is subsequently found shall be given to the agency procurement card program administrator.

e. Responsibilities defined in Section 10.

9. **Custodian Responsibilities:** A procurement card may be issued to a custodian of a functional unit. Written justification shall be sent to and prior approval shall be obtained from the Office of the Controller for each card. Justification shall include an explanation of why the card is needed and document the expected types of transactions. In addition to the other sections of this policy, controls and restrictions on procurement cards issued to functional units are as follows:

a. The agency head or the agency head's designee shall sign a Custodial Card Site Agreement for the functional unit card provided by the Finance and Administration Cabinet.

b. The procurement card shall be stored in a secured area with access limited.

c. The agency head shall assign one employee in the functional unit to serve as the Custodial card custodian. The custodian shall sign a Custodial Card Custodian Agreement and be responsible for the functional unit's procurement card, and shall have discretion to determine if an employee may use the card.

d. If the location of the card is unknown for any period of time, the employee who signed out the card shall notify the issuing bank and the procurement card custodian immediately.

e. Each employee using the custodial card shall sign a Custodial Card User Agreement and shall receive a copy of this policy and other written material given to other cardholders in the cabinet or agency before using the functional unit's procurement card.

f. Responsibilities defined in Section 10.

10. Cardholder and Custodian Responsibilities:

a. Each cardholder and custodial card custodian shall reconcile purchases to transaction information provided by the financial institution and submit to the agency site administrator, on at least a monthly basis, a valid receipt for each charge. The itemized receipt or email confirmation shall be issued by the merchant and identify the good or service purchased. Dues and subscriptions may be documented by an order form. The receipts for each procurement card cycle shall be submitted to the agency site administrator in sufficient time to approve each payment, prior to the due date.

b. Each procurement card cycle for which the cardholder or custodial card custodian has made purchases, the cardholder or custodial card custodian and his or her supervisor shall access their card activity and document that the purchases were received by the Commonwealth and were for the benefit of the Commonwealth and not for personal use. Each cardholder or functional unit's card custodian shall identify the purpose of the transaction.

c. Purchases of food or beverage shall be accompanied by documentation explaining the reason for the purchase, justification of need, and proof that they benefited the Commonwealth. Examples of this documentation include, but are not limited to, prior approval memo, meeting minutes and board calendars.

d. Each cardholder or custodial card custodian shall reconcile transaction information provided by the financial institution to all cashier receipts and invoices to ensure the accuracy of that information. The cardholder or custodial card custodian shall address any questions regarding disputed charges to the vendor reported on the procurement card billing statement and attempt to reach a resolution. If a resolution cannot be reached with the vendor, the cardholder or custodial card custodian shall notify their agency procurement card program administrator to coordinate the disputed charges process.

e. Each cardholder or custodial card custodian, who no longer needs a card, shall return that card to the agency site administrator or the agency procurement card program administrator for cancellation.

11. **Finance and Administration Cabinet Responsibilities:** The Finance and Administration Cabinet shall maintain the overall responsibility for the procurement card program, and shall take the following actions to ensure that each participating agency is in compliance with this policy:

    a. The Finance and Administration Cabinet may conduct an independent audit to ensure compliance with this policy by each agency.

    b. The Finance and Administration Cabinet may review reports and documentation associated with the procurement card program. Based on card usage, the cabinet may determine that an agency or cardholder shall be subject to additional review.

Relates to: KRS 45A.100

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FAP 111-59-00
FEDERAL DEBARMENT

1. Prior to contract award, an agency initiating a procurement of $100,000 or more, any amount of which is federally funded, shall ensure that the successful vendor is not debarred from doing business with federal agencies. An agency may access the List of Parties Excluded from Federal Procurement and Nonprocurement Programs on the U. S. General Services Administration (GSA) website to verify that the vendor is not debarred.

2. An agency may include in a solicitation a statement that the vendor's signature on a solicitation response certifies that the vendor is not debarred from doing business with federal agencies and that, if debarred during the life of the contract, the vendor will notify the Commonwealth buyer of record within seventy-two (72) hours of the federal debarment.

3. If a solicitation does not contain the statement established in section 2 of this policy, the vendor shall submit, with its solicitation response, a written certification on the vendor's letterhead that the vendor is not debarred from doing business with federal agencies and that, if debarred during the life of an extended term contract, the vendor will notify the Commonwealth buyer of record within seventy-two (72) hours of the federal debarment.

FAP 118-11-00
LOST OR STOLEN PROPERTY

1. State-owned property that has been lost and cannot be established as having been stolen shall be removed from the agency's inventory. A lost or stolen property record explaining the loss shall be maintained by the cabinet or agency head.

2. If state-owned property is stolen, the theft shall be reported to the police authorities where the theft occurred. After receipt of a report from the police, the property officer shall delete the stolen item from the agency's fixed asset records.

3. If the stolen property is recovered and returned to the agency after deletion from its fixed asset records, the property officer shall restore the property to the agency's fixed asset records.

4. Records of lost and stolen property shall be subject to audit by the Finance and Administration Cabinet.

(KRS 45.313; KRS 45A.045(5))

SECTION II

DIVISION OF STATEWIDE ACCOUNTING SERVICES

DIVISION OF STATEWIDE ACCOUNTING SERVICES
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FAP 120-05-00
PROMPT PAYMENT OF VENDORS

Guidelines for penalty provisions of KRS 45.451 to 45.458

1. Originating agency to pay penalty

An agency that originates and pays for a purchase shall determine under the provisions of KRS 45.451- KRS 45.458 whether the Commonwealth owes the vendor a penalty and, if so, shall pay it. If feasible, the purchase payment and the penalty payment shall be transmitted together to the vendor. After payment, the Finance and Administration Cabinet or the Kentucky State Treasurer's Office shall repay the agency for any penalty or portion of penalty caused by delays in those agencies.

2. Account object codes for penalty payments

If an agency prepares and processes a Payment Voucher more than thirty (30) working days after receipt of both satisfactory goods and services and satisfactory invoice, the agency may include the penalty payment as a separate item on the transaction. An object code shall be shown for the amount of the purchase payment and for the amount of the penalty.

The object code for a penalty caused by the agency is E370 for Personal Services and Operating Expenses, E613 for Capital Outlay Expenses, and E770 for Capital Construction Expenses.

The object code for a penalty caused by the Finance and Administration Cabinet or Kentucky State Treasurer's Office is E356.

3. Date Stamp on invoices.

a. A state agency receiving an invoice shall place a receiving stamp on the invoice. The stamp shall show at least the following:

(1) The word "received".

(2) The month, day, and year.

(3) The agency name. If the agency's name is not unique in state government, the name of the cabinet shall be included.

b. Location of date stamps.

The originating agency's receiving date stamp shall be placed near the lower left corner of the front of the vendor's original invoice, or as near to that location as will not obscure other information on the invoice. If goods or services listed on the invoice are received, the agency shall enter to the right of the invoice received stamp the date the goods or services were received.

4. Expense Transfer to reclaim penalty

An agency that pays a penalty caused in total or in part by another agency shall process an Expense Transfer transaction to the Finance and Administration Cabinet for the appropriate amount. The Finance and Administration Cabinet shall determine which agency caused the penalty and charge or prorate the penalty accordingly.

5. Multiple invoices paid on single document

If more than one invoice is paid on a Payment Voucher, each invoice shall be considered separately as to whether a penalty is due and, if so, the amount.

6. Counting of time

The originating agency shall in ten working days:

a. Process the document to acceptance.

b. Respond to the Finance and Administration Cabinet, Division of Statewide Accounting Services regarding incorrect or incomplete transactions.

c. Respond to the Finance and Administration Cabinet's Office of Material and Procurement Services regarding incorrect or incomplete information.

FAP 120-07-00
FISCAL YEAR CLOSING

In accordance with KRS 45.229(2), the Finance and Administration Cabinet's Division of Statewide Accounting Services shall close out old year transactions within thirty days of June 30, the last day of the fiscal year.

On about March 1 of each year the secretary of the Finance and Administration Cabinet shall provide all constitutional officers, cabinet secretaries, department heads and fiscal officers with a closing schedule for the current fiscal year that specifies the following:

1. The last calendar date on which old year transactions shall be processed by the Division of Statewide Accounting Services.

2. The first calendar date on which new year transactions shall be processed by the Division of Statewide Accounting Services.

3. The final date for budget, purchase, and personnel actions related to the old year.

4. Rules regarding the lapse or carry-forward of various year-end fund balances.

5. General information regarding the time frame within which an agency shall provide closing financial data to the Division of Statewide Accounting Services for Generally Accepted Accounting Principles (GAAP) reporting purposes. Training shall be offered to the agencies and shall be primarily oriented toward the recognition and measurement of accounts payable and receivable and capitalization of General Fixed Assets in order to record and report June 30 fund balances in compliance with GAAP for state government.

An agency head shall either serve as or appoint an employee of the agency to serve as fiscal officer with responsibilities including, but not limited to, establishing and maintaining a proper internal control structure, establishing and maintaining the state's accounting system chart of accounts, providing assurances that agency financial reports accurately reflect underlying activity, conducting fiscal operations under GAAP, and acting as a single point of contact with the Office of the State Controller.

FAP 120-08-06
GRANTS TO NOT-FOR-PROFIT ENTITIES

A sum given by a state agency to a nonprofit entity for a demonstration project would not necessarily be a personal service contract, but more likely a grant.

A grant would be, among other things, a sum given by a state agency to a nonprofit entity for that entity's activities without supervision of those activities by the state agency, except possibly a final report to the agency, and for which (1) the source of funds can be identified as an approved federal program, and (2) the agency can identify to the Division of Statewide Accounting Services the agency's authority to make such a grant.

FAP 120-08-07
ASSIGNMENT OF BENEFITS

A vendor wishing to assign part or all of the proceeds of a contract entered into with a state agency shall submit to the Finance and Administration Cabinet's Division of Statewide Accounting Services a notarized assignment form stating the name, address, and TIN (taxpayer identification number) of the assignor and assignee, the amount to be assigned, and the contract number. If the assignment is approved by the director of the Division of Statewide Accounting Services, a copy shall be sent to the assignor, the assignee, the Finance and Administration Cabinet's Office of Material and Procurement Services, and the affected agency. The original shall be filed in the director's office, Division of Statewide Accounting Services.

An approved assignment shall apply to all future contracts that are renewals of the original contract assigned and shall be effective until the original contract and any renewals expire or are terminated, or until a subsequent assignment of the contract proceeds is approved.

The Division of Statewide Accounting Services shall establish an alternate vendor number for the assignee and record the vendor number in the upper right corner of the assignment form.

FAP 120-13-00
DECENTRALIZATION OF THE PRE-AUDIT FUNCTION

Agencies shall assume pre-audit authority pursuant to KRS 45.121.

Pre-audit shall consist of verification of the validity of claims. Verification shall include an edit applied to a document by the computerized system, as well as review of accounts and elements applied, and review of conformance with applicable rules, regulations or legal requirements.

For an agency that assumes the pre-audit authority:

(1) A Pre-audit Delegation Agreement shall be executed between the responsible official of the agency and the secretary of the Finance and Administration Cabinet. This Agreement shall incorporate by reference agency signature approval authorizations referencing FAP 120-22-00.

(2) Periodic post-audit review shall be made by the Finance and Administration Cabinet to ensure the effective functioning of the pre-audit process. The audit may be performed randomly without any notice to the agency.

(3) The agency shall adhere to the Finance and Administration Cabinet policies and procedures for Document Retention, Prompt Payment of Vendors and Open Records Requests.

The Finance and Administration Cabinet shall determine the capability of an agency to assume the pre-audit function and assess the agency's ability to retain the pre-audit function.

FAP 120-14-00
UNHONORED CHECK PROCESSING

The Kentucky State Treasury shall separate by agency checks that are received and deposited but that are not honored for payment by the banks upon which they are drawn. The unhonored checks for agencies other than the Department of Revenue shall be separated into those with a Receivable (RE) document reference and those without.

For unhonored checks of the Department of Revenue, the State Treasury shall prepare a decrease Cash Receipt document that charges a Department of Revenue clearing account for the unhonored checks. The Department of Revenue shall distribute the unhonored checks to the proper accounts returning the clearing account to a zero balance.

For unhonored checks of agencies other than the Department of Revenue, the State Treasury shall prepare a Non-Sufficient Funds document for checks that contain a Receivable document reference. This document shall charge the originating agency's accounts for the amount of the unhonored checks.

For unhonored checks of agencies other than the Department of Revenue, which are received without a Receivable document reference or with only a Cash Receipt document reference, the State Treasury shall prepare a decrease Cash Receipt document that charges the unhonored checks against the originating agency’s accounts. The originating agency shall distribute the unhonored checks to the proper accounts if the agency prefers an account other than the one selected by the State Treasury. The originating agency shall take whatever actions are deemed appropriate to collect these unhonored checks.

A new check shall be submitted by the vendor to the responsible agency and processed on a Cash Receipt document as new revenue.

FAP 120-16-00
AUTOMOBILE LIABILITY INSURANCE REIMBURSEMENT

1. An agency may approve reimbursement to an employee for extended non-owned insurance coverage added to the employee's personal automobile liability coverage if the employee is required to drive a state-owned vehicle not covered under the Commonwealth's auto liability coverage. **REIMBURSEMENT SHALL BE MADE ONLY FOR THE COST OF THE EXTENDED NON-OWNED COVERAGE, NOT FOR THE ENTIRE COST OF THE AUTO LIABILITY INSURANCE POLICY**. An employee driving a state-owned vehicle that is covered under the Commonwealth's auto liability insurance is insured to $350,000 and shall not be reimbursed for any additional personal insurance coverage.

2. The employee shall furnish to his employer adequate documentation to support the claim for reimbursement.

3. KRS 45.231 authorizes payment from current fiscal year funds for two prior fiscal years. If an employee does not file a claim within this period, reimbursement shall not be made.

4. To apply for reimbursement, an employee shall submit a Travel Payment Voucher, with accompanying documentation, for agency approval. The request for an amount of reimbursement shall be included in the miscellaneous section of the Travel Payment Voucher.

FAP 120-17-03
TRAVEL EXPENSE HIGH RATE AREAS

Effective June 1, 2001, the list of High Rate Areas recognized by the secretary of the Finance and Administration Cabinet for travel expense purposes shall be as follows:

Akron, OH	Corporate Limits
Alaska	Entire State
Albuquerque, NM	Corporate Limits
Baton Rouge, LA	Corporate Limits
Biloxi, MS	Corporate Limits
Birmingham, AL	Corporate Limits
Boise, ID	Corporate Limits
Burlington, VT	Corporate Limits
California	Entire State
Canada	All Provinces
Charleston, SC	Corporate Limits
Charlotte, NC	Corporate Limits
Chicago, IL	Cook County and DuPage County
Cincinnati, OH	Corporate Limits
Cleveland, OH	Corporate Limits
Coeur d' Alene, ID	Corporate Limits
Colorado	Entire State
Columbia, SC	Corporate Limits
Columbus, OH	Corporate Limits
Connecticut	Entire State
Des Moines, IA	Corporate Limits
Detroit, MI	Corporate Limits
Florida	Entire State
Gatlinburg/Pigeon Forge, TN	Corporate Limits
Georgia	Entire State
Hawaiian Islands	All Islands
Hilton Head, SC	Island
Hot Springs, AR	Corporate Limits
Indianapolis, IN	Corporate Limits
Jackson Hole, WY	Corporate Limits
Kansas City, KS	Corporate Limits
Kansas City, MO	Corporate Limits
Knoxville, TN	Corporate Limits
Lake Tahoe, NV	Corporate Limits
Las Vegas, NV	Corporate Limits
Little Rock, AR	Corporate Limits
Madison, WI	Corporate Limits
Maine	Entire State
Maryland	Entire State
Massachusetts	Entire State
Memphis, TN	Corporate Limits
Milwaukee, WI	Corporate Limits
Minneapolis, MN	Corporate Limits
Mobile, AL	Corporate Limits
Myrtle Beach, SC	Corporate Limits
Nashville, TN	Corporate Limits
New Hampshire	Entire State
New Jersey	Entire State
New Orleans, LA	Corporate Limits

New York	Entire State
Oklahoma City, OK	Corporate Limits
Omaha, NE	Corporate Limits
Pennsylvania	Entire State
Phoenix/Scottsdale, AZ	Corporate Limits
Portland, OR	Corporate Limits
Raleigh, NC	Corporate Limits
Rapid City, SD	Corporate Limits
Reno, NV	Corporate Limits
Rhode Island	Entire State
Richmond, VA	Entire State
Roanoke, VA	Corporate Limits
Salt Lake City, UT	Corporate Limits
Santa Fe, NM	Corporate Limits
Springfield, IL	Corporate Limits
St. Louis, MO	Corporate Limits
St. Paul, MN	Corporate Limits
Texas	Entire State
Topeka, KS	Corporate Limits
Tucson, AZ	Corporate Limits
Tulsa, OK	Corporate Limits
Washington	Entire State
Washington, D.C.	Corporate Limits of Washington, D.C.; the cities of Alexandria, Falls Church of Arlington, Loudown, and Fairfax in Virginia; and the counties of Montgomery and Prince George in Maryland
Wilmington, DE	Corporate Limits
Ypsilanti, MI	Corporate Limits
Other	All United States Possessions

(KRS 45.101 and 200 KAR 2:006)

FAP 120-19-00
INTERNAL REVENUE SERVICE (IRS) FORM 1099 REPORTING

Section 6041 of the Internal Revenue Code (IRC) requires reporting of aggregate payments for services.

The IRS has assigned two (2) types of taxpayer identification numbers (TIN) to taxpayers for tax reporting. The two types of taxpayer identification numbers are (1) social security numbers for individuals, and (2) federal employer identification numbers for corporations, partnerships and all other entities. Every individual, business or government entity should have one of these numbers.

Related Attachments

Attachment 1	1099 Reportable Object Codes
Attachment 2	1099 Reportable Information

Form 1099-MISC:

For agencies using TIN 61-0600439, the Finance and Administration Cabinet's Division of Statewide Accounting Services shall gather the required information necessary to prepare and disseminate all 1099-MISC forms and related paper and electronic reports. The paying agency shall produce other 1099 types indicated in Attachment 2.

At the close of December each year, 1099-MISC information shall be recorded for all vendors paid for services rendered by agencies and institutions in TIN 61-0600439.

The Division of Statewide Accounting Services shall update and monitor the Vendor File to ensure accurate 1099 reporting status.

The Vendor File shall be used to store each payee's TIN and 1099 reporting status. This information is a required element when adding a vendor to the system.

Agency Responsibility for Accurate Use of Expenditures Object Codes:

Payments classified with objects that are potentially 1099 reportable shall be reviewed by agencies to insure correct classification of expenditures involving both services and materials. Only the portions of payments that are for services are 1099 reportable.

Division of Statewide Accounting Services Reporting Responsibilities:

At the end of each calendar year, the Division of Statewide Accounting Services shall produce all 1099-MISC forms required within TIN 61-0600439 for dissemination to vendors and the IRS.

Each covered vendor shall be provided with a 1099-MISC not later than January 31 as required by the IRS. Each agency and institution within TIN 61-0600439 shall receive a detailed report of all 1099 reportable payments to each vendor paid during the calendar year just ended. This report shall serve as an information resource for addressing inquiries from vendors or the IRS.

The 1099-MISC forms provided to the IRS shall be summarized on a Transmittal Form 1096 and submitted on electronic media no later than February 28, as required by the IRS.

An agency shall provide the Division of Statewide Accounting Services with the information required to produce corrected 1099s by July 15 of each year.

Responsibility for Payment of Penalties:

The IRS may impose penalties for failure to meet 1099 requirements. Ultimate responsibility for payment of penalties incurred as a result of errors and omissions lies with the agencies and institutions that prepare information containing 1099 reportable payments to vendors.

Training:

The Division of Statewide Accounting Services shall provide agency personnel with instruction about the collection, preparation, and reporting of 1099 information. Instruction shall be provided annually to all agencies and individuals. Agency training shall be provided as requested.

Attachment 1
1099 Reportable Object Codes

E120	Deceased Employees Salaries & Wages	E252	Printing Paid to Vendor
E141	Legal Services	E253	Laundry & Cleaning
E142	Auditing Serv - Incl Fin Discl Rev Audit	E255	Advertising
E143	Architect & Engineering Services	E256	Garbage Collection
E144	Medical & Dental Services	E257	Services Not Otherwise Classified
E145	Prof Computer Services Outside Contr	E258	Armored Car Services
E146	Consulting Services	E356	Int Due from Fin or Treas for Late Pmt
E147	Advertising Services	E370	Interest Due to Late Payment
E148	Artistic Services	E406	Worker's Comp Award – Claim Interest
E149	Appraisal Services	E407	Worker's Comp Award – Attorney Fee
E150	Miscellaneous Services	E410	Public Defender Fees
E151	Expert Witnesses	E415	Prog Admin Costs - Outside Vendors
E152	Court Reporters	E419	Premiums/Awards/Prizes
E153	Keypunch Services	E420	Prison Labor Allow - Pmt to Prisoners
E155	Court Designated Worker Services	E438	Local Jail - Restricted Medical
E158	Veterinarians Services	E439	Local Jail - Catastrophic Medical
E159	Actuarial Services	E441	Rehabilitation - Client Service Cost
E162	Security Guard Services	E446	Instructor/Student/Grant Stipends
E163	Janitorial Services - non employees	E450	Child Care Payments
E164	Honoraria	E453	Medical - Dental
E166	Lab Tests & Analysis Fees	E456	Hospitalization
E221	Rental - Non-St Owned Bldg & Land	E459	Dependent Care
E223	Rental of Equipment	E463	Medical Assistance Benefits
E224	Copy Machine Rental	E466	Other Benefits
E225	Computer Rental - Direct Pmt to Vendor	E472	Interest Paid on Debt
E228	Aircraft Charter - Non-St-Owned	E473	Trustee and Agent Fees
E229	Rentals Not Otherwise Classified	E541	Interest Earn on Judge/Ben
E231	Maintenance of Bldg and Grounds	E542	On-line Subscription Services
E232	Maintenance of Equipment	E613	Interest Due to Late Payment
E233	Copy Machine Maintenance	E701	Architect/Engineer Fees
E234	Computer Maintenance	E717	Land/Right of Way
E235	Maintenance of Vehicles	E718	Legal and Administrative Costs
E236	Repairs Not Otherwise Classified	E720	Rental of Buildings
E237	Highway Maintenance	E770	Interest Due to Late Payment
E238	Computer Software Maintenance	E791	Highway Right-of-Way (Misc.)
E239	Comm/Net Hardware Maintenance	E794	Highway Right-of-Way
E243	Other Parcel Delivery Service	E799	Highway Legal Admin Right-Of-Way

Attachment 2
1099 Reportable Information

	Corporations/ Public Service Corporations	Individuals/ Partnerships/ Trusts/ Estates	Responsibility for Reporting
1099 Misc.			Division of Statewide Accounting Systems
Rent and Royalties		X	
Nonemployee Compensation for Services Rendered		X	
Fees for Professional Services		X	
Prizes and Awards		X	
Disability Payments		X	
Medical Payments to Doctors and Hospitals	X	X	
Salary Payments to Deceased Employees		X	
Scholarships Paid to Non-degree Candidates		X	
Scholarships to Degree Candidates in excess of tuition and course- related fees, books and supplies		X	
Foster Care Payments in excess of Cost of Care		X	
Legal Services	X	X	
1099 INT			Division of Statewide Accounting Systems
Taxable Interest Payments in excess of $10		X	
1099 R			The Agency
Benefits Paid Under a Pension, Annuity of Retirement Plan		X	
1099 G			The Agency
Income Tax Refunds		X	
Unemployment Compensation		X	
1099 S			Division of Statewide Accounting Systems
Real Estate Transactions		X	

FAP 120-20-01
PERSONAL PROPERTY AND VEHICLE INVENTORIES

Pursuant to KRS 45.313, each budget unit shall maintain a current fixed asset record of equipment having an original cost of five hundred dollars ($500) or more and a useful life of greater than one year. To ensure compliance with this requirement, the Finance and Administration Cabinet may conduct physical audits of fixed asset records. Agencies shall enter records into the fixed asset system for non-expendable property that promotes financial reporting, safeguarding of assets, and adequate insurance. Expendable property should be accounted for using the statewide inventory control system or an appropriate internal method of accounting for the flow of expendable property.

I. GENERAL PROVISIONS PERTAINING TO FIXED ASSET RECORDS

a. A state agency shall maintain current records of physical properties and equipment and make appropriate additions and deletions to fixed asset records as property is acquired or disposed.

b. The administrative head of an agency shall be responsible and accountable for the custody and safekeeping of all personal property assigned to, purchased, or otherwise acquired by the agency. Each agency head shall either serve or appoint an employee of the agency to serve as agency property officer with responsibility for both maintaining the agency's fixed asset records and taking the annual physical inventory.

c. Each budget unit shall review its fixed asset records as of June 30 each year to ensure completeness and accuracy.

d. If the review process reveals incorrect or inadequate information, the agency shall take the necessary steps to correct the discrepancies.

II. PERSONAL PROPERTY TO BE RECORDED

a. All non-expendable property valued at $500 or more shall be recorded as a line item. This record shall include agency number, state property identification tag number, make, description, model number, serial number, quantity, location by building, and cost.

b. Cost, including freight, installation, auxiliary charges, less discount taken shall be used if purchase price is known. Appraised value, indexed back to acquisition date, shall be used if the purchase price is unknown.

c. The property officer of each agency shall affix a property identification tag to all non-expendable property. The property identification tag shall be affixed to the left side of the item when the item is in its normal operating position.

d. Furniture and equipment under the control of, but not owned by, an agency shall be listed under the guidelines of Non-expendable Property and shall note the percentage of state ownership, if any.

III. EXPENDABLE PERSONAL PROPERTY

a. A perpetual inventory record of the receipts and withdrawals of expendable supplies shall be maintained to determine past usage and appropriate stock levels.

b. Minimum reorder points for replenishing orders shall be established for each item that shall allow enough lead time for deliveries and prevent "stock-outs".

c. The agency supply system shall use economic order quantities for restocking based upon past and anticipated usage. Every effort shall be made to avoid an accumulation of surplus or obsolete stock that reduces storage space.

IV. VEHICLE INVENTORIES

A fixed asset record of all licensed vehicles and licensed trailers assigned to an agency shall be maintained regardless of cost or other equipment mounted on the vehicle. This report shall include: vehicle license number, agency name, property or commodity code, serial number, make, style, manufacturer's model number, year, date registered during the first year only and original purchase price. "Assigned" means any licensed motor vehicle under an agency's control. This includes vehicles owned by an agency of the Commonwealth, excluding motor pool vehicles, which are reported by the Transportation Cabinet; vehicles legally exempt from bearing a state official plate pursuant to KRS 44.045 (4), KRS 44.045 (5), KRS 186.065 (2), and KRS 186.065 (3); vehicles whose title is vested in the federal government but on loan to an agency; and vehicles obtained from any other source. Vehicles not owned by the agency shall be so noted on the fixed asset report.

FAP 120-21-00
RETENTION OF ACCOUNTING DOCUMENTS

An agency that processes accounting and payment documents shall abide by this document retention policy. An agency using the state's procurement system or accounting system, with pre-audit delegation, shall not provide original source documents to the Finance and Administration Cabinet, and shall maintain such documentation and retain the documents in the agency.

An agency shall maintain the original source document that initiated a transaction and shall maintain a system of tracking that allows for auditing the original source document back to the electronic system.

An agency shall maintain all records in a central location. The location shall be identified at the time the agency executes a Pre-audit Delegation Agreement, in accordance with FAP 120-13-00, with the Finance and Administration Cabinet, and shall be referenced as an addendum to the Pre-audit Delegation Agreement. Deviation from the declared central location shall be requested of and approved by the Finance and Administration Cabinet. If an agency has not executed a Pre-audit Delegation Agreement, the agency shall prepare a correspondence to the secretary of the Finance and Administration Cabinet detailing its compliance with the document retention policy, including the location of original source documents.

Records shall be retained by an agency for a period of eight years beyond the close of the fiscal year in which the transaction was initiated. Capital projects records shall be retained in accordance with the Finance and Administration Cabinet's record retention schedule. Records shall be preserved in their original condition and afforded reasonable security and protection from damaging elements.

Authorized personnel shall access stored documents as needed to comply with open records requests.

FAP 120-22-00
ELECTRONIC RECORDS AND SIGNATURES

“Electronic signature” and “record” are defined at KRS 369.102.

An agency head shall either serve as, or appoint an employee of the agency to serve as, the security officer with responsibilities including, but not limited to, designating authorized electronic signatures to the Finance and Administration Cabinet, as prescribed by the Division of Statewide Accounting Services. The security officer shall be responsible for the control and continued maintenance of the assigned signature authority.

An agency shall maintain source documentation to support electronic signatures and records in compliance with FAP 120-21-00.

SECTION III

DEPARTMENT FOR FACILITIES AND SUPPORT SERVICES

DEPARTMENT FOR FACILITIES AND SUPPORT SERVICES
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FAP 220-05-00
SUBJECT: BIDDER INSTRUCTIONS FOR CONSTRUCTION SOLICITATIONS

1. DEFINITIONS

a. "Addenda" means written or graphic instruments issued by the purchasing agency prior to the execution of the contract that modify or interpret the bidding documents by addition, deletion, clarification, or correction.

b. "Alternate" means an optional item stated in the bid the amount of which is to be added to or deducted from the amount of the base bid.

c. "Architect or engineer" means the architectural or engineering firm that prepared the drawings and specifications.

d. "Bid" means the sum stated in the Bid Response for which the bidder offers to perform the work described in the specifications and detailed on the plans.

e. "Bidder" means one who submits a bid directly to the owner for the work described in the bidding documents.

f. "Bidding documents" means the Solicitation, including Instructions to Bidders, General Conditions, Special and Supplemental Conditions, Forms for Response, plans, specifications, and Addenda issued prior to receipt of bids.

g. "Bid Response" means a complete and properly signed document, offering to do the work or designated portion thereof, supported by data called for by the bidding documents.

h. "Owner" means the Commonwealth of Kentucky.

i. "Purchasing agency" means the Finance and Administration Cabinet, Department for Facilities and Support Services, Division of Engineering and Contract Administration.

j. "Purchasing officer" or "contracting officer" means the director, Division of Engineering and Contract Administration, or an authorized representative of that individual.

k. "Sub-bidder" or "subcontractor" means one who submits a bid to a prime bidder for materials or labor for a portion of the work described in the bidding documents.

l. "Unit price" means an amount stated in the bid as a price per unit of measurement for materials or services as described in the bidding documents.

m. "Using agency" means the state government entity that utilizes the work being contracted.

2. BIDDER'S REPRESENTATIONS: Each bidder, by submitting a bid, swears or affirms, under penalty of law, that:

a. The bidder has read and understands the bidding documents and the bid is made in accordance with the bidding documents.

b. The bidder has carefully examined the site of the proposed work and is familiar with the local conditions under which the work is to be performed.

c. The bid is premised upon furnishing the work required by the bidding documents.

d. The bid amount has been arrived at by the bidder independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with any other contractor, vendor of materials, supplies, equipment or services described in the solicitation, that is designed to limit independent bidding or competition.

e. The contents of the bid have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder, or its surety on any bond furnished with the bid and will not be communicated to any such person prior to the bid opening.

f. The bidder is legally entitled to enter into a contract with the Commonwealth and the award of a contract will not create any conflict of interest, including those set out in KRS 45A.330 to 45A.340, 45A.455 and 164.390.

3. BIDDING DOCUMENTS

a. A bidder, sub-bidder, sub-contractor, and others may obtain bidding documents in the manner and for the charge, if any, stated in the solicitation.

b. A complete set of bidding documents shall be used in preparing bids. The Commonwealth assumes no responsibility for misinterpretations resulting from the use of incomplete sets of bidding documents.

c. The Commonwealth, in providing bidding documents, does so only for the purpose of obtaining bids on the work and does not confer a license or grant for any other use.

d. A bidder shall promptly notify the purchasing officer of any ambiguity, inconsistency or error, which they may discover upon examination of the bidding documents or of the site and local conditions.

e. All questions regarding the meaning or interpretation of the bidding documents shall be directed in writing to the purchasing officer. Questions received less than ten (10) calendar days prior to the date for receipt of bids may not be answered.

f. Any interpretation, correction or change of the bidding documents shall be made by an addendum issued by the purchasing agency. Interpretations, corrections or changes of the bidding documents made in any other manner shall not be binding and bidders shall not rely upon such interpretations, corrections or changes.

g. Unless otherwise indicated in the bidding documents, the materials, products and equipment described or referenced by manufacturers' or vendors' names, trade names, and catalog numbers are intended to establish a standard of required function, dimension, appearance and quality. Unless otherwise stated, equal items may be furnished or used if approved by the purchasing officer in consultation with the architect.

h. Addenda shall be published on the Commonwealth's eProcurement web site and may be mailed to all who are known by the purchasing officer to have been furnished bidding documents.

i. Copies of addenda shall be made available for inspection wherever bidding documents are on file.

j. No addenda of a material nature shall be issued later than seven (7) calendar days prior to the date for receipt of bids, except for addenda postponing the date for receipt of bids or withdrawing the solicitation.

k. The bidder shall ascertain, prior to submitting a bid, that the bidder has received all addenda issued by the purchasing officer for the particular solicitation. The bidder shall acknowledge

receipt of all addenda on the Bid Response or by a separate letter to the purchasing officer, which shall be received at or prior to the hour and date specified for receipt of bids.

4. BIDDING PROCEDURE

a. Bids shall be submitted on the Bid Documents provided by the purchasing officer.

b. All blanks in the Bid Documents shall be completed and all required support data shall be furnished.

c. If indicated in the bidding documents, sums shall be expressed in both words and figures. In the case of discrepancy between the two, the amount in words shall prevail.

d. The authorized representative of the bidder who signed the Bid Response shall initial any alteration or erasure in ink.

e. All alternates specifically called for by the owner shall be bid. Voluntary alternate bids or an alternate to a lump sum bid shall not be considered unless specifically permitted by the solicitation.

f. The bidder shall make no stipulations on the Bid Response nor qualify the bid in any manner.

g. A person legally authorized to bind the bidder to a contract shall sign the Bid Response. The Bid Response shall also include the legal name of the bidder and a statement indicating whether the bidder is a sole proprietorship, a partnership, a corporation, or other legal entity. A bid by a corporation shall also identify the state of incorporation and federal employer identification number.

h. Bids shall be accompanied by a bid guarantee of not less than five percent (5%) of the amount of the base bid executed with a licensed resident or non-resident agent who represents insurance companies authorized to do business in Kentucky. This bid security secures the bidder's promise (1) to enter into a contract with the owner on the terms stated in his bid, and (2) if required, to furnish bonds covering the faithful performance of the contract and the payment of all obligations. If the bidder refuses to enter into a contract or fails to furnish the required performance and payment bonds, the amount of the bid security shall be forfeited to the owner as liquidated damages, not as a penalty.

i. The purchasing officer may retain the bid security of bidders until either (1) the contract has been executed and performance and payment bonds have been furnished, or (2) the specified time has elapsed so that bids may be withdrawn, or (3) all bids have been rejected.

j. The completed Bid Response, bid security, and required support data shall be enclosed in a sealed envelope. The envelope shall be addressed to the bid receipt clerk stated in the solicitation and shall identify the bidder's name and address, the invitation number stated in the bidding documents, closing date and hour. If the bid is sent by mail, the sealed envelope shall contain the notation "BID ENCLOSED" on the face thereof.

k. Bids shall be received at the designated location prior to the closing time and date for receipt of bids indicated in the solicitation or any extension thereof made by addendum. Bids received after the closing time and date for receipt of bids may be considered for evaluation and award only if (1) no other bids were received within the legal advertisement period; (2) the readvertisement time delay would seriously affect the operations of the using agency; and (3) in the reasonable judgment of the purchasing officer, the bid was finalized prior to the official closing time and date for the receipt of bids.

l. A bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids.

m. Oral, telephonic, facsimile or telegraphic bids or changes in bids by such methods are not permitted and shall not be considered.

5. MODIFICATION OR WITHDRAWAL OF BID

a. A bid may be withdrawn prior to the closing time and date for receipt of bids by (1) a properly identified representative of the bidder whose name appears on the bid envelope, or (2) written request by an authorized representative of the bidder, received by the receipt clerk stated in the solicitation prior to bid closing time.

b. Withdrawn bids may be resubmitted up to the closing time designated for the receipt of bids.

c. No bidder may withdraw, modify or cancel its bid for a period of thirty (30) calendar days following closing time and date for receipt of bids without the bid security being subject to forfeiture.

6. CONSIDERATION OF BIDS

a. Unless the bidding documents indicate otherwise, all properly identified, timely bids shall be publicly opened, read aloud, and listed on the official bid tabulation, which shall be made available to bidders upon request.

b. The Commonwealth retains the right to cancel the solicitation, to reject any and all bids, and to waive technicalities and minor irregularities in bids, if such action is determined to be in the best interest of the Commonwealth.

c. Grounds for the rejection of bids are stated in 200 KAR 5:306.

d. Minor or technical deficiencies or irregularities in a bid may be waived by the purchasing officer on behalf of the owner if all of the following circumstances are present:

(1.) The purchasing officer determines that it is in the owner's best interest to do so; and

(2.) The technicalities or irregularities are mere matters of form not affecting the material substance of a bid, represent an immaterial deviation from or variation in the precise requirements of the solicitation, and have no more than a trivial or negligible effect on price, quality, quantity or delivery of supplies or performance of services being procured; and

(3.) The correction or waiver of the technicality or irregularity does not affect the relative standing of, or prejudice other bidders.

If the Owner does not waive the deficiency, the deficient bid shall be rejected.

7. ACCEPTANCE OF BID

a. A contract shall be awarded, after a reasonable bid evaluation period, in accordance with the solicitation, if the acceptable bid is within the amount budgeted by the agency.

b. The owner reserves the right to accept or reject any alternate bid. If alternates designated by the owner are considered in the award, the alternates shall be accepted in the sequence in which they are listed on the Bid Documents and the lowest bid sum shall be computed on the basis of the sum of the base bid plus any alternates accepted.

8. QUALIFICATION OF CONTRACTORS

a. A bidder shall submit a statement of the bidder's qualifications as part of the bid response. The purchasing officer shall have the right to make such inquiry as deemed necessary to determine the ability of the bidder to perform the work in a prompt and efficient manner in accordance with the contract documents. The failure of a bidder to promptly supply information in connection with the purchasing officer's inquiry may be grounds for a determination that such bidder is nonresponsive.

b. In determining the qualifications and responsibility of a bidder, the purchasing officer shall consider the bidder's experience, facility, previous work standing, financial standing, skill, quality and efficiency of construction plant, and equipment proposed to be utilized on the project.

c. The owner may reject any bid if an investigation and evaluation of the bidder's qualifications give reasonable doubt that the bidder can perform the work in a prompt and efficient manner in accordance with the contract documents.

9. SUBCONTRACTOR, MATERIAL AND EQUIPMENT LISTING

a. A bidder shall, if requested in the solicitation, list the names of subcontractors proposed for each of the principal portions of the work, including those persons or entities who are to furnish material or equipment fabricated to a special design, in the designated place on the Bid Documents.

b. A bidder shall establish to the satisfaction of the purchasing officer, the reliability and responsibility of the listed subcontractors. The bidder may be required by the purchasing officer to provide additional information regarding listed subcontractors.

c. If, after due investigation, there is reasonable objection to the qualifications of a listed subcontractor, the bidder shall, upon written direction of the purchasing officer, submit the name of an acceptable substitute subcontractor with no change in bid price. The failure of the bidder to promptly comply with this requirement may be grounds for rejection of the bid.

d. Any listed subcontractor to whom the purchasing officer does not make written objection prior to the giving of the Notice of Intent to Award shall be deemed acceptable to the owner.

e. A bidder shall make no other substitution for any listed subcontractor without first receiving the approval of the purchasing officer in writing of the intended substitution and the specific reason for the substitution. A substitution may be disapproved if the purchasing officer has reasonable objection.

f. Nothing contained in the bidding documents shall be deemed to create a contractual relationship between the owner and any subcontractor.

10. LIST OF MATERIALS AND EQUIPMENT

a. A bidder shall, if requested in the solicitation, submit a listing of major materials and equipment, including manufacturer's name, brand and catalog number. The materials and equipment listing shall be bound with the Bid Response or completed in the time period designated in Section 18.

b. Prior to the acceptance of a bid, the purchasing officer shall make a preliminary review of the bidder's list of materials and equipment. The purchasing officer shall advise the bidder of the tentative acceptability of such materials and equipment, subject to satisfactory completion and approval of shop drawings, or direct such other action as may be necessary in order to meet the requirements of the contract documents. If any of the listed material or equipment is determined not to meet the requirements of the contract documents, the bidder shall be required to furnish other material or equipment meeting those requirements at no change in bid price. Preliminary

review and acceptance of the above list shall not relieve the bidder, as the contractor, of the obligation to furnishing equipment and materials in accordance with the contract documents.

11. UNIT PRICES

a. A bidder shall, if requested in the solicitation, submit with the bid a list of unit prices as designated on the Bid Documents, which shall include all necessary labor, materials, equipment, appliances, supplies, overhead and profit.

b. Unit prices shall be used for the pricing of changes in the quantity of work from that indicated by the contract drawings and specifications, if the owner has authorized such changes in writing.

c. Only one unit price shall be quoted for each designated item of work. The unit price shall be used to calculate price adjustments based on deductive as well as additive changes.

d. Unit prices shall apply to all phases of the work whether the work is performed by the bidder or by the bidder's subcontractor.

e. For unit prices of a lump sum bid contract, the owner reserves the right, prior to an award of contract, to evaluate the unit prices and adjust or reject any unit price that is determined by the purchasing officer to be unreasonable in amount.

f. If a total sum bid is made by line item, and unit prices are quoted for estimated quantities of units of work, such unit prices are not subject to change. However, the purchasing officer reserves the right to correct mathematical errors in extensions and additions by the bidder. In the latter case, the purchasing officer's corrected bid sum total shall supersede the bidder's incorrect computed bid sum total.

12. BID BONDS - The Division of Engineering and Contract Administration or an agency may require a bid bond as surety that a bidder will hold his offer firm for a specified period of time. If the Solicitation requires a bid bond, a bidder shall file with the requesting agency a bid bond or certified check in the amount and form specified by the Solicitation. The bond shall be received either with the bid or prior to the bid closing, or the bid shall not be considered.

a. The amount of the bond shall be specified in the Solicitation.

b. In addition to signing the bid bond as principal, the bidder shall have the bond signed by a surety company authorized to do business in the Commonwealth of Kentucky. A list of surety companies may be obtained from the Office of Insurance. If the surety on a bond has its authority to do business in Kentucky revoked or, if for any reason it ceases to do business in the Commonwealth, the bidder shall promptly obtain another surety on the bond.

c. The bond shall be conditioned on full performance of all obligations imposed on the bidder by the Solicitation, including the obligation to keep his price firm for as long a period as specified in the Solicitation, and the obligation to file a performance bond if required by contract. The bid bond shall provide that upon failure to perform an obligation, the Commonwealth of Kentucky may recover from the bidder and the surety, or either of them, any and all damages suffered because of the failure.

d. A bidder may file a continuing bond for all bids made during a certain period of time up to a stated amount.

e. If submitting an online bid response in the state's procurement system for a Solicitation that requires a bid bond, the bidder shall attach the scanned bond document to the formal bid or, if the bidder does not have access to a scanner, shall submit a hard copy of the bond document with a copy of the online response. The vendor shall sign the hard copy of the online bid document in

ink, attach the online bidding confirmation page, attach the bond document, and deliver the documents to the Commonwealth no later than the published date and time for bid opening. A successful bidder shall provide hard copies of all scanned bond documents prior to contract execution, in accordance with the terms of the Solicitation.

f. If a bidder elects to submit a certified check in lieu of a bid bond, it shall be security for full performance of all obligations referred to in subsection c of this Section.

g If a bidder is not awarded a contract, the certified check shall be returned to that bidder promptly after the award is made. The successful bidder's check shall be returned after the contract is awarded or as soon as the bidder has filed a performance bond, if required. Checks may be returned by certified mail, return receipt requested. The return receipts shall be electronically attached or hard copies attached to each bidder's bid and filed in the bid folder.

13. PERFORMANCE AND PAYMENT BONDS

a. A bidder shall deliver the required bonds to the purchasing agency upon notification of intent to award, or, with the approval of the purchasing officer, within fourteen (14) calendar days after that date. Otherwise, the owner may at its option determine that the awardee has abandoned the contract and the proposal shall become null and void.

b. Unless otherwise specified in the bidding documents, the bonds shall be written on the form bound in the bidding document in the number of copies to be specified by the purchasing officer.

c. A bidder shall require the attorney-in-fact who executes required bonds on behalf of the surety to affix thereto a certified and current copy of his Power of Attorney. The date of the Power of Attorney shall not precede the date of the bonds. The bonds shall be executed with a licensed resident or non-resident agent who represents insurance companies authorized to do business in Kentucky.

14. AWARD OF CONTRACT

a. The issuance of an award of a contract is contingent upon (1) securing an acceptable bid that is within the amount of budgeted funds and (2) determining that the award of contract is in the best interest of the Commonwealth of Kentucky.

b. Unless otherwise provided in the bidding documents, the Agreement Between Owner and Contractor shall be written on the standard form of agreement bound within the Solicitation.

c. The Commonwealth’s acceptant of the bidder’s offer in response to the Solicitation, indicated by the issuance of a contract award, shall create a contract between the parties consisting of the following documents. In the event of a conflict between the provisions contained in the contract, the order of precedence shall be as follows.

(1.) Solicitation including any special conditions, plans, specifications, and addenda;

(2.) General Conditions;

(3.) Bid in response to the Solicitation; and

(4.) Written clarification concerning the bid.

15. LEGAL REQUIREMENTS

a. A foreign corporation submitting a bid shall be registered with the Kentucky Secretary of State and be declared in good standing prior to the issuance or receipt of a contract.

b. A domestic corporation submitting a bid shall be in good standing in accordance with the requirements of the Kentucky Secretary of State.

16. TAXES

a. The winning bidder shall be liable for payment of Kentucky sales and use tax.

b. The winning bidder is deemed the end user of all building materials used in construction projects for the Commonwealth of Kentucky.

c. The winning bidder may not separately state Kentucky sales or use tax payable by the Commonwealth of Kentucky.

17. PLANHOLDER'S LIST

a. A request for plans and specifications for a particular project shall be regarded as showing intent to submit a bid. Unless the purchasing agency is otherwise notified, the names of all firms making such requests shall appear on the planholder's list showing all planholders, and all issued addenda.

b. The published planholder and addenda listing is for general information purposes and the exclusion or inclusion of any firm in no way expresses or implies owner approval or disapproval of the qualifications of any listed bidder, subcontractor, or material or equipment supplier. If the bidder or planholder is not in receipt of any of the listed addenda, he shall obtain copies from the purchasing officer or review the addenda at any of the designated reporting agencies where bidding documents have been placed.

18. POST-BID REVIEW AND MATERIAL SUBMITTAL

a. A bidder may have an authorized representative at the bid opening for (1) submittal of the material and equipment listing and (2) post-bid review of the apparent winning bid.

b. Unless otherwise provided in the bidding documents or authorized by the purchasing officer, the apparent winning bidder shall submit the material and equipment listing no later than one (1) hour after the close of the reading of the bids. The materials and equipment listing shall be that listing bound with the Bid Documents.

c. After opening, bids shall be reviewed by representatives of the purchasing agency, the using agency, the architect or engineer, and the apparent winning bidder. Review shall be directed toward subcontractors, material listing, unit prices, and qualifications of the bidder.

d. The bidder's representative shall have the authority and ability to respond to questions that arise during the review.

19. EQUAL EMPLOYMENT AND NONDISCRIMINATION

a. The Commonwealth of Kentucky is committed to a policy of providing equal job opportunities on public contracts and prohibiting discrimination based on race, creed, color, sex, age, religion, national origin, or disability in employment.

b. The utilization of minority vendors and subcontractors is encouraged, whenever possible, on public works contracts. The bidder and contractor should make full efforts to locate minority businesspersons. For assistance in identifying vendors and subcontractors, bidders may contact the Small and Minority Business Division, Cabinet for Economic Development, Frankfort,

Kentucky 40601, or Office of Equal Opportunity, Contract Compliance, Finance and Administration Cabinet, New Capitol Annex Building, Frankfort, Kentucky 40601.

c. Unless exempted in accordance with KRS 45.590, the provisions of KRS 45.560 to 45.640, known as the Kentucky Equal Employment Act of 1978, shall be binding upon the declared successful bidder and the resulting contract shall contain the provisions set out at KRS 45.570(2).

d. Any bidder not exempted from the affirmative action or reporting requirements of KRS 45.560 to 45.640 shall, within five (5) calendar days after being declared the apparent low bidder, submit to the Office of Equal Employment Opportunity, Contract Compliance, Finance and Administration Cabinet, through the purchasing agency, the information required by KRS 45.600, on forms provided by the purchasing agency, bound within the bid documents, and submitted in the manner prescribed on the forms.

FAP 220-06-00
COMPETITIVE BIDDING EXCEPTIONS FOR CONSTRUCTION AND BUILDING MAINTENANCE

1. Definitions

   a. "Building maintenance" means maintenance and repairs to existing buildings.

   b. "Construction" is defined in KRS 45A.030(4).

2. The Division of Engineering and Contract Administration has determined that the following items are not practicable or feasible for competitive bidding in accordance with KRS 45A.080; KRS 45A.095 and 200 KAR 5:309.

3. Only the specific items listed are exempt from competitive bidding. An electronic statement describing the need for a particular procurement that justifies the procurement on a noncompetitive basis shall be sent to the Division of Engineering and Contract Administration for prior approval for all purchases above an agency's construction small purchase limit for procurements under subsections a., b., and d. of this section, or the agency's single-quote, construction small purchase limit for procurements under subsection c.

   a. **Building maintenance repair, service and materials.** If the repair costs represent a substantial percentage of the equipment's market value, an agency shall justify incurring repair expense versus the purchase of new or used equipment.

   b. **Proprietary materials for construction and building maintenance.** The Division of Engineering and Contract Administration shall make the final determination as to whether the equipment or supplies are proprietary, if the amount exceeds the agency's designated single-quote, construction, small purchase limit.

   c. **Proprietary building service and maintenance agreements for preventative, scheduled, and unscheduled maintenance or service agreements with either manufacturer or authorized service agent.** Electronic justification shall identify the provider as a manufacturer or authorized service agent.

   d. **Other construction and building maintenance materials and services available from only one source.**

FAP 220-09-00
FORCE ACCOUNT PROJECTS

1. "Force Account Project" means a capital construction project that is performed by a state agency utilizing material and labor provided by the agency. This definition shall not apply to capital outlays of the Transportation Cabinet for roads and bridges and the Department of Corrections for repair, maintenance, improvements, or expansion of present correctional facilities on which prison inmate labor will be utilized.

   In accordance with KRS 56.491, a force account project shall not exceed two hundred thousand dollars ($200,000).

2. The Finance and Administration Cabinet, Department for Facilities and Support Services, is the contact agency for force account determinations. Each utilizing agency shall maintain all records for authorized force account construction projects. The Department for Facilities and Support Services is the designated contact and processing agency of the Finance and Administration Cabinet for force account determinations.

3. A state agency seeking approval and establishment of a force account project shall submit to the Department for Facilities and Support Services a written request with sufficient description of the project and estimated cost.

4. Construction plans shall be submitted to and carry the review approval of the Department of Housing, Buildings, and Construction as to conformity with the Uniform State Building Code, if applicable.

5. The agency shall indicate the source of available funds and the estimated cost of materials, labor, and contracted services. Contracted services should be minimized in force account projects.

6. All labor, materials, equipment, and supplies required on an approved project shall be procured in accordance with KRS Chapter 45A.

7. A monetary value shall be assigned to the labor input of the agency's employees for the performance of the project.

8. The Finance and Administration Cabinet shall not approve any project if:

   a. The project is not needed; or

   b. The proposed method of financing is not sound; or

   c. The total cost of the project will exceed the amount of funds available for the project; or

   d. The cost of the project will exceed the statutory dollar limit.

9. Approval of the project by the Finance and Administration Cabinet shall be by processed Commonwealth's Appropriation, Allotment, Revenue Budget, Project Management Master, and Journal Voucher Transfer documents (SAS-5, SAS-14). These documents indicate authorization of the project and allocation of funds to designated account and expenditure codes.

10. A project shall not be separated into smaller projects in order to circumvent the statutory maximum dollar limit for a force account project or to facilitate split purchasing.

11. The using state agency shall maintain fiscal and procurement records on each authorized force account construction project, in accordance with the appropriate record retention schedule. The

records shall indicate fund allotments, expenditures, balances, and the procurement process for materials and equipment.

FAP 220-10-00
SMALL PURCHASE PROCEDURE FOR CONSTRUCTION SERVICES

1. A construction service small purchase may be made by an agency if the cost of filling the reasonably foreseen needs of the agency is estimated to be no more than the amounts listed in Table I below.

2. Procurement requirements shall not be parceled, split, divided, or scheduled over a period of time in order to subvert the intent of this procedure. If an agency's projected need for construction services will cost more than what it can purchase under its small purchase limit, the agency shall submit a Purchase Request to the Finance and Administration Cabinet, Division of Engineering and Contract Administration.

3. The Finance and Administration Cabinet, Commonwealth institutions of higher learning, and the legislative branch shall informally seek, from qualified sources of supply, at least one (1) price quote for construction services of $20,000 or less and at least three (3) price quotations for construction services between $20,000 and $40,000.

4. All other agencies shall informally seek, from qualified sources of supply, at least one (1) price quote for construction services of $3,000 or less and at least three (3) price quotations for construction services between $3,000 and $10,000. An agency shall not purchase construction services totaling more than $10,000 without a delegated higher small purchase authority limit.

5. Quotes may be obtained by telephone, fax, mail, or by posting to the Commonwealth's eProcurement web site. A quotation shall contain, at a minimum, the following:

   a. Issuing agency address;

   b. Due date and time of solicitation closing;

   c. Address to which quotation shall be delivered;

   d. Description of the product or services to be provided; and

   e. Solicitation instructions and conditions.

6. An agency shall maintain a small purchase order file containing the price quotations requested and those received, a tabulation of prices offered, and comments by the agency concerning the basis for placing the order. The agency shall retain a file copy of these records for audit and review purposes.

Table I, Basic Construction Service Small Purchase Limits

Type of Purchase	One Quote Solicited	3 or More Quotes Solicited
Construction Services for the Finance and Administration Cabinet, Commonwealth institutions of higher education, and the legislative branch	$20,000 or Less	$20,000 to $40,000
Construction Services for all other state government agencies	$3,000 or Less	$3,000 to $10,000

7. Construction service items otherwise available on Master Agreement (MA) or Catalog Master Agreement (CMA) may be purchased under small purchase authority from another contractor if the aggregate dollar amount of the total requirement is less than either $1,000 or the higher amount required for a minimum order in a specific MA or CMA.

8. If a construction or building maintenance service is between an agency's construction services small purchase limit and $40,000, an agency may solicit the service through a Master Agreement or Award/Contract in the state's procurement system, if a Solicitation is posted to the Commonwealth's eProcurement web site. The agency shall forward the electronic procurement document to the director of the Division of Engineering and Contract Administration for approval prior to the purchase of the services.

9. The secretary of the Finance and Administration Cabinet may grant to a state agency, with a justifiable need, the delegated authority to purchase specific items whose costs frequently exceed the agency's small purchase limit provided in KRS 45A.100(1).

   a. The Division of Engineering and Contract Administration and the Office of Policy and Audit may perform periodic procurement audits of agencies for compliance with the provisions of KRS Chapter 45A and the Finance and Administration Cabinet Manual of Policies and Procedures. If an agency demonstrates deficiencies in procurement expertise or practice, the Division of Engineering and Contract Administration shall recommend that the secretary revoke or amend any delegations granted.

   b. Agencies granted a higher delegated small purchase limit shall request the number of price quotations indicated in Table II, unless the secretary's delegation specifies an alternate table or number.

Table II, Construction Services Quotes Required for Agencies with Higher Delegated Construction Small Purchase Authority

Delegated Agency Construction Small Purchase Limit	One Quote Request	*At Least Three Quote Requests If Between
$15,000	$5,000 or less	$5,000 to $15,000
$20,000	$10,000 or less	$10,000 to $20,000
$40,000	$20,000 or less	$20,000 to $40,000

*****The posting of a request for quotes on the Commonwealth's eProcurement web site will satisfy the quote solicitation requirements.

FAP 220-11-00
EMERGENCY PURCHASES: CONSTRUCTION PROJECTS

1. The Department for Facilities and Support Services shall assist the secretary of the Finance and Administration Cabinet in regard to emergencies as defined by 45A.095(4) relating to construction.

2. For emergencies relating to construction, a state agency may negotiate directly for the purchase of contractual services, supplies, and materials, regardless of the estimated cost.

3. If time and conditions permit, the agency shall contact the Division of Engineering and Contract Administration, Department for Facilities and Support Services for guidance and assistance.

4. The head of the agency shall provide documentation to the secretary of the Finance and Administration Cabinet that explains the emergency purchase and is approved or signed by the secretary of the cabinet involved or his designee. The president of a university or his designee shall provide the required documentation for a university's emergency purchases. The secretary of the Finance and Administration Cabinet or his designee shall approve the purchase before payment authorization.

FAP 220-12-00
SOLICITATION PROCESS FOR COMPETITIVE SEALED BIDDING

1. A Solicitation shall be posted to the Commonwealth's eProcurement web site and may be mailed to qualified firms.

2. Solicitation notices and plan documents may be placed in the plan room of contractors, subcontractors, material-supplying associations and reporting agencies.

3. Solicitation forms, plans, specifications and other related documents shall be issued to requesting firms.

4. The solicitation response shall be submitted on the official Form of Proposal document issued by the Division of Engineering and Contract Administration.

5. The bidder shall supply all information called for in the Solicitation. Failure to supply the specified information may be cause for determining the bid nonresponsive.

6. The bid shall be firm in offer and conform substantially to the advertised terms, plans and specifications. Any qualifications or reservation set up by a bidder in the bid retaining the option of accepting, modifying or rejecting an offered contract shall be cause to render the bid not firm and ineligible for consideration of award.

7. The solicitation response shall be submitted in accordance with the requirements of the Solicitation.

8. A competitively solicited contract shall be awarded from a bid evaluation in the state's procurement system or all bidders shall be notified of the award in writing.

FAP 220-13-00
AWARD OF CONSTRUCTION AND CONSTRUCTION RELATED CONTRACTS

1. Construction is defined in KRS 45A.030. A construction contract shall be awarded by one of the following methods and in accordance with the noted relevant statutes, regulations, policies and procedures.

   a. Competitive sealed bid. KRS 45A.080, 200 KAR 5:306, FAP 220-12-00.

   b. Competitive negotiation. KRS 45A.825, 200 KAR 5:307, FAP 220-14-00, FAP 220-15-00, FAP 220-17-00.

   c. Noncompetitive negotiation. KRS 45A.095, 200 KAR 5:309, FAP 220-11-00.

   d. Small purchase. KRS 45A.100, FAP 220-10-00.

2. Capital construction funded contracts require properly authorized Appropriation, Allotment, Revenue Budget, Project Management Master, and Journal Voucher Transfer documents (SAS-5, SAS-14) for award of contract and allocation of construction funds.

3. The issuing agency shall execute a construction contract using agency or general fund accounts on the basis of a duly signed agency Purchase Request.

FAP 220-14-00
SOLICITATIONS FOR ARCHITECTURAL OR ENGINEERING SERVICES AND PROCEDURE FOR PREQUALIFICATION

I. Solicitation

A Solicitation for architectural or engineering services shall comply with the provisions of KRS 45A.825 and may include the following evaluation factors:

A. Experience and ability:

1. Number of professionals in the firm including consultant disciplines.
2. Number of technical, administrative and other personnel in the firm.
3. Number of years the firm has been in the business.
4. Types of projects on which the firm or key personnel have been the prime design professional or provided significant professional design services.
5. Qualifications and experience of the proposed project team.
6. Availability of technical equipment.
7. Volume of design work in the last three years.

B. Past performance:

1. For the prior 3-year period, the ability to design projects within specific project budgets and schedules.
2. Average percentage by which construction bids deviated from the estimated construction cost.
3. Change orders as a percentage of the bid construction amount.
   (a) Change orders caused by errors and omissions of the architect or engineer.
   (b) Change orders requested by the Commonwealth.
   (c) Change orders caused by found conditions or regulatory decisions.
4. Design performance and experience of firm and key personnel with prior projects of similar scope.
5. Construction supervision services and post construction services.
6. Record of compliance with:
   (a) Regulatory agencies.
   (b) Environmental regulations.
   (c) Equal employment opportunity regulations, policies and procedures.

(d) Building codes.

C. Existing workload relative to the size of the firm and capacity to perform the project.

D. Geographical location with respect to the project:

1. Location of offices of persons that will perform the work.

2. Size of the staff, including professional personnel, in the offices that will perform the work.

E. Payment of sub-consultants.

II. Prequalification

A. In order to submit a response to a request for proposal, an architectural or engineering firm shall be prequalified by the Department for Facilities and Support Services.

B. An architectural or engineering firm shall prequalify by filing with the Department for Facilities and Support Services a completed current Federal Standard Form 254.

C. A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.

D. The prime consultant shall be registered in the Commonwealth of Kentucky with the appropriate professional governing body.

III. Selection Committee Project Evaluation Sheets

A. Each member of an architectural or engineering services selection committee shall use the project evaluation sheet provided by the Department for Facilities and Support Services, in evaluating a firm's proposal.

B. Upon completion of evaluation of all the responses to a request for proposals, each evaluation committee member shall sign his or her individual project evaluation sheet and shall submit the sheet to the chairperson of the committee. The chairperson of the selection committee shall record the composite score from each individual evaluation sheet on the evaluation summary sheet for the project. The evaluation summary sheet shall be signed by each participating member of the selection committee.

C. The procedure established in subsection B of this section shall also apply to project interview evaluation sheets used during the interview process required by KRS 45A.825(8).

D. All evaluation sheets and evaluation summaries for a project shall be maintained by the Division of Engineering and Contract Administration, Department for Facilities and Support Services.

FAP 220-15-00
REAL PROPERTY ACQUISITION

In accordance with KRS 56.463, the Finance and Administration Cabinet, Division of Real Properties, shall be responsible for the acquisition of real property for all departments, agencies, and administrative bodies of state government, except the Transportation Cabinet, and those universities which have elected to administer their real property functions pursuant to KRS 164A.555 to 164A.630. All requests for acquisition of real property shall include a description of the property, an explanation of the need, estimated cost and a statement concerning the means of financing the acquisition.

The secretary of the Finance and Administration Cabinet shall approve all requests pursuant to an Official Order. Upon the secretary's approval, the Division of Real Properties shall be responsible for coordinating, directing and performing all aspects of the acquisition process.

All costs of acquiring real property shall be borne by the requesting agency either by direct payment or inter-account bill. Appraisals of real property shall be performed by appraisers under contract to the Finance and Administration Cabinet or Transportation Cabinet staff appraisers. For property estimated to cost $200,000 or more, two appraisals shall be performed. The Finance and Administration Cabinet's Division of Real Properties or the appraisal review staff of the Department of Highways shall review the appraisals.

1. Preliminary Stages.

    a. Only the Finance and Administration Cabinet, Division of Real Properties staff may conduct preliminary discussions with landowners regarding contemplated acquisitions of their properties. Other agencies shall not have preliminary discussions with landowners.

    b. The requesting agency shall, if possible, obtain a legal description of the land and the source of the owner's title.

    c. The requesting agency shall be familiar with and take into consideration the applicability of relocation assistance payments when preparing a proposal to acquire a particular property.

    d. The requesting agency shall comply with regulations relating to floodplain management when preparing a proposal to acquire a particular property.

2. Formal Declaration of Need.

Once the decision has been made by the requesting agency to purchase a particular property, a written formal determination of need shall be prepared and signed by the appropriate agency personnel and submitted to the Division of Real Properties.

3. Agency Participation and Duties During the Acquisition of Land.

Upon receipt of a formal determination of the requesting agency's or the Finance and Administration Cabinet's need for a particular property and any available title information, the director of the Division of Real Properties shall determine whether the request should be submitted to the secretary of the Finance and Administration Cabinet for approval. The Division of Real Properties shall write the commissioner, Department for Facilities and Support Services, for authorization to appraise the property and authorization to contact appraisers for a proposal to complete the appraisal. Once an appraisal has been obtained and reviewed, an Official Order shall be prepared and submitted to the secretary, Finance and Administration Cabinet, for approval. This Order shall authorize acquisition of the property at the negotiated price based on the fair market value. Once the Official Order has been executed, the Division of Real Properties may begin negotiations with the property owner. The requesting agency shall not be directly involved in the acquisition of the land except as follows:

a. Officials of the requesting agency may be asked to accompany a representative of the Finance and Administration Cabinet to assist in an explanation to the landowner of the Commonwealth's necessity to acquire his land and what that landowner can expect.

b. The requesting agency shall promptly process all matters forwarded by the Finance and Administration Cabinet involving interaccounting.

c. The requesting agency shall cooperate with the Division of Real Properties during the acquisition phase.

4. The following steps shall be followed during the acquisition phase:

a. Appraisal – If required by law, the Finance and Administration Cabinet shall obtain an appraisal to establish the fair market value of the property.

b. Negotiation - Agents of the Division of Real Properties shall negotiate in the name of the Commonwealth of Kentucky with the property owner. A firm offer based upon the appraisal shall be made, and, if it is accepted, a Land Contract shall be entered into with the landowner.

c. Title Examination - If required by law and if a Title Certification has not already been made available, the Finance and Administration Cabinet shall engage an attorney to perform an examination of title and prepare a narrative Abstract of Title. The Finance and Administration Cabinet shall obtain a Title Update after acquisition.

d. Survey - If required by law, the Finance and Administration Cabinet shall obtain a survey of the property.

e. Condemnation - If the landowner refuses an offer to purchase and a determination has been made by the director of the Division of Real Properties that the property cannot be acquired by negotiation or by an administrative settlement, the requesting agency shall be notified and requested to submit a formal request to the secretary of the Finance and Administration Cabinet that the property be acquired by condemnation. An Official Order authorizing condemnation shall be submitted to the secretary of the Finance and Administration Cabinet for approval.

FAP 220-16-00
SURPLUS REAL PROPERTY DISPOSITION

Pursuant to KRS Chapters 45A and 56, the Finance and Administration Cabinet, Department for Facilities and Support Services, Division of Real Properties shall be responsible for the disposition of all real property owned by the Commonwealth of Kentucky except property owned by universities that have elected to administer their real property functions pursuant to KRS 164A.555 to 164A.630.

The agency requesting to surplus property shall forward to the Division of Real Properties a written request declaring the property surplus with all supporting documentation. **Unless the secretary of the Finance and Administration Cabinet determines it is in the best interest of the Commonwealth to proceed otherwise**, the property shall be sold by sealed bid or at public auction, subject to the provisions of KRS 45A.045, KRS 56.463 and the following procedures:

1. Upon receipt of the agency's written request and all supporting documentation requested by the Division of Real Properties, including the agency's recommended manner of disposition, the Division of Real Properties shall review and evaluate the request.

2. The Division of Real Properties shall notify any governmental agency deemed to have a likely interest of the surplus real property availability.

3. If the Division of Real Properties concurs with the agency's recommendation, an Official Order authorizing the disposition shall be submitted to the secretary of the Finance and Administration Cabinet for review and final approval.

4. If required by law, or if it is determined to be necessary by the Division of Real Properties, a survey and appraisal of the property shall be performed.

5. The Division of Real Properties shall publicize the availability of surplus real property. The publication shall include a description of the property, date of bid opening, auction date and any special restrictions. The requesting agency shall be responsible for advertising costs and any signage on surplus real property.

6. All administrative costs associated with disposition of the property shall be the responsibility of the requesting agency. If the secretary of the Finance and Administration Cabinet approves a negotiated sale, associated costs may be passed on to the grantee.

FAP 220-17-00
COMPETITIVE NEGOTIATIONS

Competitively negotiated contracts shall be awarded as prescribed in 200 KAR 5:307 and this regulation.

1. A written determination authorizing competitive negotiations for construction and construction related goods and services shall be made by the purchasing officer and approved by the director of the Finance and Administration Cabinet's Division of Engineering and Contract Administration.

2. Advertisement shall be in the same manner as for competitive sealed bids.

3. Notice shall be posted and mailed to prospective offerors advising of the availability of proposal documents and specifications, and of the time and date for receipt of proposals. Ample time shall be given for the preparation of proposals.

4. The method for receipt of proposals and method of award shall be clearly defined. If an evaluated award is to be made, objective measurable criteria shall be clearly set out in the solicitation.

5. If it is anticipated that an award can be made on the original offer without further submittals or negotiations, it shall be so stated in the notice.

6. Proposals shall be received and time stamped by the Division of Engineering and Contract Administration until the close of business on the established closing date. A public opening shall not be held. All proposal prices shall be kept confidential and the proposals shall not be subject to public inspection until a contract has been awarded.

7. The next business day, the proposals shall be opened by the purchasing officer and copies distributed to the using agency, consultant, the Finance and Administration Cabinet's Division of Engineering and Contract Administration, and others as applicable for review and recommendation.

FAP 220-18-00
CAPITAL PROJECT ACCOUNTS CLOSING PROCESS

A state agency or university shall execute the process in this policy to close a capital construction project account, in accordance with KRS 45.770(4), to facilitate the transfer of moneys constituting the available balance in a project account to the proper account.

1. Definitions:
   a. "Beneficial occupancy" means the date an agency can take possession of or occupy a facility for its intended purpose.

   b. "Division" means the Finance and Administration Cabinet, Department for Facilities and Support Services, Division of Engineering and Contract Administration.

   c. "GOPM" means the Governor's Office for Policy and Management.

   d. "Project has been accepted by the Commonwealth" and "project acceptance" mean the date one (1) year after the actual date of beneficial occupancy, as certified by the Division. This coincides with the standard one (1) year construction warranty period.

   e. "Quarterly Report" means the Division of Engineering and Contract Administration's Quarterly Capital Construction Report.

2. A capital construction project account shall be closed within thirty (30) days of project acceptance, in accordance with KRS 45.770(4). A state agency or university shall close a capital construction project account within thirteen (13) months from the date of beneficial occupancy, unless GOPM and the Division grant an extension of time.

3. The Division shall modify the Quarterly Report to reflect the estimated completion date and the actual date of beneficial occupancy for each project. The Division shall formally notify the agency of the actual date of beneficial occupancy for each agency project.

4. The Division shall publish the most current Quarterly Report to a network or Internet location accessible by all agencies. An agency shall monitor its capital construction projects as they approach the thirteen (13) month closing deadline. An agency shall either initiate the documents to close a project in a timely manner or provide sufficient written justification for approval to allow the project account to remain open beyond the closing deadline.

5. If circumstances prevent project closure within the thirteen (13) month closing period, the agency shall provide written justification for the delay to GOPM and the Division. If a delay in closing the project is approved, this information shall be listed in the comments section of the Quarterly Report addendum.

6. The Division shall create an addendum to the Quarterly Report to contain:

   a. A listing of projects that have reached the thirteen (13) month closing deadline;

   b. Status of each project;

   c. The remaining balance of project funds if the project has not been closed; and

   d. Comments explaining miscellaneous project information or the reason the project has not been closed.

7. Agency officials shall be prepared to appear before the Capital Projects and Bond Oversight Committee to explain the circumstances that require a project to remain open after the thirteen (13) month closing period.

FAP 220-19-00
SURPLUS STATE-OWNED PERSONAL PROPERTY: DECLARATION AND DISPOSAL

1. The Finance and Administration Cabinet, Division of Surplus Property shall dispose of state-owned personal property declared to be surplus to the needs of the Commonwealth, unless authority to declare and dispose of surplus property has been delegated to an agency head by the secretary of the Finance and Administration Cabinet. Disposal of surplus personal property shall be by one of the following methods:

   a. Intra-agency or inter-agency transfer;

   b. Use of the property as a trade in the procurement of a similar item;

   c. Transfer to a unit of local government within the Commonwealth at a price determined by the Cabinet, and in accordance with FAP-220-20-00;

   d. Transfer, at a price determined by mutual consent and in the Commonwealth's best interest, to a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, excluding a religious organization, or a nonprofit organization eligible to receive surplus federal property pursuant to 41 C.F.R. 101-44.207(c) and organized under the laws of the Commonwealth, another state, or the District of Columbia, or chartered under an Act of Congress, lawfully doing business in the Commonwealth of Kentucky, and serving a public purpose of an essentially governmental, civic, educational, or charitable nature, after first receiving from the recipient agency the certification and evidence of nonprofit status required in FAP 220-20-00;

   e. Sale to the general public using either the sealed bid or auction, including consignment auction and internet auction methods of sale. Disposal by either of these methods shall be preceded by notice adequate to inform the general public of the sale, taking into consideration the estimated value of the items;

   f. Disposal in accordance with applicable state and federal waste management laws and regulations if property is not suitable for transfer, trade, or sale; or

   g. Other method as determined by the director of the Division of Surplus Property, in writing, to be in the best interest of the Commonwealth.

2. An agency wishing to dispose of state-owned personal property shall file with the Division of Surplus Property a State-Owned Personal Property Declared Surplus Form, B-217-2, prepared by the agency's property officer and approved by the agency head. The Division of Surplus Property shall determine the specific time, method, and grouping or bundling of items for disposal.

3. The secretary of the Finance and Administration Cabinet may delegate the authority to declare and dispose of surplus state-owned personal property to an agency head requesting delegation. The request for delegation shall:

   a. Be signed by the agency head;

   b. Assure that only property not needed or deemed non-serviceable by the agency shall be declared surplus;

   c. Assure compliance with KRS Chapter 11A and that no employee of the Commonwealth shall personally benefit from the disposal of surplus property;

d. Certify that disposal shall be in accordance with applicable federal and state laws and regulations, and Finance and Administration Cabinet policies and procedures;

e. Acknowledge that disposal of vehicles, boats, and other licensed equipment shall be excluded from the delegation unless specifically stated otherwise in the delegation, in accordance with section 9 below; and

f. Assure that disposal will serve the Commonwealth's best interests by seriously weighing each of the disposal options provided in section 1 above.

4. An agency with offices in or within five (5) miles of Franklin County that has been delegated authority to dispose of state-owned surplus personal property shall deliver the property to a Finance and Administration Cabinet, Division of Surplus Property warehouse for actual disposal, if property is suitable for transfer or sale, unless otherwise directed by the Division of Surplus Property.

5. An agency with offices more than five (5) miles outside of Franklin County that has been delegated authority to declare and dispose of state-owned surplus personal property may:

   a. deliver the property to a Finance and Administration Cabinet, Division of Surplus Property warehouse for actual disposal, if property is suitable for transfer or sale; or

   b. dispose of the property by one of the methods provided in section 1 above.

6. An agency that has been delegated authority to declare and dispose of state-owned surplus personal property shall:

   a. delete surplus items from agency inventory listings;

   b. maintain records of disposal;

   c. manage the accounting of any applicable federal interest in the property;

   d. retain the proceeds from the disposal of surplus property, unless the property has been delivered to a Finance and Administration Cabinet, Division of Surplus Property warehouse; and

   e. make records of surplus property disposition available for audit by the Finance and Administration Cabinet.

7. Property shall be delivered to a Finance and Administration Cabinet, Division of Surplus Property warehouse, only after calling to schedule delivery. Delivery shall be accompanied by a completed State-Owned Personal Property Declared Surplus Form, B-217-2, listing each item being delivered. The Division of Surplus Property shall retain all proceeds from disposal of property delivered to a Division of Surplus Property warehouse.

8. Records of surplus property disposition by agencies delegated authority to dispose of state-owned surplus personal property shall be subject to audit by the Finance and Administration Cabinet.

9. Vehicles, boats, and other similar licensed equipment shall be declared surplus and disposed of only upon approval by the secretary of the Finance and Administration Cabinet or his designee, unless an agency delegation specifically states that authority is delegated for these items. A request to surplus and dispose of vehicles, boats, or other similar licensed equipment shall be made on a State-Owned Personal Property Declared Surplus Form, B-217-2, and be accompanied by a current Certificate of Title. If the vehicle, boat, or other similar licensed equipment is inoperable and cannot feasibly be restored to an operable condition, the agency shall note the facts on the request so that an appropriate and efficient disposal method may be selected.

10. Proceeds from the sale of surplus vehicles, boats, or other licensed equipment shall be retained by, or returned to, the agency with a nominal handling charge set and deducted by the Division of Surplus Property if that division conducts the sale.

KRS 45A.045(5)
200 KAR 5:302(3)

FAP 220-20-00
SURPLUS STATE-OWNED PERSONAL PROPERTY: ELIGIBILITY AND RECEIPT

1. A unit of local government in the Commonwealth or a nonprofit organization described in FAP 220-19-00 section 3(d) may request surplus state personal property upon submitting evidence of its status as a unit of local government or tax-exempt nonprofit organization. Proof of eligibility may include a Donee Authorization Card issued by the Division of Surplus Property, an IRS letter granting or recognizing tax-exempt status, a local unit of government purchase order, or a request on official local government letterhead.

2. Personal property may be transferred to an entity described in section 1 above upon receipt of a signed acknowledgment including the items to be received by description, inventory number, serial number, quantity, and transfer charge, and containing a statement that the recipient agency:

   a. Is a unit of local government or a nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or a nonprofit organization eligible to receive federal surplus property pursuant to 41 C.F.R. 101-44.207(c).

   b. Shall use the property for public purposes or to further its nonprofit mission, and that the property is not being acquired for other purposes, for sale, or for permanent use outside the Commonwealth.

   c. Shall use all property received for at least one (1) year from date of receipt unless prior approval is granted for an alternate minimum use requirement by the Division of Surplus Property, Finance and Administration Cabinet.

   d. Shall pay to the Commonwealth the proceeds of disposal, or the fair market value or fair rental value of the property, if the property is put into personal or other ineligible use, or is sold, traded, leased, or otherwise disposed of, within twelve (12) months of receipt, without approval of the Commonwealth. The amount of payment shall be determined as of the time of disposal or ineligible use, and shall be at the option of and as determined by the state agency. Payment shall not preclude any other legal action that the Commonwealth may pursue if criminal violation is suspected.

   e. Shall, if requested during the twelve (12) months after receipt, report to the state agency the condition, use, and location of, answer other questions about, and allow inspection of the property.

   f. Accepts the property "as is" and "where is" without warranty of any kind.

   g. Holds the Commonwealth of Kentucky harmless from any and all losses, claims, expenditures, actions, causes of action, costs, damages, and obligations arising from this transaction and from the use of the property and the acts of the donee recipient, its agents, employees, and licensees that may result in injury to persons, damage to property, or loss of any sort, and to indemnify the Commonwealth of Kentucky from any and all liability, loss, or damage that it may suffer resulting therefrom or any other claims or judgments resulting therefrom.

3. Payment for transferred property shall be by local government or nonprofit agency check only. Personal checks shall not be accepted.

4. Title to any transferred property shall be in the name of the recipient agency.

FAP 220-21-00
SURPLUS FEDERAL PROPERTY: ACQUISITION AND DISTRIBUTION

1. The Finance and Administration Cabinet, Division of Surplus Property shall acquire and distribute federal surplus property received by the Commonwealth to eligible donee organizations.

2. Federal surplus property shall be offered, for a nominal fee, to eligible entities after completion of an Application for Eligibility, which includes a Donee Authorization, a Donee Agreement, and a Nondiscrimination Agreement. Each form shall be signed by the chief executive officer of the donee organization and approved by the Finance and Administration Cabinet. A Donee Authorization Card shall be issued to approved applicant organizations, after which the organization may receive federal surplus property.

3. Eligible entities shall include:

   a. State agency or political subdivision thereof.

   b. Unit of local government or subdivision thereof.

   c. Nonprofit educational or public health institution that is exempt from taxation under Section 501 of the federal Internal Revenue Code, for purposes of education or public health, and programs for older individuals which receive funds under the Older Americans Act of 1965, as amended, Title IV or Title XX of the Social Security Act, or Economic Opportunity Act of 1964, as amended, and other such organizations determined to be eligible under federal regulations and guidelines as amended from time to time.

SECTION IV

COMMONWEALTH OFFICE OF TECHNOLOGY

COMMONWEALTH OFFICE OF TECHNOLOGY
******* INDEX *******
NUMERICAL

FAP 300-01-00 Cellular Telephones

COMMONWEALTH OFFICE OF TECHNOLOGY
******* INDEX *******
ALPHABETICAL

FAP 300-01-00 Cellular Telephones

FAP 300-01-00
Cellular Telephones

Each agency that is assigned a cellular phone shall enforce and manage this policy regarding acquisition, assignment and use of cellular equipment and services, and reimbursement for personal calls. Abuse of this policy may result in revocation of cellular access and disciplinary action.

1. **Assignment of Cellular Phones:** Cellular phones may be assigned to staff who are mobile for most of a work period, respond to emergencies, are responsible for restoration of services, or are integral to an agency's decision-making process.

    a. If a cellular phone is reassigned from one staff person to another, the Wireless Coordinator shall be notified immediately.

    b. Each agency may establish a pool of cellular telephones to be distributed to staff on a temporary basis. This pool of cellular phones may be used to address short-term extemporaneous requirements. Distribution shall be on an as-needed basis, to reduce the need for permanent assignment of cellular phones to individual staff persons.

    c. Each agency shall perform a cost benefit analysis to determine if temporary use cellular phones are more cost effective.

    d. If cellular service is no longer required, the issuing agency shall immediately terminate the service.

2. **Inventory:** Each agency shall maintain an accurate inventory of cellular assets and accessories within the agency. The inventory shall identify to whom and the date assets were assigned. Typical assets and accessories include the cellular phone, chargers, spare batteries, and carrying cases.

3. **Use of Cellular Phones:** Use of a state-owned cellular phone is a privilege that may be revoked at any time for inappropriate conduct.

    a. State provided cellular equipment and service shall be assigned for official business.

    b. A state-issued cellular phone is not intended for personal use and shall not be used for personal calls unless the phone holder reimburses the state for the costs incurred for personal calls.

    c. State cellular equipment and services shall not be used for personal gain, personal business activities, or soliciting money for religious or political causes.

4. **Request for Cellular Telephone Equipment and Services:** Cabinet secretaries, agency heads or their designees shall authorize all requests for cellular phones and services for their agencies.

    a. Cellular telephone equipment, services and maintenance shall be acquired using current contracts for cellular telephone equipment, services and maintenance awarded by the Finance and Administration Cabinet, unless an exception is approved by the Finance and Administration Cabinet.

    b. The request for cellular services shall include a statement justifying the use of cellular services by the individual for whom services are requested.

5. **Agency Wireless Coordinator Responsibility:** Each head of an agency that is issued cellular equipment or services shall appoint a Wireless Coordinator for the agency. The Wireless Coordinator shall:

a. Verify that the agency maintains an accurate inventory of cellular assets and accessories within the agency.

b. Coordinate with the agency head and others as designated by the agency head the distribution and use of cellular phones in the agency.

c. Monitor and evaluate the distribution and use of cellular phones in the agency, to verify that the most cost-effective calling plan is selected for each cellular phone in use by agency.

d. Recommend to the agency head if a need exists for an individual to possess a cellular phone.

e. Ensure each bill from the cellular service provider is reviewed monthly.

f. Ensure that the cellular phone holders review the monthly billing from the service provider in a timely manner. The cell phone holder shall be responsible for identifying personal calls.

g. Determine if the service provider owes the agency a reimbursement for any roaming or long distance calls related to border issues. If a reimbursement is due, notify the service provider and verify that the correct credit for the reimbursement appears on a future statement.

h. Verify cellular phone holders receive a copy of their detailed phone calls.

i. Identify cellular phones with little or no activity, and verify that the phone is still needed. Determine if a shared cellular phone would be more cost-effective and practical.

j. Maintain a file containing needs analysis, justification, and approvals for all requests for cellular equipment and services. This information shall be audited periodically by the Finance and Administration Cabinet.

k. Coordinate the acquisition of equipment, services and maintenance with the Finance and Administration Cabinet.

l. Act as the single point of contact for issues related to cellular phone services.

m. Ensure that agency staff are aware of the provisions of this policy.

n. Replace lost, stolen or damaged equipment.

o. Collect reimbursement for costs incurred by the agency for personal calls made or received by the assigned cellular phone user.

p. Conduct an annual audit of the agency's cellular phone plans.

6. Employee Responsibility: Holders of state-issued cellular phones shall use their cellular phones and services in a responsible, informed and safe manner, conforming to network etiquette, customs, courtesies, safety practices and applicable laws or regulations. Cell phone holders may be held liable for lost, stolen or damaged state-owned cellular equipment. Cell phone holders shall:

a. Identify personal calls listed on cellular phone statements monthly.

b. Reimburse their agency, on a monthly basis, for the costs incurred on state-owned cellular phones as a result of personal calls, if plan minutes are exceeded.

c. Secure cellular phones and accessories at all times.

d. Report any loss to the Wireless Coordinator or agency head immediately.

7. **Reimbursement Rates:** A holder of a state-issued cellular phone shall reimburse the agency for personal calls at the following rates, except, the amount of reimbursement shall not exceed the amount of the phone bill.

   a. Local calls: $.10 per minute;

   b. Out of state calls that originate in Kentucky: $.15 per minute; and

   c. Calls that originate outside of Kentucky: $.49 per minute.

8. **Finance and Administration Cabinet Monitoring:** The Finance and Administration Cabinet shall conduct random reviews of cellular phone usage and charges, at least once per year. The Finance and Administration Cabinet Wireless Coordinator shall:

   a. Compare randomly chosen cellular phone statements with the amount reimbursed for the year, and report any discrepancy to the Agency Wireless Coordinator;

   b. Evaluate the necessity of the cellular phone based on the requirements set out in this policy and the contractor's usage history; and

   c. Determine the appropriateness of the assigned plan based on the needs of the individual user.