

GENERAL CONDITIONS AND INSTRUCTIONS FOR SOLICITATIONS AND CONTRACTS

The following general conditions are incorporated into each and every Solicitation and into each and every Contract issued by the Commonwealth.

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

1. 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 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. If authorized by the Solicitation, an online response shall be submitted in accordance with Section 4, and shall be the preferred method of bidding. If the offeror elects to submit a paper copy, the offeror shall sign the paper copy Solicitation in ink and type or print in ink his name, firm, address, telephone number and date.
- e. The person signing the offer shall initial an erasure or other change in ink. Failure to initial an erasure or other change in the offer may result in the rejection of the offer.
- f. Unit price for each unit offered shall be shown and shall include packing and shipping, 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.
- 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, if authorized by the Solicitation.
- i. Time discounts may be considered, if OPS 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. If a range of time is proposed for delivery, the maximum time shall be used for evaluation of delivery time.

- 2. 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 closing 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.

3. 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 not to be considered, unless the failure is waived in accordance with 200 KAR 5:306(4)(3). Acknowledgment of the most recent modification shall constitute acknowledgment of all prior modifications.

4. Bid Submission Compliance and Provisions: A bidder shall:

- a. Submit a bid in legible form in accordance with the Solicitation requirements.
- b. Ensure that a bid response submitted using the online bid response feature of the state's eProcurement system contains all required information for the Solicitation. A vendor who submits an online bid response may subsequently submit an exact paper copy of the response. If any discrepancies exist between the online bid response and the paper copy, the bid may be considered non-responsive and may not be eligible for award. If submitting a paper copy of the bid response after an online bid submission, the vendor shall send the following paper copy documents to the issuing agency by the closing date and time. Paper copy bid submissions shall be signed in ink to comply with all statutes, administrative regulations and policies.
- c. Ensure the paper copy is signed by a proper agent of the firm prior to the bid closing. A paper copy bid shall be 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 by the act of submitting it electronically through the state's eProcurement system.
- d. Specify brand name, trademark, model number and catalog number for each item bid, if appropriate.
- e. Offer only one (1) price for each item bid and offer only one (1) product for each item of the Solicitation, unless the Solicitation specifically states that more than one (1) product may be bid for a single item of the contract. Offering more than one (1) 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 OPS 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. If online bidding is authorized by the Solicitation ensure the bid response is submitted and is in an "Accepted" status in the state's eProcurement system, or the paper copy of the bid response arrives in OPS before the time specified in the Solicitation. The time shown on the time stamp as provided in the Bid Receipt Room in OPS for paper 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 eProcurement system at the time of final acceptance and formal

submission by the vendor. The state's eProcurement 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. Prior to closing, a bid shall be withdrawn at the vendor's request in accordance with Section 17 of this FAP. After closing, a bid may be withdrawn in accordance with 200 KAR 5:306.
- 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 OPS. Samples shall become the property of the Commonwealth unless a bidder requests return within thirty (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. The contractor, as defined in KRS 45A.030(10), agrees that the contracting agency, the Finance and Administration Cabinet (FAC), the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records or other evidence received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 - KRS 61.884. In the event of a dispute between the contractor and the contracting agency over documents that are eligible for production and review, the FAC shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004.
- r. File a performance bond, irrevocable letter of credit or mutually agreed upon surety, if requested by OPS as 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. 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/her 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, irrevocable letter of credit or mutually agreed upon surety meeting the requirements of the Solicitation from the bidder's source of supply, if requested to do so by OPS. If a bond is required, it shall be issued to the Commonwealth 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 OPS. OPS may accept an irrevocable letter of credit, if it is in the best interest of the Commonwealth.
- 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 SAS 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. Offers shall be submitted under sealed cover and shall be labeled in accordance with the instructions in the Solicitation.
- w. If state offices are closed on days other than scheduled holidays, bid closings scheduled for that day shall be held on the next normal working day at the scheduled hour.
- x. If operating hours of the issuing office are delayed, and it is determined to be in the best interest of the Commonwealth, bid closings at the issuing office may be delayed.
- y. If a power outage or system failure occurs within the state'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 state's eProcurement web site.

5. Compliance with State and Federal Law: In addition to any other remedies at law or in equity, OPS 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 or of the United States.

6. Governing Law: The laws of the Commonwealth shall govern all contracts or orders entered into by the Commonwealth. The rights and obligations of the parties shall be determined in accordance with the laws of the Commonwealth. A bid conditioned upon governance by the laws of a state other than Kentucky shall not be considered.

7. Compensable Damages for Breach: The following items shall be included as compensable damages to the Commonwealth 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.

8. 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 the working days and hours of Monday through Friday, 8:00 a.m. to 4:30 p.m., not including state holidays, to the point or points specified in the contract.
- 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.

- e. **Penalty for Late Delivery:** In addition to being cause for disciplinary action, the vendor who fails to make delivery as specified in the contract shall be charged in accordance with the terms and conditions of the contract. Furthermore, a delivery not made within the time provided by the contract may create a critical situation requiring the commodity to be obtained from some other source. If a critical situation is created and it is in the best interest of the Commonwealth, the contracting agency may enter the open market and purchase the commodity sought under the contract. The vendor shall be charged with the increase in price incurred by the Commonwealth.
 - f. **Delivery of Goods:** If goods are delivered by a vendor that does not conform to the order, the agency shall notify the vendor promptly. If after thirty (30) days of written notice the vendor does not replace rejected materials, the agency may sell the rejected items and submit the proceeds to the vendor less expenses.
- 9. Reporting Equal Employment Opportunity Compliance or Breach:** The contractor or vendor shall, within the time frame set by the contracting agency, complete an Equal Employment Opportunity (EEO) template designed by the FAC, along with a statement of intent to comply in full with all requirements of the Kentucky Civil Rights Act, and to submit data required by KRS 45.560 - KRS 45.640. 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.
- 10. Failure to Comply:** Failure to comply with any provisions of KRS 45.550 - KRS 45.640 shall constitute a material breach of contract.
- 11. Additional Equal Employment Provisions Under Contracts Utilizing Federal Funds:** The contractor shall comply with all provisions of Presidential Executive Order 11246 as amended. 41 CFR Part 60-1.4.
- 12. 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 forty (40) and over, disability, veteran's status 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 forty (40) and over, disability, veteran's status or national origin.
 - 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 forty (40) and over, disability, veteran's status 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/she 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.
- 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 KRS 45A.235. Pending final decision of a dispute, the contractor shall proceed diligently with the performance of the contract.

- 15. 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.
- 16. Terms for Prompt Payment:** Pursuant to KRS 45.454, a bill shall be paid within thirty (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 thirty (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 thirty (30) days.
- 17. 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/her identity is made known and he/she 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 closing bids by applying the appropriate electronic signature and following the procedure in the state's eProcurement system. An electronic modification shall not mention unit prices or total price, but shall only refer to percentage change or numerical change. In accordance with 200 KAR 5:306, withdrawal of a bid after closing 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 OPS.
- 18. Late Offers and Modifications:** The state's eProcurement system will not allow submission of electronic responses after the published date and time for bid closing. A paper copy 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 all of the following apply:
- a. The need of an agency is determined to preclude the re-Solicitation of bids;
 - b. No bids are received other than the late bid and it is postmarked before the date specified in the Solicitation or has been logged into the courier's tracking system before the bid closing time; and
 - c. The offer is evaluated and found to serve the best interest of the Commonwealth.
- 19. Multiple and Alternate Bids:** A bidder shall submit one (1) response to the Solicitation and shall not propose more than one (1) model and brand for each bid item. Except for tiered pricing, multiple or alternate bids offering more than one (1) bid price in total or by line-item shall be cause for rejection, unless specifically called for in the Solicitation.
- 20. Award of Contract:**
- a. A contract shall be awarded to the responsible and responsive offeror in accordance with the Solicitation.
 - b. 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.
 - c. The Commonwealth reserves the right to reject any offers and to waive informalities and minor irregularities in offers received.
 - d. In the event that no complete bids are received and it is determined to be in the Commonwealth's best interest, the Commonwealth reserves the right to award based on item by item awards.
 - e. An electronic or written award furnished to the successful offeror within the time for acceptance specified in the Solicitation shall constitute a binding contract without further actions by either party.

- f. The Commonwealth only notifies the successful offeror of an award. Any other interested party may view contract awards posted on the state's eProcurement web site. The date the contract award is posted to the state's eProcurement web site shall serve as the official notification of award for actions pursuant to KRS 45A.285(2) and 200 KAR 5:380.
- 21. Rejection of All Bid Responses:** If it is in the Commonwealth's best interest as determined in writing by OPS or the authorized purchasing agency, a Solicitation may be cancelled and a Solicitation reissued containing the same or revised specifications, terms and conditions.
- a. If time does not permit or if an emergency exists, the agency may purchase the items on a negotiated basis.
- b. The rejection of all bids and selection of the negotiated method of purchase shall be fully documented in the bid file.
- 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 OPS. If the contractor finds at any time that existing conditions make modification of requirements necessary, the contractor shall report the matter promptly to OPS for consideration and decision. All contract modifications shall be subject to the provisions of 200 KAR 5:311.
- 23. Required Documents for Bidders:** Every person shall submit the Required Affidavit for Bidders, Offerors and Contractors as required in KRS 45A.110 and KRS 45A.115. In addition, every person shall submit a copy of the appropriate sales and use tax permit or Revenue Form 10A100, Kentucky Tax Registration application per KRS 139.200 and KRS 139.310 prior to execution of a contract. As applicable, nonresident entities submitting a bid or responding to a Solicitation shall provide a Certificate of Authorization from the Kentucky Secretary of State.
- 24. Strategic Procurement Review (SPR) Process:** Purchases or contracts that have an enterprise impact or a strategic value exceeding \$1,000 require preapproval prior to procurement. Such procurements include IT hardware, software, IT services, IT maintenance, IT task orders, vehicles, vehicle repairs, postal, printing and competitive exemptions for Personal Service Contracts, Architectural & Engineering (A&E) and construction. The SPR process is conducted by the appropriate business expertise agency (Commonwealth Office of Technology, OPS, Division of Fleet Management, Division of Postal Service and DFSS) through the state's eProcurement system. Agencies shall not use split-purchasing or any other methods to artificially circumvent this requirement.
- 25. Residential Preference Law:** All agencies shall consider and apply the Reciprocal Preference Laws, in accordance with KRS 45A.494 and 200 KAR 5:400, before the final award of all contracts.
- 26. Energy Efficient Procurement:** It is in the best interest 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, if applicable.
- 27. Communications with Vendors:** In order to ensure fair and equitable treatment of all vendors, communication regarding a particular procurement shall cease at an appropriate date prior to the issuance of a Solicitation. Questions regarding the Solicitation, once issued, shall be submitted in accordance with the directions in the Solicitation.
- 28. Seller's Invoices:** Invoices, if required, shall be prepared and transmitted to the agency receiving the goods or services. Unless it is an invoice for a Personal Service Contract (See FAP 111-43-00), each invoice shall contain the following information, as applicable:
- 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.

Relates to: 41 CFR Part 60-1.4; KRS 44.030; KRS 45.454; KRS 45.560 – KRS 45.640;
KRS Chapter 45A; KRS 61.870 – KRS 61.884; KRS 139.200;
KRS 139.310; KRS 371.040 and Title 200 of KAR