

THE COMMONWEALTH OF KENTUCKY
PROCUREMENT MANUAL

PUBLISHED BY:

FINANCE & ADMINISTRATION CABINET
OFFICE OF PROCUREMENT SERVICES

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SECTION ONE: INTRODUCTION

Welcome to the Commonwealth of Kentucky Procurement Manual (“Procurement Manual”). The Procurement Manual is provided to be the official guide on the procurement process for goods and services in the Commonwealth. The Procurement Manual, along with Commonwealth of Kentucky Revised Statute (KRS), the Kentucky Administrative Regulations (KAR), and Finance Administration Policies (FAP), are the primary resources for procurement professionals in the Commonwealth.

1.1 PURPOSE & APPLICATION

The purpose of the Procurement Manual is to provide an authoritative source for the standard procedures for implementing the requirements of Commonwealth statutes and delegated purchasing authority to ensure the application of consistent and sound business practices in the acquisition of goods and services and disposition of state-owned property by State procurement professionals in the performance of their duties.

The Procurement Manual demonstrates the ongoing commitment of the Finance and Administration Cabinet (FAC) to standardize state procurement practices and procedures by:

- Simplifying and clarifying the law governing procurement by the Commonwealth of Kentucky.
- Providing for the continued development of centralized procurement policies and practices.
- Ensuring consistency in procurement practices among state agencies.
- Providing for increased transparency and public confidence in the procurement procedures followed by Kentucky governmental entities.
- Ensuring the fair and equitable treatment of everyone who deals with Kentucky procurement processes and systems.
- Providing increased economy in state procurement activities; maximizing the purchasing value of public funds; obtaining in a cost-effective and responsive manner the commodities and services required by state agencies in order for those agencies to better serve Kentucky taxpayers.
- Fostering effective, broad-based competition in the marketplace.
- Safeguarding ethics, quality and integrity in Kentucky public procurement.

In addition to detailing procurement processes, the Procurement Manual presents a roadmap of the solicitation process as well as key information concerning the electronic systems utilized in support of the procurement process.

1.2 AUTHORITY

Procurement authority is delegated to the Finance and Administration Cabinet through [KRS 45A](#). Procurement of supplies, equipment and services for state agencies is further delegated to the Office of Procurement Services in KRS 45A.040.

The guidance provided in this Procurement Manual governs all state government entities subject to Office of Procurement Services (OPS) authority pursuant to KRS 45A.050, unless specifically exempted by statute.

Additional authority and guidance for procurement in the Commonwealth of Kentucky generally reside in the following sources:

Kentucky Revised Statutes (KRS)

- [Chapter 42](#)
- [Chapter 45](#)
- [Chapter 45A](#)
- [Chapter 56](#)
- [Chapter 57](#)

Rules and Regulations

- [Kentucky Administrative Regulations, Title 200, Chapter 5](#)

Finance Policies

- [Finance and Administration Cabinet Policies and Procedures](#)

1.3 ETHICAL AND PROFESSIONAL CONDUCT

OPS ensures compliance with Kentucky Model Procurement Code ([KRS 45A](#)) and the [NIGP Code of Ethics](#). Commonwealth of Kentucky Executive Branch agency employees involved in the procurement of goods and services have a responsibility to uphold Kentucky procurement laws and act in good faith to serve the best interests of the Commonwealth of Kentucky and its taxpayers.

The Code of Conduct for public officers and state employees in the conduct of procurement activities is detailed in KRS 45A.330 to KRS45A.340, with penalties for violating these statutes prescribed in KRS 45A.990. All public officers and state employees, not just procurement professionals, are expected to read and understand these key statutes prescribing proper conduct.

KRS 45A.330 states:

“The purpose of KRS 45A.330 to 45A.340 is to prescribe specific standards to guide public officers and employees in the conduct of their offices or employment, and to proscribe improper conduct to the extent to which such conduct may be sufficiently described to enable statutory prohibitions against it to be properly enforced.”

KRS 45A.340 defines proper conduct, specifically detailing how to avoid a conflict of interest, or the perception of a conflict of interest, in the fulfillment of your duties.

In addition, elected officials, officers and other employees in the executive branch of state government are governed by the Executive Branch Code of Ethics as enforced by the Executive Branch Ethics Commission. The laws setting out the Code of Ethics are contained in Kentucky Revised Statute [Chapter 11A](#) and [Title 9](#) of the Kentucky Administrative Regulations.

The Commission’s staff provides state employees, executive agency lobbyists and the public with information, guidance and training aimed at promoting ethical conduct of executive branch employees. However, like the procurement code of conduct, the Executive Branch Code of Ethics establishes the ethical standards that govern the conduct of all executive branch employees, and as such all elected officials, officers and other employees in the executive branch of state government are expected to read and understand these key statutes prescribing proper conduct.

1.4 OWNER & REVISIONS

Any revisions to the Procurement Manual will be accomplished by publicly posting a new version of this manual, which contains the approved revisions and indicates the effective date of the new manual. Unless otherwise stated, the effective date of the manual is its stated publication date. OPS will formally announce such revisions to state entities and publish a summary of recent revisions. Previous versions of the Procurement Manual will be archived and maintained in accordance with OPS’s record retention policies. The current and most recent archived versions will be made accessible online. Individuals interested in accessing previous versions of this manual that are not available online may make such requests by contacting OPS.

1.5 MANUAL ORGANIZATION

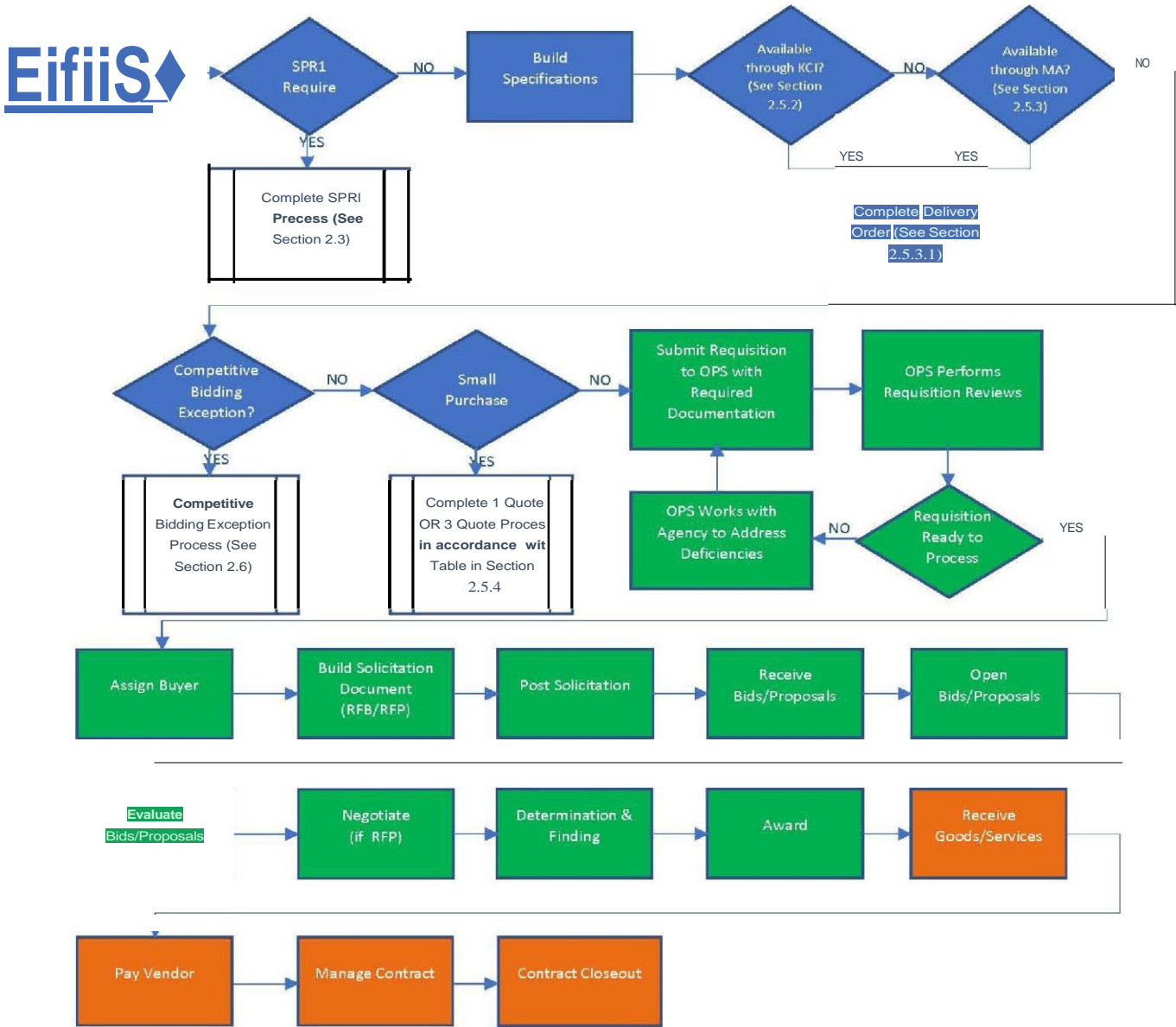
The Procurement Manual is organized based on the *Acquisition Lifecycle Model* with individual sections dedicated to each of the three stages of the lifecycle plus this introductory section. The *Acquisition Lifecycle Model*, illustrated below organizes the procurement process into a series of steps from the time the state entity first identifies a needed good or service through contract award and contract administration including final disposition.



Each Section will begin with a *Key Information* subsection providing a general overview of the stage processes and providing links to tools and templates identified in the section. Following this the Section

will provide guidance and direction for how to properly execute the stage of the lifecycle and continue workflow through the remainder of the stages.

Lastly, the Procurement Manual contains an Appendix, providing a table of all tools and templates identified in the Procurement Manual broken out by stage with a description and links to each document, and a Glossary with definitions for key procurement terms.



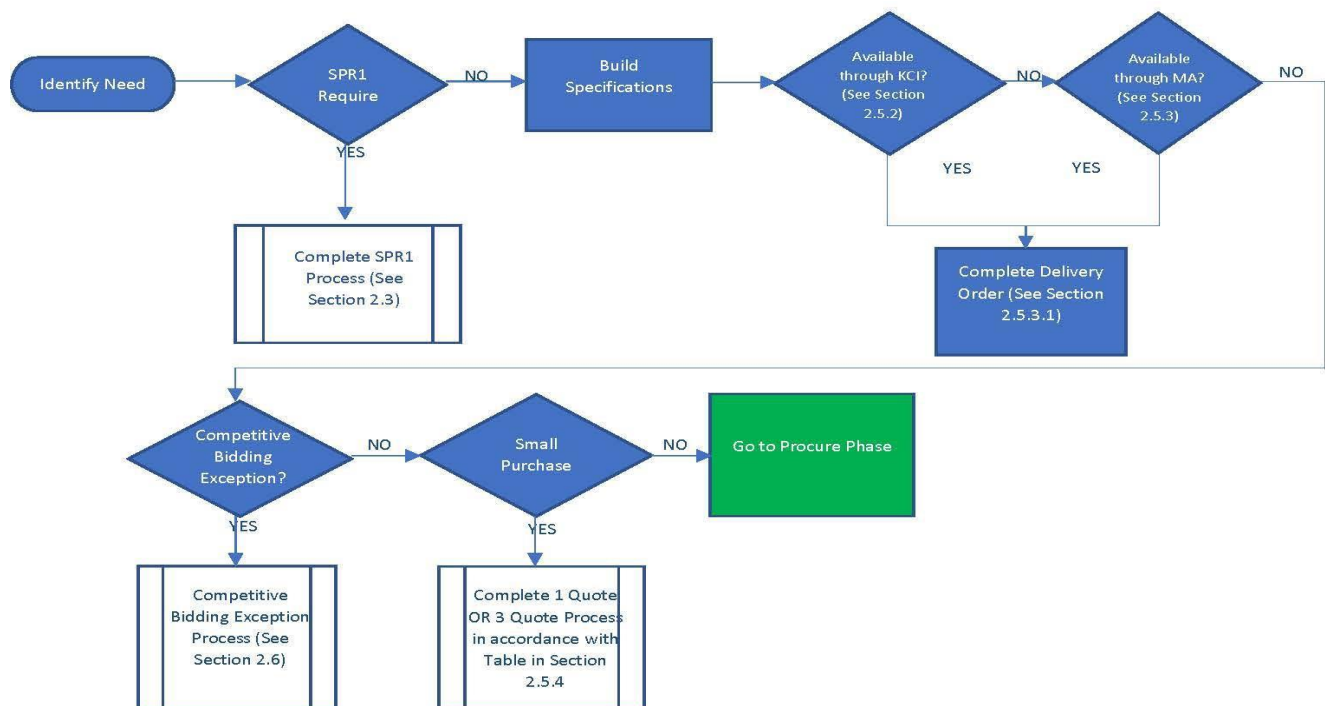
SECTION TWO: PLAN

2.1 KEY INFORMATION

2.1.1 PLAN PHASE PROCESS FLOW

The Plan phase of the procurement lifecycle defines the specific need and the appropriate acquisition method, necessary to procure the goods or services.

The following are the major steps in the process flow for the Plan phase:



2.2 IDENTIFY & PRIORITIZE NEEDS

The procurement process begins with the identification of a purchasing need. There are many ways procurement needs are identified, from programs executing on major budgeted projects, to programs seeking specific needs to fulfill their program mission, to OPS identifying a need for a statewide contract to meet multiple agency needs.

Once agencies determine their purchasing needs, they must work to prioritize them. Everything needed cannot be acquired at the same time, and as such agencies will need to review their often conflicting priorities in an effort to determine which should be done when. In some cases, budget may drive priorities. In addition, to simplify prioritizing needs, agencies should also review purchasing needs to determine where consolidation or combining of purchases may be possible, to improve purchasing

efficiency and potentially drive improved pricing through the presentation of greater volumes or opportunity to the marketplace.

2.2.1 IDENTIFY SCOPE

The scope of the procurement refers to the factors defining the feature and functions of the good or service the agency is seeking to procure. The agency project manager (e.g., program or procurement professional) must work to identify the scope of the need by consulting with identified stakeholders as well as reviewing the state agency's historical purchases or usage of the identified goods or services. Without a clear scope, the agency will have difficulty in developing the detailed functional requirements for the good or service. Over the life of the project, it will be the job of the agency project manager to manage the need to the scope identified, not allowing scope creep, which is the addition of functions or features not originally contemplated, to occur.

The scope of work identifies the agency's needs and desired outcomes and is directed to potential suppliers, vendors or contractors. Developing the scope of work will help the agency and OPS determine the most appropriate procurement method. Regardless of the procurement method, as documented by NIGP, the scope of work must identify the needs and desired outcomes, allow potential suppliers to understand and respond to the agency's needs, use clear and concise language, avoid overly restrictive specifications, group similar requirements together and use consistent formatting.

2.2.2 STAKEHOLDERS

Stakeholders are individuals that are subject matter experts who have an interest in the requested goods or services. These individuals can come from many different places and be helpful to the project for many different reasons. Stakeholders vary per procurement but may include program managers, end users, budget personnel, COT representatives, upper management, etc. It is important for the agency program or procurement professional to work diligently to identify a team of stakeholders for their project that can help them to define scope, define functional requirements and eventually help to evaluate the solicitation during the Procure phase of work.

2.3 STRATEGIC PROCUREMENT REQUEST REVIEW PROCESS

Expenditures with an enterprise impact or of a strategic nature to the Commonwealth as outlined in the following table require approval prior to the initiation of a purchase. Agencies seeking approval of such procurements will submit requests on a Strategic Procurement Request (SPR1) form in eMARS. The form allows the agency to clearly state the circumstance and need for the proposed purchase. The SPR1 form will be reviewed regularly by the appropriate business expertise agency as identified in the following table. Procurements requiring SPR approval must have the approved SPR1 attached to the eMARS purchase document or requisition or included in the eMARS procurement folder.

TYPE OF REQUEST/STRATEGIC PROCUREMENT CATEGORY	THRESHOLD	BUSINESS EXPERTISE AGENCY
A & E PSC - Not Practicable To Bid	\$0	Finance – Division of Engineering & Contract Administration (DECA)
A & E PSC - Sole Source	\$0	DECA
IT Hardware	\$1,000	Commonwealth Office of Technology (COT)
IT Maintenance	\$0	COT
IT Services	\$0	COT
IT Software	\$0	COT
IT Task Orders	\$0	COT
IT Hardware - NO BID	\$1,000	COT & Finance – Office of Procurement Services (OPS)
IT Maintenance - NO BID	\$0	COT & OPS
IT Services - NO BID	\$0	COT & OPS
IT Software - NO BID	\$0	COT & OPS
IT Task Orders - NO BID	\$0	COT & OPS
Postal Services & Equipment	\$0	Finance – Division of Postal Services
Printing	\$0	KYTC – Design & Print Services
PSC - Start Date Request	\$0	OPS
PSC - Sole Source	\$0	OPS
PSC - Not Practicable to Bid	\$0	OPS
PSC – Contract with an Individual	\$0	Finance Division of Local Government (FAC DLG) & Personnel Cabinet (PERS CAB)
PSC – Contract with an Individual NO BID	\$0	FAC DLG, PERS & OPS

University Agreement per KRS45A.690(1)(d)(4)	\$0	OPS
Non-IT - Not Practicable to Bid	\$0	OPS
Non-IT - Sole Source	\$0	OPS
Non-IT - Emergency Purchase	\$0	OPS
Non-IT - Construction - Not Practicable to Bid	\$0	DECA
Non-IT - Construction - Sole Source	\$0	DECA
Non-IT - Construction - Emergency Purchase	\$0	DECA
Vehicle Repairs and Parts	\$5,000	Finance – Division of Fleet Management
Vehicles	\$1,000	Finance – Division of Fleet Management

Only procurements and expenditures that fall into one of the Strategic Procurement categories will require prior review/approval by the business expertise agency. Agencies must obtain appropriate agency authorization prior to submitting the electronic SPR1 form but are not required to maintain a hard copy signature on the form.

Agencies shall apply keen scrutiny to all procurements and state expenditures but particularly to those procurements and expenditures within their small purchase authority that are not reviewed by a business expertise agency as identified in the preceding table. Procurements and expenditures that exceed the agency's small purchase authority but do not fall into the Strategic Procurement categories will be evaluated and assessed by the OPS, COT, Division of Fleet Management, Division of Postal Services and DECA through standard processes such as requisition process, exemption request process, SAS-5, Real Property space requests, MOA, PSC RFP process, etc.

2.3.1 STRATEGIC PROCUREMENT CATEGORIES

The following table provides additional information and examples of the Strategic Procurement Categories.

Type of Request/Strategic Procurement Category	Examples
Architectural & Engineering PSC - Not Practicable to Bid	Architect or Engineer with a justification that service can only be provided by a specific Vendor, -on a continuing basis. Requires sufficient justification to support "not practicable to bid".
Architectural & Engineering PSC - Sole Source	Architect or Engineer with a justification that service can only be provided by a specific Vendor, -on a continuing basis. Requires sufficient justification to support sole source.
IT Hardware	Desktops, Laptops, Computer Leases, Copier Leases, CD Burners, Monitors, Wireless projectors, Wireless Routers, Digital Cameras, GPS.
IT Maintenance	Maintenance Agreements for IT equipment including Hardware and Servers as well as software maintenance.
IT Services	Installation of IT related hardware and software, User Training of IT related items, Phone services, Internet services, cabling...
IT Software	Software licenses and purchase of software.
IT Task Orders	IT Staff used on a continuing basis not on the Commonwealth's payroll but to be paid against one of the IT Augmentation and Consulting Master Agreements.
IT Hardware – NO BID	Desktops, Laptops, Computer Leases, Copier Leases, CD Burners, Monitors, Wireless projectors, Wireless Routers, Digital Cameras, GPS procured through a non-competitive process.
IT Maintenance -- NO BID	Maintenance Agreements for IT equipment including Hardware and Servers as well as software maintenance procured through a non-competitive process.
IT Services – NO BID	Installation of IT related hardware and software, User Training of IT related items, Phone services, Internet services, cabling procured through a non-competitive process.
IT Software – NO BID	Software licenses and purchase of software procured through a non-competitive process.

IT Task Orders – NO BID	IT Staff used on a continuing basis not on the Commonwealth's payroll but to be paid against one of the IT Augmentation and Consulting Master Agreements procured through a non-competitive process.
Postal Services & Equipment	Mailing services, Postage stamps, Postage meter, funds added to postage meter.
Printing	Brochures, Forms, Manuals, Stationary, Business Cards.
Personal Service Contract - Start Date Request	Personal Service with a start date prior to the contract being completed and approved, and prior to the filing with the Governmental Contract Review Committee.
Personal Service Contract - Sole Source	Professional Services to be provided that can only be provided by a specific Vendor that cannot be reasonably performed by any other state agency or university. Requires sufficient justification to support sole source.
Personal Service Contract - Not Practicable to Bid	Professional Services to be provided that where it is not practicable to issue an RFP and services cannot be reasonably performed by any other state agency or university. Requires sufficient justification to support "not practicable to bid".
Personal Service Contract with an individual	Professional services provided by an individual rather than a company.
Personal Service Contract with an individual – NO BID	Professional services provided by an individual rather than a company procured through a non-competitive process per explanation above for sole source and not practicable to bid.
University Agreements	Agreements with a state university or college only when the agreement does not result in the use of employee(s) of the state university or college filling a position or performing a duty that an employee(s) could perform if hired by the agency per KRS 45A.690(1)(d)(4).
Non-IT Not Practicable/Feasible	Goods and services that are not related to Information Technology where defensible and justified circumstances exist making the good or service not practicable or feasible for competitive bidding. The purchase must be supported by justification clearly substantiating the fact that the item/service is the <u>only</u> item/service that will meet the needs of the agency.

Non-IT Sole Source	Goods and non-professional services that are not related to Information Technology where there is only one (1) known capable supplier of a commodity or service, brought about by the unique nature of the requirement, supplier, or market conditions. The purchase must be supported by justification clearly substantiating the fact that the sole source item/service is the <u>only</u> item/service that will meet the needs of the agency.
Emergency Purchase Request – Non-construction Related	Non-construction type goods or non-professional services immediately required due to a situation which creates a threat or impending threat to public health, welfare, or safety such as may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar events.
Non-IT - Construction - Not Practicable to Bid	Construction related goods and services that are not related to Information Technology where defensible and justified circumstances exist making the construction related good or service not practicable or feasible for competitive bidding. The purchase must be supported by justification clearly substantiating the fact that the item/service is the <u>only</u> item/service that will meet the needs of the agency.
Non-IT - Construction - Sole Source	Construction related goods and non-professional services that are not related to Information Technology where there is only one (1) known capable supplier of a construction related commodity or service, brought about by the unique nature of the requirement, supplier, or market conditions. The purchase must be supported by justification clearly substantiating the fact that the sole source item/service is the <u>only</u> item/service that will meet the needs of the agency.
Non-IT - Construction - Emergency Purchase	Construction related goods or non-professional services immediately required due to a situation which creates a threat or impending threat to public health, welfare, or safety such as may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar events.
Vehicle Repairs and Parts	Any repairs including parts on existing vehicles.

Vehicles	Initial Vehicle purchase or any add-ons.
Authorization for utilizing a KYTC MA – Construction Related	Request to use a construction related master agreement awarded under the KYTC authority where a statewide master agreement does not exist, such as building materials.
Authorization for utilizing a KYTC MA – for Non-construction Goods or Services	Request to use a master agreement awarded under the KYTC authority where a statewide master agreement does not exist, such as road salt or heavy machinery.
P3 Consultant - Construction Related	Request to utilize a statewide master agreement for a Public, Private, Partnership consulting firm for a construction related project.
P3 Consultant – Non-construction Related	Request to utilize a statewide master agreement for a Public, Private, Partnership consulting firm for a non-construction related project.
Construction Not Practicable/Feasible	Construction good or service where defensible and justified circumstances exist making the construction related item or service not practicable or feasible for competitive bidding. The purchase must be supported by justification clearly substantiating the fact that the item/service is the <u>only</u> item/service that will meet the needs of the agency.

2.4 DEVELOP SPECIFICATIONS

2.4.1 ELICITING REQUIREMENTS

After identifying the stakeholders, the agency program or procurement professional must facilitate open dialogue with the identified stakeholders to elicit requirements for the procurement. Requirements are essential features and functions which must be met by the provided good or service. They should seek to encourage discussion and ask sufficient and pertinent questions to ensure the stakeholders fully understand the requirements. Some examples of questions to consider when eliciting requirements are:

- Who/what area is impacted by this procurement?
- What are the key functions the needed goods/services must meet?
- What factors will impact this purchase?
- When are the goods/services needed?
- Where will goods be delivered and/or services performed?
- Why are the goods/services needed?
- How must goods/services be provided or delivered?
- Are there key approvals that are necessary and who must provide these approvals?
- Are there specific quality or quantity needs to consider?

If the requirements are incorrectly, inaccurately or incompletely specified there is little chance the solution will meet agency expectations. Taking the time to ask these questions and elicit input from the project team will ensure an improved outcome from the procurement.

2.4.2 DEVELOPING THE SPECIFICATIONS

A specification is a detailed description of the features and functions of a product or service an agency seeks to procure along with a description of what a vendor must offer to be considered for an award. Specifications are the primary means of communication between an agency and a vendor.

Specifications control:

- The minimum quality level of the product or service;
- The amount of competition;
- The suitability of the product or service for the job to be done; and
- The method of evaluation used in making an award and determining the best value proposal for the purchase.

As project managers work to develop their specifications, they should seek to develop specifications that meet the following characteristics of an effective specification:

1. **SIMPLE:** Avoid unnecessary detail but provide sufficient information to ensure that requirements will satisfy their intended purpose.
2. **CLEAR:** Use terminology that is understandable to the agency and proposers. Use correct spelling and appropriate sentence structure to eliminate confusion. Avoid legalese, specialized language and jargon whenever possible.
3. **ACCURATE:** Use units of measure compatible with industry standards. All quantities and packing requirements should be clearly identified.

4. **COMPETITIVE:** Identify at least two commercially available brands, makes, or models (whenever possible) that will satisfy the intended purpose. Avoid unneeded "extras" that could reduce or eliminate competition and increase costs.
5. **FLEXIBLE:** Avoid totally inflexible specifications which prevent the acceptance of a proposal that could offer greater performance for fewer dollars. Use approximate values such as dimensions, weight, speed, etc. (whenever possible) if they will satisfy the intended purpose. If approximate dimensions are used, they should be within 10% unless otherwise stated in the solicitation document.

In the end the project manager should seek to develop SMART specifications:

- **Specific** –clearly states what is required
- **Measurable** – to confirm when it has been met
- **Achievable** – can be done, is technically possible
- **Realistic** – is reasonable, is not cost prohibitive
- **Timely** – achievable within an acceptable timeframe

Agencies may conduct market research to determine and assist in developing specifications and scopes of work. The depth of the market research needed depends on the urgency, dollar value, and complexity of the procurement. Agencies must keep vendor engagement to a minimum to avoid impropriety or disqualification of vendors during the solicitation process. Market research includes:

- Analyzing the marketplace and identifying the commercial practices for similar products or projects
- Considering the potential business models and service delivery methods that can achieve the desired results.
- Using the market analysis to create functional requirements for the commodities and services
- Identifying potential suppliers, vendors or contractors that can meet the need and business objectives
- Researching experience other public entities have had with the type of procurements

See [Appendix C - Frequently Asked Questions for Conducting Market Research and Vendor Engagement](#)

2.5 SELECT PROCUREMENT METHOD

The choice of procurement method is a critical decision in purchasing a good or service. While in some cases Kentucky law dictates which method must be used, other circumstances allow discretion on the part of the procurement professional. In general, agencies must first consider centralized procurement methods before attempting the purchase directly under their own authority.

2.5.1 PURCHASING ORDER OF PRECEDENCE

Statewide Master Agreements

Agency Master Agreements

Small Purchase Authority

RFB

RFP

2.5.2 KENTUCKY DIVISION OF PRISON INDUSTRIES

In accordance with KRS 45A.470, when making a purchase of goods or services, agencies should give first preference to the products made by the Department of Corrections, Kentucky Correctional Industries (KCI) whenever possible. OPS has established a Master Agreement detailing the goods and services available through KCI and agencies should review this Master Agreement to determine if their need can be met by purchasing through KCI. If your agency's need can be met utilizing the KCI Master Agreement, the purchasing officer will need to create a delivery order in the state's procurement and accounting system, eMARS from the KCI Master Agreement to initiate the order.

The [KCI website](#) also provides a searchable list of products and services offered, including descriptions, prices and item numbers to assist buyers. In addition, the KCI showroom is open to the public during normal business hours. See the KCI website for details on location and hours of operation.

2.5.3 MASTER AGREEMENTS

Master Agreements (MA) are contracts for goods and non-professional services established by OPS utilizing the state's purchasing power to garner the best possible pricing through consolidation of agency or state volume. Agencies should determine if goods or services are available on a MA and use MA's to fulfill their needs before utilizing other purchasing methods. There are two (2) types of MA's in use in the Commonwealth, as follows:

1. Statewide Master Agreements (SWMA) - Master Agreements for goods and services established by OPS for use by all state agencies. Agencies seeking goods or services available on a Statewide Master Agreement shall purchase them utilizing the SWMA unless exempted in contract terms.

The **only** exception to use of the SWMA is when the aggregate dollar amount of the total agency purchase is less than \$1,000 (or the amount stipulated in the SWMA). In this instance, agencies may utilize local suppliers to acquire the goods or services required. Purchases will not be parceled, split, divided, or scheduled over a period of time in such a way as to subvert the use of the SWMA.

2. Agency Master Agreements (AMA) – Master Agreements for goods and services established by OPS for use by a single or multiple agencies but not all state agencies.

Should an agency buyer seek to add goods or services to an existing Master Agreement, they are encouraged to contact the OPS buyer for the MA and work with them to determine if the desired goods or services can be added to the MA or if another procurement method must be used to meet the specific agency need.

When multiple Master Agreements for the same good or services exist, the Master Agreement may instruct agencies to obtain quotes from all awarded vendors when making a purchase over a specific threshold. Check the Master Agreement for specific requirements. When quotes are required, attach the quotes to the Delivery Order for auditing purposes.

In some cases, Master Agreements are for specific projects for agencies. When an agency needs to modify their agreement or requires a change order, the agency must provide OPS a request for the change and a Statement of Work from the vendor. OPS will modify the Master Agreement to add the Statement of Work. If the Master Agreement is for information technology related services, a SPR1 is required per Section 2.3.1.

2.5.3.1 DELIVERY ORDERS

When your agency can use an existing Master Agreement to fulfill its need, the purchasing officer will need to create a Delivery Order in eMARS against the Master Agreement to initiate the order. After the Delivery Order is established, the agency will forward the Delivery Order to the vendor. The Delivery Order will include specific information for the vendor such as the required quantity, expected delivery dates, shipping and billing locations.

Delivery Orders are essential, and agencies must create Delivery Orders to document the agency's agreement for specific goods or services with the vendor. The Master Agreement may include hundreds or thousands of items/services. The Delivery Order specifies the exact item/service, the quantity and the delivery expected from the vendor. The agency provides the Delivery Order to the vendor as notification of the agency expectations.

When agencies have Master Agreements for their specific projects, a Delivery Order should be issued to the vendor when new Statements of Work are added to the Master Agreement for the new work.

Delivery Orders also ensure the agency has a legal method of payment when a Master Agreement expires. The eMARS system prohibits payments from expired Master Agreements.

As an example of the importance of Delivery Orders, if an agency places an order for a vehicle to a Master Agreement vendor by emailing their need or calling the vendor and verbally placing their order but fails to create the delivery order, many issues can arise.

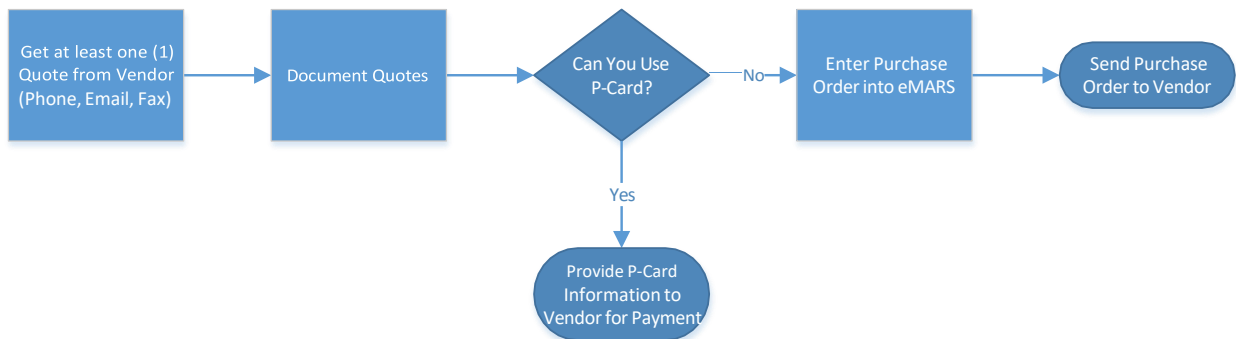
2.5.4 SMALL PURCHASE AUTHORITY

In accordance with authority granted directly to the agency in KRS 45A.100, an agency may be delegated direct purchase authority by the Secretary of the Finance and Administration Cabinet to execute purchases up to \$20,000 in total value. Once an agency has determined that it is operating within its authority to complete a procurement, it may proceed using Small Purchase Authority processes outlined in the table below and detailed in the sections following. A SPR may be required depending on the good or service an agency is procuring.

SMALL PURCHASE AUTHORITY FOR GOODS

Small Purchase Delegated Authority Limit	One Quote Required for Purchase Equal or Less Than	At Least Three Quotes Requested Or Posted to eProcurement Website Equal or Less Than
<ul style="list-style-type: none"> \$1,000 	\$1,000 (See 2.5.4.1)	N/A
<ul style="list-style-type: none"> \$10,000 	\$5,000 (See 2.5.4.1)	\$10,000 (See 2.5.4.2)
<ul style="list-style-type: none"> \$20,000 	\$5,000 (See 2.5.4.1)	\$20,000 (See 2.5.4.2)

2.5.4.1 ONE QUOTE SMALL PURCHASES



For purchases that fall within the agency’s one-quote Small Purchase Authority, the agency will obtain a minimum of one (1) quotation. Quotes may be obtained by telephone, email, fax, or by posting a solicitation to the Commonwealth’s eProcurement web site (preferred method).

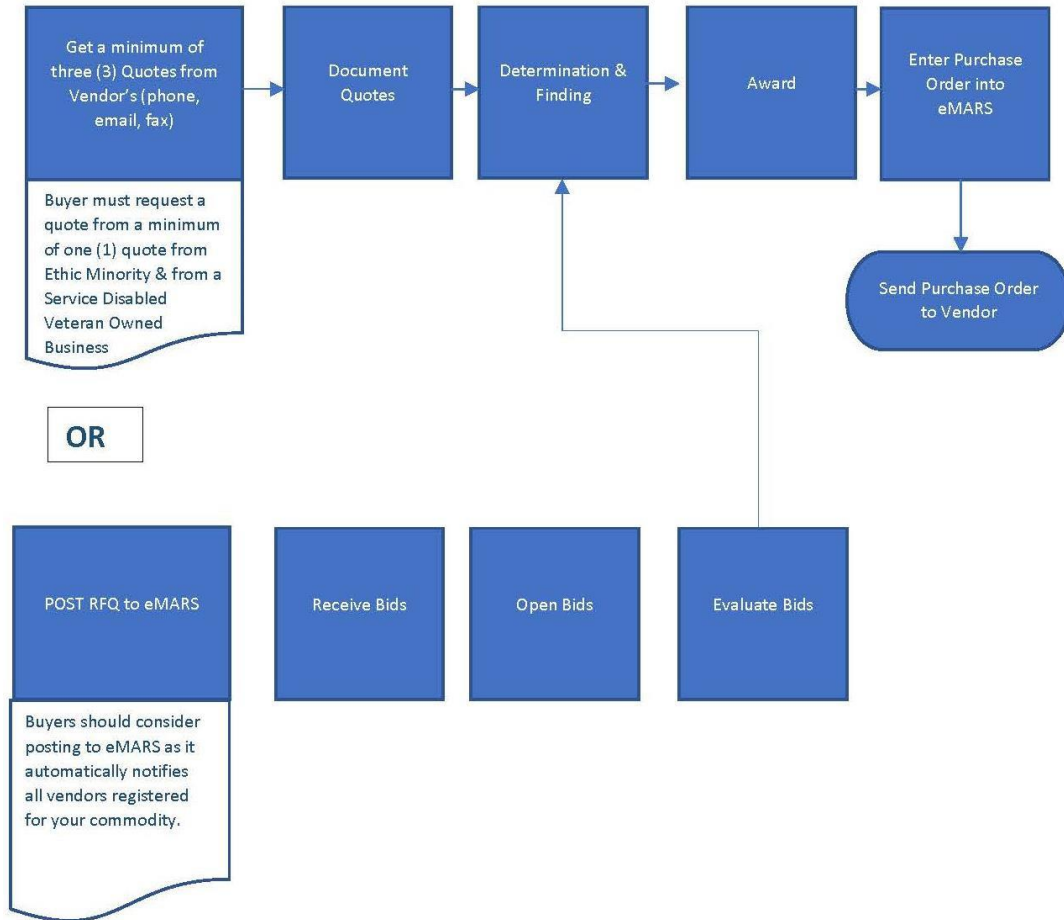
The agency seeking the quotes will maintain a small purchase order file containing the Request for Quote (RFQ) and quotations received. The agency must retain these records for audit and review

purposes. Although agencies are only required to seek one (1) quotation, agencies should seek to acquire quotations from as many viable sources as possible to ensure the best price is obtained and maximum competition is generated.

After the agency evaluates the quotes, they should consider whether the vendor will accept and can be paid in accordance with guidelines for the State Procurement Card (ProCard). If so, the agency should provide the ProCard information to vendor as payment for the small purchase. If not, the purchasing officer will need to enter the Purchase Order in eMARS, and after proper approvals have been received in the system, forward the approved Purchase Order to the Vendor for processing. All applicable authorizations must be attached to the eMARS document including the approved SPR1 and the Required Affidavit for Bidders, Offerors, and Contractors per section 3.9.2.

For purchases exceeding the agency’s small purchase authority, the agency must submit a requisition per Section 3.2.

2.5.4.2 THREE QUOTE SMALL PURCHASES



For purchases that are within the agencies 3-quote Small Purchase Authority, the agency will seek a minimum of three (3) quotations and must seek a quote from one (1) ethnic minority vendor. Refer to

Section 3.9.2. Quotes may be obtained by telephone, fax, or by posting a solicitation to the Commonwealth's eProcurement web site. Agencies are encouraged to post their bid to Commonwealth's eProcurement web site as it allows them to meet all requirements with a single posting and does not require special processing to identify a minority vendor.

The agency will maintain a small purchase order file containing the price quotations requested, quotations received, and a tabulation of prices offered. After the tabulation is complete, the agency shall identify the residency of each bidder. If applicable, purchasing officer shall apply the Kentucky Resident Bidder Reciprocal Preference per 200 KAR 5:400. Refer to Section 3.9.7. Once the purchasing officer evaluates the bids, they will document the determination of award utilizing the Appendix B – SMALL PURCHASE DETERMINATION AND FINDING, and file it with the procurement file, documenting the basis for placing the order with the chosen vendor.

Generally, the criterion for awarding a Small Purchase is lowest quote, however, if other criteria, such as delivery time, was included in the Request for Quote, the agency must explain how other criteria factored into the award.

The agency will retain these records for audit and review purposes. Although agencies are only required to seek three (3) quotations, agencies should seek to acquire quotations from as many viable sources as possible to ensure the best price is obtained and maximum competition is generated.

After the agency has completed their Appendix B – SMALL PURCHASE DETERMINATION AND FINDING (D&F), the purchasing officer will complete the Purchase Order in eMARS, and after proper approvals have been received in the system, forward the approved Purchase Order to the Vendor for processing.

Agencies should refer to [FAP 220-10-00](#) for the small purchase procedure for construction services.

2.5.4.3 SMALL PURCHASES FOR NON-PROFESSIONAL SERVICES

If a non-professional service is less than \$20,000 annually, any agency may solicit services according to Section 2.5.4.2 Three Quote Small Purchase process. The agreement may contain one renewal option but may not exceed \$20,000 in the second year. Agencies may refer to FAP 111-55-00-05. Agencies shall attach all supporting documentation including the tabulation of quotations received, award justification and the Required Affidavit for Bidders, Offerors, and Contractors per Section 3.9.1. Agencies must comply with Minority Owned Business Procurement process described in Section 3.9.2. See Appendix D – SMALL PURCHASE NONPROFESSIONAL SERVICES

Non-professional services are such services as janitorial services, snow removal, and lawn maintenance. Contact your OPS agency liaison to determine if a service is a non-professional service.

SMALL PURCHASE AUTHORITY FOR NON-PROFESSIONAL SERVICES

Small Purchase Delegated Authority Limit	One Quote Required for Purchase Equal or Less Than	At Least Three Quotes Requested Or Posted to eProcurement Website Equal or Less Than
<ul style="list-style-type: none"> \$1,000 	\$1,000 (See 2.5.4.1)	\$20,000 (See 2.5.4.2)
<ul style="list-style-type: none"> \$10,000 	\$5,000 (See 2.5.4.1)	\$20,000 (See 2.5.4.2)
<ul style="list-style-type: none"> \$20,000 	\$5,000 (See 2.5.4.1)	\$20,000 (See 2.5.4.2)

2.5.4.4 SMALL PURCHASES ABOVE DELEGATED AUTHORITY

Agencies seeking to perform a small purchase exceeding their delegated small purchase authority will complete and submit the appropriate requisition in eMARS, attach their documented specifications, and suggested vendors. OPS has a Small Purchase Authority of \$40,000. OPS will work with the agency to complete their purchase within the OPS authority. Agencies should refer to FAP 111-38-00 for information regarding requisition preparation and development. See Section 3.2 of this manual for additional information about requisitions.

2.5.5 COOPERATIVE PURCHASING

Cooperative purchasing can take many forms. It can be multiple agencies working together on a common procurement need. It can be one agency seeking the use of a contract held by another state agency, political subdivision, agencies of other states, or agencies of the federal government. Lastly, it could represent state use of a contract established in a cooperative manner and provided through a cooperative purchasing entity such as the NASPO ValuePoint (formerly known as Western States Contracting Alliance -WSCA) or the Federal General Services Administration (GSA). KRS 45A.300, KRS 45A.045 (8)

In all cases, OPS is required to create an MA on behalf of the agency or the state to enable use of cooperative contracts. Agencies are not permitted to enter into cooperative agreements and must work closely with OPS where they would like to utilize a cooperative contract to execute a procurement.

2.5.6 COMPETITIVE SEALED BIDDING – REQUEST FOR BIDS

For purchases exceeding the maximum small purchase authority of \$40,000, a contract will be awarded utilizing the Competitive Sealed Bidding process. Unless otherwise delegated or permitted by law, only OPS may issue a competitive sealed solicitation. Therefore, agencies seeking to utilize the Competitive Sealed Bid process should be prepared to work closely with OPS to complete their purchases.

Agencies seeking to use the Competitive Sealed Bid process are to follow the processes outlined in [FAP 111-35-00](#) and detailed further in Section 3, specifically Section 3.3, of this Procurement Manual to complete their Competitive Sealed Bid procurements.

2.5.7 COMPETITIVE NEGOTIATION – REQUEST FOR PROPOSALS

In situations where Competitive Sealed Bidding is not practicable, agencies are to utilize the Competitive Negotiation process. This process can only be used if in accordance with administrative regulations, the purchasing officer determines in writing that certain conditions exist that preclude the use of the Competitive Sealed Bidding process. Specific requirements for documentation by the purchasing officer are detailed in Section 1 of [200 KAR 5:307](#).

Unless otherwise delegated or permitted by law, only OPS may issue a competitive negotiation solicitation. Therefore, agencies seeking to utilize the Competitive Negotiation process should be prepared to work closely with OPS to complete their purchases.

Agencies seeking to use the Competitive Negotiation process are to follow the processes outlined in [FAP 111-57-00](#) and detailed further in Section 3, specifically Section 3.4, of this Procurement Manual to complete their Competitive Negotiation procurements.

2.6 COMPETITIVE BIDDING EXCEPTIONS

2.6.1 SOLE SOURCE

A Sole Source procurement is exempt from competitive bidding if there is only one (1) known capable supplier of a commodity or service, brought about by the unique nature of the requirement, supplier, or market conditions. In addition to other possible purchasing needs, 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.

1. Instructional materials, equipment, supplies, or services
2. Patented equipment
3. Proprietary equipment and supplies
4. Equipment lease or rental, excluding passenger vehicles
5. Proprietary service and maintenance agreements
6. Dues and organizational fees
7. Computer software that is copyrighted and available from only one source
8. Other commodities, equipment and services available from only one source

If your purchasing need falls into one of the above categories, or may be a sole source procurement, buyers should refer to [FAP 111-10-00](#) for additional information, prior approval requirements and the appropriate process to follow to complete your purchase.

2.6.2 NOT PRACTICABLE OR FEASIBLE

OPS has determined that certain goods and services are not practicable or feasible for competitive bidding and are therefore exempt from competitive bidding requirements.

1. Fresh meat, fresh dairy, fresh produce, fresh seafood, and fresh eggs
2. Transcripts
3. Advertisements, public media, public displays, billboards, signage, and booths
4. Insurance and bonds under \$10,000
5. Equipment repair service and parts
6. Short-term equipment rental
7. Airfare, discount travel tickets
8. Supplies and equipment for laboratory or experimental studies
9. Vehicle motor fuel
10. Deaf interpreters
11. Foreign language interpreters
12. Other goods and services

For details of the specific categories and procedures for completing these purchases including prior approval requirements, refer to [FAP 111-09-00](#).

2.6.3 EXEMPT BY LAW PURCHASES

Certain types of purchases are exempt from competitive bidding by law or regulation and may be purchased without prior approval from OPS. The following is a list of categories of purchases exempt from competitive bidding by law or regulation:

1. Contractual services where no competition exists, such as electrical energy, telephone service, and other public utility services
2. Works of art for museum and public display
3. Services of a visiting speaker, professor, expert witness, or performing artist.
4. Rates fixed by law or ordinance
5. Commercial items purchased for resale to the general public through a resale outlet maintained by a state agency.
6. Subscriptions for the purchase of periodicals in either paper or electronic format
7. Copyrighted material in either paper or electronic format for which only one source of supply is available.
8. Cooperative purchases made between state agencies, political subdivisions, state universities, agencies of other states, or agencies of the federal government

If your purchasing need falls into one of the above categories, buyers should refer to [FAP 111-08-00](#) for additional information and the appropriate process to follow to complete your purchase.

2.6.4 EMERGENCY PROCUREMENTS

In accordance with KRS 45A.095 (3), an emergency condition is a situation which creates a threat or impending threat to public health, welfare, or safety such as may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar events.

The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of government, the preservation or protection of property, or the health or safety of any person.

If your agency is faced with an emergency and needs to acquire good or services, buyers can refer to [FAP 111-39-00](#) for guidance as to how the agency may obtain required supplies or services while complying with the state laws and rules.

2.6.5 SUBMITTING EXCEPTION REQUESTS

Agencies should ensure that competitive exemption requests clearly and fully state why the contract is needed, why the services cannot be performed in house or by another state agency, and why competitive exemption is required. Note that most exemptions per FAP111-10-00 and some exemptions per FAP111-09-00 require prior approval by the Executive Director of the OPS.

Exception requests shall be submitted in eMARS using the SPR1 process. See Section 2.3 of this manual. The request shall include the timeframe covered by the request, the dollar amount, the vendor and sufficient explanation and justification clarifying why a solicitation cannot be issued and why no other vendors/contractors will meet the agency need. If a “sole source” is requested, the agency shall attach a letter from the vendor stating they are the sole source and including patents or other relevant information that supports the claim.

After the exception request/SPR1 is approved, the agency purchasing officer will enter the Purchase Order in eMARS, select the appropriate and corresponding cited authority and attach the approved SPR1 to the Header of the eMARS document. Attachments should be named to reflect an accurate description of the document. After proper approvals have been received in the system, the agency will forward the approved Purchase Order to the Vendor for processing. If the agency requires a Master Agreement for ongoing fulfillment of goods or services, they will submit a requisition per Section 3.2 of this manual and attach the approved exemption request/SPR1 to the Header of the eMARS requisition document.

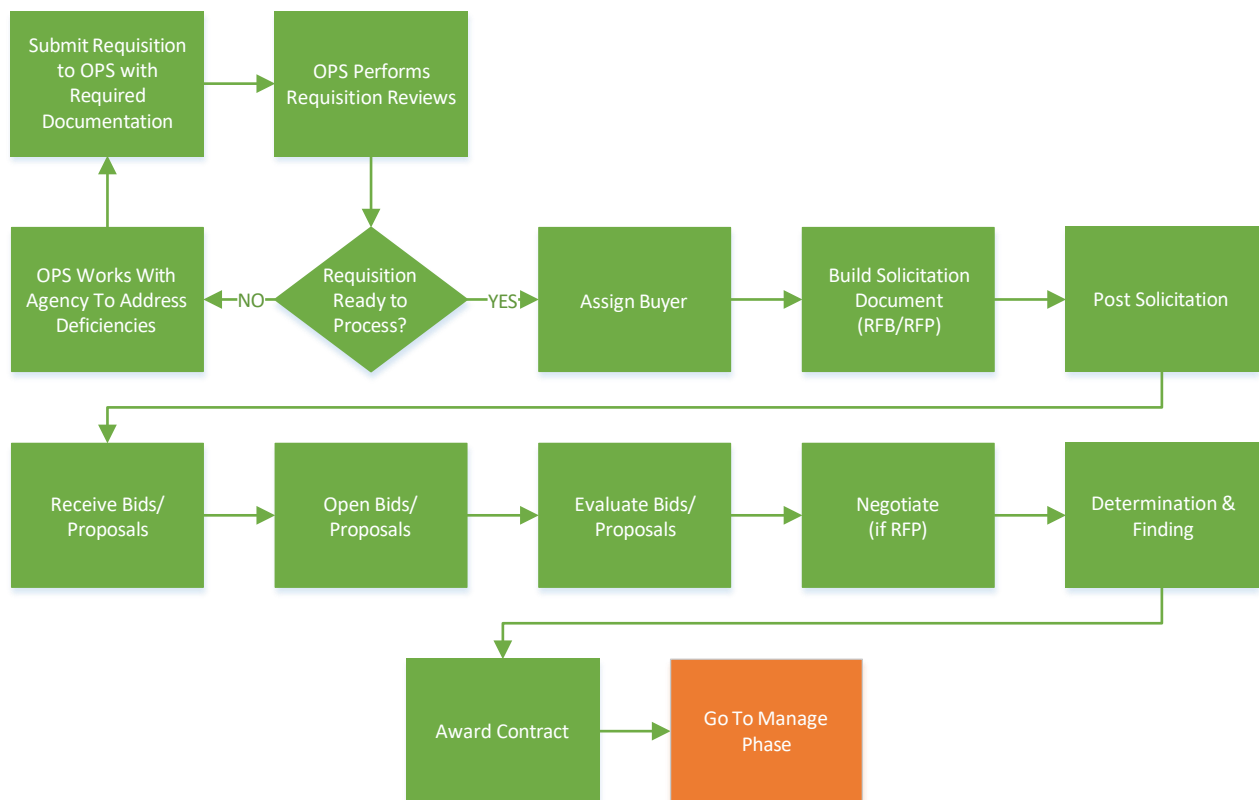
SECTION THREE: PROCURE

3.1 KEY INFORMATION

3.1.1 PROCURE PHASE PROCESS FLOW

The Procure phase of the procurement lifecycle is defined as the process of acquiring goods and/or services through an open, competitive solicitation process, including solicitation development, solicitation issuance, receiving response, evaluation, negotiation (if applicable) and award.

The following are the major steps in the typical process flow for the Procure phase:



3.2 SUBMIT REQUISITION

An agency seeking to request assignment of an OPS Buyer to support and assist them with a competitive procurement must complete and submit the appropriate requisition in eMARS, the state's eProcurement system in accordance with [FAP 111-38-00](#). Upon completion of appropriate approvals, the requisition will arrive in the appropriate OPS Assistant Director's queue for assignment to an OPS Buyer. Attached to the requisition will be the following items:

1. Completed agency sections of the appropriate **solicitation template** (see table below);
2. Any required forms; and,

3. **The Solicitation checklist.**

As a component of the Procurement Manual, OPS has built and implemented standard solicitation templates to be used by agencies. The following are the templates available to agencies, when they should be used and who is responsible for completing the required sections of the solicitation template.

Solicitation Template

RFP for IT Procurements

RFP for Non-IT Procurements

RFB for IT Procurements

RFB for Non-IT Procurements

The template contains highlighted sections that the agency should complete. For services, agencies should complete the Scope of Work section. For commodities, agencies should include specifications on the line item section of the RQS.

Upon receipt of the appropriate documents from the requesting agency, OPS will perform the review for the requisition and submitted documentation.

3.2.1 REQUISITION REVIEW

The first review performed will be an Administrative Review. The Administrative Review will review the requisition to make sure it is accurate and complete, and will review the documentation submitted to be sure the following questions can be answered in the affirmative:

1. Were all the required elements submitted?
2. Are all the correct forms and approvals present?
3. Is anything missing that needs to be submitted by the agency prior to assigning a Buyer?

If there are any deficiencies in the packet submitted by the agency, the reviewer will note what is missing and provide guidance to the agency buyer on how to remedy the deficiency.

3.2.2 QUALITY REVIEW

The second review performed by OPS is the Quality Review. The Quality Review is focused on the solicitation template and the Solicitation Checklist and will review these documents to be sure the following questions can be answered in the affirmative:

1. Is the specification submitted of sufficient quality to assign a Buyer and complete development of a solicitation document? Refer to FAP 111-38-00.
2. Are any key required elements missing that should be included in the solicitation?

If there are any deficiencies in these documents, the reviewer will note them and provide guidance for the agency buyer on how to remedy the deficiency.

3.2.3 SOURCING REVIEW

The final review performed by OPS is the Sourcing Review. The Sourcing Review is seeking to verify if the chosen procurement method is the most effective approach to acquire the goods or services the agency is seeking and is verifying the more direct purchasing methods were not overlooked in the Plan phase when identifying the procurement method. Questions the OPS staff will be considering when performing the Sourcing Review include:

1. What is the best method for acquiring the good or service?
2. Is there already a state or departmental contract we can utilize for the acquisition?
3. Is there a Cooperative Contract we could use to expedite the acquisition?
4. Should this be a statewide contract OR can we make it a statewide contract?
5. Is the method identified by the agency the most effective procurement method for the good/service required?

If the buyer identifies an opportunity in the procurement, they will note this and seek to engage the agency to discuss the approach they would recommend for procuring the goods or services required.

3.2.4 ASSIGNING A BUYER

Upon receipt of a completed and accepted packet from the agency, with any identified deficiencies remediated, the appropriate OPS Division Assistant Director will forward the agency submitted packet to the assigned OPS Buyer and assign the requisition to the identified OPS Buyer who will assist the agency in the development of a final solicitation document.

3.3 THE COMPETITIVE BID PROCESS (RFB)

The following sections provide an overview of each step of the Competitive Bid Process (RFB) and guidance to agencies on their role, if any, in the step.

3.3.1 CREATING THE RFB

Once a buyer is assigned, the process of creating the RFB is cooperative and requires ongoing consultation with the purchasing agency. The OPS buyer will work with the agency buyer to clarify any specifications, complete the remaining sections of the template, and determine dates for posting.

3.3.2 ADVERTISING THE RFB

Once a particular supply or service need is fully defined and incorporated into an RFB, OPS advertises the bid opportunity to the vendor community in several ways. In accordance with [FAP 111-35-00](#), unless otherwise permitted by law or specially delegated to the agency, only OPS and designated agencies should be publishing bids to the Commonwealth's eProcurement website.

All bids are required to be published for a minimum of seven (7) days prior to the opening date. During the advertisement period, prospective bidders may contact OPS for inquiries and clarifications in accordance with the solicitation requirements. On occasion these inquiries may require the RFB to be modified. If so, OPS will issue an addendum that details the changes. It is the responsibility of prospective bidders to keep current on any addenda and consider these changes in their bid submittal.

In addition, some RFB's may include a pre-proposal conference or site visit. Such events will be specified in the RFB, including dates and times for each.

3.3.3 OPENING THE RFB

At the time designated in the solicitation document for bid opening, the bid clerk will open all bids received as of the advertised opening date, including both online and hardcopy bids received. When online bidding is used, the bid clerk will retrieve the vendor bids from eMARS. If practical, the names of the bidders and the amounts of their bids may be read aloud to the persons present. Inspection of bids by interested persons will not be permitted during the formal bid opening process. Any bids that arrive after the opening date and time are considered late and are not opened or evaluated, unless it is a hardcopy bid and no other bids are received, the need of the agency is determined to preclude the re-solicitation of bids and the offer is determined to be in the best interest of the Commonwealth. Fax bids are not acceptable and will be considered non-responsive.

3.3.4 EVALUATING THE RFB

After the bids are opened, bid responses are evaluated to determine compliance with all specifications and ability of the bidders to perform the contract. The purchasing officer responsible for the procurement will examine the bid for any clerical or technical errors, determine technical compliance with the terms of the solicitation, and evaluate the supplies or services bid for conformity with the specifications contained in the solicitation. Once all responsible and responsive bidders have been scored and ranked, the residency of each bidder shall be identified. If applicable, the Kentucky Resident Bidder Reciprocal Preference shall be applied per 200 KAR 5:400. Refer to Section 3.9.6.

During the evaluation period, bidders are not allowed to initiate contact with the purchasing officer. On occasion, the purchasing officer may contact a bidder for clarification. The clarification will be incorporated in any contract awarded based on that bid.

Except if it is deemed impractical, due to the nature or complexity of a solicitation, a bid tabulation summary sheet will be prepared for each solicitation recording the name of each bidder, a description of the supplies or services bid, and the amounts of the bids received. The bid tabulation summary sheet will be documented and placed in the solicitation file.

3.3.5 AWARDING THE RFB

Once the bids have been evaluated, the purchasing officer will document the determination of award utilizing the Determination & Finding Template, and file it with the procurement file, and the contract is awarded by written notice to the responsive and responsible bidder whose bid offers the best value to the Commonwealth.

Alternatively, if after evaluation of the bids the purchasing officer determines that no satisfactory bid has been received, all bids may be disqualified. At the discretion of the purchasing officer, the solicitation may be cancelled, and new bids solicited on the basis of the same or revised specifications, or competitive negotiations undertaken for the procurement. The basis for the disqualification of all bids and subsequent action taken or to be taken with respect to the solicitation will be recorded and filed in the solicitation file relating to the procurement.

3.3.6 REVERSE AUCTION – MULTI-STEP COMPETITIVE BID

A reverse auction is permitted in accordance with the Multi-step Competitive Bid process as described in [200 KAR 5:375](#). The OPS buyer will work with the Commonwealth's reverse auction vendor and the agency to determine if the procurement is appropriate for the reverse auction process. The most suitable procurements for a reverse auction are non-professional services, goods and services where multiple vendors supply like products or where well-defined specifications exist. The minimum threshold for a reverse auction is \$250,000. When submitting a requisition, agencies may indicate they desire OPS to consider a reverse auction procurement method.

The process is similar to the standard RFB process. The RFB is issued to the Commonwealth's eprocurement website and bidders are required to respond with all information required by the RFB except for pricing by the bid opening date. After the bid opening occurs, the buyer determines which of the bids are responsive to the requirements of the RFB and whether those bidders are responsible. The vendors who are successful in this phase will be invited to continue with phase two, the online auction. The online auction is scheduled for a specific day and a limited amount of time. Only those eligible vendors are permitted to participate in the online auction. The eligible bidders are contacted by the Commonwealth's reverse auction vendor who provides training on the online bidding process. On a scheduled date, the eligible vendors compete online providing real-time pricing. Each vendor is aware of the lowest bid and their relative ranking but blind to the identity of other bidders. Agencies and OPS buyers may view the online auction as it occurs.

3.4 THE COMPETITIVE NEGOTIATION PROCESS (RFP)

Whenever the competitive sealed bid process is not possible or advantageous to the state, OPS is authorized to make purchases through competitive negotiation. In this process, award is made to the offeror whose proposal is determined to be best value to the Commonwealth, taking into consideration factors such as price and the evaluation criteria set forth in the RFP. The following sections provide an overview of each step of the Competitive Negotiation Process (RFP) and guidance to agencies on their role, if any, in the step.

3.4.1 CREATING THE RFP

Once a buyer is assigned, the process of creating the RFP is cooperative and requires ongoing consultation with the purchasing agency. The OPS buyer will work with the agency buyer to clarify any specifications, complete the remaining sections of the template and determine dates for posting. The RFP will include comprehensive performance requirements, technical provisions, separate cost provisions, and specific evaluation criteria for evaluating offers. Contract awards will be based upon cost and technical evaluation criteria set forth in the RFP.

Agencies must utilize the RFP Template, Attachment A. The agency will complete the items highlighted in green within the template.

In accordance with KRS 61.931, if the contract that will result from the RFP is anticipated to disclose “personal information” to a non-affiliated third party as defined in KRS 61.931, the RFP must contain Attachment H of the RFP template. See Section 3.9.6 of this manual for additional information pertaining to the Protection of Personal Information and Security and Breach Investigation Procedures and Practice Act.

3.4.2 ADVERTISING THE RFP

Once a particular supply or service need is fully defined and incorporated into an RFP, OPS advertises the solicitation opportunity to the vendor community in several ways. In accordance with [FAP 111-57-00](#), unless otherwise permitted by law or specially delegated to the agency, only OPS should be publishing solicitations to the Commonwealth’s eProcurement website.

All solicitations are required to be published for a minimum of seven (7) days but should allow enough time for adequate public notice of the opportunity.

During the advertisement period, prospective bidders may contact OPS for inquiries and clarifications as specified in the solicitation document. On occasion these inquiries may require the RFP to be modified. If so, OPS will issue an addendum that details the changes that will be posted to the Commonwealth’s eProcurement website. It is the responsibility of prospective bidders to keep current on any addenda and consider these changes in their submitted proposal.

RFP’s may be advertised for any number of days determined by OPS in consultation with the agency buyer. In addition, some RFP’s may include a pre-proposal conference or site visit. Such events will be specified in the RFP, including dates and times for each.

During the time that the RFP opportunity is published, the requesting agency will nominate a technical evaluation committee, and if applicable, a cost evaluation committee for the project and submit the nomination to OPS for confirmation. The evaluation committee should consist of three to five scorers. The committee should be comprised of state employees, unless approval for appointment of non-state employees is granted by the Executive Director of the Office of Procurement Services.

3.4.3 CLOSING THE RFP/OPENING PROPOSALS

All written proposals received by OPS are kept secure and unopened until the closing date and hour set out in the solicitation. When online bidding is used, the proposals are secured and available to the buyer in the specific RFP procurement folder after the closing date and time specified in the RFP. Competitive sealed proposals are typically opened at Close of Business on the day specified in the RFP or at the beginning of the next business day. Any proposals arriving after the closing date and time are considered late and are not opened or evaluated. The names of the offerors are recorded, but otherwise the contents of the proposals are not disclosed. In order to ensure a fair and impartial evaluation, proposals are not available for public inspection until after the award of the contract.

3.4.4 EVALUATING THE RFP

Following receipt of responses to the RFP, the buyer will examine each written proposal received for general conformity with the requirements of the solicitation and the terms of the procurement. OPS will 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 will be transmitted to the technical evaluation committee for evaluation. If applicable, the cost proposals determined acceptable for award will be transmitted to the cost evaluation committee. If the technical evaluation committee is also serving as the cost evaluation committee, once the technical proposals are scored, the cost proposals will be transmitted to the committee for evaluation.

The assigned OPS buyer will conduct evaluation committee meetings and generally uses consensus scoring. See Appendix F – RFP EVALUATION RATING SCALE PROCESS. The OPS buyer will schedule an initial evaluation committee meeting where evaluators chosen to evaluate the RFP will be asked to sign a confidentiality/non-disclosure form, be provided copies of the proposals and be given a brief overview of the [General Rules for the RFP Evaluation](#). An evaluation committee meeting is scheduled after adequate time is allowed for evaluators to review the proposals. The OPS buyer then facilitates the evaluation discussion meetings and records comments to support consensus scores given by the committee. Once the evaluation is complete, the residency of each bidder shall be identified. If applicable, the Kentucky Resident Bidder Reciprocal Preference shall be applied per 200 KAR 5:400. Refer to Section 3.9.6.

Oral presentations/demonstrations may be scheduled after scoring is complete if warranted.

3.4.5 NEGOTIATING THE RFP

Procedures for conducting negotiations and the way in which proposals will be evaluated will be established by the buyer for each procurement and will be set forth in the request for proposals.

Prior to meeting with the vendor, the buyer will prepare a summary of points to cover in the negotiations, and during the negotiations will document the outcome of negotiation discussions for each point. Verbatim records of the discussion will not be required.

If used, the call for Best and Final Offers (BAFO) will be sent only to those firms as detailed in the RFP. After BAFO responses are received, OPS will award the contract in accordance with the award methodology stated in the RFP.

3.4.6 AWARDING THE RFP

Once the evaluation committee recommends a responsible offeror, determined to be the most advantageous to the Commonwealth, based upon the price and the evaluation factors set forth in the solicitation, the buyer will document the determination of award utilizing the Determination & Finding Template and file it with the procurement file. At that time, the buyer will process a contract and notify the successful vendor of the outcome. The buyer will then complete updates to the original requisition and process a contract (CT) or Master Agreement (MA) for the awarded vendor. The awarded vendor may begin work in accordance with the CT or MA effective date.

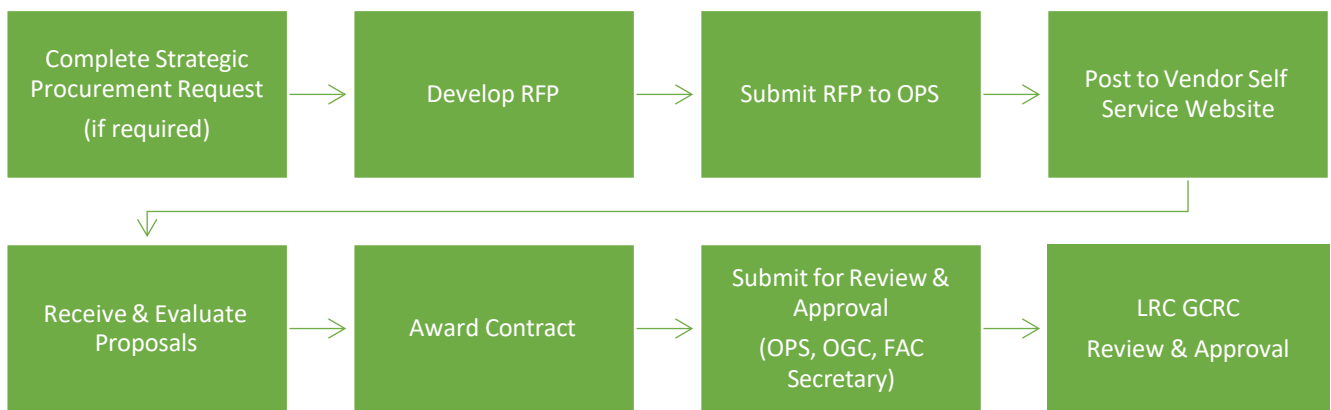
Upon award of the contract, all proposals will be subject to open records requests.

3.5 PERSONAL SERVICES CONTRACTS (PSC)

[KRS 45A.690](#) defines personal service contracts (PSC) as,

“An agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount.”

The same statute delegates all purchases of PSC, regardless of amount, to agencies. However, this delegation is coupled with a detailed process that must be followed by agencies. The following is a graphic depiction of the process flow followed by detailed process descriptions for each major process step. A PSC Checklist that provides some, not all, of the commonly overlooked requirements and other PSC resources are available at [PSC Resources](#).



Agencies establish PSC’s by Competitive Negotiation through the Request for Proposal process or by an exception to bidding approved by FAC. An exception to bidding requires an approved SPR1.

Personal service contracts with individuals should permit participation in the Kentucky retirement systems. Contractors may contribute to the state 457(b) retirement plan, which allows participants to make tax-deferred contributions each pay period through the Kentucky Public Employees’ Deferred Compensation Authority (KDC). There is no state match.

3.5.1 COMPLETE STRATEGIC PROCUREMENT REQUEST

Following the process outlined in Section 3.2 of this manual, agencies seeking to perform a procurement for a PSC, without completing the competitive negotiation process, will submit a Strategic Procurement Request (SPR). The SPR must be submitted, reviewed and approved by the Finance and Administration Cabinet prior to beginning the contracting process regardless of the amount to be spent.

3.5.2 DEVELOP & POST RFP

In accordance with [FAP 111-43-00](#), all PSC procurements, regardless of the amount, are to be performed utilizing the Request For Proposal (RFP) method. The agency must develop the scope of work, defining

their need, and develop an RFP utilizing the appropriate template. OPS has created a template to assist agencies in the creation of Personal Services Contract RFP's. These templates must be customized to allow the using agency to include an explanation describing their need, their unique Scope of Work, Requirements, Evaluation Criteria, Proposal Submission Requirements and Agency Contact Information. The RFP must clearly emphasize that technical and cost components are considered together when awarding a contract. The templates also incorporate all Required Terms and Conditions and Signature Lines. Instruction for proper use of the template is included with the template document.

Once completed, the agency will submit the RFP document to OPS for review and approval prior to posting to the website. RFP's will be submitted a minimum of seven (7) days prior to the intended let date for the RFP. RFPs submitted less than seven (7) days prior to the intended let date may be rejected if there is insufficient time and resources to review the RFP.

Upon approval by OPS, the RFP will be posted to the Vendor Self Service Website, pursuant to the let date specified by the agency.

3.5.3 PROCESS RESPONSES & AWARD CONTRACT

After the close date, the agency will evaluate the vendor responses received. The evaluation committee should consist of three to five scorers. The committee should be comprised of state employees, unless approval for appointment of non-state employees is granted by the Executive Director of the Office of Procurement Services. Once evaluation is complete, the residency of each bidder shall be identified. If applicable, the Kentucky Resident Bidder Reciprocal Preference shall be applied per 200 KAR 5:400. Refer to Section 3.9.6. Agencies are encouraged to negotiate cost and technical issues as in the best interest of the Commonwealth. See Appendix E – FREQUENTLY ASKED QUESTIONS ABOUT PSC NEGOTIATIONS.

Based on the outcome of the evaluation, the agency will document the determination of award utilizing the Determination & Finding Template. The Determination and Finding will be filed with the procurement file for the PSC and attached to the award document for submission to FAC. Once the appropriate internal approvals have been received and all appropriate contract signatures have been obtained, the agency will submit the PSC award in eMARS.

3.5.4 SUBMIT TO FAC FOR REVIEW & APPROVAL

In accordance with KRS 45A.695(2), upon final eMARS approval at the agency level, the PSC will be forwarded to the Finance and Administration Cabinet, Office of Procurement Services (OPS) along with a Proof of Necessity (PON) for review and approval. See [PSC Resources](#).

PSC's are reviewed by OPS to ensure that the using agency follows all policies, procedures and statutes that govern personal service contracts; that the correct procurement type, cited authority and terms and conditions have been used; and that the PSC has been created correctly in the eMARS system. PSC's will also be reviewed to ensure the appropriate signatures were obtained and are attached to the PSC award. PSC's must be signed by the agency head or designee, agency legal staff and the contractor. Agency legal staff may provide electronic approval in eMARS in lieu of handwritten signature.

Once the review by OPS has been completed and the PSC shown to be in compliance, it is approved and routed to the Finance and Administration Cabinet, Office of the General Counsel (Finance Legal) for

review and approval. If the PSC is not in compliance, it is rejected back to the submitter with instructions for correction. Finance Legal reviews the PSC for accuracy and statutory compliance. If the PSC is shown to be in compliance, it is routed to the Finance Secretary's worklist for review and approval. If the PSC is not in compliance, it is rejected back to the submitter with instructions for correction.

KRS 45A.695 requires that the Secretary of the Finance Cabinet or his designee has final approval over all Personal Service Contracts and MOAs. Upon review and approval by the Finance Secretary designee, the PSC is routed to the Legislative Research Commission (LRC) Government Contract Review Committee (GCRC) to await consideration pursuant to KRS 45A.705(4) for final review.

3.5.5 SUBMIT TO LRC GCRC REVIEW & APPROVAL

Upon final FAC approval in eMARS, the PSC is automatically filed with the LRC GCRC. PSC's in Final Phase in eMARS by the last business day of the month are placed on the following month's GCRC meeting agenda. The GCRC monthly meetings are typically the second Tuesday of the month, except during the Legislative session when it may be moved due to scheduling conflicts. The meeting time and location is posted on the GCRC website.

PSC's must be filed with the GCRC prior to the effective date. PSC's filed with the committee after the effective date of the contract must have an approved SPR1 attached to the procurement folder for the PSC. PSC's under \$10,000 have up to 30 days from the effective date to file with the GCRC.

GCRC staff may contact the person listed as the contact on the PON to ask questions concerning the PSC or to notify the agency to appear before the GCRC at the monthly meeting.

If the contract is disapproved by the GCRC, all contract activity must stop immediately.

Pursuant to KRS 45A.705, the agency may request the Secretary of the Finance and Administration Cabinet or his designee to determine if the PSC will:

- a) Be revised to comply with the objections of the committee;
- b) Be canceled and, if applicable, payment allowed for services rendered under the contract or amendment; or
- c) Remain effective as originally approved.

The Secretary of the Finance and Administration Cabinet or his designee will notify the committee of the action taken within ten (10) days from the date the PSC was reviewed by the committee.

3.5.6 EXCEPTIONS TO THE PSC PROCESS

In some instances, an agency may request an exemption from the RFP process. Competitive exemption requests that will be considered include:

- Sole source; OR
- Not Practicable or feasible to bid

These requests will be reviewed when submitted through the SPR1 review and approval process. The request must clearly and fully state why the contract is needed, why the services cannot be performed in house or by another state agency, and why competitive exemption is necessary.

Agencies should be sure to note that contracts awarded as a Sole Source or Not Practicable or Feasible to Bid may NOT be renewed because an RFP was not issued. A new Sole Source or Not Practicable or Feasible to Bid request is required.

3.5.7 SPECIAL PROCEDURES FOR LEGAL AND AUDIT SERVICES

An agency wishing to perform a solicitation for legal or audit services must meet additional requirements established by policy prior to posting the RFP to the market.

PSC's for legal services require approval from the Governor's Office of Legal Services prior to the issuance of an RFP or issuance of a Sole Source or Not Practicable to Bid contract. PSC's for legal services also require eMARS approval from the Governor's Office of Legal Services after the Finance Secretary's approval and prior to filing with the GCRC. Agencies are advised to allow for the extra time in the review and approval process when creating PSC's for legal services.

Similarly, no agency will enter into any contract with a certified public accountant for an audit unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within fifteen (15) days of receipt of a written request for an audit. As such, agencies seeking to perform a procurement for these services must first check with the Auditor of Public Accounts (APA) and get a letter from their office declining to perform the audit prior to beginning any work on the PSC. This letter should be attached to the header of the contract for verification. If the agency is seeking an exception to bidding the service the letter from the APA must be attached to the SPR1.

In addition, the GCRC has established a maximum rate paid for legal, appraisal and auctioneer services (Policy Statements 99-1, 99-2 and 99-3). Agencies requesting approval to pay more than the maximum rate must send a written request to the GCRC co-chairs stating the reasons exceeding the maximum rate schedule. The request letter will be placed on the agenda for consideration at the next regularly scheduled GCRC meeting. The agency will appear before the committee to answer any questions or provide additional information regarding the request.

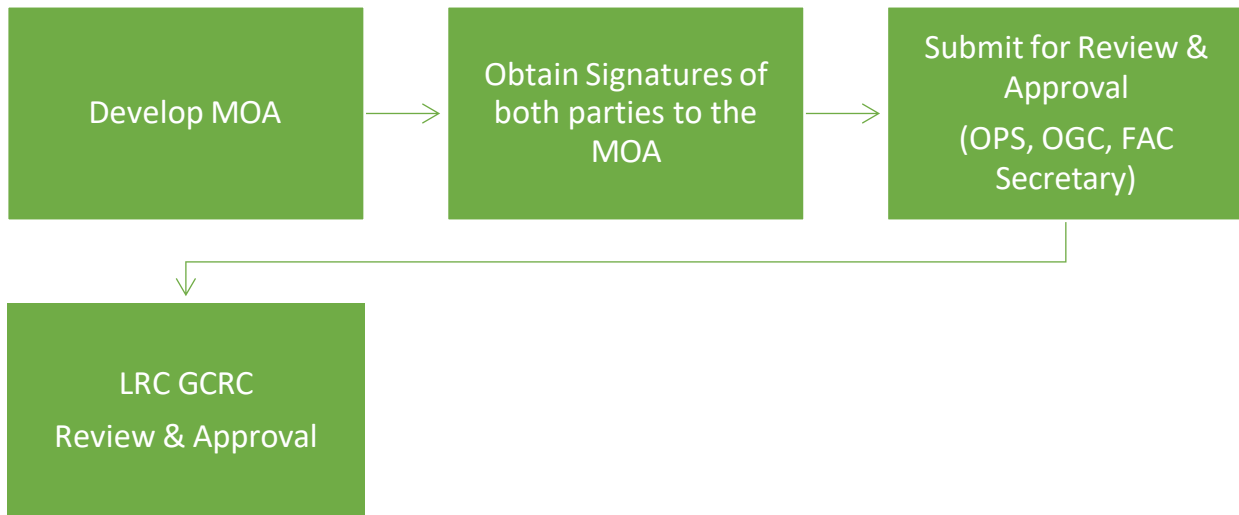
3.5.8 MODIFICATIONS TO PSC CONTRACTS

In accordance with [FAP 111-43-00](#) modifications to a Personal Service Contract will be processed in the same manner as the original contract in the state's procurement system and will be subject to the same reviews by FAC and LRC GCRC. A modification will be used if the parties to an established Personal Service Contract agree to increase or decrease funds, revise the scope of work, extend the term of the contract within the current biennium, or any other change directly impacting the PSC contract agreement.

3.6 MEMORANDUM OF AGREEMENT (MOA)

A Memorandum of Agreement (MOA) is a contractual method utilized when the Commonwealth is entering into a contract with another public entity or a not-for-profit (501 (c)3) corporation to perform a governmental function. All MOA's must be reviewed and approved by FAC and the LRC GCRC. Additionally, MOA's must be filed prior to the effective date, unless the amount of the MOA is \$50,000 or less. MOA's that are \$50,000 or less must be filed within 30 days of the effective date. Agencies will be required to submit the completed MOA to FAC for review and approval in the same manner as

completed contract awards in the PSC process outlined above in Sections 4.6.4 and 4.6.5. The following is a graphic depiction of the MOA process flow.

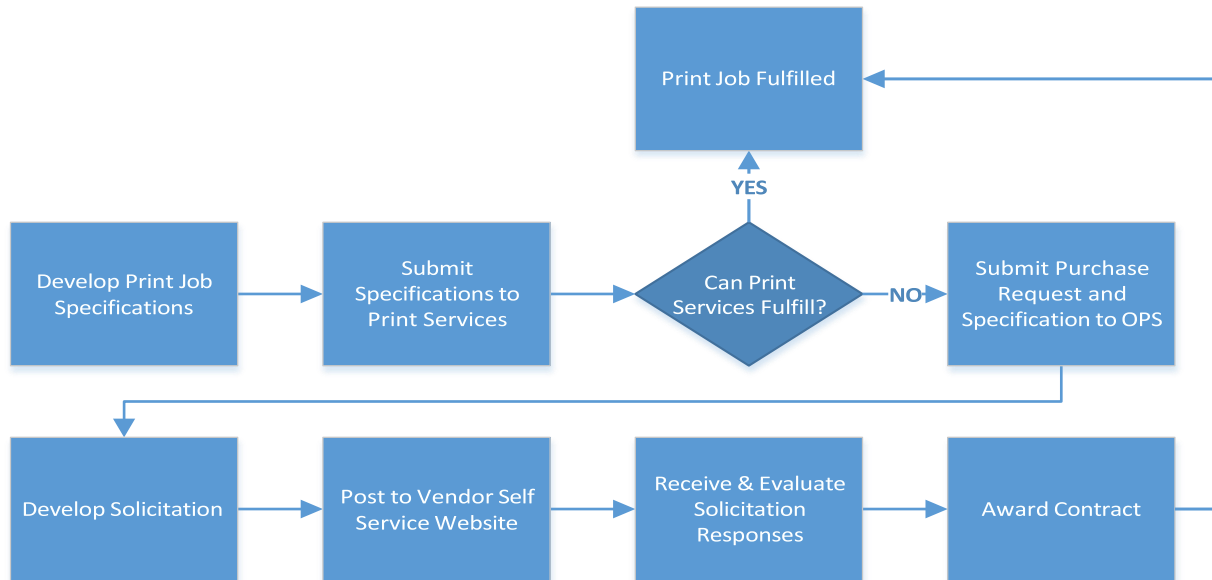


3.7 PRINTING AND PHOTOCOPYING

To expedite the fulfillment of print and photocopying needs, the Kentucky Design and Print Services at the Kentucky Transportation Cabinet has been delegated the responsibility for meeting the printing and duplicating needs of state agencies. The staff of Graphic Designers in the Electronic Pre-Press Branch offer creative, artistic, technical skills and experience. Using state of the art, industry specific equipment and software, their professionals can satisfy most graphic design needs from simple brochures to logo design to more complex, concept to production creative projects.

In addition, consulting services are available to assist agencies in planning their printing projects.

The process purchasing officers are to use in procuring printing and photocopying needs utilizing the services of Print Services, is detailed in [FAP 111-12-00](#). The following is a graphic depiction of the process for procuring printing and photocopying needs.



3.8 FLEET VEHICLES

In accordance with [200 KAR 40:020](#), no agency of the Commonwealth, except those specifically exempted by rule, will procure or lease a vehicle for the discharge of the authorized duties and functions of the agency without the prior approval of the Transportation Cabinet. For specific guidance on the process to be used to submit a request for purchase of a fleet vehicle, buyers should reference [FAP 111-20-00](#).

3.9 SPECIAL CONSIDERATIONS

3.9.1 REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS, AND CONTRACTORS

The Required Affidavit for Bidders, Offerors, and Contractors must be signed and notarized by bidders, offerors and contractors when responding to solicitations including requests for quote, sealed bids, requests for proposals including Personal Service Contracts. It must also be executed by any vendor who is awarded a contract as a result of a non-competitive negotiation including sole source, not practicable or feasible to bid, or emergency contracts. This form applies to procurements including small purchases awards, including transactions without a written contract, for all goods and all types of services over \$1,000. A newly signed and notarized affidavit must be obtained upon renewal of any contract for additional period of time unless an Annual Required Affidavit for Bidders, Offerors, and Contractors (Annual Affidavit) is available on the vendor record in eMARS (VCUST). The Required Affidavit for Bidders, Offerors, and Contractors must be attached to the header of the contract or payment established in eMARS.

The Required Affidavit for Bidders, Offerors, and Contractors does not have to be executed for stand-alone payments made on a GAX document such as utility payments, court-ordered payments or purchase of postage; Procard payments; purchase from a Master Agreement (since the affidavit will be obtained when the Master Agreement is established); agreements between governmental agencies; payments for dues and subscriptions; or reimbursements to employees. The Affidavit is not required for purchases or stand-alone payments in amounts less than or equal to \$1,000. However, procurement

requirements shall not be parceled, split, divided or scheduled over a period of time in order to subvert the intent of this procedure.

The Required Affidavit for Bidders, Offerors, and Contractors affirms under penalty of perjury that the bidder, offeror or contractor is in compliance with campaign finance laws of the Commonwealth; has revealed any violation within the previous 5 years and is compliant with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342; is registered and will remain registered with the Kentucky Department of Revenue for the duration of the award; and is not delinquent on any state taxes or fees owed the Commonwealth. If the contract is for services the bidder, offeror or contractor must also affirm compliance with Executive Order 2015-370 Minimum Wage for State Employees and the Commonwealth's Service Providers. The Required Affidavit for Bidders, Offerors, and Contractors for Services contains the additional provision for compliance with EO2015-370.

The appropriate Affidavit must be attached to the eMARS procurement document. When a vendor has an Annual Affidavit, it is available on the vendor's eMARS record in the VCUST table. The Business Type for the vendor with an Annual Affidavit will be identified as AFF.

3.9.2 MINORITY OWNED BUSINESS PROCUREMENT

Working with the Governor's Office, OPS instituted a new process, in February 2013, aimed at increasing ethnic minority participation and opportunity in the State procurement process. All agencies utilizing their Small Purchase Authority to acquire goods and services in excess of their one quote Small Purchase Delegated Authority, are required to send the RFQ to at least one (1) ethnic minority vendor. To identify ethnic minority vendors who can provide the goods or services, agencies can use eMARS and the Small Business Connection database. To identify ethnic minority vendors who can provide the goods or services, agencies can use the eMARS Vendor Commodity by Business Type (VENDCMBT) table. The business type code is B060. Agencies must document which ethnic minority vendors they provided the RFQ response in their RFQ Determination and Finding. For the purpose of this requirement, ethnic minority is defined as Ethnic Minority Business Enterprise/MBE.

Agencies can locate information on small, female-owned, and minority-owned businesses 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.

3.9.3 PURCHASE OF RECYCLED MATERIAL CONTENT PRODUCTS

In accordance with KRS 45A.520, every state agency will when purchasing goods, supplies, equipment, materials, and printing require a minimum recycled material content for those goods, supplies, equipment, materials, and printing. Specifics of guidelines for minimum recycled content for specific items can be found in administrative regulation [200 KAR 5:330](#).

3.9.4 SERVICE-DISABLED VETERANS OWNED SMALL BUSINESSES (SDVOSB)

During the 2017 regular legislative session, HB161 was enacted to promote increasing participation and opportunity for service-disabled veteran owned small businesses (SDVOSB). Executive branch agencies utilizing their Small Purchase Authority to acquire goods and services in excess of their one quote Small Purchase Delegated Authority, are required to send the RFQ to at least one (1) SDVOSB. To identify

SDVOSB vendors who can provide the goods or services, agencies can use the eMARS Vendor Commodity by Business Type (VENDCMBT) table. The SDVOSB business type code is B080. The Agency must document in the RFQ Determination and Finding the SDVOSB vendors who were sent the RFQ document, the SDVOSB vendors who responded and if a SDVOSB vendor received an award.

3.9.5 PROHIBITION OF DISCRIMINATION BY CONTRACTORS AND SUBCONTRACTORS

In accordance with Federal Executive Order 11246, contracts utilizing federal funds, in whole or in part, shall prohibit discrimination because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability. Agencies must include as a part of their solicitations, including Requests for Quote for small purchase award, contracts and MOA's the specific Discrimination clause provided by OPS. The clause is included in the OPS solicitation and contract templates.

3.9.6 PROTECTION OF PERSONAL INFORMATION SECURITY & BREACH INVESTIGATION PROCEDURES AND PRACTICES ACT

In accordance with KRS 61.931, all solicitations issued by a state agency, in the resulting contract, will disclose "personal information" defined in KRS 61.931(6), and for all contracts executed or amended on or after January 1, 2015, with a "non-affiliated third party" defined in KRS 61.931(5) a specific clause provide by OPS. The clause is included in the OPS solicitation and contract templates.

3.9.7 KENTUCKY RESIDENT BIDDER RECIPROCAL PREFERENCE

In accordance with KRS 45A.494, prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.

Any bidder claiming resident bidder status shall submit along with its solicitation response a notarized affidavit that affirms it meets the criteria to be considered a resident bidder as set forth in KRS 45A.494(2). If requested, failure by the bidder to provide documentation proving resident bidder status shall result in disqualification of the bidder or contract termination.

3.9.7.1 DETERMINATION OF RESIDENCY FOR NONRESIDENT BIDDERS

The state of residency for a nonresident bidder for the purposes of this requirement shall be its principal office as identified in the bidder's certificate of authority to transact business in Kentucky as filed with the Commonwealth of Kentucky, Secretary of State. If the bidder is not required to obtain a certificate of authority to transact business in Kentucky, its state of residency shall be deemed to be the mailing address provided in its bid.

3.9.7.2 APPLYING THE RECIPROCAL PREFERENCE

Once all responsible and responsive bidders have been scored and ranked, the residency of each bidder shall be identified. The buyer shall give a preference equal to the preference required by the state with the highest evaluated nonresident bidder to all responsive and responsible resident bidders. The responses shall then be rescored and re-ranked to account for any applicable preferences. Preferences

shall not be applied to nonresident bidders residing in states that do not give a preference against Kentucky bidders. If the procurement results in a tie between a resident bidder and a non-resident bidder, preference shall be given to the resident bidder. A nonresident bidder should never receive a preference over another nonresident bidder.

The Commonwealth utilizes the NASPO State Preference Repository to determine state preference laws. A link is available at [State Preference Repository](#) and on the eProcurement website.

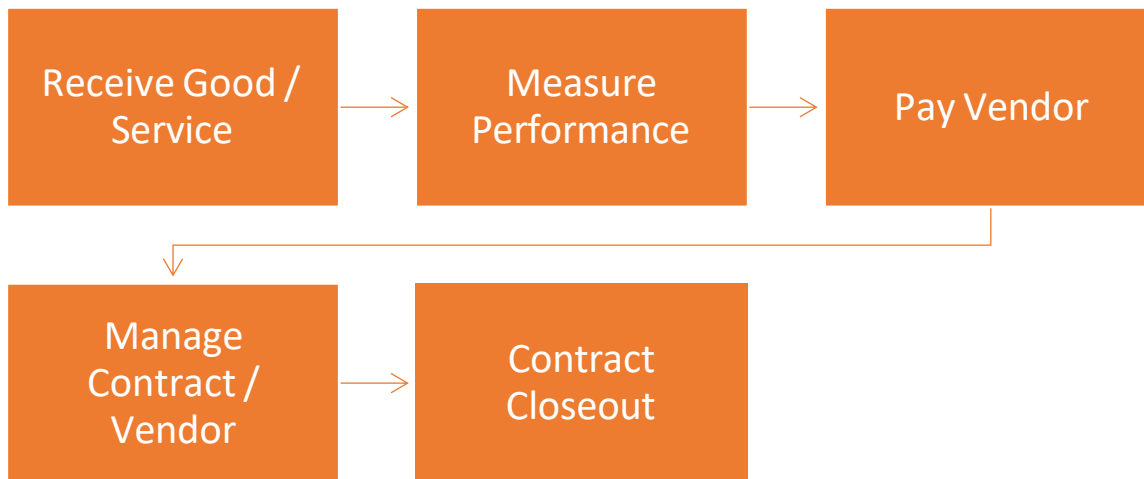
SECTION FOUR: MANAGE

4.1 KEY INFORMATION

4.1.1 MANAGE PHASE PROCESS FLOW

The Manage phase of the procurement lifecycle is defined as the process of monitoring and tracking contracts and the associated vendors to be certain requirements, terms and conditions are being met, vendor invoices are correct and payments to vendors are being made in a timely manner.

The following are the major steps in the process flow for the Plan phase:



4.2 CONTRACT & VENDOR MANAGEMENT

4.2.1 CONTRACT MANAGEMENT

Contract management and oversight is not solely the responsibility of a single individual, but is instead a team effort, including program, procurement and contract management professionals at the agency and at OPS. The Contract Manager is not the agency procurement professional. The Contract Manager is the primary person handling the daily administration of the contract, and documenting actions related to the contract, but to fully manage a contract requires assistance at times from others to address issues that may arise in the execution of the contract. For example, the Contract Manager may identify the need to make a change to a contract, however, it will require an agency procurement professional or OPS Buyer assistance to formally execute a change to the contract.

In accordance with [FAP 111-51-00](#), OPS relies on the using agency to ensure the requirements of the contract are being met and the vendor is in compliance with all contract terms and conditions. Where issues arise, the agency is considered the first line of communication and the matter will first be handled between the using agency and vendor. If the using agency cannot reach a satisfactory resolution with the vendor, the agency will refer the matter to OPS in accordance with the provisions of [FAP 111-42-00](#).

4.2.2 CONTRACT MANAGEMENT GUIDE

At minimum, the agency should assign a contract manager to each contract to monitor the progress of the contract. A contract manager is responsible for coordinating the processes required for effective contract management.

A best practice includes developing a Contract Administration Plan (CAP) that defines how the contract will be administered and establishes the order of precedence into a management tool to focus and govern implementation activities of the contract. The plan itself will vary in complexity, risk, and scope depending on the requirements of each contract. The frame of the plan should focus on the Who, What, When, Where, and How of the administration of the contract. The plan should provide the means to monitor contract quality, risk, schedule, and budget.

Contract management is successful when:

1. The contractual arrangements for delivery of goods and services continue to be satisfactory to both parties;
2. The supplier is cooperative and responsive;
3. The organization understands its obligations under the contract;
4. Disputes are mitigated and surprises are eliminated;
5. Issues can be resolved in a positive manner for both parties; and,
6. The expected business benefits and value for the money are realized.

Additional guidance for contract management, including forms and templates is available in a formal Contract Management Guide. The Guide provides practical suggestions as well as best practices to improve agency contracting practices, assist contract managers in leveraging technology, metrics, training and lessons learned for the purpose of minimizing project risks and clearly define roles and responsibilities of all players in the contract management process. It describes the primary duties of an

agency contract manager, including how to develop a solicitation and contract that will help in your future contract management, and most importantly how to manage to the contract through monitoring of contractor and subcontractor performance.

The guide outlines structures, processes and tools OPS in place to support agencies in Contract Management and should help to establish a more consistent approach to Contract Management for the Commonwealth of Kentucky. The guide is available at [Contract Management](#).

4.2.3 ANNUAL PROCUREMENT PLAN (APP)

The initial phase in planning for upcoming procurements for state agencies will be the completion of the Annual Procurement Plan. State agencies will submit these to OPS as required by KRS 45A.045 (1)(a). OPS will review all submitted plans and determine which upcoming procurements require the completion of a Risk Self-Assessment prior to the creation and submission of a Requisition (RQS). Detailed explanation and direction is provided in the Contract Management Guide.

4.3 RECEIVE GOODS / SERVICES

An agency is responsible for prompt receipt, inspection, and acceptance of all goods and services procured by the agency, unless otherwise specified in the contract. For each delivery, an agency will designate appropriate personnel to certify that the goods or services were received, that quantities were as stated, that the goods or services met specified requirements, and that condition was satisfactory or noted otherwise upon receipt.

If a vendor fails to comply with the delivery terms and conditions of a contract established by OPS, the agency will notify OPS using the Performance Evaluation (PE) in eMARS. To the maximum extent possible, all state agencies will use receiving reports in the state's procurement system to document items received.

For additional guidance on Delivery and Receipt of goods and services, buyers should reference [FAP 111-41-00](#).

4.4 VENDOR PAYMENT

An agency will select the appropriate payment method for all goods and services. For payments against a document that has been entered into and encumbered funds within eMARS, an agency will process an electronic invoice that will liquidate the encumbrance when payment is authorized. All payments referencing contracts and awards established in eMARS will be made in the state's procurement system and reference the appropriate award. Agencies shall pay the amount or rate authorized by the contract but not more than that amount or rate. Agencies are permitted to pay an amount or rate less than the amount or rate authorized by the contract if that amount is offered or negotiated with the vendor.

If exercising small purchase authority, or if making a payment against an MA that is within the agency's Procurement Card (Procard) limit, an agency may make payments using a Procard. The Procard may not be used for payment for leased purchases. Agencies are encouraged to utilize the Procard for MA purchases whenever possible to maximize Procard spend. Agencies can contact the Customer Resource Center for more information on Procard and Procard limits.

A vendor invoice is required for payment unless otherwise specified in the purchasing document. The original vendor invoice will be retained in the agency for the period of time required by the appropriate document retention schedule. The invoice will be on the official invoice form of the vendor. The received invoice should be compared to the delivery receipt and the procurement document/contract/MA, if applicable, to determine if the invoice is proper. A proper invoice must match the procurement document in all respects (item description, quantity, delivery information, unit costs, etc.).

Agencies are never to pay for goods or services that are not rendered. Additionally, prepayment of goods or services is prohibited.

For further information on vendor payments and payment documents, buyers should reference [FAP 111-45-00](#).

4.5 MODIFICATION OF CONTRACTS

A modification is used to make corrections or changes to a contract. A modification will not be used to:

- a. initiate a major change outside the original scope of the contract;
- b. effect a new buy that normally would be placed by competitive solicitation;
- c. increase the quantity of a contract in excess of ten percent (10%) unless specifically authorized in the solicitation; or,
- d. increase the dollar amount of a contract using Small Purchase Authority to an amount exceeding an agency's small purchase authority limit.

Modifications to Statewide Master Agreements issued by the OPS will be initiated and processed by OPS. For other contracts issued by OPS, an agency may request a modification and forward supporting documentation to OPS for review, approval and processing. An agency will provide sufficient information to support the basis for modification and provide a requested effective date for the modification.

For additional guidance on modifications of contracts, buyers should reference [FAP 111-11-00](#).

4.6 CONTRACT CLOSEOUT

Contract closeout consists of the procedural and administrative tasks to change the status of a contract from "active" to "complete". The most common way for a contract to end is when each party performs its obligations according to the terms of the contract, or when the contract term expires.

Contracts for the provision of goods may not specify an end date but obligations under the contract are usually considered to be complete following the delivery and acceptance of the last item(s) required under the contract. Acceptance implies that the items delivered have met the agreed upon standards.

Contracts for the provision of services may specify an end date when all contract deliverables have to be provided. The contract ends if the services are satisfactorily completed by the due date.

In both service and goods contracts, contract closure should be completed as soon as possible after all commitments have been met.

4.6.1 CONTRACT/PROCUREMENT FILE

Each agency will 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 will contain the following, at minimum, 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.
3. Documentation related to any modifications to the award, including but not limited to justification for price increases.
4. Documentation related to renewal of the contract, including the Required Affidavit for Bidders, Offerors and Contractors (Section 3.9.1)

For additional guidance on the contract/procurement file and associated retention policies, buyers should reference the Records Retention Schedules located on the Kentucky Department for Library and Archives website.

4.7 DISPOSAL OF GOODS

The Finance and Administration Cabinet, Division of Surplus Property will 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. Surplus property will be properly disposed of in accordance with the Finance and Administrations Cabinet, Division of Surplus Property's Policies and Procedures.

For additional guidance on proper disposal of agency surplus property, buyers should reference [FAP 220-19-00](#).

4.8 UNAUTHORIZED PURCHASES OR TRANSACTIONS

Unauthorized purchases, commitments or transactions are arrangements not acquired according to KRS 45A.075 or the government representative or personnel making the arrangement lacked the authority to bind the Commonwealth. Unauthorized purchases and transactions may not be binding upon the Commonwealth. When irreversible claims are made against the Commonwealth such as where supplies or services are accepted by the Commonwealth agency or the agency will obtain a benefit resulting from the performance of an unauthorized transaction, the agency may consider pursuing a legislative claim in order to render payment pursuant to KRS 45.231

Agencies should take positive action to the greatest extent to preclude such commitments. Efficient communications and Kentucky Procurement Institute training will prevent most irregularities and reduce misunderstandings. When in doubt, contact OPS. In some cases, OPS may be able to assist in ratifying the unauthorized transaction. In these cases, the individual or agency who committed the unauthorized act must prepare a statement of all pertinent facts of the transaction including relevant documents and records. In addition, the individual or agency

shall provide a corrective action plan outlining the measures and processes that they will implement to avoid future unauthorized transactions. Willful violation of the provisions of the Kentucky Model Procurement Code may result in personal penalties pursuant to KRS 45A.990.

APPENDICES

Appendix A – COMMON REQUEST FOR PROPOSAL (RFP) PROBLEMS & ISSUES

Appendix B – SMALL PURCHASE DETERMINATION AND FINDING

Appendix C - FAQs FOR CONDUCTING MARKET RESEARCH & VENDOR ENGAGEMENT

Appendix D – SMALL PURCHASE NONPROFESSIONAL SERVICES

Appendix E – FREQUENTLY ASKED QUESTIONS ABOUT PSC NEGOTIATIONS

Appendix F – RFP EVALUATION RATING SCALE PROCESS

APPENDIX A – COMMON REQUEST FOR PROPOSAL (RFP) PROBLEMS & ISSUES

When Drafting:

- Using the RFP method when a Request for Bid would suffice
- Using a previous solicitation and not removing all previous material
- Conflicting/Incorrect dates
- Not including the Procurement contact information
- Not listing timeline (estimated start/end or required completion dates)
- Unduly Restrictive Specifications
 - Requirements that include the words “**Shall**”, “**Will**”, “**Must**” indicate a **mandatory requirement**
 - Mandatory Requirement means a condition set out in the specifications or scope of work that **must be met without exception.**
- Having directors/project leaders "leak" information to vendors
- Scope of Work (SOW) not clear/vague (goals are not defined)
- Not having staff proofread
- Overview just a cut/paste of the SOW
- No organization background information included
- Writing the SOW/Specifications based on a pre-determined vendor
- Not enough time to draft a solid RFP
- Not clear/concise (i.e. too wordy)
- Not conducting any market research/analysis (outdated market standards)
- Too much/little required years of experience (without justification)
- Evaluation criteria does not match SOW
- Required vendor responses buried or located in multiple locations
- Does not allow vendor to expand on their expertise by allowing for value-added options
- Vendors not required to address risk and offer a mitigation plan
- Telling the vendor "what they will do" instead of asking them to “propose a solution to a problem”
- Not including the formula for assigning cost points
- Not limiting vendor narrative response/marketing material
- Responsiveness requirements not defined or not stated "**will** be found non-responsive" if not met

While Soliciting:

- Sharing information with one vendor (not issuing an amendment/modification)
- Conversations with vendors
- Not holding a pre-proposal meeting
- Emailing RFP and not posting publicly
- Scheduling a pre-proposal meeting too soon after releasing RFP
- Not documenting questions at a pre-proposal meeting and issuing in an amendment/modification
- Requesting references without scoring or adding value
- Not documenting decisions in writing (Determination & Finding)
- Unclear proposal submittal instructions (Number of copies/Electronic Submission)
- Issuing Addendum/Modification without extending the deadline
- Accepting late proposals
- Disclosing evaluation committee members prior to award

While Evaluating:

- No instructions or confidentiality requirements for the proposal evaluation committee
- Sharing prices prematurely to evaluation committee
- Evaluation committee team conflicts (supervisor/overbearing member)
- Undeclared conflict of interests
- Scoring problems (adding/averaging totals)
- Finding a vendor non-responsive (instead of waiving insignificant mistakes as minor informality) without justification
- Not requiring interviews/demonstrations
- Not asking for a Best and Final Offer
- Evaluation responses are "Y/N" instead of a narrative
- Scoring method not defined (1 = bad 5 = excellent)

When Awarding:

- Waiting until now to address Terms & Conditions exceptions
- Releasing confidential/proprietary information as public information
- Not considering the schedule for completion and the potential for a protest that may delay work beginning timely
- Allowing vendor to begin working before the contract is approved and final in eMARS
- Not allowing for debriefing unsuccessful proposers

APPENDIX B – SMALL PURCHASE DETERMINATION AND FINDING

DETERMINATION AND FINDING FOR SMALL PURCHASE						
VENDOR LEGAL NAME	ALIAS/DBA	BUSINESS TYPE (Ethnic Minority or SDVOSB)	CONTACT NAME	CONTACT TYPE (VSS, Phone, Fax, Email)	CONTACT TYPE INFORMATION (VSS, Phone Number, Fax Number, Email Address)	ENTER VENDOR PRICE OR NO RESPONSE
IF NO ETHNIC MINORITY OR SDVOSB VENDORS WERE FOUND ENTER EXPLANTION HERE:						
JUSTIFICATION FOR AWARD:						
SUCCESSFUL VENDOR & PRICE:						

APPENDIX C - FAQs FOR CONDUCTING MARKET RESEARCH & VENDOR ENGAGEMENT

Question	Yes	No	Check with Office of Procurement Services (OPS) FIRST
Can I conduct market research or talk to vendors when I am not planning to buy anything specific?	X		
Can I reach out to vendors when I need to find out if there is something that does what I need done?	X		
Can I reach out to vendors when a solicitation is out "on the street" posted to the internet?		X	
Can I reach out to vendors when proposal evaluations are under way?		X	
Is it okay to find a few vendors that sell what I need or might sell what I need?	X		
Can I conduct market research to help me decide if I want to make a purchase?	X		
Can I conduct market research to find out if there are products that do what I need done?	X		
Can I conduct research to discover characteristics that I would like in a product	X		
Can I contact vendors to help give me an understanding about how much something might cost (budgetary quotes) if a procurement is not underway?	X		
Can I contact vendors to get quotes that I will use to buy something?			X
Can we ask vendors to do a demo? Onsite or online?			X
Can we ask vendors to send us products for evaluation?			X
Can we ask vendors to customize their product for demo?		X	
Can we ask vendors to expend significant cost or effort?		X	
Can we ask a vendor to help us prepare the Scope of Work?		X	
Do we need to notify OPS when we are researching vendors?	X		
Can we ask the vendors to help with some of the RFP components?		X	
Can we provide detailed description of our existing environment so they can assess the product compatibility?			X
Can I ask for the price paid by colleagues in other companies (public and private) for the product?	X		
Can I get copies of solicitations issued by other agencies?	X		
Can we ask the vendor how their product compares with their competitors?		X	
Can we provide the vendor the project budget and procurement timeline?		X	
Can we provide draft solicitation components to vendors?		X	

APPENDIX D – SMALL PURCHASE NONPROFESSIONAL SERVICES

Agencies may solicit for nonprofessional services (security guard, janitorial, lawn care) when their need is less than \$20,000 for a one-year period or less in accordance with FAP111-55-00-05. Agencies must use a Request for Quote (RFQ) to solicit and award a Purchase Order (PO) as the contractual agreements.

1. Agencies must first develop terms and conditions for soliciting quotes and provide the same document and information to all vendors solicited. For purposes of a term contract, the contract period cannot exceed 12 months. A renewal clause must be included in the solicitation in order to extend any resulting contract. Prices must remain firm for the initial contract period. The contract can only be renewed for one additional year. Prior to the contract expiring in the second year, the agency must go through the RFP process again. A template for Informal Solicitation for Nonprofessional Services can be found in eMARS terms and conditions.
2. If your anticipated requirement is less than \$5,000, one quote is required. If it is between \$5,000 and \$20,000, solicit 3 quotes or post to the web via an eMARS RFQ solicitation document.
3. After the solicitation opening date and time, using the SR- Solicitation Response or the SRW Solicitation Response Wizard in eMARS, tabulate and evaluate responses received to provide documentation justifying the award. Award the PO from the EV document (which has been copied forward from the Solicitation and has had the Solicitation Responses loaded into it.)
4. The PO will route to the Office of Procurement Services based on its referenced cited authority. The PO needs to contain the following:
 - Terms and Conditions available in eMARS. Note that a blank free form clause is not acceptable.
 - Reference FAP-111-55-00-05 as the cited authority. Procurement type 13- Non-professional services.
 - At the header level of the PO, attach the Determination and Finding (justification) for award. The Determination and Finding should include the document number, the vendors that responded to the RFB, and their pricing, the reasons for making the award, and the buyer's name.

Prior to expiration of this PO, the agency should re-evaluate their needs and make any necessary changes. If renewing the agency can submit a modification to the PO reflecting any changes for the next contract period (12 months) and submit for approval. Should a new contract be needed, repeat the processing beginning with Step 1 above and submit for approval. Please note that if the vendor requests a price increase that causes the total amount of the contract for that year to exceed \$20,000, the contract must be re-bid on a competitive basis. An agency non-professional service PO cannot exceed \$20,000 per year and may not exceed a two-year period.

APPENDIX E – FREQUENTLY ASKED QUESTIONS ABOUT PSC NEGOTIATIONS

1. Can the agency negotiate on all Personal Services Contracts (“PSCs”), or only on PSCs generated through a Request for Proposals (“RFP”)?

RESPONSE: All Personal Services Contracts, including sole-source contracts, can theoretically be negotiated, prior to contract signature/award.

2. What are the limitations on the negotiations process itself?

RESPONSE: The agency must negotiate with the best evaluated (highest scoring) vendor first. If negotiations are unsuccessful with that vendor, then the agency may discontinue negotiations with that vendor and move on to the next highest-scoring vendor. However, the agency cannot go back and re-engage in discussions with a vendor with whom negotiations have been discontinued, so this decision should not be taken lightly.

3. Should the agency include the budgeted amount in an RFP?

RESPONSE: No. Agencies should not include the budgeted amount in an RFP. KRS 45A.020(2)(f) requires that agencies provide for increased economy in state procurement activities by fostering effective competition. Disclosing the budgeted amount in an RFP upfront defeats the purpose of conducting a competitively negotiated procurement and does not demonstrate good stewardship of taxpayer dollars.

4. What may be discussed with a vendor during negotiations?

RESPONSE: The agency may discuss anything in the RFP or the specific vendor’s response about which it has concerns, but it cannot provide a vendor with information about any other vendor’s proposals. In other words, the agency may generally indicate that other vendors’ have submitted a bid response, but cannot discuss specifics (i.e. how many other vendors bid, the names of the other vendors, or the specific solution or price proposed by another vendor).

5. Do negotiations have to be face-face?

RESPONSE: This depends on the complexity of the items being negotiated. A negotiation may be conducted in person, videoconferencing application, over the telephone, or in writing.

6. What should the agency do if a vendor refuses to negotiate?

RESPONSE: If a vendor refuses to negotiate, then the agency will have to determine whether it is in the best interests of the agency to continue with contract award to that vendor; or to discontinue negotiations with that vendor and move to the next.

7. May an agency agree to a price increase during negotiations?

RESPONSE: Generally, no. Typically, the price which a vendor proposes has been considered as part of the evaluation process and establishes a ceiling for negotiation and not a floor (so price negotiations

focus on a reduction in price and not an increase). There are limited exceptions to this, but if this situation occurs; the agency may wish to consult with the Finance and Administration Cabinet's Office of Procurement Services, prior to moving forward with increasing the price during negotiations.

8. For price negotiations, should an agency simply ask a vendor to reduce their price by a certain amount?

RESPONSE: Ideally, the agency should first ask a vendor to propose a lower price and task the vendor with the primary responsibility for coming back to the agency with a proposal for price reduction. However, if this approach is unsatisfactory, or if the agency is in a time-crunch, the agency may simply choose to ask the vendor to reduce their price by a certain amount or percentage.

9. Should the agency attempt to negotiate, even if the highest scoring vendor's response to the solicitation already proposed a price which is within the agency's budget?

RESPONSE: Yes. Simply asking the vendor to come down in price based on reduced agency budgets, etc. may result in cost savings.

10. Certain PSCs, such as legal contracts, have pre-defined rates. Can the agency still negotiate price on such contracts?

RESPONSE: Pre-defined rates are typically "not to exceed" rates, so the agency may choose to negotiate for and pay a lower rate.

GENERAL NEGOTIATION TIPS

- Be willing to negotiate
- Set realistic goals for yourself
- Don't get emotionally involved
- Don't be rushed into making a decision
- Never be the first person to name a figure
- Don't act too interested (give the impression you're willing to walk away)

APPENDIX F – RFP EVALUATION RATING SCALE PROCESS

The Office of Procurement Services typically uses a rating scale approach for evaluating Requests for Proposals (RFP's), which may be used by agencies for Personal Service Contracts. The evaluator team will use the RFP Evaluation Rating Scale in determining how well each response meets the needs of the RFP. The rating score is applied to each evaluation criteria. The final score is calculated by multiplying the rating score by the points available.

The RFP Evaluation Rating Scale

Score	Description
5 Excellent/Outstanding	The response is very comprehensive, detailed and clear. All relevant information is included and the proposal satisfies all requirements and describes specifically how and what will be accomplished. No evaluator assumptions made or clarifications required.
4 Good	Response is detailed and clear and satisfies the general requirements but could contain more explanation or evidence of how and what will be accomplished. Few clarifications are required.
3 Average	Response meets the requirements of the RFP.
2 Weak/Marginal	Response lacks detail and explanation. The proposal offered no explanation of how or what would be accomplished. Or the response fails to provide a clear approach or solution and it is unclear whether the offeror can provide the needed service successfully.
1 Poor	Response has several inconsistencies and exhibits a poor understanding of the requirements.
0 Unacceptable	Unacceptable response. Failure to respond to the requirement or provide understandable information.

The following is an example of how the RFP Evaluation Rating Scale is applied during the evaluation process. The RFP Technical Evaluation Criteria are presented in the RFP to inform offerors of the factors that will be considered during the evaluation of proposals and the relative importance of each factor to the Commonwealth based on the number of points applied to each factor.

RFP Technical Evaluation Criteria

Evaluation Criteria	Points
Proposed Solution	600
Project Management Approach	200
Staffing	100
Value Added Innovative Strategies	100
Total Points	1000

The evaluation team members will individually review each of the technical proposals prior to the first technical evaluation meeting. At the meeting the evaluators will discuss each proposal and score before proceeding to the next proposal. The evaluation team will come to a consensus on the Rating Score that best fits each evaluation criterion. The Rating Score is multiplied by the number of points available for the criterion to determine the final technical score.

After Offeror 1 is evaluated their score sheet could look something like the following:

Criteria	Evaluation Rating Score (0-5)	Possible Points (From RFP 1000)	Resulting Score Evaluation Rating Score % Possible Points Best Possible Score is 1000	Supporting Notes
Proposed Solution	4	600	480	
Project Management Approach	3	200	120	
Staffing	3	100	60	
Value Added Innovative Strategies	3	100	60	
Technical Score			720	