

Kentucky Preference Laws



KRS 45A.494 - Reciprocal preference for Resident Bidders

The Reciprocal Preference

“Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder 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.”



Tie Bid

If a procurement results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.

KRS 45A.494 - Reciprocal preference for Resident Bidders

Applicability

- Applies to all contracts funded or controlled in whole or in part by a public agency.
- “Contract” means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item.
- “Public agency” has same meaning as KRS 61.805 (Open Meetings Law definition).

KRS 45A.494 - Reciprocal preference for Resident Bidders

Resident Bidder

- 1. An individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding**
- 2. Authorized to transact business in the Commonwealth; and**
- 3. For 1 year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.**



KRS 45A.494 - Reciprocal preference for Resident Bidders

Nonresident Bidder

An individual, partnership, association, corporation, or other business entity that does not meet the requirements to be considered a resident bidder.

KRS 45A.494 - Reciprocal preference for Resident Bidders

Other Requirements

- 1. The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by public agencies in determining resident bidder preferences.**
- 2. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.**

KRS 45A.494 - Reciprocal preference for Resident Bidders

Other Requirements (cont.)

3. The preference for resident bidders shall not be given if the preference conflicts with federal law.
4. Any public agency soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

200 KAR 5:400. Kentucky resident bidder reciprocal preference.

Section 1. Definitions.

- (1) "Contract" is defined by KRS 45A.490(1).
- (2) "Nonresident bidder" is defined by KRS 45A.494(3).
- (3) "Public Agency" is defined by KRS 45A.490(2).
- (4) "Resident bidder" is defined by KRS 45A.494(2).
- (5) "Response" means any bid or response submitted to a solicitation.
- (6) "Solicitation" means an invitation for bid, request for proposal, advertisement for bid, or another formal method of soliciting a contract issued by a public agency.

200 KAR 5:400. Kentucky resident bidder reciprocal preference.

Claiming Resident Bidder Status.

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



200 KAR 5:400. Kentucky resident bidder reciprocal preference.

Determination of Residency for Nonresident Bidders.

1. The state of residency for a nonresident bidder, for purposes of this administrative regulation, 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.
2. 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.



200 KAR 5:400. Kentucky resident bidder reciprocal preference.

Applying the Reciprocal Preference

1. Once all responsible and responsive bidders to a solicitation have been scored and ranked, the residency of each bidder shall be identified.
2. A preference equal to the preference given or required by the state of the highest evaluated nonresident bidders shall be given to all responsive and responsible resident bidders.
3. The responses shall then be rescored and re-ranked to account for any applicable preferences.

200 KAR 5:400. Kentucky resident bidder reciprocal preference.

Applying the Reciprocal Preference (cont.)

4. In awarding a contract, resident bidders shall only receive preference against nonresident bidders residing in a state that gives a preference to bidders from that state. This preference shall not be applied against nonresident bidders residing in states that do not give preference against Kentucky bidders.
5. If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.
6. Nothing in this administrative regulation shall result in a nonresident bidder receiving a preference over another nonresident bidder.



Next Steps

- This information will be posted to our eprocurement website:
<http://eprocurement.ky.gov/>
- The Oregon website that contains a list of all state preferences is:
http://procurement.oregon.gov/DAS/SSD/SPO/reciprocal_detail.shtml. Ky is in the process of creating our own list of state preferences, but we will use the Oregon site initially.

This example will take into account price and delivery as the best value criteria.

Step 1: Record the bids that were submitted.

Bidders	Ky Vendor	State 2	State 3	State 4
Line 1	\$19,250.00	\$18,949.76	\$18,000.00	\$18,750.00
Total Bid	\$19,250.00	\$18,949.76	\$18,000.00	\$18,750.00
Delivery Days	14	10	12	14

Step 2: Score all bidders for best value

- Step 2: Score all bidders for best value from bid tabulation. Best price divided by next best price multiplied by the number of points allotted for price. Repeat for all vendors for price. Repeat process for all vendors for delivery: best delivery time divided by next best delivery time multiplied by the amount of points allotted for delivery. Note: best value criteria and points is required to be communicated to offerors during the solicitation process.

Bids Scored for Best Value

Bidders/ State	Ky Vendor	State 2	State 3	State 4
Bid Price	\$19,250.00	\$18,949.76	\$18,000.00	\$18,750.00
BV price (90 points)	84.2	85.5	90	86.4
Delivery Days	14	10	12	14
Delivery (10 points)	7.1	10	8.3	7.1
Total BV score	91.3	95.5	98.3	93.5
Rank	# 4	# 2	# 1	# 3

**BV Score- Take best price/another vendor's price X
available points. Repeat for delivery.**



Step 3: Determine State & Preference

Bidders/ State		Ky Vendor	State 2	State 3	State 4
State		KY	State 2	State 3	State 4
Preference		KY	5%	10%	2.50%
Rank (from previous screen)		# 4	# 2	# 1	# 3

A preference equal to the preference given or required by the state of the highest evaluated nonresident bidders shall be given to all responsive and responsible resident bidders.

Step 4: Applying the Preference

Bidders	Ky Vendor	State 2	State 3	State 4
Ky versus State 3- Ranked #1- less 10%	\$17,325.00	N/A	\$18,000.00	N/A
BV points price(90)	90		86.6	
Delivery points(10)	7.1		8.3	
Total	97.1		94.9	

Reduce the Ky bid amount by the same % preference as State 3 (10%). Rescore the BV points for price. Add in the delivery BV points previously scored. The Ky vendor beats State 3. Repeat for all other states ranked ahead of the Ky bidder.



Step 4: Applying the Preference

Bidders	Ky Vendor	State 2	State 3	State 4
Ky vs State 2 - Ranked #2- less 5%	\$18,287.50	\$18,949.76	N/A	N/A
BV points price(90)	90	86.9		
Delivery points (10)	7.1	10		
Total	97.1	96.9		

Reduce the Ky bid amount by the same % preference as State 2 (5%). Rescore the BV points for price. Add in the delivery BV points previously scored. The Ky vendor beats State 2. Repeat for all other states ranked ahead of the Ky bidder.



Step 4: Applying the Preference

Bidders	Ky	State 2	State 3	State 4
Ky vs State 2 - Ranked #2- less 2.5%	\$18,768.75	N/A	N/A	\$18,750.00
BV points price(90)	89.9			90
Delivery points (10)	7.1			7.1
Total	97.0			97.1

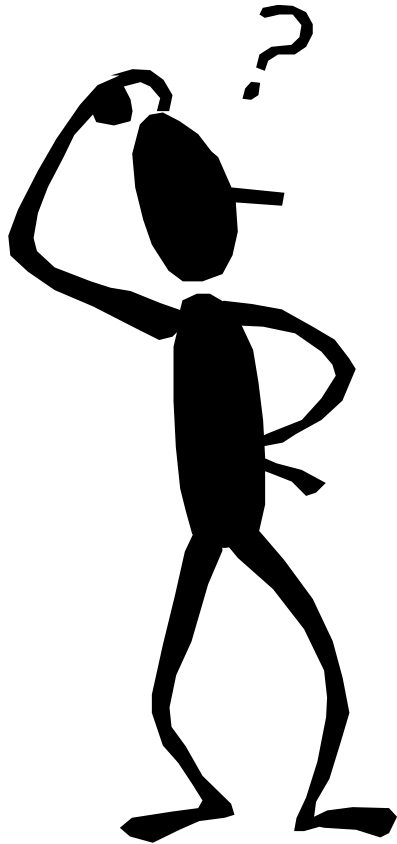
Reduce the Ky bid amount by the **same** % preference as State 4 (2.5%). Rescore the BV points for price. Add in the delivery BV points previously scored. The State 4 vendor beats the Ky vendor.



Step 5: Determining Award

After Reciprocal Preference is applied, is a Ky vendor eligible for award?

- **If Yes**, award to best evaluated Ky vendor at their **bid** price.
- **If No**, evaluate non-resident bidders against each other at bid prices, taking no preferences into account. In this example, State 3 would receive the award.



Questions?

KRS 45A.470(1) - Bid Preference to Qualified Bidders

- Notwithstanding any provision of this chapter to the contrary, all governmental bodies and political subdivisions of this state shall, when purchasing commodities or services, give first preference to the products made by the Department of Corrections, Division of Prison Industries, as required by KRS 197.210.
- Second preference shall be given to any products produced by Kentucky Industries for the Blind, Incorporated, or any other nonprofit corporation that furthers the purposes of KRS Chapter 163, and agencies of individuals with severe disabilities as described in KRS 45A.465.



KRS 45A.465(3) – “Qualified nonprofit agency for individuals with severe disabilities”

- Definition
 - Is organized and operated in the interest of individuals with severe disabilities; and
 - Complies with any applicable occupational health and safety law of the United States and the Commonwealth; and
 - In the manufacture or provision of products or services listed or purchased under KRS 45A.470, during the fiscal year employs individuals with severe disabilities for not less than seventy-five percent (75%) of the man hours of direct labor required for the manufacture or provision of the products or services; and
 - Is registered and in good standing as a nonprofit organization with the Secretary of State.

200 KAR 5:410. Preferences for Purchases of Commodities or Services

Section 1. Definitions

- (1) "Bidder" means any entity submitting a response to a solicitation.
- (2) "Qualified bidder" means Kentucky Industries for the Blind, Incorporated; any nonprofit corporation that furthers the purposes of KRS Chapter 163; or a qualified nonprofit agency for individuals with severe disabilities as described in KRS 45A.465(3).
- (3) "Solicitation" means any invitation for bids, request for proposals, advertisement for bid, or any other method of soliciting a contract issued by a public agency.



200 KAR 5:410. Preferences for Purchases of Commodities or Services

Section 2. Percentage Preference.

- (1) Products made by the Department of Corrections, Division of Prison Industries, shall receive a preference equal to twenty (20) percent of the maximum points awarded to a bidder in a solicitation.
- (2) Products or services provided by a qualified bidder shall receive a preference equal to fifteen (15) percent of the maximum points awarded to a bidder in a solicitation.

200 KAR 5:410. Preferences for Purchases of Commodities or Services

Section 3. Claiming Qualified Bidder Status

- (1) Except for Kentucky Industries for the Blind, Incorporated, a bidder claiming qualified bidder status shall submit along with its response to a solicitation a notarized affidavit which affirms that it meets the requirements to be considered a qualified bidder.
- (2) If requested, failure to provide documentation to a public agency proving qualified bidder status may result in disqualification of the bidder or contract termination.



This example will take into account price and delivery as the best value criteria.

Step 1: Record the bids that were submitted.

Bidders	Ky Corr Ind	Qualified Bidder	Bidder 1
Line 1	\$22,000.00	\$21,000.00	\$18,000.00
Total Bid	\$22,000.00	\$21,000.00	\$18,000.00
Delivery Days	14	10	12

Step 2: Score all bidders for best value

- Step 2: Score all bidders for best value from bid tabulation. Best price divided by next best price multiplied by the number of points assessed for price. Repeat for all vendors for price. Repeat process for all vendors for delivery: best delivery time divided by next best delivery time multiplied by the amount of points assessed for delivery. Note: best value criteria and points is required to be communicated to offerors during the solicitation process.

Applying Best Value Scoring

Bidders	Ky Corr Ind	Qualified Bidder	Bidder 1
Bid Price	\$22,000.00	\$21,000.00	\$18,000.00
BV price (90 points)	73.6	77.1	90
Delivery Days	14	10	12
Delivery (10 points)	7.1	10	8.3
Total BV Score	80.7	87.1	98.3
Rank	# 3	# 2	# 1

BV Score- Take best price/another vendor's price X available points. Repeat for delivery.



Step 3: Determine bidder qualifications.

Claiming Qualified Bidder Status. (1) ...a bidder claiming qualified bidder status shall submit along with its response to a solicitation a notarized affidavit which affirms that it meets the requirements to be considered a qualified bidder. (2) If requested, failure to provide documentation to a public agency proving qualified bidder status may result in disqualification of the bidder or contract termination.

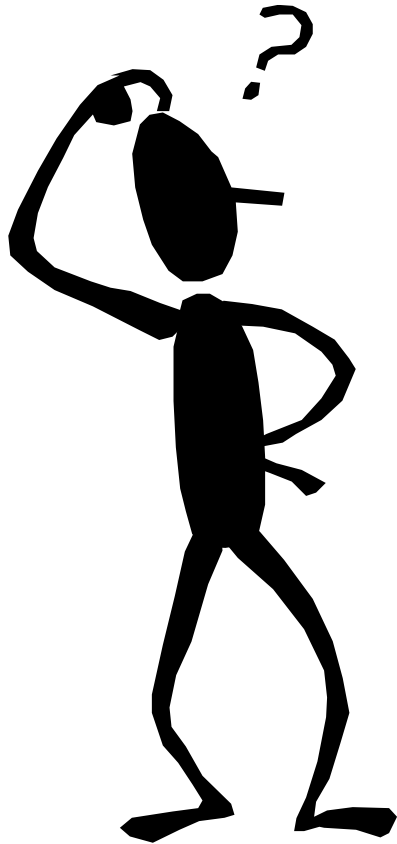
Bidders	Ky Corr Ind	Qualified Bidder	Bidder 1
Preference	KCI- 20% of total points	Qualified- 15% of total points	Not Qualified for Preference

Step 4: Apply preference points to total best value score.

Bidders	Ky Corr Ind	Qualified Bidder	Bidder 1
Bid Price	\$22,000.00	\$21,000.00	\$18,000.00
BV price (90 points)	73.6	77.1	90
Delivery Days	14	10	12
Delivery (10 points)	7.1	10	8.3
Total BV Score	80.7	87.1	98.3
Preference Points	20	15	0
BV Score after pref	100.7	102.1	98.3
Rank	# 2	# 1	# 3

Step 5: Award to lowest ranked bidder after preference is applied to best value scoring.

Bidders	Ky Corr Ind	Qualified Bidder	Bidder 1
Bid Price	\$22,000.00	\$21,000.00	\$18,000.00
Preference Points	20	15	0
BV Score after pref	100.7	102.1	98.3
Rank	# 2	# 1	# 3



Questions?