



FINANCE AND ADMINISTRATION CABINET MANUAL OF POLICIES AND PROCEDURES

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This manual is incorporated by reference as an administrative regulation, pursuant to 200 KAR 5:021.

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Section 1: Definitions

1. "Addendum" means a written or graphic instrument issued by the purchasing agency prior to the execution of the contract that modifies or interprets the Bidding Documents by addition, deletion, clarification or correction.
2. "Alternate" means an optional item stated in the bid the amount of which is to be added to or deducted from the amount of the base bid.
3. "Architect" or "Engineer" means a firm that provides professional design services and is engaged by the Division of Engineering and Contract Administration for Capital Construction Projects, and identified as such in the Contract Documents. The term refers to the design team, consisting of the prime architect/engineer and all Sub-Consultants (if used) or consultant identified by the owner.
4. "Bid" means the sum stated in the Bid Response for which the bidder offers to perform the work described in the specifications and detailed on the plans.
5. "Bidder" means one who submits a bid directly to the owner for the work described in the bidding documents.
6. "Bidding Documents" means the Solicitation, including Instructions to Bidders, General Conditions, Special and Supplemental Conditions, Forms for Response, plans, specifications and Addenda issued prior to receipt of bids.
7. "Bid Response" means a complete and properly signed document, offering to do the work or designated portion thereof, supported by data called for by the bidding documents.
8. "Chief Purchasing Officer" means the secretary of the Finance and Administration Cabinet, who shall be responsible for all procurement of the Commonwealth except as provided by KRS Chapters 175, 176, 177, and 180. KRS 45A.030(3).
9. "Commonwealth" means the Commonwealth of Kentucky.
10. "Construction" means the process of building, altering, repairing, improving or demolishing any public structures or buildings, or other public improvements of any kind to any public real property. It does not include the routine maintenance of existing structures, buildings or real property. KRS 45A.030(4).
11. "Contract (CT/CT2)" means a document established to purchase a specific quantity or amount of goods or non-professional services at a specific price. KRS 45A.030(8).
12. "Contract Modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It includes bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination and notices of the exercise of a contract option. KRS 45A.030(9).
13. "DECA" means the Division of Engineering and Contract Administration within the Department for Facilities and Support Services, Finance and Administration Cabinet.
14. "Delivery Order (DO/DO2)" means a document established by a state agency to purchase a specific quantity at a specific price referencing a Master Agreement. DO documents are generally used for commodities and DO2 documents are used for services.
15. "DFSS" means the Department for Facilities and Support Services within the Finance and Administration Cabinet.

16. "DRP" means the Division of Real Properties within the Department for Facilities and Support Services, Finance and Administration Cabinet.
17. "Electronic Offer" means an online bid through the state's eProcurement system, an offer submitted by electronic mail, or an offer submitted by facsimile.
18. "FAC" means the Finance and Administration Cabinet.
19. "Government Body" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government, corporation or other establishment of the executive or legislative branch of the state government. KRS 45A.030(17).
20. "Master Agreement (MA)" means a document that establishes a price agreement for use by state agencies with a vendor for supplying specific goods and services at specific unit prices during a specified time period. It does not place an order for goods and services.
21. "Offer" means a bid, proposal, Solicitation response or quotation.
22. "OPS" means the Office of Procurement Services within the Finance and Administration Cabinet.
23. "Owner" means the Commonwealth of Kentucky.
24. "Person" means any business, individual, organization or group of individuals. KRS 45A.030(20).
25. "Planholder" means any entity, supplier and/or subcontractor that has purchased plans and specifications from the Division of Engineering and Contract Administration's reprographics vendor in order to submit a bid with the Commonwealth of Kentucky.
26. "Procurement" means the purchasing, buying, renting, leasing or otherwise obtaining of any supplies, services or construction. It includes all functions that pertain to the procurement of any supply, service or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. KRS 45A.030(21).
27. "Proof of Necessity Agreement (PON2)" means a type of contract established by a state agency to purchase professional services (i.e. personal service contracts, grants and memoranda of agreements).
28. "Purchase Order (PO/PO2)" means a type of contract established by a state agency to purchase a specific quantity or amount of goods or non-professional services at a specific price and is generally for a one-time purchase. A PO2 for non-professional services may contain an option to renew for an additional time period.
29. "Purchasing Agency" means any governmental body that is authorized by this code or its implementing administrative regulations or by way of delegation from the chief purchasing officer to contract on its own behalf rather than through the central contracting authority of the chief purchasing officer. KRS 45A.030(23).
30. "Purchasing Officer" means any person authorized by a governmental body in accordance with procedures prescribed by administrative regulations to enter into and administer contracts and make written determinations and findings with respect thereto. The term includes an authorized representative acting within the limits of authority. KRS 45A.030(24).
31. "Quote" or "Quotation Response" means a complete offer to perform the work specified in the Request for Quotation.
32. "RFB" means a Request for Bids.
33. "RFI" means a Request for Information.

34. "RFP" means a Request for Proposals. KRS 45A.070(5).
35. "RFQ" means a Request for Quotations.
36. "SAS" means the Office of Statewide Accounting Services within the Finance and Administration Cabinet.
37. "Secretary" means the secretary of the Finance and Administration Cabinet.
38. "Solicitation" means an RFB, RFI, RFP or RFQ.
39. "Sub-bidder" or "Subcontractor" means one who submits a bid to a prime bidder for materials or labor for a portion of the work described in the bidding documents.
40. "Tiered Pricing" means a determination of price based on volume, where the larger the volume, the larger the discount offered.
41. "Time" means calendar days.
42. "Unit Price" means an amount stated in the bid as a price per unit of measurement for materials or services as described in the bidding documents.
43. "Using Agency" means the state government entity that utilizes the work being contracted.

Section 2:

Policies related to Procurement and Contracts

GENERAL CONDITIONS AND INSTRUCTIONS FOR SOLICITATIONS AND CONTRACTS

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

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

1. Preparation of Offers:

- a. An offeror shall examine the drawings, specifications, schedule and all instructions.
- b. An offer shall set forth full, accurate and complete information as required by the Solicitation. An offer that contains terms and conditions in conflict with the terms of the Solicitation or Commonwealth statutes and regulations may be rejected.
- c. An electronic offer shall not be considered unless authorized by the Solicitation. An offer may be modified by electronic or facsimile notice, if notice is received prior to the hour and date specified for receipt of offers. An electronic or facsimile modification shall not mention unit prices or total price; but shall only refer to percentage change or numerical change.
- d. If authorized by the Solicitation, an online response shall be submitted in accordance with Section 4, and shall be the preferred method of bidding. If the offeror elects to submit a paper copy, the offeror shall sign the paper copy Solicitation in ink and type or print in ink his name, firm, address, telephone number and date.
- e. The person signing the offer shall initial an erasure or other change in ink. Failure to initial an erasure or other change in the offer may result in the rejection of the offer.
- f. Unit price for each unit offered shall be shown and shall include packing and shipping, unless otherwise specified. A total shall be entered in the amount column of the schedule for each item offered. In case of discrepancy between a unit price and extended price, the unit price shall govern.
- g. Trade discounts, if offered, shall be deducted by the vendor in calculating the unit price quoted, unless otherwise stated.
- h. Quantity discounts, if offered, shall be included in the price of the item. The unit price shown on the contract shall be the net price less the discount unless otherwise stated. Tiered pricing may also be used, if authorized by the Solicitation.
- i. Time discounts may be considered, if OPS or the purchasing agency deems it in the Commonwealth's best interest.
- j. An offer for supplies or services other than those specified shall not be considered unless authorized by the Solicitation.
- k. An offeror shall state a definite time for delivery of supplies or performance of services unless otherwise specified in the Solicitation. If a range of time is proposed for delivery, the maximum time shall be used for evaluation of delivery time.

2. Offeror Clarification – Request and Response: Any explanation desired by an offeror regarding the meaning or interpretation of the Solicitation drawings or specifications shall be requested via electronic or written communication not less than seven (7) calendar days prior to the bid closing date. Oral explanations or instructions given before the award of the contract shall not be binding. Any information given to a prospective offeror concerning a Solicitation shall be furnished to all prospective offerors as a modification to the Solicitation, if such information is necessary to offerors in submitting offers on the Solicitation or if the lack of such information would be prejudicial to uninformed offerors.

3. Acknowledgment of Modifications to Solicitations: Receipt of a modification to a Solicitation shall be acknowledged by the offeror. Written or electronic acknowledgment shall be received prior to the hour and date specified for receipt of offers. Verbal acknowledgment shall not be accepted. Failure to acknowledge a modification shall cause the bid not to be considered, unless the failure is waived in accordance with 200 KAR 5:306(4)(3). Acknowledgment of the most recent modification shall constitute acknowledgment of all prior modifications.

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

- a. Submit a bid in legible form in accordance with the Solicitation requirements.
- b. Ensure that a bid response submitted using the online bid response feature of the state's eProcurement system contains all required information for the Solicitation. A vendor who submits an online bid response may subsequently submit an exact paper copy of the response. If any discrepancies exist between the online bid response and the paper copy, the bid may be considered non-responsive and may not be eligible for award. If submitting a paper copy of the bid response after an online bid submission, the vendor shall send the following paper copy documents to the issuing agency by the closing date and time. Paper copy bid submissions shall be signed in ink to comply with all statutes, administrative regulations and policies.
- c. Ensure the paper copy is signed by a proper agent of the firm prior to the bid closing. A paper copy bid shall be filled out in ink or typewritten and signed in ink in the space provided on the Solicitation. An electronic bid shall be authorized by the proper agent of the firm by the act of submitting it electronically through the state's eProcurement system.
- d. Specify brand name, trademark, model number and catalog number for each item bid, if appropriate.
- e. Offer only one (1) price for each item bid and offer only one (1) product for each item of the Solicitation, unless the Solicitation specifically states that more than one (1) product may be bid for a single item of the contract. Offering more than one (1) product for any item of the Solicitation shall constitute multiple bidding and shall automatically disqualify the entire bid, unless multiple bids are requested by the Solicitation.
- f. Extend prices for items, if applicable, and provide an extended total and a grand total, if appropriate. If an error is made in an extension of prices, the unit price shall prevail.
- g. Quote prices F.O.B. destination, freight prepaid and included in the unit pricing, unless otherwise stated in the Solicitation. "F.O.B. Factory-Freight Allowed" or other such terms shall not be quoted.
- h. Provide technical specifications and any other data OPS needs to properly evaluate the brands of products offered as equal to those specified in the Solicitation prior to the date the Solicitation is closed, and state clearly, on the bid proposal or in an electronic attachment, any deviation from the brand specified.
- i. Not include federal excise taxes, Kentucky sales or Kentucky use taxes in the bid.
- j. Provide new and current commodities and latest models, unless otherwise specified in the Solicitation.
- k. Provide firm prices, unless otherwise stated in the Solicitation.
- l. If online bidding is authorized by the Solicitation ensure the bid response is submitted and is in an "Accepted" status in the state's eProcurement system, or the paper copy of the bid response arrives in OPS before the time specified in the Solicitation. The time shown on the time stamp as provided in the Bid Receipt Room in OPS for paper copy responses shall be considered the correct time. A late bid response shall not be considered unless it is postmarked before the date specified in the Solicitation and is the only responsive bid received. A hand-delivered bid shall not be considered unless it is delivered before the time and date specified in the Solicitation. An online bid response shall be assigned a date and time stamp from the state's eProcurement system at the time of final acceptance

and formal submission by the vendor. The state's eProcurement system will not allow submission of an online response after the published date and time for bid closing. The Commonwealth conducts business in different time zones. The vendor shall be aware of the current time zone for the Solicitation to which the vendor responds. Closing times for all Solicitations that permit online bidding shall be deemed to be Eastern Time.

- m. Maintain a bid as a firm offer with respect to price, terms and conditions for the period of time specified in the Solicitation. Prior to closing, a bid shall be withdrawn at the vendor's request in accordance with Section 17 of this FAP. After closing, a bid may be withdrawn in accordance with 200 KAR 5:306.
- n. Accept any contract awarded on the terms and conditions stated in the Solicitation.
- o. Submit a bid bond or check, if specified in the Solicitation. A bid may be rejected for failure to comply with conditions or specifications regarding either bonds or checks.
- p. Comply with the Solicitation Instructions and requests regarding the submission of samples, and pay shipping costs for samples either sent to or returned from OPS. Samples shall become the property of the Commonwealth unless a bidder requests return within thirty (30) days after award of a contract. If not destroyed by testing, samples shall be returned at an offeror's request and expense, unless otherwise specified by the Solicitation.
- q. The contractor, as defined in KRS 45A.030(10), agrees that the contracting agency, the Finance and Administration Cabinet (FAC), the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records or other evidence received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 - KRS 61.884. In the event of a dispute between the contractor and the contracting agency over documents that are eligible for production and review, the FAC shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004.
- r. File a performance bond, irrevocable letter of credit or mutually agreed upon surety, if requested by OPS as required by the Solicitation. The bidder shall sign the bond as principal and shall have the bond signed by a surety company authorized to do business in the Commonwealth. If the surety has its authority to do business in Kentucky revoked or withdraws from doing business in the Commonwealth, the bidder shall promptly obtain another surety on the bond. A bond furnished shall be conditioned upon the full performance of all obligations imposed on the bidder by his/her contract with the Commonwealth and shall provide for recovery by the Commonwealth of all damages suffered by it by reason of the bidder's failure to perform any contract obligations. Recovery shall be permissible from the bidder and the surety, or either of them.
- s. Obtain a bond, irrevocable letter of credit or mutually agreed upon surety meeting the requirements of the Solicitation from the bidder's source of supply, if requested to do so by OPS. If a bond is required, it shall be issued to the Commonwealth and shall be conditioned on the source of supply making available to the bidder such equipment or products as will enable the bidder to fulfill its obligations under the contract with the Commonwealth.
- t. Submit the required bonds in a form approved by OPS. OPS may accept an irrevocable letter of credit, if it is in the best interest of the Commonwealth.
- u. Not assign any interest, right or duty in any contract with the Commonwealth without the written consent of the Commonwealth, except that an assignment of benefits may be executed in accordance with FAP 120-08-07. If an assignment of benefits is a partial assignment, the warrant issued by SAS shall be payable jointly to the vendor and the assignee and shall be forwarded to the assignee. An assignee shall be subject to the set-off rights of the Commonwealth provided in KRS 371.040 and KRS 44.030.

- v. Offers shall be submitted under sealed cover and shall be labeled in accordance with the instructions in the Solicitation.
- w. If state offices are closed on days other than scheduled holidays, bid closings scheduled for that day shall be held on the next normal working day at the scheduled hour.
- x. If operating hours of the issuing office are delayed, and it is determined to be in the best interest of the Commonwealth, bid closings at the issuing office may be delayed.
- y. If a power outage or system failure occurs within the state's eProcurement web site that prevents online bid responses or opening, bid closing may be delayed by modifying the Solicitation and posting the revised closing date and time on the state's eProcurement web site.

5. Compliance with State and Federal Law: In addition to any other remedies at law or in equity, OPS may cancel any contract, if there is sufficient evidence to show that:

- a. The contract was obtained by fraud, collusion, conspiracy or other unlawful means, or
- b. The contract conflicts with any statutory or Constitutional provision of the Commonwealth or of the United States.

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

7. Compensable Damages for Breach: The following items shall be included as compensable damages to the Commonwealth for any breach of contract with the Commonwealth:

- a. Replacement costs.
- b. The cost of repeating the competitive bidding procedures.
- c. Expenses incurred as the result of delay in obtaining replacements.

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

8. Delivery, Transportation and Packaging: If awarded a contract, the bidder shall:

- a. Make delivery as stated in the contract. Delivery shall be made by the end of the state's fiscal year in which the contract is awarded unless otherwise specified in the contract.
- b. Make delivery during the working days and hours of Monday through Friday, 8:00 a.m. to 4:30 p.m., not including state holidays, to the point or points specified in the contract.
- c. Pay all packing, transportation and delivery charges to the delivery point specified by the using agency. If the delivery point specified is changed by the using agency, the vendor shall be entitled to reimbursement for any increased cost of transportation from the F.O.B. point shown in the contract document to the delivery point utilized by the agency.
- d. Adequately pack all commodities and equipment, according to accepted commercial practice and the packaging and marketing instructions in the contract document. No charges shall be made for packing cases, bailing, crating, barrels, drums, bags or other containers, except that if the bid so specifies, the vendor may make a memorandum charge and require the using agency to return the containers for

credit with transportation costs paid by the vendor or pay for the containers, if not returned in a reasonable length of time.

- e. **Penalty for Late Delivery:** In addition to being cause for disciplinary action, the vendor who fails to make delivery as specified in the contract shall be charged in accordance with the terms and conditions of the contract. Furthermore, a delivery not made within the time provided by the contract may create a critical situation requiring the commodity to be obtained from some other source. If a critical situation is created and it is in the best interest of the Commonwealth, the contracting agency may enter the open market and purchase the commodity sought under the contract. The vendor shall be charged with the increase in price incurred by the Commonwealth.
 - f. **Delivery of Goods:** If goods are delivered by a vendor that does not conform to the order, the agency shall notify the vendor promptly. If after thirty (30) days of written notice the vendor does not replace rejected materials, the agency may sell the rejected items and submit the proceeds to the vendor less expenses.
- 9. Reporting Equal Employment Opportunity Compliance or Breach:** The contractor or vendor shall, within the time frame set by the contracting agency, complete an Equal Employment Opportunity (EEO) template designed by the FAC, along with a statement of intent to comply in full with all requirements of the Kentucky Civil Rights Act, and to submit data required by KRS 45.560 - KRS 45.640. The EEO form shall provide a breakdown of the bidding party's existing workforce, indicating the race, sex, age, position held, county and state of residence, and date of employment of each employee.
- 10. Failure to Comply:** Failure to comply with any provisions of KRS 45.550 - KRS 45.640 shall constitute a material breach of contract.
- 11. Additional Equal Employment Provisions Under Contracts Utilizing Federal Funds:** The contractor shall comply with all provisions of Presidential Executive Order 11246 as amended. 41 CFR Part 60-1.4.
- 12. Equal Employment Compliance:** During the performance of a contract, the contractor or vendor shall:
- a. Not discriminate against any employee or applicant for employment because of race, color, religion, sex, age forty (40) and over, disability, veteran's status or national origin.
 - b. Take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age forty (40) and over, disability, veteran's status or national origin.
 - c. State in all Solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age forty (40) and over, disability, veteran's status or national origin.
 - d. Post notices in conspicuous places, available to employees and applicants for employment, setting forth the provision of the nondiscrimination clauses required by this section.
 - e. Send a notice to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses.
- 13. Termination of Contracts:** A contract may be terminated for default by the vendor, for the convenience of the Commonwealth, or for lack of appropriation in accordance with 200 KAR 5:312.
- 14. Contract Disputes:** A dispute concerning a question of fact arising under a contract between the Commonwealth and a contractor, if not disposed of by mutual agreement, shall be decided in accordance with KRS 45A.230 and KRS 45A.235. Pending final decision of a dispute, the contractor shall proceed diligently with the performance of the contract.

- 15. Compliance with Federal Requirements:** If a procurement involves the expenditure of federal assistance or contract grant funds, the awarded contractor shall comply with federal law and authorized regulations that are mandatorily applicable and that are not set forth in the Solicitation.
- 16. Terms for Prompt Payment:** Pursuant to KRS 45.454, a bill shall be paid within thirty (30) working days of either the receipt of correct invoice or receipt of goods or services in satisfactory condition. A penalty payment of one percent (1%) per month shall be added to the amount due the vendor for each full or partial month that the payment exceeds thirty (30) working days. As an incentive for earlier payment, bidders for state contracts are encouraged to offer discounts for payments made in less than the prescribed thirty (30) days.
- 17. Modification or Withdrawal of Offers:** An offer may be modified or withdrawn by electronic or written notice received prior to the hour and date specified for receipt of offers. An offer may also be withdrawn in person by an offeror or his authorized representative, if his/her identity is made known and he/she signs a receipt for the offer, but only if the withdrawal is made prior to the hour and date set for receipt of offers. A vendor may withdraw or modify an online bid response before the time set for closing bids by applying the appropriate electronic signature and following the procedure in the state's eProcurement system. An electronic modification shall not mention unit prices or total price, but shall only refer to percentage change or numerical change. In accordance with 200 KAR 5:306, withdrawal of a bid after closing shall be permitted only if clear and convincing evidence indicates that a bidder has made a bona fide error in the preparation of a bid and the error will result in substantial loss to the bidder. Proof shall be submitted to substantiate error and loss to the reasonable satisfaction of OPS.
- 18. Late Offers and Modifications:** The state's eProcurement system will not allow submission of electronic responses after the published date and time for bid closing. A paper copy offer or a modification of an offer received at the office designated in the Solicitation after the hour and date specified for receipt shall not be considered for an award of contract, unless all of the following apply:
- a. The need of an agency is determined to preclude the re-Solicitation of bids;
 - b. No bids are received other than the late bid and it is postmarked before the date specified in the Solicitation or has been logged into the courier's tracking system before the bid closing time; and
 - c. The offer is evaluated and found to serve the best interest of the Commonwealth.
- 19. Multiple and Alternate Bids:** A bidder shall submit one (1) response to the Solicitation and shall not propose more than one (1) model and brand for each bid item. Except for tiered pricing, multiple or alternate bids offering more than one (1) bid price in total or by line-item shall be cause for rejection, unless specifically called for in the Solicitation.
- 20. Award of Contract:**
- a. A contract shall be awarded to the responsible and responsive offeror in accordance with the Solicitation.
 - b. An award may be made to a bidder for all items, a group of items or on an individual item basis, whichever is deemed to be in the Commonwealth's best interest. The Solicitation shall state the method of award and how the bid will be evaluated.
 - c. The Commonwealth reserves the right to reject any offers and to waive informalities and minor irregularities in offers received.
 - d. In the event that no complete bids are received and it is determined to be in the Commonwealth's best interest, the Commonwealth reserves the right to award based on item by item awards.
 - e. An electronic or written award furnished to the successful offeror within the time for acceptance specified in the Solicitation shall constitute a binding contract without further actions by either party.

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

- b. Item numbers;
- c. Description of supplies or services;
- d. Sizes;
- e. Quantities;
- f. Unit prices; and
- g. Extended totals.

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

FAP 111-11-00
MODIFICATION OF CONTRACTS

1. A Modification shall be used to make corrections or changes to a contract. A Modification shall not be used to initiate a change outside the original scope of the contract.
 - a. Modifications are amendments to contracts and, thus, become part of the contract.
 - b. Modifications shall be subject to the provisions of 200 KAR 5:311. The modification shall state the reason and basis for the changes. A copy of the Modification and documentation from the purchasing officer stating the reason and basis for the Modification shall be maintained in the contract file by the purchasing agency.
 - c. Should a situation requiring a contract Modification occur, the agency shall thoroughly document the need for the Modification. This documentation shall be communicated to OPS to explain the rationale for the Modification and its financial impact.
2. During the period of the contract, any Modification shall not be permitted in any of its conditions and specifications, unless the contractor receives electronic or written approval from OPS or the agency issuing the modification. If the contractor finds at any time that existing conditions make Modification of requirements necessary, the contractor shall report the matter promptly to OPS or appropriate agency for consideration and a decision.
3. Contracts issued by OPS for the purchase of commodities, supplies and equipment shall be subject to the provisions of 200 KAR 5:311.
4. Contracts issued by an agency in accordance with its small purchase delegated authority shall not be modified to an amount in excess of the agency's small purchase delegated authority.
5. If OPS issues an MA, the Modification associated with that MA shall also be initiated by OPS. If OPS issues other contracts on behalf of an agency, an agency may request a Modification approval from OPS. An agency shall provide sufficient information to support the basis for Modification and provide a requested effective date for the Modification.
6. An agency may initiate a Modification to a Non-Professional Services Contract for \$20,000 or less and forward it to OPS for approval. The "Reason for Change" shall fully support the basis for the Modification and cite an appropriate contract provision. Supporting documentary evidence that validates the change shall be attached in an electronic attachment.
7. Upon approval by OPS and, if required, encumbrance of funds, a Modification shall be mailed or electronically submitted to the vendor.

Relates to: KRS 45A.030(8); KRS 45A.210(1); 200 KAR 5:311

FAP 111-12-00
PRINTING AND PHOTOCOPYING PROCUREMENT

1. Definitions:

- a. "Kentucky Design and Print Services" means the design and print shop within the Kentucky Transportation Cabinet.
- b. "Photocopying" is defined as a copy of printed or other graphic material made by a device that photographically reproduces the original, or short run color reproduction on color laser or inkjet copier equipment from reflective copy or electronic data.
- c. "Printing" is defined as "lithographic or offset printing, engraving and embossing". Generally this includes higher quality, multi-color printing, with reproduction of photographs and illustrations by offset color lithography, embossing and engraving and other specialty work. The following are not included in the definition of printing and shall not be subject to this policy: the silk screening process and imprinted specialty items like, but not limited to, mugs, pens, decals, vinyl bags, buttons, metal signs, flags, t- shirts, notebooks, placemats, match books, hats and banners.

2. Agencies located within Franklin County:

- a. Unless provided within the agency or by the agency's designated representative, photocopying services shall be ordered from the Kentucky Design and Print Services.
- b. Printing services shall also be ordered from the Kentucky Design and Print Services. Agencies may request services by completing a Print Request form located on the Kentucky Design and Print Services website http://transportation.ky.gov/Print/Documents/KDPS_KCI_Print-Request.pdf and submitting the form to Print@ky.gov. The Kentucky Design and Print Services may:
 1. Fill those orders;
 2. Place those orders with the Division of Correctional Industries, if it determines that Correctional Industries can address the agency requirements in terms of price, quality, and delivery; or
 3. Recommend that the requesting agency seek private sector services through OPS.

3. Agencies located outside of Franklin County:

- a. Only agencies located outside Franklin County may order directly from the Division of Correctional Industries, in accordance with that entity's ordering procedures.
- b. Unless provided within the agency or by the agency's designated representative, photocopying services may be purchased from the private sector.

4. Printing Procurement:

- a. All printing not performed in-house by a state agency, as outlined above, shall be procured by Requisition (RQS) through the state's eProcurement system or other approved electronic format. Printing shall not be obtained through an agency's small purchase authority.
- b. Requisitions for printing of all kinds and classes shall be submitted by the using agency to OPS for award of contract or for purchase from a current Master Agreement. No order for printing, for any amount, shall be placed with any firm except through OPS. No Class II printing order, as defined by KRS 57.011, shall be processed without the written approval of the secretary of the FAC.
- c. The RQS shall specify the number of copies to be purchased, estimated cost and contain complete specifications including paper size, paper type, ink color(s) and line art other than text. The RQS shall affirm that ownership of any plates, artwork or negatives shall be in the name of the ordering agency

and the Commonwealth, and return of the original and any copies shall be required upon agency request.

- d. Pursuant to KRS 57.091, all work under the provisions of KRS 57.011 shall be performed under contract, awarded to the lowest responsible bidder whose bid offers the best value, is in accordance with bidder preference laws and is approved by the Governor.

Relates to: KRS 57.011; KRS 57.091

FAP 111-13-00
COPIER AND PRINTER PROCUREMENT AND DISPOSAL

1. If a state-wide copy and print services Master Agreement (MA) has been approved and is active, the policy and process for procurement and/or disposal of a copier shall be governed by the FAC.
2. If there is not a state-wide copy and print services MA approved and active, the following apply:
 - a. **Procurement:**
 1. All agencies and offices within the Executive Branch shall use the Managed Print Services (MPS) program to procure new copiers and printers unless specifically exempted by the Managed Print Governance Board or their representative. All state and local government agencies may request new MPS devices and services by following the instructions on the MPS website (www.ky-mps.com).
 2. Rental payment shall be initiated in the state's eProcurement system and shall reference the established Managed Print Agreement for that device.
 3. The purchase of copier or printer equipment shall not be permitted unless specifically exempted from the Managed Print Program. Exempted equipment shall be purchased from an established Master Agreement and shall be made by Delivery Order, which may be issued by the agency. Exemptions may be requested by following the instructions on the MPS website.
 4. Agencies are encouraged to contact the Commonwealth Office of Technology, Division of IT Operations through the Commonwealth Service Desk to request an assessment or additional assistance prior to purchasing or entering into a rental agreement.
 - b. **Disposal:**
 1. Agencies and offices that provide a purchase exemption from the MPS program may trade existing non-MPS equipment owned by the Commonwealth to the seller of the new equipment in exchange for a credit, if a trade-in is in the Commonwealth's best interests. An agency shall comply with applicable requirements of FAP 111-54-00 and FAP 220-19-00, if trading-in existing equipment. MPS equipment will be returned to MPS vendor when no longer required.
 2. Non-MPS leased equipment shall be returned to the leasing company after an office or agency is brought into the MPS program. In some cases, this may take several months to satisfy the lease. State owned equipment not brought into the MPS program shall be disposed of in accordance with the appropriate Surplus Property rules within ninety (90) days.
 3. All agencies shall comply with the Enterprise IT Policy CIO-092 - Media Protection Policy when arranging disposal of any copier or printing equipment that contain storage device(s). Equipment must be properly sanitized prior to disposal or release and sanitization procedures shall be properly documented to prevent unauthorized release of sensitive and/or confidential information that may be stored on that equipment and/or on other electronic media.

COMPUTER HARDWARE, SOFTWARE AND RELATED SERVICES PROCUREMENT

1. DEFINITIONS:

- a. "Computer hardware" means mainframe, server, desktop computer, terminal, printer, disk or tape storage equipment, voice and data communications equipment, cabling for local area network, wide area network or building cabling scheme and repair or replacement parts.
- b. "Computer software" means enterprise software, licensed package software, communications software and software trade-ins.
- c. "Contractual service" means software development or modification, programming support service, database or computerized bibliographic services, training and access to remote computer systems.
- d. "Hardware and software maintenance agreement" means service from Master Agreements as well as proprietary service agreements.
- e. "Information technology (IT) system" means any related computer or telecommunications components that provides a functional system for a specific business purpose and contains one (1) or more of the following:
 - 1. Hardware;
 - 2. Software, including application software, systems management software, utility software or communications software;
 - 3. Professional services for requirements analysis, system integration, installation, implementation or data conversion services; or
 - 4. Digital data products, including acquisition and quality control.

2. REVIEW REQUIREMENTS:

- a. All IT System requests are subject to the Strategic Procurement Review (SPR) request procedures and shall be electronically submitted through eMARS.
- b. The threshold for submission of IT System requests for any contract or purchase is set at \$1,000. If the contract or purchase exceeds \$1,000, it shall be submitted on the SPR form. Agencies shall not use split purchasing or any other methods to artificially circumvent this requirement.

3. PROCUREMENT REQUIREMENTS:

The procurement of IT System assets defined in Section 1 of this policy shall comply with the CIO-050 Enterprise Procurement of IT Assets Policy.

FAP 111-18-00

SHREDDING AND BAILING EQUIPMENT PROCUREMENT

1. All Requisitions for shredding and bailing equipment, excluding equipment on Master Agreements, shall be approved prior to purchase by the Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste Management.
2. The Division of Waste Management shall review Requisitions to ensure the equipment is appropriate and compatible with the Commonwealth's material recovery and recycling program.
3. Cut-off shredders and disintegrators shall not be purchased for paper document destruction unless it can be demonstrated that:
 - a. It is necessary for the material to be processed in this manner;
 - b. The material can be processed and included in the material recovery program; and
 - c. The material is compatible with existing infrastructure capabilities for recovery.
4. This policy shall also apply to purchases that fall within the agency's small purchase authority.

Relates to: KRS 224.10-650

FAP 111-20-00
VEHICLE PURCHASES

1. Except for agencies exempted by KRS 44.045 and 200 KAR 40:020, passenger vehicles shall be purchased by OPS for the discharge of the authorized duties and functions of the various agencies of the state. Passenger vehicles shall include vehicles with a weight rating of 3/4 ton or less such as cars, sport utility vehicles, trucks and vans. State-purchased vehicles shall be used for official purposes only.
2. **Vehicle Purchases:**
 - a. If the vehicle is available in the Master Agreement (MA) in the state's eProcurement system, the state agency shall initiate a Delivery Order (DO).
 - b. If the vehicle is not in the MA, the state agency shall electronically submit a Requisition (RQS) for the passenger motor vehicles under the control of the FAC's, Division of Fleet Management in the state's eProcurement system for review and approval by the director of the Division of Fleet Management. The request shall include the following:
 1. Name of the requesting agency;
 2. Description of the requested vehicle;
 3. Intended use of the vehicle;
 4. Number of vehicles requested;
 5. Estimated annual vehicle mileage;
 6. If the vehicle is a replacement or a program expansion (if the vehicle is a program expansion, prior written approval of the secretary of the FAC, or designee, is required.);
 7. Source of funds for the purchase;
 8. If funding for the vehicle was approved in the budget;
 9. If the vehicle will be assigned to a motor pool and, if not, an explanation of its planned uses; and
 10. The name, address, telephone number and signature of the person in the agency authorized to request the purchase.
3. State agencies purchasing non-passenger vehicles not on a contract established by OPS shall create a Requisition in the state's eProcurement system and submit the RQS to OPS for the Solicitation of bids to establish a contract.
4. Passenger vehicles shall be delivered to the Division of Fleet Management, where licensing, identification and other required markings shall be performed. The FAC may recover the actual costs for licensing, identification and other required markings from the agencies that own or assign vehicles outside of the fleet owned and managed by the Division of Fleet Management.
5. The assignment of a passenger motor vehicle to a specific individual shall be discouraged, but may be made upon prior written approval by the secretary of the FAC. The head of the requesting agency shall submit a written request for the assignment to the secretary of the FAC. The request shall explain why the assignment is necessary and, if the vehicle is to be parked at a private residence, include sufficient justification.
6. Unless authority is otherwise delegated by the secretary of the FAC, RQSs for passenger vehicles that are to be owned by or assigned to the agency and are not part of the fleet require prior approval by the

requesting cabinet secretary or agency head, the director of Fleet Management and the secretary of the FAC or designee.

7. An agency shall not lease a motor vehicle from a private individual or business without prior written approval of the secretary of the FAC, unless the lease is with a private individual or business under a contract established by OPS.
8. Exempted agencies that are permitted by statute or administrative regulation to purchase vehicles are required to submit an annual inventory report to the FAC, pursuant to 200 KAR 40:020 Section 3(2). Exempted agencies shall purchase motor vehicles from MAs established by OPS and shall create DOs in the state's eProcurement system.

Relates to: KRS 44.045; 200 KAR 40:010; 200 KAR 40:020

CONCESSION CONTRACTS

1. "Concession services" means vending machines, coin-operated laundry equipment, rental golf carts, ice vending equipment, catered food service and food refreshments sold by others at facilities accommodating civic, social, cultural, sporting or other entertainment or business events.
2. Contracts providing concession services shall not convey rights in real property to a vendor during the contract term.
3. A Requisition for a concession contract shall be submitted through the state's eProcurement system describing the type of service desired and providing sufficient information to solicit the vendor community and secure services.
4. Unless the revenue generated by the concession contract is within the amount designated in the agency's small purchase authority, or if the agency has been given statutory or delegated authority from the FAC, all contracts permitting the establishment and operation of concession services at state operated facilities shall be awarded through OPS.

Related to: KRS 45A.080; KRS 45A.100; 200 KAR 5:306

TAX EXEMPTION FOR PURCHASES

1. KRS 139.470(7) provides that the Kentucky sales and use tax shall not apply to purchases of tangible personal property or services made by any cabinet, department, commission, board or other statutory or constitutional agency of the Commonwealth. This exemption applies only to purchases of property or services for use solely in the governmental function. A purchaser not qualifying as a governmental agency or unit is not entitled to the exemption even though such purchaser may be the recipient of public funds or grants.
2. The exemption applies only to sales made directly to units of state government and cannot be claimed by a contractor purchasing property to be used in fulfilling a contract with the Commonwealth.
3. Under the provisions of KRS 139.495, schools, colleges and universities are exempt from the sales and use tax on purchases that are used within the educational function of the institutions. Organized athletics conducted by an exempt educational institution are an integral part of the educational activities and the exemption is extended to the purchase of athletic equipment and supplies by an exempt institution.
4. Each unit of state government that performs a specific function and makes purchases in its own name shall file an application for exemption. "Application for Purchase Exemption Sales and Use Tax", Revenue Form 51A125 shall be completed and returned to the Department of Revenue.
5. Units of state government qualifying for exemption shall obtain an authorization letter bearing an exemption number. A copy of that letter shall be supplied to vendors upon request. Every invoice shall show that delivery was made to a unit of state government and shall bear the unit's exemption number.

Related to: KRS 139.470(7); KRS 139.495

BONDING REQUIREMENTS FOR VENDORS

1. Pursuant to KRS 45A.190(2), payment and performance bonds shall be furnished to the Commonwealth for all construction contracts in excess of ~~\$40,000~~100,000.
 - a. A performance bond shall be executed by a surety company authorized to do business in the Commonwealth in amount equal to 100% of the contract price.
 - b. A payment bond shall be executed by a surety company authorized to do business in the Commonwealth to cover labor and supplies in an amount equal to 100% of the original contract price.
 - c. A contract shall not be awarded to a contractor who fails or refuses to furnish the bond of a construction project in excess of ~~\$40,000~~100,000. 200 KAR 5:305.
2. For the procurement of other goods and services and if it is in the best interest of the Commonwealth, OPS or another procuring agency may require a successful bidder to file a performance bond, an irrevocable letter of credit or mutually agreed upon surety in a designated amount with the requesting agency.
 - a. A performance bond, an irrevocable letter of credit or mutually agreed upon surety may be required in an amount up to 100% of the amount of the contract, depending upon the nature of the transaction.
 - b. A successful bidder shall have the bond, an irrevocable letter of credit or mutually agreed upon surety signed by a surety company authorized to do business in the Commonwealth. A list of surety companies may be obtained from the Kentucky Department of Insurance. If the surety's authority to do business in Kentucky is revoked, the bidder shall promptly obtain another surety on the bond or an irrevocable letter of credit.
 - c. A bond, an irrevocable letter of credit or mutually agreed upon surety shall be conditioned on the bidder's complete performance of all obligations imposed by the contract. A bond, an irrevocable letter of credit or mutually agreed upon surety shall provide that if the bidder fails to perform an obligation, the Commonwealth may hold the bidder and his surety jointly and severally liable for damages resulting from the breach of the contract.
 - d. If the bidder does not have stock of the commodity or equipment to be purchased in the amount sought, nor the facilities to produce the item in an amount to guarantee satisfactory service, the procuring agency may require the bidder's source of supply to file a performance bond, an irrevocable letter of credit or mutually agreed upon surety conditioned on the sources supplying the bidder as stated in the bid.
 - e. The vendor shall be liable for any damages caused the Commonwealth by failure to file a bond or irrevocable letter of credit. Failure to submit a bond or irrevocable letter of credit within the time frame specified by the buyer, if required, may be grounds for rejecting the bid.

Related to: KRS 45A.190; KRS 45A.195; 200 KAR 5:305

FAP 111-35-00
COMPETITIVE SEALED BIDDING

- 1. Competitive Bid Requirement:** Competitive sealed bids, including multi-step as defined by 200 KAR 5:375, shall be solicited in the state's eProcurement system as a Request for Bids (RFB). Competitive sealed bidding shall be required for all purchases, except purchases made in accordance with KRS 45A.085(1); KRS 45A.095(1) or KRS 45A.100.

 - a. Unless otherwise permitted by law, only OPS or an agency with delegated authority or limited special authority may issue a competitive Solicitation.
 - b. Purchases of major items of equipment estimated to cost \$200,000 or more and equipment projects that constitute a computer or telecommunications system estimated to cost \$600,000 or more shall receive prior approval through the process as outlined in KRS 45.750 - KRS 45.810; KRS 45.750(1)(f)(4); KRS 45.750(1)(f)(6) and conform with executive branch budget preparation instructions.
 - c. When it is anticipated that the resulting contract will disclose "personal information" defined by KRS 61.931(6) to a "non-affiliated third party" defined by KRS 61.931(5), the Solicitation shall include provisions requiring compliance with the Personal Information Security and Breach Investigation Procedures and Practices Act (KRS 61.931 – KRS 61.933).
- 2. Competition among Vendors:** A Solicitation shall be distributed to the vendor community by posting it to the state's eProcurement web site.
- 3. Bid Publication:** Pursuant to KRS 45A.080(3), posting the RFB to the state's eProcurement web site shall satisfy the distribution requirement for bid publication. OPS or an authorized agency may advertise a Solicitation in a major newspaper of general circulation or other publication determined appropriate for the Solicitation. The notice, if advertised, shall be published a minimum of seven (7) days prior to the bid closing date and contain the following information:

 - a. The Solicitation or proposal number;
 - b. The name of the using agency;
 - c. A general description of items or services to be purchased;
 - d. The date, time and place at which Solicitation responses shall be opened;
 - e. An address or phone number from which the Solicitation or proposal may be requested; and
 - f. Any other pertinent information deemed appropriate.
- 4. Best Value Procurement:** A Solicitation shall clearly identify the procurement as a best value award, shall contain the measurable best value criteria and shall clearly explain how the criteria shall be used in the evaluation and award process.

 - a. Best value shall be based on objective and quantifiable criteria that shall include price and the reciprocal preference for a resident bidder required under KRS 45A.494 and has been communicated to the offerors as set forth in the RFB.
 - b. Contracts issued in response to competitive sealed bids shall be awarded by written notice to the responsive and responsible bidder whose bid offers the best value, as defined in KRS 45A.070(1).
- 5. Preference Laws:** Contracts issued in response to competitive sealed bids shall be awarded in accordance with 200 KAR 5:400 and 200 KAR 5:410.
- 6. Minimum Times to be allowed for Bid Response:** Solicitations and material modifications of the Solicitations shall be closed no sooner than seven (7) days after they are uploaded electronically to the

state's eProcurement web site. Solicitation modifications shall be provided adequate public notice of any change to a Solicitation and posted on the state's eProcurement website.

7. Submission of Bids:

- a. A bidder shall submit one (1) response to a Solicitation and shall not propose more than one (1) model and brand for each item listed in the Solicitation. Multiple or alternate bids offering more than one (1) bid price in total or by line item shall be rejected unless specifically called for in the Solicitation.
- b. Offers shall be submitted under sealed cover and shall be labeled in accordance with the instructions in the Solicitation.
- c. A Bid Response submitted using the online Bid Response feature of the state's eProcurement system shall contain all required information for the Solicitation.
- d. A vendor who submits an online Bid Response may submit an exact paper copy of the response as backup, in accordance with FAP 110-10-00(4)(b).

8. Bid Modifications or Withdrawals: A vendor may withdraw or modify a bid in accordance with FAP 110-10-00(17).

9. Use of Facsimile (Fax) Equipment: A faxed response to a Solicitation for competitive sealed bids shall not be accepted unless authorized by the Solicitation. Faxing bid modifications and withdrawals may be permitted. Faxed, electronically mailed and telegraphic modifications may not mention unit or total price. The bidder may only refer to a percentage or numerical change.

10. Receipt of Bids:

- a. Online Bid Responses shall be assigned a date and time stamp from the state's eProcurement system at the time of final approval and submission by the vendor. The state's eProcurement system will not allow submission of online responses after the published date and time for bid closing. Online Bid Responses shall be secured electronically and shall not be viewable by the Commonwealth until the published date and time for bid closing.
- b. All paper copy competitive bids shall be time and date stamped on the sealed cover by OPS or by the authorized procuring agency upon receipt, and the sealed bid shall be filed by Solicitation number in a secure place to protect the integrity of the bid process. No information shall be disclosed as to the number of bids received or the identity of the bidders.

11. Closing of Bids: At the time designated for bid closing, online and paper copy bids shall be opened and made available to the public by reading, if practical. A paper copy bid received after the time specified in the Solicitation shall not be considered, unless no other bids are received. No late bid shall be considered unless:

- a. Is postmarked or logged into the courier's tracking system before the bid closing time;
- b. The need of an agency is determined to preclude the re-solicitation of bids; and
- c. The offer is evaluated and found to serve the best interest of the Commonwealth.

12. Bid Evaluation: All responsive and responsible bidder Solicitation responses shall be evaluated in accordance with the specifications and terms and conditions of the Solicitation on the basis of best value and in accordance with all applicable state laws and preferences including:

- a. Reciprocal preference for Kentucky resident bidders (KRS 45A.494; 200 KAR 5:400);
- b. Preference to the Department of Corrections, Division of Prison Industries (200 KAR 5:410(2); KRS 45A.470(1)); and

- c. Preference for the qualified bidder (200 KAR 5:410(3)).

State agencies shall award each competitively solicited contract from a bid evaluation in the state's eProcurement system. The bid evaluation shall contain a record of all bidders' responses and a copy shall be retained by the awarding agency.

- 13. Disqualification of Bids:** Grounds for the disqualification of bids are defined in 200 KAR 5:306, Section 4 for competitive sealed bidding. In addition, a bid:
 - a. Shall be disqualified, if the bid or proposal does not conform to the requirements of the Solicitation and the General Conditions applicable to all bids, or if the bidder fails or refuses, within a reasonable time to give a clarification about the bid, if requested to do so by the purchasing officer; or
 - b. May be rejected, if the bid contains material alterations or erasures not initialed in ink by the bidder.
- 14. Responsibility of the Bidder:** OPS may, at any time, make a supplemental investigation of the responsibility of any bidder, even though the bidder is a registered vendor.
 - a. Investigation of a bidder may include the bidder's financial responsibility, capacity to produce or source of supply, performance record in the business or industry, compliance with state health rules and regulations, background check, past performance with the Commonwealth, registration with the Secretary of State, and any other matter relating to the bidder's probable ability to deliver in the quantity and at the time required by a contract.
 - b. If OPS concludes on the basis of all available evidence that a particular bidder does not appear sufficiently responsible to assure adequate performance, the bidder's response may be rejected.
 - c. If there is some doubt as to the responsibility of a bidder, but the Commonwealth's interest will be adequately protected by the filing of a performance bond, irrevocable letter of credit or mutually agreed upon surety whether required by the Solicitation or not.
- 15. Collusive Bids:** If it is determined in writing by OPS that there are reasonable grounds to believe that bidders have agreed to restrain competitive bidding by establishing a fixed price on commodities or equipment sought to be purchased by the Commonwealth, or by any other means, the bids of all such bidders shall be rejected, and the bidders barred from further bidding for a period of time considered appropriate.
 - a. If collusion is suspected among any bidders or offerors, a written notice of the facts giving rise to such suspicion shall be transmitted to the Attorney General (KRS 45A.160(1)).
 - b. All documents involved in any procurement in which collusion is suspected shall be retained by the agency until the Attorney General gives notice that they may be released and shall be made available to the Attorney General or the designee upon request pursuant to KRS 45A.160(2).

Relates to: KRS 45A.070; KRS 45A.080; KRS 45A.160; KRS 45A.470;
KRS 45A.490 – KRS 45A.494; KRS 61.931 – KRS 61.933; 200 KAR 5:306;
200 KAR 5:375; 200 KAR 5:400 and 200 KAR 5:410

FAP 111-38-00
REQUISITIONS BY AGENCIES

1. **Submission:** An agency requiring commodities or services in excess of its delegated small purchase authority shall prepare a Requisition (RQS) document in the state's eProcurement system identifying the need for the purchase and submit it to the FAC. A RQS may contain multiple commodities, if the commodities are related. If the commodities are not related, a separate RQS shall be submitted for each class or category of commodities. A RQS that contains insufficient information or that mixes items of different classes shall be modified by the agency.
2. **Lead-Time:** An agency shall submit a RQS in sufficient time to allow OPS to process the request and the vendor to deliver.
3. **Description:** Agencies shall provide clear and concise specifications and standards when preparing a RQS.
 - a. The description shall specify dimensions, types of materials, performance and functions.
 - b. Specifications shall include requirements applicable to the product or service needed, including applicable best value criteria.
 - c. A specification shall identify and include minimum and basic requirements, describe functional features and include variables such as color, grade and size, or provide measurable performance specifications. It shall include any other items such as requests for warranty, labeling, packaging, equipment set-up and an operating manual.
4. **General:** A description shall set forth the essential physical and functional characteristics of the commodity or service required. The following characteristics, as applicable, to express the salient characteristics of the Commonwealth, shall be used in preparing descriptions:
 - a. Common nomenclature;
 - b. Kind of material (i.e., type, grade, alternatives);
 - c. Principles of operation;
 - d. Restrictive conditions;
 - e. Dimensions, size or capacity;
 - f. Intended use, including location within an assembly and essential operational conditions;
 - g. Equipment with which the item is to be used;
 - h. Other pertinent information that further describes the item, material or service required;
 - i. Estimated cost; and
 - j. Measurable criteria for determining best value, which may include:
 1. Inspection;
 2. Testing;
 3. Quality;
 4. Workmanship;
 5. Delivery;
 6. Training;
 7. Total cost of ownership;
 8. Warranty;
 9. Vendor responsibility;
 10. Inventory;
 11. Years in business;
 12. Facilities;
 13. Personnel;
 14. Service;
 15. Life cycle cost;
 16. Suitability for a particular purpose;
 17. Minimum recycled content as required by 200 KAR 5:330; and
 18. Any other relevant criteria.

- 5. Restrictive Descriptions:** Descriptions shall not be written so as to specify a product or a particular feature of a product specific to one manufacturer or vendor, unless it is determined that the particular feature is essential to the Commonwealth's requirements and other vendors lack the essential feature necessary to meet the Commonwealth's need. An agency shall provide documentation to support the determination.
- a. **Brand Name or Approved Equal:** The identification of a requirement by the use of a brand name followed by the words "or approved equal" shall be used only if an adequate specification or more detailed description cannot feasibly be provided. Citing of a brand name in no way indicates a preference, when "or approved equal" is designated.
 - b. **Essential Products:** The words "or approved equal" shall not be added if it has been determined that only a particular product meets the essential requirements of the Commonwealth.
 - c. **Brand Name Products:** The term "brand name product" means a commercial product described by a brand name and make or model number or appropriate description by which such product is offered for sale by the particular manufacturer, producer or distributor. If feasible, all known acceptable brand name products shall be referenced.
 - d. **Use of the "Or Approved Equal":** Brand name or approved equal descriptions shall describe those most important characteristics of the referenced products essential to the needs of the agency. Descriptions shall contain the following information to the extent available, and include other information necessary to describe the item required:
 - 1. Complete common generic identification;
 - 2. The most current applicable model, make or catalog number for each brand name product;
 - 3. Name of the manufacturer, producer or distributor of each brand name product; and
 - 4. An adequate commercial catalog description or extracts there from, to identify the item being required.
- 6. Evaluation and Award - Brand Name or Approved Equal:** Bids offering products that differ from brand name products referenced in a brand name or approved equal description shall be considered for award, if the buyer and the agency determine that the offered products meet the salient criteria and are equal in all material respects to the products referenced in the Solicitation. Bids shall not be rejected because of minor differences in design or features that do not affect the suitability of the products for their intended use.
- 7. Service Descriptions:** Descriptions of services to be procured shall outline to the greatest degree practicable the specified services the vendor is expected to perform. The buyer shall assure that all factors of the service that affect the vendor and his/her cost calculations are fully detailed in the description. Every aspect of the desired service shall be listed in order to insure valid competition between vendors.
- 8. Suggested Sources:** Agencies are encouraged to recommend sources as part of the RQS. The agency shall enter this information on the free form vendor tab of the RQS and include the firm's full name, address, email address, phone number, fax and zip code.
- 9. Delivery:** A reasonable delivery period after receipt of contract that will meet the agency's need shall be stated in the Solicitation. If a delivery period of less than thirty (30) days is essential, the agency shall support the requirement since a contract may be placed on delivery ability and restrict full competition. Date required shall not be stated in such terms as "ASAP" or "RUSH". RQSs with unreasonably short delivery requirements shall require modification by the agency.
- 10. Requisition (RQS) Preparation:**

- a. After determining the requirements for commodities, equipment or services, the agency shall formulate specifications and complete a RQS in the state's eProcurement system. An agency shall place supporting documentation for specifications and standards, best value criteria and descriptions in attachments to the RQS and shall submit, in electronic format, the basic document with all attachments to OPS for all goods and non-professional services.
- b. An agency shall provide full explanation on the RQS document, if:
 - 1. A specific brand name or model of equipment is required; or
 - 2. Equipment is required to be compatible or interchangeable with existing equipment. See FAP 111-10-00(3).
- c. Agencies shall designate the correct procurement units in relation to the quantities desired. When the RQS requests establishment of a Master Agreement (MA), agencies shall provide an estimated annual usage. If other than market items are desired, care shall be taken to correctly identify those items requiring special fabrication, and the agency shall describe those items in detail. If feasible, drawings shall accompany the RQS for those items that require special fabrication.
- d. RQSs that are inaccurate, unclear, unnecessarily restrictive or discourage maximum competition shall require modification by the agency.
- e. A RQS involving computer-related services or equipment shall receive approval from the FAC's Commonwealth Office of Technology in accordance with FAP 111-15-00 prior to the issuance of a Solicitation.
- f. A RQS involving shredding and bailing equipment shall receive approval from the Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste Management in accordance with FAP 111-18-00(1) prior to purchase.

Relates to: KRS 45A.035; 200 KAR 5:330

FAP 111-41-00
DELIVERY AND RECEIVING

1. Definitions:

- a. "F.O.B. Destination Freight Prepaid and Allowed" means the vendor or shipper owns all goods in transit and is liable for delivery to the point of destination. The vendor or shipper is responsible for filing any claims with the delivering carrier for breakage or other loss and for any damage resulting from transportation. The vendor shall include the cost of freight in the unit price.
- b. "F.O.B. Destination, Freight Prepaid" means the vendor or shipper owns all goods in transit and is liable for delivery to the point of destination and shall prepay all handling, crating and transportation charges to the location of the using agency. The vendor shall bill the using agency for reimbursement for the cost of transportation from the shipping point to the delivery point by submitting the prepaid and receipted freight bill with the invoice for the items shipped. A receipt for delivery service and parcel post shipments is not required.
- c. "F.O.B. Origin or Shipping Point" means the agency owns the goods in transit, pays freight charges and shall file any claims with the delivering carrier for losses or damages.

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

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

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

4. Delivery Hours: All deliveries shall be made during the working days and hours of Monday through Friday, 8:00 a.m. to 4:30 p.m., not including state holidays, or as designated by the Commonwealth on the contract or Delivery Order.

5. Penalty for Late Delivery: In addition to being cause for disciplinary action, the vendor who fails to make delivery as specified in the contract shall be charged in accordance with the terms and conditions of the contract. Furthermore, a delivery not made within the time provided by the contract may create a critical situation requiring the commodity to be obtained from some other source. If a critical situation is created and it is in the best interest of the Commonwealth, the contracting agency may enter the open market and purchase the commodity sought under the contract. The vendor shall be charged with the increase in price incurred by the Commonwealth.

6. Receiving Deliveries and Filing Freight Claims: Unless otherwise specified in the contract, each agency is responsible for the prompt receiving, inspecting and acceptance of agency-ordered goods.

- a. Each agency shall designate responsible personnel to certify that:
 - 1. The listed materials were received;
 - 2. The quantities were as stated;
 - 3. The condition was satisfactory, unless noted; and
 - 4. If payment is due.
- b. Each agency designee may use a receiving report in the state's eProcurement system to document items received.

c. **Shortages and/or Damages upon Delivery:**

- 1. If there are any shortages or apparent damages upon delivery, the responsible personnel designee(s) shall note said shortages or damages on the delivering carrier's freight bill, and obtain the delivering driver's signature below this notation before forwarding it to the agency procurement supervisor or designee.
 - 2. If there are any concealed damages or shortages not recognized upon delivery, those shall be reported to the agency procurement supervisor or designee within seven (7) calendar days after receipt of delivery.
 - 3. The agency procurement supervisor or designee shall request an inspection by the delivering carrier's adjuster by completing the company's freight claim form.
 - 4. After receiving an official inspection report offering a compromise offer of settlement, the agency procurement supervisor or designee shall forward a copy of the report, along with a copy of the freight bill, to the vendor immediately.
 - 5. If a vendor fails to handle a freight claim or repair or replace damaged materials promptly, the using agency shall immediately file a Performance Evaluation (PE) document in accordance with FAP 111-42-00(1).
- d. If goods are delivered that do not conform to the order, the agency shall notify the vendor promptly. If after thirty (30) days of the written notice the vendor does not replace rejected materials, the agency may sell the rejected items and submit the proceeds to the vendor less expenses.

7. **Failure to Comply:** If a vendor fails to comply with any of the delivery terms and conditions of a contract, the agency shall follow the procedures in accordance with FAP 111-42-00.

FAP 111-42-00

AGENCY COMPLAINTS OF A VENDOR

1. If a state agency experiences a minor problem or difficulty with a vendor, the agency shall contact the vendor directly and attempt to informally resolve the problem. If the vendor does not act promptly and satisfactorily, the using agency shall immediately file a Performance Evaluation (PE) document in the state's eProcurement system.
2. If an agency experiences a major problem in which the goods or services are not in conformance with the terms and conditions of the contract, a PE document shall immediately be entered into the state's eProcurement system. A PE document shall be filed on a timely basis and shall fully document the nature of the problem.
3. The PE document and any attachment filed in the state's eProcurement system shall contain the contract number, vendor name, commodity or service involved, name of the purchasing officer, brief description of the complaint and action taken to date by the using agency. Copies of all PE documents, supporting documentation and subsequent communications shall be placed in the state's eProcurement system document file maintained by OPS.
4. Upon receipt of a PE document, the appropriate purchasing officer in OPS shall review the information submitted. An agency may be asked for further clarification or supporting documentation. The purchasing officer shall then forward a copy of the complaint to the vendor for a response or corrective action. The complaining state agency shall be copied on all communications between OPS and the vendor.
5. Upon receipt of the vendor response to a complaint, the purchasing officer shall consult with the using agency to determine, if the proposed corrective action is satisfactory or if alternatives offered by the vendor are acceptable. If persistent or chronic problems with a given vendor are documented, or the vendor fails to respond, OPS may initiate disciplinary action in accordance with 200 KAR 5:315(2).

Relates to: KRS 45A.015; KRS 45A.110; 200 KAR 5:312; 200 KAR 5:315

FAP 111-43-00
PERSONAL SERVICE CONTRACTS

1. An agency desiring to procure professional services by a Personal Service Contract (PSC) shall issue a Request for Proposal (RFP) in the state's eProcurement system.
 - a. When it is anticipated that the resulting contract will disclose "personal information" defined by KRS 61.931(6) to a "non-affiliated third party" defined by KRS 61.931(5), the Solicitation shall include provisions provided by OPS requiring compliance with the Personal Information Security and Breach Investigation Procedures and Practices Act (KRS 61.931 – KRS 61.933).
 - b. Pursuant to KRS 45A.695(3), the RFP shall describe the services required, list the type of information and data required of each offeror and state the relative importance of particular qualifications. The Scoring of Proposals is subject to the Reciprocal Preference Law for Kentucky resident bidders (KRS 45A.490 – KRS 45A.494), which shall be applied in accordance with 200 KAR 5:400 and Preference for a Qualified Bidder or the Department of Corrections, Division of Prison Industries (KRS 45A.470 and 200 KAR 5:410).
 1. A draft RFP shall be submitted to OPS for review before it is issued by an agency. The RFP shall be filed at least one (1) week prior to the intended date for the issuance of the RFP.
 2. All RFP's shall be reviewed by OPS prior to the Solicitation posting to the state's eProcurement website. The RFP shall provide adequate notice of the need for the service on the state's eProcurement website. At the discretion of the agency, and if stated in the RFP, a vendor may respond via the online bidding feature of the state's eProcurement system, in accordance with FAP 110-10-00.
 - c. Vendors shall submit all responses to RFPs to the agency. Following receipt of responses to the RFPs, the agency shall determine which offers have met the general conditions of the RFP and are susceptible for award. The technical proposals for those offers determined susceptible for award shall be transmitted to the technical evaluation committee for evaluation.
 - d. The agency shall establish a technical evaluation committee and a cost evaluation committee, if applicable. Technical and cost components shall be evaluated separately. The committee(s) shall be comprised of members who are state employees, unless approval for appointment of non-state employees is granted by the executive director of the OPS. The committee(s) shall review the proposals received. The evaluation committee(s) shall review and evaluate all offers determined to be susceptible for award in accordance with the criteria set forth in the RFP. The determination shall be documented in the Bid Evaluation of the state's eProcurement system by the contracting agency.
 - e. After determining the best proposal received, the agency may request Best and Final Offers, if determined appropriate by the agency in accordance with terms of the RFP. After the Best and Final Offers are received and re-evaluated with criteria included in the Best and Final Offer instructions, the agency may negotiate a fair and reasonable compensation with the selected offeror. After successful negotiations are concluded, the agency shall award the Contract in accordance with the award methodology stated in the RFP.
 - f. The agency shall award a Contract electronically from a Bid Evaluation in the state's eProcurement system and obtain required signatures. The Contract shall include:
 1. All terms and conditions agreed upon;
 2. The sworn statement regarding campaign finance laws required by KRS 45A.110(2) and KRS 45A.115;
 3. The statement regarding revealing of violations of and compliance with certain KRS Chapters required by KRS 45A.485;

4. The Legislative Research Commission (LRC) Proof of Necessity (PON) form;
 5. Language regarding access to documents required by 200 KAR 5:314(1);
 6. Language of KRS 45A.695(10) regarding PSC invoicing requirements; and
 7. Language of KRS 45A.695(7) regarding payment and cancellation clause required by KRS 45A.695(1).
- g. If any changes are made to the agreement along the electronic route, a new copy shall be forwarded to the second party for agreement to the changes.
 - h. A vendor wishing to exempt proprietary information from disclosure as stated in 200 KAR 5:314(1) shall submit a request to the secretary of the FAC for approval before executing a contract. The request shall specifically describe the information requested to be exempted.
2. A PSC for auditing services shall not be established until the Auditor of Public Accounts has declined in writing to perform the service or has failed to respond within fifteen (15) days to a written request for an audit. KRS 45.149(2).
 3. Exemptions from the requirements of KRS 45A.690 – KRS 45A.725 and this policy may be approved by the secretary of the FAC or designee, if an emergency condition exists, if a sole source provider is identified or if it is not practicable or feasible to bid. Exemption requests shall be submitted to the secretary of the FAC or designee electronically through the Strategic Procurement Review Letter of Intent (SPR LOI) in the state's eProcurement system with the following information:
 - a. Approval of the agency head or secretary of the requesting cabinet or agency;
 - b. A description of the needed service and sole source justification or a description of the emergency conditions;
 - c. An estimate of the planned amount of work involved;
 - d. An estimate of the contract cost per fiscal year or biennium including anticipated amendments;
 - e. Identity of an agency contact person; and
 - f. Verification of the unavailability of Commonwealth personnel or the non-feasibility of utilizing Commonwealth personnel to perform the service.
 4. If a governmental emergency, as defined by KRS 45A.690, requires that a vendor begin work prior to the contract being filed with LRC, the agency shall submit a SPR LOI in eMARS to the secretary of the FAC requesting an emergency effective date and describing the circumstances that required the vendor to start work prior to filing the Contract with LRC.
 5. Modification to a PSC shall be processed in the same manner as the original Contract in the state's eProcurement system. A Modification shall be used, if the parties to an established PSC agree, to increase or decrease funds, revise the scope of work, extend the time for performance within the current biennium or any other change.
 6. If an agency creating a PSC does not have legal counsel in-house, the agency shall submit the original document to OPS. OPS shall review the agreement, secure the signatory approval of an attorney from the FAC and return the original to the agency to be retained.

Relates to: KRS 45A.080; KRS 45A.110(2); KRS 45A.115; KRS 45A.470; KRS 45A.485;
KRS 45A.490 – KRS 45A.494; KRS 45A.690 – KRS 45A.725; KRS 61.931 – KRS 61.933; 200 KAR 5:311; 200
KAR 5:314; 200 KAR 5:400 and 200 KAR 5:410

FAP 111-44-00
MEMORANDUM OF AGREEMENT

1. A Memorandum of Agreement (MOA) shall not cross over the budget biennium, unless wholly funded by federal road fund monies.
2. All MOA's shall be created in the state's eProcurement system. The Contract shall include all terms and conditions agreed upon:
 - a. The sworn statement regarding campaign finance laws required by KRS 45A.110(2) and KRS 45A.115;
 - b. The statement regarding revealing of violations of and compliance with certain KRS Chapters required by KRS 45A.485;
 - c. The Legislative Research Commission's Proof of Necessity (PON) form;
 - d. Language regarding access to documents required by 200 KAR 5:314(1); and
 - e. Language of KRS 45A.695(7) regarding payment and cancellation clause required by KRS 45A.695(1).
 - f. Language provided by OPS requiring compliance with the Personal Information Security and Breach Investigation Procedures and Practices Act (KRS 61.931 – KRS 61.933) when it is anticipated that the resulting MOA will disclose "personal information" as defined by KRS 61.931(6) to a "non-affiliated third party" defined by KRS 61.931(5).
3. After the Contract is created, the agency shall secure the signatures of the first and second parties and electronically route the agreement to OPS. The document shall be reviewed and approved electronically by the FAC's Office of General Counsel and the secretary of the FAC. If any changes are made to the agreement, a new copy shall be forwarded to the second party for agreement to the changes. The FAC shall file the Contract with the Government Contract Review Committee.
4. If an agency creating a MOA does not have legal counsel in-house, the agency shall submit the original document to OPS. OPS shall review the agreement, secure the signature of an attorney from the FAC and return the original to the agency.
5. The agency shall retain the original Contract, signed by all parties, in accordance with the Kentucky Department of Libraries and Archives record retention schedule and shall be made available for review upon request.
6. A Modification to a MOA shall be processed in the same manner as the original document. A Modification shall be used if the parties to an established agreement agree to increase or decrease funds, revise the scope of work, extend the time for performance within the current biennium or any other change.
7. Agencies seeking an exemption from the definition of a MOA for agreements with state universities or colleges, when the agreement does not result in the in the use of an employee of a state university or college, to fill a position or perform a duty that an employee of state government could perform if hired, require approval from the OPS. To request approval, a letter addressed to the executive director of the OPS that contains credible and comprehensive justification explaining why the agreement is exempt from the definition of a MOA pursuant to KRS 45A.690(1)(d)(4) must be emailed to OPS.reporting@ky.gov. Letters are logged by the date received, reviewed and returned to the agency with approval, denial or request for additional information.

Relates to: KRS 45A.110(2); KRS 45A.115; KRS 45A.300; KRS 45A.660;
KRS 45A.690 – KRS 45A.725; KRS 45A.485; KRS 61.931 – KRS 61.933;
200 KAR 5:311 and 200 KAR 5:314

FAP 111-45-00
PAYMENT DOCUMENTS

1. Contracts are special purpose documents used for authorizing purchases and payments for commodities and services procured by the Commonwealth.
2. Pursuant to KRS 45A.075, Contracts, except authorized by law, shall be awarded by:
 - a. Competitive sealed bid (KRS 45A.080; 200 KAR 5:306; FAP 111-35-00);
 - b. Competitive negotiation (KRS 45A.085; KRS 45A.695; 200 KAR 5:307; FAP 111-57-00);
 - c. Noncompetitive negotiation (KRS 45A.095; 200 KAR 5:309; FAP 111-08-00; FAP 111-09-00; FAP 111-10-00; FAP 111-39-00);
 - d. Competitive bidding exceptions as established by: FAP 111-08-00; FAP 111-09-00; FAP 111-10-00; or
 - e. Small purchase procedure (KRS 45A.100; FAP 111-55-00).
3. A Contract shall not be required for the following items, unless it is an agreement, which meets the definition of a "Memorandum of Agreement (MOA)" (KRS 45A.690(1)(d)):
 - a. Transactions that can be made by Journal Voucher (JV);
 - b. Items that can be purchased or paid by Imprest Cash or Procurement Card under the agency's small purchase authority; or
 - c. Transactions that can be handled by inter-account.
4. A vendor invoice shall be required for payments against a Contract, if specified in the purchasing document. The original vendor invoice shall be retained in the agency for the period of time required by the appropriate record retention schedule. The invoice shall be on the official invoice form of the vendor. A vendor invoice for a Personal Service Contract (PSC) shall be in the form and manner as required by KRS 45A.695(10).
5. An agency shall ensure that adequate funds are available within its budget for immediate payment before placing an order.
6. An agency shall review invoices for Contract compliance. The contractor shall be held accountable to perform at acceptable levels.
 - a. Acceptance and rejection requirements for goods or services shall be clearly outlined in the Contract.
 - b. The invoice shall only be approved if the product or service billed has been delivered per the specifications within the Contract. Examples of items that shall be monitored include:
 1. The quality of work;
 2. Work schedule/timetable;
 3. Conflicts;
 4. Budgets;
 5. Payments;
 6. Data; and
 7. Subcontractors.

- c. In deliverables-based Contracts, all milestones shall be fully met before remitting payment.
 - d. Invoices shall meet invoicing requirements and have enough detail to be sufficient for a proper audit.
7. An agency shall select the appropriate payment method for all goods and services. For payments against a document that has been entered into and encumbered funds within the state's eProcurement and accounting systems, an agency shall process an electronic invoice that will liquidate the encumbrance when payment is authorized. If exercising small purchase authority, or if specifically authorized in the terms of the Contract, an agency may make payments using a Procurement Card. All payments referencing Contracts established in the state's eProcurement system shall be made in the state's eProcurement system and reference the appropriate Contract.
 8. If an agency pays a vendor more than thirty (30) working days after receipt of both satisfactory goods or services and satisfactory invoice, the agency shall determine under the provision of KRS 45.451 – KRS 45.458 whether the Commonwealth owes the vendor a penalty.
 9. **Master Lease Contract:** An agency desiring to use financing as its payment method for a procurement shall do so using the Master Lease Purchase Contract. All requests and transactions shall be processed under the direction of the OPS.

FAP 111-51-00
CONTRACT ADMINISTRATION

1. The Contract shall be the official notice of award, which will begin the process of contract management. The vendor shall only begin work when the official Contract from the Commonwealth has been authorized.
2. OPS shall rely on the using agency to ensure the contract is being completed or executed as written. Every agency shall designate a programmatic contract manager for each contract he/she administers. The programmatic contract manager shall be familiar with the affected program and its day-to-day operations.
3. It is essential that the contract manager verifies that the contractor complies with all contractual requirements. Factors to be considered in the management of a contractor's performance are:
 - a. Deliverables (milestones);
 - b. Quantity of goods to be delivered and/or services to be performed;
 - c. Meets required specifications;
 - d. **Schedule:** Completion of project and implementation;
 - e. **Outcomes:** Were the savings projected from using this new product or service achieved?;
 - f. **Budget/Financial issues:** Timeliness of invoicing, necessity of contract modifications; and
 - g. Customer service level.
4. If any post-award problem, deviation, change or delay arises that is not provided for in the contract, the matter shall first be handled between the using agency and vendor. If the using agency cannot reach a satisfactory resolution with the vendor, the agency shall refer the matter to OPS in accordance with the provisions of FAP 111-42-00.
5. Agencies shall complete a Performance Evaluation (PE) document in the state's eProcurement system at the completion of or renewal of every contract to indicate a vendor's performance. The PE document assists in the award of future contracts.
6. **Authorities:** A using agency shall not allow any change to the terms of a contract without proper authorization from the issuing agency. Agencies shall document problems that may require contract changes, price adjustments, quantity variations, alternate items or delinquent deliveries, and forward the documents to the issuing agency. The issuing agency shall then initiate any necessary action or contract change with the vendor.

Related to: KRS 45A.035

LONG TERM LEASE OR RENTAL OF EQUIPMENT AND SERVICES

1. **General:** Equipment and service requirements contemplated for lease or rental that are not within the requirements of FAP 111-09-00(6) and are not otherwise covered by an established contract, shall be evaluated on the basis of need, economy and the best interest of the Commonwealth. Such factors as lease or rental versus purchase, long term costs, future needs, depreciation, penalties and other considerations shall be analyzed by an agency to propose a lease or rental arrangement, unless otherwise referenced in FAP 111-09-00. If possible, a lease agreement shall be solicited and awarded on a competitive basis. A lease agreement shall not be formalized between the Commonwealth and any lessor for the intended purpose of circumventing the requirements of competitive bidding and normal purchasing procedures.
2. **Lease Agreement within an Agency's Small Purchase Authority:** An agency may formalize a lease or rental agreement, which does not exceed its small purchase authority, without prior approval from OPS.
3. **Lease Agreements that Exceed an Agency's Small Purchase Authority:**
 - a. If a contemplated lease agreement exceeds an agency's small purchase authority, the agency shall forward a Requisition (RQS) to OPS in the state's eProcurement system with an accompanying electronic attachment supporting the need and reasons for entering into the agreement. This request shall be subject to the approval of the executive director of OPS.
 - b. Upon review and approval by the executive director, OPS shall issue the appropriate contract document in the state's eProcurement system. The document shall be the authority basis for the agency to order items on the contract and make payments to the vendor.
4. **Contract Administration:** The agency shall administer the terms of the contract, ensuring that the vendor is billing according to the contract terms, and providing any maintenance or other requirements according to the contract terms. (FAP 111-51-00)
5. **Post-Award Agreements:** Unless provided in a contract, an agency shall not enter into any further agreement, lease, company order or other document to complete or initiate the terms and conditions of a contract already in effect and awarded via a competitive Solicitation. Any "post-award" signed agreement shall be considered non-binding upon the Commonwealth of Kentucky and cause for breach of contract.
6. **Lease with Purchase Option:** A purchase option in a lease shall be exercised only if the lease containing the option was placed by competitive bidding, competitive negotiation or small purchase procedures, or if the leased equipment is the only product that can meet the Commonwealth's requirements, as determined in writing by the agency head and approved by OPS.
 - a. A request for a purchase option in a lease shall be submitted on a RQS in the state's eProcurement system and shall describe the equipment desired giving all pertinent details and supporting the basis for exercising the option.
 - b. Before exercising a purchase option in the lease, the agency shall:
 1. Investigate alternative means of procuring comparable equipment;
 2. Compare costs and benefits associated with the alternative means and the exercise of the option; and
 3. Document the basis and justification for exercising the purchase option.

Relates to: KRS 45A.035

FAP 111-53-00

PRE-OWNED AND RECONDITIONED EQUIPMENT AND PRODUCTS

1. An agency desiring to purchase pre-owned, reconditioned or demonstrator-type products or equipment that exceeds its small purchase authority shall request from OPS a one-time authorization to purchase under FAP 111-53-00.
2. OPS may approve the purchase of pre-owned, reconditioned, demonstrator or "factory-seconds" products or equipment if:
 - a. The purchase is fully justified;
 - b. The products or equipment are of proven value to and meet the needs of the agency;
 - c. The products or equipment are available at fair market prices;
 - d. If feasible, an independent appraisal of the products or equipment, or documentation of value in a commonly accepted published guide, attesting to the current market value, accompanies the request. Complete data and descriptions, model numbers, serial numbers, brand names and accessories shall also be included; and
 - e. The purchase is in the best interest of the Commonwealth.
3. If the executive director of OPS approves a request to purchase pre-owned, reconditioned, demonstrator or "factory-seconds" products or equipment, the agency may proceed referencing the authority for a purchase in accordance with FAP 111-53-00.
4. The requirement for an independent appraisal of the products or equipment may be waived by the executive director of OPS upon written request of the agency that such independent appraisal is not feasible or possible.

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

FAP 111-54-00
TRADE-IN PURCHASES

1. State-owned personal property may be traded-in toward the purchase of new equipment or products, if the property is first declared surplus in accordance with policy set forth in FAP 220-19-00.
2. Trade-in purchases shall be completed through a Requisition (RQS) submitted to OPS for approval, or through a formal Solicitation posted to the state's eProcurement website. The RQS or Solicitation shall:
 - a. Document that a trade-in is included;
 - b. Include a complete description of the item to be traded, including inventory identification number and serial number, if applicable; and
 - c. Specify the method by which potential respondents may inspect the property.
3. The executive director of OPS shall approve in advance a proposed purchase with trade-in that will not be competitively procured.
4. The agency property officer shall update inventory records upon completion of the transaction in accordance with the FAC's User Guide for Surplus Property Disposal and FAP 220-19-00.

Relates to: KRS 45A.035; KRS 45A.045(5); 200 KAR 5:302(3)

SMALL PURCHASE PROCEDURE FOR GOODS AND NON-PROFESSIONAL SERVICES

1. The small purchase procedure may be used for agency purchases in accordance with KRS 45A.100. This procedure shall not be used for printing or Professional Service Contracts (PSCs).
2. Procurement requirements shall not be parceled, split, divided or scheduled over a period of time in order to subvert the intent of this procedure.
 - a. An agency shall make its purchases based on sound business planning with the goals of economy and efficiency in mind and shall consider storage capacity and product shelf life when purchasing commodities.
 - b. If an agency's projected needs for like items will cost more than what it can purchase under its small purchase limit, the agency shall submit a Requisition (RQS) to OPS for commodities and services. Quotes may be obtained by mail, electronic mail, facsimile or by posting the request to the state's eProcurement website.
 - c. Refer to FAP 220-10-00 for the small purchase procedure for construction services.
3. An agency shall maintain a small purchase order file containing the price quotations requested, quotations received, a tabulation of prices offered and comments by the agency handling the small purchase concerning the basis for placing the order. The agency shall retain these records for audit and review purposes.
4. **Master Agreement (MA) Items:** Items available on a MA may be purchased under small purchase authority from another vendor, if the aggregate dollar amount of the total requirement is less than either \$1,000 or the higher amount required for a minimum order in a specific MA. Agencies finding a comparable item at a lower price than what is listed on the MA shall contact the OPS buyer for review and discussion with the vendor holding the MA. Procurement requirements shall not be parceled, split, divided or scheduled over a period of time in order to subvert the intent of this procedure.
5. **Solicitation Procedure for Non-Professional Services for Agencies with Small Purchase Limits Less than \$20,000:** If a non-professional service is more than an agency's small purchase limit, but is less than \$20,000, an agency may solicit non-professional services by obtaining one (1) quote up to \$5,000, or at least three (3) quotes or posted to the state's eProcurement website, if between \$5,000 and \$20,000.
 - a. A Purchase Order (PO2) shall be created by the agency in the state's eProcurement system and forwarded to OPS, along with supporting documentation containing the request for quotations, the number of quotations requested, a tabulation of quotations received and award justification, for electronic approval prior to a purchase of services.
 - b. For purposes of a term contract, the contract period shall not exceed twelve (12) months. A renewal clause shall be included in the Solicitation in order to extend any resulting contract. Prices shall remain firm for the initial contract period. The contract may be renewed for only one (1) additional year. Under no circumstance may an agency modify a non-professional service contract to exceed \$20,000 per year.
6. **Procedure for Agencies Seeking Delegated Higher Small Purchase Limits:** The secretary of the FAC may grant to a state agency, with a justifiable need, the delegated authority to purchase specific items whose costs frequently exceed the agency's small purchase limit provided in KRS 45A.100(1), in accordance with KRS 45A.100(3) and 200 KAR 5:302.
7. The Office of Policy and Audit may perform periodic procurement audits of the various agencies for compliance with the provisions of KRS Chapter 45A and the FAC Manual of Policies and Procedures, and, if an agency demonstrates deficiencies in procurement expertise or practice, shall recommend that the secretary of the FAC revoke or amend any delegations granted under this policy.

Relates to: KRS 45A.100; 200 KAR 5:302

FAP 111-57-00
COMPETITIVE NEGOTIATIONS

1. A Contract may be awarded by competitive negotiation, if under regulations issued by the secretary of the FAC, the purchasing officer determines in writing that the use of competitive sealed bidding is not practical.
2. OPS shall use a Request for Proposals (RFP) for Solicitations by competitive negotiation. The RFP shall include comprehensive performance requirements, technical provisions, cost provisions and evaluation criteria for evaluating offers. When it is anticipated that the resulting contract will disclose "personal information" as defined by KRS 61.931(6) to a "non-affiliated third party" defined by KRS 61.931(5), the solicitation shall include provisions requiring compliance with the Personal Information Security and Breach Investigation Procedures and Practices Act (KRS 61.931 – KRS 61.933).
3. All responsive, responsible bidder's Solicitation responses shall be evaluated in accordance with the specifications and terms and conditions of the Solicitation, and in accordance with all applicable state laws, to include the reciprocal preference for Kentucky resident bidders (KRS 45A.494) and preferences for a qualified bidder or the Department of Corrections, Division of Prison Industries (200 KAR 5:410; KRS 45A.470). Each Contract shall be awarded from a Bid Evaluation in the state's eProcurement system. The Bid Evaluation shall contain a record of all bidders' responses.
4. An agency needing to purchase services or commodities by RFP shall follow these procedures:
 - a. The agency shall forward a Requisition (RQS) and a copy of the supporting documentation electronically to OPS.
 - b. The supporting documentation shall include, at a minimum, information on specifications, performance requirements and evaluation criteria. An agency shall contact OPS to receive a copy of the standard RFP format as soon as possible after identifying the requirement for an RFP.
 - c. OPS shall review the RQS and supporting materials and return the draft document to the requesting agency with comments, if clarifications, revisions or additions are needed.
 - d. OPS shall put the material in the final RFP format and distribute the RFP to prospective offerors. Posting the RFP to the state's eProcurement system shall satisfy the distribution requirement. The notice shall be published a minimum of seven (7) days prior to the proposal opening date.
 - e. The requesting agency shall nominate a technical evaluation committee, and if applicable, a cost evaluation committee for the project and submit the nomination to OPS for confirmation. The committee(s) shall be comprised of members who are state employees, unless approval for appointment of non-state employees is granted by the executive director of the OPS.
 - f. Vendors shall submit all responses to RFPs to OPS. Following receipt of responses to an RFP, OPS shall determine which offers have met the general conditions of the RFP and are susceptible for award. The technical proposals for those offers determined susceptible for award shall be transmitted to the technical evaluation committee for evaluation. The evaluation committee(s) shall review and evaluate all offers determined to be susceptible for award in accordance with the criteria set forth in the RFP.
 - g. Upon review of the evaluations and scores, OPS and the evaluation committee(s) shall conduct negotiations and determine if "Best and Final Offers" are appropriate. If used, the call for "Best and Final Offers" shall be sent in accordance with the RFP. After the Best and Final Offers are received and re-evaluated with criteria included in the Best and Final Offer instructions, OPS and the requesting agency may conduct negotiations. After successful negotiations are concluded, OPS shall award the Contract in accordance with the award methodology stated in the RFP.
5. An agency having a procurement that may be best handled by competitive negotiation shall contact OPS as early as possible for further coordination and guidance on procedures.

Relates to: KRS 45A.085; KRS 45A.470; KRS 45A.494;
KRS 61.931 – KRS 61.933; 200 KAR 5:307 and 200 KAR 5:410

FAP 111-59-00
FEDERAL DEBARMENT

1. Agencies initiating a procurement of \$100,000 or more, any amount of which is federally funded, shall ensure that the successful vendor is not debarred from doing business with federal agencies. This verification shall be completed prior to awarding the contract.
2. **Verification Process:** The agency shall choose one (1) or more of the following methods to verify that the vendor is not debarred from doing business with federal agencies:
 - a. Verification may be made through the federal website that is used for federal procurement and awards processes.
 - b. An agency may include in a Solicitation a statement that the vendor's signature on a Solicitation response certifies that the vendor is not debarred from doing business with federal agencies and that, if debarred during the life of the contract, the vendor shall notify the Commonwealth buyer of record within seventy-two (72) hours of the federal debarment.
 - c. If the Solicitation does not contain the verification statement within the Solicitation, it shall require the vendor to submit a written certification statement on letterhead stating that it is not debarred from doing business with federal agencies and that, if debarred during the life of an extended term contract, the vendor shall notify the Commonwealth buyer of record within seventy-two (72) hours of the federal debarment. This statement shall be submitted with the vendor's Solicitation response.

Relates to: 200 KAR 5:315

Section 3:
**Policies specifically related to Procurement and Contracts of
Construction and Construction-Related Services**

BIDDER INSTRUCTIONS FOR COMPETITIVELY SEALED BID CONSTRUCTION SOLICITATIONS

1. **Bidder's Representations:** Each bidder, by submitting a bid, swears or affirms, under penalty of law, that:
 - a. The bidder has read and understands the bidding documents and the bid is made in accordance with the bidding documents.
 - b. The bidder has carefully examined the site of the proposed work and is familiar with the local conditions under which the work is to be performed.
 - c. The bid is premised upon furnishing the work required by the bidding documents.
 - d. The bid amount has been arrived at by the bidder independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with any other contractor, vendor of materials, supplies, equipment or services described in the Solicitation, that is designed to limit independent bidding or competition.
 - e. The contents of the bid have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder, or its surety on any bond furnished with the bid and will not be communicated to any such person prior to the bid opening.
 - f. The bidder is legally entitled to enter into a contract with the Commonwealth and the award of a contract shall not create any conflict of interest, including those set out in KRS 45A.330 – KRS 45A.340; KRS 45A.455 and KRS 164.390.

2. **Bidding Documents:**
 - a. A bidder, sub-bidder, sub-contractor and others may obtain bidding documents in the manner and for the charge, if any, stated in the Solicitation.
 - b. A complete set of bidding documents shall be used in preparing bids. The Commonwealth assumes no responsibility for misinterpretations resulting from the use of incomplete sets of bidding documents. The bidder shall supply all information called for in the Solicitation. Failure to supply the specified information may be cause for determining the bid nonresponsive.
 - c. The Commonwealth, in providing bidding documents, does so only for the purpose of obtaining bids on the work and does not confer a license or grant for any other use.
 - d. A bidder shall promptly notify the purchasing officer of any ambiguity, inconsistency or error, which it may discover upon examination of the bidding documents or of the site and local conditions.
 - e. All questions regarding the meaning or interpretation of the bidding documents shall be directed in writing to the purchasing officer. Unless otherwise specified in the Solicitation, questions received less than ten (10) calendar days prior to the date for receipt of bids may not be answered.
 - f. Any interpretation, correction or change of the bidding documents shall be made by an addendum issued by the purchasing agency. Interpretations, corrections or changes of the bidding documents made in any other manner shall not be binding and bidders shall not rely upon such interpretations, corrections or changes.
 - g. Unless otherwise indicated in the bidding documents, the materials, products and equipment described or referenced by manufacturers' or vendors' names, trade names and catalog numbers are intended to establish a standard of required function, dimension, appearance and quality. Unless otherwise stated, equal items may be furnished or used if approved by the purchasing officer in consultation with the architect or the director of DECA.

- h. Addenda shall be published on the Commonwealth's eProcurement web site, and shall be issued to all who are registered planholders with the contracted reprographics company or other distribution authorized by the director of DECA.
- i. Copies of addenda shall be made available for inspection wherever bidding documents are on file.
- j. No addenda of a material nature shall be issued later than seven (7) calendar days prior to the date for receipt of bids, except for addenda postponing the date for receipt of bids or withdrawing the Solicitation.
- k. The bidder shall ascertain prior to submitting a bid that the bidder has received all addenda issued by the purchasing officer for the particular solicitation. The bidder shall acknowledge receipt of all addenda on the Bid Response or by a separate letter to the purchasing officer, which shall be received at or prior to the hour and date specified for receipt of bids.

3. Bidding Procedure:

- a. Bids shall be submitted on the Bid Documents provided by the purchasing officer.
- b. All blanks in the Bid Documents shall be completed and all required support data shall be furnished.
- c. If required in the bidding documents, sums shall be expressed in both words and numerical figures. In the case of discrepancy between the two, the amount in words shall prevail.
- d. The authorized representative of the bidder, who signed the Bid Response, shall initial any alteration or erasure in ink.
- e. The bid shall be firm in offer and conform substantially to the advertised terms, plans and specifications. Any qualifications or reservation imposed by a bidder in the bid retaining the option of accepting, modifying or rejecting an offered contract shall be cause to render the bid not firm and ineligible for consideration of award. Any offer in response to the Solicitation that includes terms contrary or in addition to those in the Solicitation may be considered non-responsive and may be rejected by the Commonwealth.
- f. All alternates specifically called for by the Commonwealth shall be bid. Voluntary alternate bids or an alternate to a lump sum bid shall not be considered.
- g. The bidder shall make no stipulations on the Bid Response nor qualify the bid in any manner.
- h. A person legally authorized to bind the bidder to a contract shall sign the Bid Response. The Bid Response shall also include the legal name of the bidder and a statement indicating whether the bidder is a sole proprietorship, a partnership, a corporation or other legal entity. A bid by a corporation shall also identify the state of incorporation and federal employer identification number.
- i. The purchasing officer shall retain the bid security of bidders until:
 - 1. The contract has been executed and performance and payment bonds have been furnished;
 - 2. The specified time has elapsed so that bids may be withdrawn; or
 - 3. All bids have been rejected.
- j. The completed Bid Response, bid security, and required support data shall be enclosed in a sealed envelope. The envelope shall be addressed to the bid receipt clerk stated in the Solicitation and shall identify the bidder's name and address, the invitation number stated in the bidding documents, closing date and hour. If the bid is sent by mail, the sealed envelope shall contain the notation "BID ENCLOSED" on the face thereof.

- k. Bids shall be received at the designated location prior to the closing time and date for receipt of bids indicated in the Solicitation or any extension thereof made by addendum. Bids received after the closing time and date for receipt of bids may be considered for evaluation and award only if:
 - 1. No other bids were received within the advertisement period;
 - 2. The readvertisement time delay would seriously affect the operations of the using agency; and
 - 3. In the reasonable judgment of the purchasing officer, the bid was finalized prior to the official closing time and date for the receipt of bids.
- l. A bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids.
- m. Oral, telephonic, facsimile or telegraphic bids or changes in bids by such methods are not permitted and shall not be considered.
- n. A competitively solicited contract shall be awarded from a bid evaluation in the state's eProcurement system or all bidders shall be notified of the award in writing.

4. Modification or Withdrawal of a Bid:

- a. A bid may be withdrawn prior to the closing time and date for receipt of bids by written request from an authorized representative of the bidder. The modification or withdrawal of a bid shall be received by the receipt clerk stated in the Solicitation prior to bid closing time to be considered valid.
- b. A withdrawn bid may be resubmitted up to the closing time designated for the receipt of bids.
- c. No bidder may withdraw, modify or cancel its bid for a period of thirty (30) calendar days following closing time and date for receipt of bids without the bid security being subject to forfeiture.

5. Legal Requirements:

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

6. Taxes:

- a. The winning bidder shall be liable for payment of Kentucky sales and use tax.
- b. The winning bidder is deemed the end user of all building materials used in construction projects for the Commonwealth.
- c. The winning bidder may not separately state Kentucky sales or use tax payable by the Commonwealth.

7. Planholder's List: The published planholder and addenda listing is for general information purposes and the exclusion or inclusion of any firm in no way expresses or implies Commonwealth approval or disapproval of the qualifications of any listed bidder, subcontractor, or material or equipment supplier.

8. Bid Bonds: Pursuant to KRS 45A.185, DECA or the using agency may require a bid bond as surety that a bidder will hold its offer firm for a specified period of time. If the Solicitation requires a bid bond, a bidder shall file with the requesting agency a bid bond or certified check in the amount and form specified by the Solicitation with the requesting agency. The bond shall be received either with the bid or prior to the bid closing to be considered.

- a. The bond shall be in an amount equal to at least five percent (5%) of the amount of the bid or as stated in the Solicitation.
- b. In addition to signing the bid bond as principal, the bidder shall have the bond signed by a surety company authorized to do business in the Commonwealth. A list of surety companies may be obtained from the Kentucky Department of Insurance. If the surety on a bond has its authority to do business in Kentucky revoked or, if for any reason it ceases to do business in the Commonwealth, the bidder shall promptly obtain another surety on the bond.
- c. The bond shall be conditioned on full performance of all obligations imposed on the bidder by the Solicitation, including the obligation to keep the price firm for as long a period as specified in the Solicitation, obligation to enter into a contract with the Commonwealth, and the obligation to file a performance payment bond if required by contract. The bid bond shall provide that upon failure to perform an obligation, the Commonwealth may recover from the bidder and the surety, or either of them, any and all damages suffered because of the failure.
- d. If a bidder elects to submit a certified check in lieu of a bid bond, it shall be security for full performance of all obligations referred to in subsection c. of this Section.
- e. If a bidder is not awarded a contract, the certified check shall be returned to that bidder promptly after the award is made. The successful bidder's check shall be returned after the contract is awarded or as soon as the bidder has filed a performance bond, if required. Checks may be returned by certified mail, return receipt requested. The return receipts shall be electronically attached or hard copies attached to each bidder's bid and filed in the bid folder.

9. Consideration of Bids:

- a. Unless the bidding documents indicate otherwise, all properly identified, timely bids shall be publicly opened, read aloud, and listed on the official bid tabulation. Tabulations shall be made available to bidders upon written request to the FAC's Open Records Custodian.
- b. The Commonwealth retains the right to cancel the Solicitation, to reject any and all bids, and to waive technicalities and minor irregularities in bids, if such action is determined to be in the best interest of the Commonwealth.
- c. Grounds for the disqualification of bids are stated in 200 KAR 5:306(4)(2).
- d. Minor or technical deficiencies or irregularities in a bid may be waived by the purchasing officer on behalf of the Commonwealth, if:
 - 1. The purchasing officer determines that it is in the Commonwealth's best interest to do so;
 - 2. The technicalities or irregularities are mere matters of form not affecting the material substance of a bid, represent an immaterial deviation from or variation in the precise requirements of the Solicitation, and have no more than a trivial or negligible effect on price, quality, quantity or delivery of supplies or performance of services being procured; and
 - 3. The correction or waiver of the technicality or irregularity does not affect the relative standing of, or prejudice other bidders.
- e. If the Commonwealth does not waive the deficiency, the deficient bid shall be rejected.

10. Acceptance of Bid:

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

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

11. Qualification of Contractors:

- a. A bidder shall submit a statement of the bidder's qualifications as part of the Bid Response. The purchasing officer shall have the right to make such inquiry as deemed necessary to determine the ability of the bidder to perform the work in a prompt and efficient manner in accordance with the contract documents. The failure of a bidder to promptly supply information in connection with the purchasing officer's inquiry may be grounds for a determination that such bidder is nonresponsive.
- b. In determining the qualifications and responsibility of a bidder, the purchasing officer shall consider the bidder's experience, facility, previous work standing, financial standing, skill, quality and efficiency of construction plant, and equipment proposed to be utilized on the project.
- c. The Commonwealth may reject any bid if an investigation and evaluation of the bidder's qualifications give reasonable doubt that the bidder can perform the work in a prompt and efficient manner in accordance with the contract documents.

12. Unit Prices:

- a. If requested in the Solicitation, a bidder shall submit a list of unit prices in accordance with the Bid Document instructions, which shall include labor, materials, equipment, appliances, supplies, overhead and profit, as applicable.
- b. Unit prices shall be used for the pricing of changes in the quantity of work from that indicated by the contract drawings and specifications, if the Commonwealth has authorized such changes in writing.
- c. Only one (1) unit price shall be quoted for each designated item of work. The unit price shall be used to calculate price adjustments based on deductive as well as additive changes.
- d. Unit prices shall apply to all phases of the work whether the work is performed by the bidder or by the bidder's subcontractor.
- e. For unit prices of a lump sum bid contract, the Commonwealth reserves the right, prior to an award of contract, to evaluate the unit prices and adjust or reject any unit price that is determined by the purchasing officer to be unreasonable in amount.
- f. If a total sum bid is made by line item, and unit prices are quoted for estimated quantities of units of work, such unit prices are not subject to change. However, the purchasing officer reserves the right to correct mathematical errors in extensions and additions by the bidder. In the latter case, the purchasing officer's corrected bid sum total shall supersede the bidder's incorrect computed bid sum total.

13. Subcontractor Listing:

- a. If requested, a bidder shall list the names of subcontractors proposed for each of the principal portions of the work, including those persons or entities who are to furnish material or equipment fabricated to a special design, in the designated place on the Bid Documents.
- b. When a listed subcontractor is proposed for a principal portion of the work as required in subsection a. above, and that subcontractor is not self-performing the work, but is subcontracting the work to lower tier subcontractor, each lower tier subcontractor shall be listed in parenthesis after the name of the main subcontractor. Without such listing of lower tier contractors, the main subcontractor must perform the work of that principal portion of the work with its own forces in its entirety.

- c. A bidder shall establish, to the satisfaction of the purchasing officer, the reliability and responsibility of the listed subcontractors. The bidder may be required by the purchasing officer to provide additional information regarding listed subcontractors, including listed lower tier subcontractors.
- d. If, after due investigation, there is reasonable objection to the qualifications of a listed subcontractor or a listed lower tier subcontractor, the bidder shall, upon written direction of the purchasing officer, submit the name of an acceptable substitute subcontractor or lower tier subcontractor with no change in bid price. The failure of the bidder to promptly comply with this requirement may be grounds for rejection of the bid.
- e. Any listed subcontractor or listed lower tier subcontractor to whom the purchasing officer does not make written objection prior to the award of the contract shall be deemed acceptable to the Commonwealth.
- f. A bidder shall make no other substitution for any listed subcontractor or listed lower tier subcontractor without first receiving the approval of the purchasing officer in writing of the intended substitution and the specific reason for the substitution. A substitution may be disapproved if the purchasing officer has reasonable objection. The purchasing officer may require a written agreement from the subcontractor being released.
- g. Any work performed by a lower tier subcontractor that is not listed on the form of proposal in the manner described above, where required by the purchasing officer, shall be deemed to have been installed at the risk of the general contractor and the Commonwealth reserves the right, at its sole discretion, to reject that portion of the work and require that the work be removed and installed by a listed subcontractor or that the Commonwealth otherwise be compensated by a credit change order for an amount determined by the Commonwealth as reasonable for acceptance of such work installed by a non-listed lower tier subcontractor.
- h. Nothing contained in the bidding documents shall be deemed to create a contractual relationship between the Commonwealth and any subcontractor.

14. Materials and Contractor Listing:

- a. If requested, a bidder shall submit a listing of primary materials and equipment, including manufacturer's name, brand and catalog number. The materials and equipment listing shall be bound with the Bid Response or completed in the time period designated in Section 15.b. of this FAP.
- b. Prior to the final acceptance of a bid, the purchasing officer shall make a preliminary review of the bidder's list of materials and equipment. The purchasing officer shall advise the bidder of the tentative acceptability of such materials and equipment, subject to satisfactory completion and approval of shop drawings, or direct such other action as may be necessary in order to meet the requirements of the contract documents. If any of the listed material or equipment is determined not to meet the requirements of the contract documents, the bidder shall be required to furnish other material or equipment meeting those requirements at no change in bid price. Preliminary review and acceptance of the above list shall not relieve the bidder, as the contractor, of the obligation to furnishing equipment and materials in accordance with the contract documents.

15. Post-Bid Review:

- a. A bidder may have an authorized representative at the bid opening for the submittal of the material and equipment listing and the post-bid review of the apparent winning bid.
- b. Unless otherwise provided in the bidding documents or authorized by the purchasing officer, the apparent winning bidder shall submit the material and equipment listing no later than one (1) hour after the close of the reading of the bids. The materials and equipment listing shall be that listing bound with the Bid Documents.
- c. After opening, the scope of work bid by each bidder shall be reviewed by representatives of the purchasing agency, the using agency, the architect or engineer, and the apparent winning bidder.

Review shall be directed toward subcontractors, material listing, unit prices and qualifications of the bidder.

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

16. Equal Employment and Nondiscrimination:

- a. The Commonwealth is committed to a policy of providing equal job opportunities on public contracts and prohibiting discrimination based on race, creed, color, sex, age, religion, national origin or disability in employment. KRS 45.560 – KRS 45.640.
- b. The utilization of minority vendors and subcontractors is encouraged, whenever possible, on public works contracts. The bidder and contractor should make full efforts to locate minority business persons. KRS 45A.610.
- c. Unless exempted in accordance with KRS 45.590, the provisions of KRS 45.560 – KRS 45.640 shall be binding upon the declared successful bidder and the resulting contract shall contain the provisions set forth in KRS 45.570(2).
- d. Unless a bidder is exempt under KRS 45.560 – KRS 45.640, the apparent successful bidder shall submit to the purchasing agency in the manner described and on the form(s) required, the information required by KRS 45.600 within five (5) calendar days of being declared the apparent low bidder. The form(s) shall be reviewed by the FAC Office of Equal Employment Opportunity and Contract Compliance.

17. Performance and Payment Bonds:

- a. Pursuant to KRS 45A.190 and KRS 45A.195, a bidder shall deliver the required performance and payment bonds to the purchasing agency upon notification of intent to award, or, with the approval of the purchasing officer, within fourteen (14) calendar days after that date. Otherwise, the Commonwealth may determine that the proposed awardee has abandoned the Bid Response and the bid shall become null and void.
- b. Unless otherwise specified in the bidding documents, the bonds shall be written on the form bound in the bidding document in the number of copies to be specified by the purchasing officer.
- c. A bidder shall require the attorney-in-fact, who executes required bonds on behalf of the surety, to affix thereto a certified and current copy of his/her Power of Attorney. The date of the Power of Attorney shall not precede the date of the bonds. The bonds shall be executed with a licensed resident or non-resident agent, who represents insurance companies authorized to do business in Kentucky.

18. Award of Contract:

- a. The issuance of an award of a contract is contingent upon securing an acceptable bid that is within the amount of budgeted funds and determining that the award of contract is in the best interest of the Commonwealth.
- b. Unless otherwise provided in the bidding documents, the Agreement between the Commonwealth and the contractor shall be written on the standard form of agreement bound within the Solicitation. The Commonwealth shall not be required to enter into or sign further agreements, leases, company orders or other documents to complete the Agreement.
- c. The Commonwealth's acceptance of the bidder's offer in response to the Solicitation, indicated by the issuance of a contract award, shall create a binding agreement between the parties consisting of the documents listed below. In the event of a conflict between the provisions contained in the contract, the order of precedence shall be in the same listing order as below.

1. Solicitation including any addenda;
2. Specifications;
3. Special Conditions;
4. General Conditions;
5. Technical provisions of the specifications;
6. Drawings/plans; and
7. Bid Response to the Solicitation.

19. Award of Construction and Construction-Related Contracts: Capital construction funded contracts require properly authorized Appropriation, Allotment, Revenue Budget, Project Management Master and Journal Voucher Transfer documents (SAS-5, SAS-14) for award of contract and allocation of construction funds. The issuing agency shall execute a construction contract using agency or general fund accounts on the basis of a duly signed agency Purchase Request.

FAP 220-09-00
FORCE ACCOUNT PROJECTS

1. "Force Account Project" means a capital construction project that is performed by a state agency utilizing material and labor provided by the agency. This definition shall not apply to capital outlays of the Kentucky Transportation Cabinet for roads and bridges and the Department of Corrections for repair, maintenance, improvements or expansion of present correctional facilities on which prison inmate labor will be utilized.
2. In accordance with KRS 56.491, a force account project shall not exceed ~~\$250,000~~500,000.
3. DFSS is the contact agency for force account determinations. Each using agency shall maintain all records for authorized force account construction projects.
4. A state agency seeking approval and establishment of a force account project shall submit to DFSS a written request with sufficient description of the project and estimated cost.
5. Construction plans shall be submitted to and carry the review approval of the Department of Housing, Buildings and Construction as to conformity with the Uniform State Building Code, if applicable.
6. The requesting agency shall indicate the source of available funds and the estimated cost of materials, labor and contracted services. Contracted services shall be minimized in force account projects.
7. All labor, materials, equipment and supplies required on an approved project shall be procured in accordance with KRS Chapter 45A.
8. A monetary value shall be assigned to the labor input of the agency's employees for the performance of the project.
9. Pursuant to KRS 56.491, DFSS shall not approve any project if:
 - a. The project is not needed;
 - b. The proposed method of financing is not sound;
 - c. The total cost of the project will exceed the amount of funds available for the project;
 - d. The cost of the project will exceed the statutory dollar limit; or
 - e. The work contemplated will be insufficient to accomplish the purpose of the project.
10. Approval of the project by the DFSS shall be processed by the Commonwealth's Appropriation, Allotment, Revenue Budget, Project Management Master and Journal Voucher Transfer documents (SAS-5, SAS-14). These documents indicate authorization of the project and allocation of funds to designated account and expenditure codes.
11. A project shall not be separated into smaller projects in order to circumvent the statutory maximum dollar limit for a force account project or to facilitate split purchasing.
12. The using state agency shall maintain fiscal and procurement records on each authorized force account construction project, in accordance with the applicable record retention schedules provided by the Kentucky Department of Libraries and Archives. The records shall indicate fund allotments, expenditures, balances and the procurement process for materials and equipment.

Relates to: KRS 56.491

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

1. A construction-related small purchase may be made by an agency if the cost of filling the reasonably foreseen needs of the agency is estimated to be no more than the amounts listed in Table I.
 - a. The FAC, the Legislative Branch and institutions of higher learning shall obtain, from qualified sources of supply, at least one (1) price quote for construction services of ~~\$20,000~~50,000 or less and at least three (3) price quotations for construction services between ~~\$20,000~~50,000 and ~~\$100,000~~40,000.
 - b. All other state agencies shall obtain, from qualified sources of supply, at least one (1) price quote for construction services of \$3,000 or less and at least three (3) price quotations for construction services between \$3,000 and \$10,000. An agency shall not purchase construction services totaling more than \$10,000 without a delegated higher small purchase authority limit.

Table I
Basic Construction-Related Small Purchase Limits

If the Type of Purchase is:	Then one (1) quote is required for purchases equal to or less than:	Then at least three (3) quotes are required for purchases for these amounts:
Construction Services for the FAC, institutions of higher education and the Legislative Branch	\$20,000 <u>50,000</u> or Less	\$20,000 <u>50,000</u> to \$100,000 <u>40,000</u>
Construction Services for all other state government agencies	\$3,000 or Less	\$3,000 to \$10,000

2. Procurement requirements shall not be parceled, split, divided, or scheduled over a period of time in order to subvert the intent of this procedure. If an agency's projected need for construction services will cost more than what it can purchase under its small purchase limit, the agency shall submit a Requisition to DECA.
3. Quotes may be obtained by mail, facsimile, electronic mail, or by posting the request to the state's eProcurement web site. A quotation shall contain the minimum specifications:
 - a. Issuing agency address;
 - b. Due date and time of solicitation closing;
 - c. Address to which quotation shall be delivered;
 - d. Description of the product or services to be provided; and
 - e. Solicitation instructions and conditions.
4. An agency shall maintain a small purchase order file containing the price quotations requested and those received, a tabulation of prices offered, and comments by the agency concerning the basis for placing the order. The agency shall retain a file copy of these records for audit and review purposes.
5. **Master Agreement (MA) Items:** Construction service items available on a MA may be purchased under small purchase authority from another contractor. Agencies finding a comparable item at a lower price than what is listed on the MA shall contact the contract's buyer for review and discussion with the vendor holding the MA. Procurement requirements shall not be parceled, split, divided or scheduled over a period of time in order to subvert the intent of this procedure.

6. **Procedure for Construction Services for Agencies with Small Purchase Limits Less than \$40,000:** If a construction or building maintenance service is more than an agency's construction services small purchase limit but is less than \$40,000, an agency may solicit the service through the state's eProcurement system, if a Solicitation is posted to the state's eProcurement web site. The agency shall forward the Requisition to the director of the DECA for approval prior to the purchase of the services.
7. The secretary of the FAC may grant to a state agency, with a justifiable need, the limited delegated authority to purchase specific items whose costs frequently exceed the agency's small purchase limit provided in KRS 45A.100(1), in accordance with 200 KAR 5:302. Agencies granted a higher delegated small purchase limit shall request the number of price quotations indicated in Table II, unless the Secretary's delegation specifies an alternate table or number.

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

If the Delegated Agency Construction Small Purchase Limit is:	Then one (1) quote is required for purchases equal to or less than:	*Then at least three (3) quotes are required for purchases for these amounts;
\$15,000	\$5,000	\$5,000 to \$15,000
\$20,000	\$10,000	\$10,000 to \$20,000
\$40,000	\$20,000	\$20,000 to \$40,000

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

8. DECA and the Office of Policy and Audit may perform periodic procurement audits of agencies for compliance with the provisions of KRS Chapter 45A and the FAC Manual of Policies and Procedures. If an agency demonstrates deficiencies in procurement expertise or practice, DECA shall recommend that the Secretary revoke or amend any delegations granted.

Relates to: KRS 45A.100; 200 KAR 5:302

SOLICITATIONS FOR ARCHITECT/ENGINEER SERVICES AND PROCEDURE FOR PREQUALIFICATION

1. **Solicitation:** A Solicitation for architectural or engineering services shall comply with the provisions of KRS 45A.825 and may include the following evaluation factors:

a. **Experience and ability:**

1. Number of professionals in the firm including consultant disciplines.
2. Number of technical, administrative and other personnel in the firm.
3. Number of years the firm has been in the business.
4. Types of projects on which the firm or key personnel have been the prime design professional or provided significant professional design services.
5. Qualifications and experience of the proposed project team.
6. Availability of technical equipment.
7. Volume of design work in the last three (3) years.

b. **Past performance:**

1. For the prior three (3) year period, the ability to design projects within specific project budgets and schedules.
2. Average percentage by which construction bids deviated from the estimated construction cost.
3. Change orders as a percentage of the bid construction amount.
 - a. Change orders caused by errors and omissions of the architect or engineer.
 - b. Change orders requested by the Commonwealth.
 - c. Change orders caused by found conditions or regulatory decisions.
4. Design performance and experience of firm and key personnel with prior projects of similar scope.
5. Construction supervision services and post construction services.
6. Record of compliance with:
 - a. Regulatory agencies.
 - b. Environmental regulations.
 - c. Equal employment opportunity regulations, policies and procedures.
 - d. Building codes.
- c. Existing workload relative to the size of the firm and capacity to perform the project.
- d. Geographical location with respect to the project:
 1. Location of offices of persons that will perform the work.

2. Size of the staff, including professional personnel, in the offices that will perform the work.

e. Payment of sub-consultants.

2. Prequalification:

- a. In order to submit a response to a request for proposal, an architectural or engineering firm shall be prequalified by DFSS.
- b. An architectural or engineering firm shall prequalify by filing with DFSS a completed current Federal Standard Form 330. This form may be submitted concurrently with a response to a request for proposals.
- c. The prime consultant shall be registered in the Commonwealth with the appropriate professional governing body.

3. Receipt of Proposals:

- a. Proposals shall be received at the designated location prior to the closing time and date for receipt of proposals indicated in the solicitation or any extension thereof made by addendum. Proposals received after the closing time and date for receipt of bids shall be considered for evaluation and award only if:
 - 1. No other bids were received;
 - 2. The re-advertisement time delay would affect the operations of the using agency; and
 - 3. In the reasonable judgment of the purchasing officer, the bid was finalized prior to the official closing time and date for the receipt of bids.
- b. Submittals received that do not conform with the requirements of the solicitation may be deemed non-responsive.

4. Selection Committee Project Evaluation Sheets:

- a. Each member of an architectural or engineering services selection committee shall use the project evaluation sheet provided by DFSS in evaluating a firm's proposal.
- b. Upon completion of evaluation of all the responses to a request for proposals, each evaluation committee member shall sign his/her individual project evaluation sheet and shall submit the sheet to the chairperson of the committee. The chairperson of the selection committee shall record the composite score from each individual evaluation sheet on the evaluation summary sheet for the project. The evaluation summary sheet shall be signed by each participating member of the selection committee. This procedure shall also apply to project interview evaluation sheets used during the interview process as required by KRS 45A.825(8).
- c. All evaluation sheets and evaluation summaries for a project shall be maintained by DFSS.

Relates to: KRS 45A.825

COMPETITIVE NEGOTIATIONS: CONSTRUCTION-RELATED

1. A contract may be awarded by competitive negotiation if, under regulations issued by the secretary of the FAC, the purchasing officer determines in writing that the use of competitive sealed bidding is not practical. The written determination shall be approved by the director of DECA.
2. Advertisement shall be in the same manner as those set forth in FAP 220-05-00.
3. All responsive, responsible bidder's solicitation responses shall be evaluated in accordance with the specifications and terms and conditions of the solicitation, and in accordance with all applicable state laws, to include the reciprocal preference for Kentucky resident bidders (KRS 45A.494) and preferences for a qualified bidder or the Department of Corrections, Division of Prison Industries (200 KAR 5:410, KRS 45A.470). Each contract shall be awarded from a bid evaluation in the state's eProcurement system. The bid evaluation shall contain a record of all bidders' responses.
4. An agency needing to purchase construction services or commodities by competitive negotiation shall follow these procedures:
 - a. Notice shall be posted advising of the availability of proposal documents and specifications, and of the time and date for receipt of proposals.
 - b. The method for receipt of proposals, method of award, and criteria shall be clearly defined in the solicitation.
 - c. If it is anticipated that an award may be made on the original offer without further submittals or negotiations, it shall be so stated in the notice.
 - d. Proposals shall be received and time stamped by the procuring agency prior to the closing time and date for receipt of proposals indicated in the solicitation or any extension thereof made by addendum.
 1. A public opening shall not be held.
 2. Proposals shall be opened by the purchasing officer and copies distributed to the using agency, the consultant, DECA, and all others as applicable, for review and recommendation.
 3. All proposal prices shall be kept confidential and the proposals shall not be subject to public inspection until a contract has been awarded.

Relates to: KRS 45A.085; 200 KAR 5:307

**FAP 220-18-00 CAPITAL
PROJECT ACCOUNTS CLOSING PROCESS**

1. Definitions:

- a. "Substantial Completion" means the point at which, as certified in writing by the Architect-Engineer, the Project is at a level of completion in strict compliance with the Contract. Approvals by public authorities have been given such that the Using Agency can enjoy beneficial use or occupancy and can use, operate and maintain it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete and such partial use or occupancy shall not be evidence of Substantial Completion. Typically warranties start on the date of Substantial Completion.
 - b. "GOPM" means the Governor's Office for Policy and Management.
 - c. "Project has been accepted by the Commonwealth" and "project acceptance" means the date one (1) year after the actual date of Substantial Completion, as certified by DECA. This coincides with the standard one (1) year construction warranty period.
 - d. "Quarterly Report" means DECA's Quarterly Capital Construction Report.
2. A capital construction project account shall be closed within thirty (30) days of project acceptance, in accordance with KRS 45.770(5). A state agency or university shall close a capital construction project account within thirteen (13) months from the date of beneficial occupancy, unless GOPM and DECA grant an extension of time.
 3. DECA shall modify the Quarterly Report to reflect the estimated completion date and the actual date of beneficial occupancy for each project. DECA shall formally notify the agency of the actual date of beneficial occupancy for each agency project.
 4. DECA shall publish the most current Quarterly Report to a network or Internet location accessible by all agencies. An agency shall monitor its capital construction projects as they approach the thirteen (13) month closing deadline. An agency shall either initiate the documents to close a project in a timely manner or provide sufficient written justification for approval to allow the project account to remain open beyond the closing deadline.
 5. If circumstances prevent project closure within the thirteen (13) month closing period, the agency shall provide written justification for the delay to GOPM and DECA. If a delay in closing the project is approved, this information shall be listed in the comments section of the Quarterly Report addendum.
 6. DECA shall create an addendum to the Quarterly Report to contain:
 - a. A listing of projects that have reached the thirteen (13) month closing deadline;
 - b. Status of each project;
 - c. The remaining balance of project funds, if the project has not been closed; and
 - d. Comments explaining miscellaneous project information or the reason the project has not been closed.
 7. Agency officials shall be prepared to appear before the Capital Projects and Bond Oversight Committee to explain the circumstances that require a project to remain open after the thirteen (13) month closing period.

Relates to: KRS 45.770(5)

Section 4:

Policies related to Real Property

ACQUISITION OF REAL PROPERTY

1. In accordance with KRS 56.463, DRP shall be responsible for the acquisition of all real property interests, by purchase or donation, for all departments, agencies and administrative bodies of state government, except the Kentucky Transportation Cabinet highway right-of-way purchases, the Kentucky Community and Technical College System and those universities which have elected to administer their real property functions pursuant to KRS 164A.555 – KRS 164A.630.
2. All requests for acquisition of real property shall include:
 - a. A description of the property including a map and source deed;
 - b. An explanation of the need; and
 - c. A statement concerning the means of financing the acquisition, including an applicable inter-agency account number as all costs of acquiring real property shall be the responsibility of the requesting agency.
3. **Preliminary Stages:**
 - a. An agency acquiring an interest in real property shall have a preliminary discussion with the landowner to determine the landowner's willingness to consider the Commonwealth acquiring a real property interest. If the landowner is willing, the agency shall provide the DRP the appropriate documents to initiate the acquisition process. Prior to requesting the acquisition, the agency shall consider all current regulations or issues relating to the property and how it will be managed properly by the agency, if acquired.
 - b. Once the acquisition process is initiated, DRP shall conduct all further discussions with the landowner.
 - c. Once the landowner has executed a contract obligating him to sell the property to the Commonwealth (conditionally or otherwise), DRP shall, by a competitive bid process among attorneys on the FAC approved title attorney list, obtain a title opinion and a commitment by a title insurance company authorized to do business in the Commonwealth of Kentucky, to issue an Owner's Title Insurance Policy insuring the Commonwealth's interest in any property acquired. Following closing and recording of the deed, the title insurance company shall then provide a title policy to the DRP with the Commonwealth of Kentucky listed as an insured party. The title opinion, title insurance commitment and final title insurance policy shall all be reviewed by the FAC Office of General Counsel.
 - d. If applicable, DRP shall bid out appraisal(s) of real property utilizing appraisers under contract with the Kentucky Transportation Cabinet. For property interest estimated to cost \$200,000 or more, two (2) appraisals shall be performed. DRP shall perform a desk review of the appraisal and/or hire a review status appraiser as necessary.
4. **Formal Declaration of Need:**
 - a. A written formal declaration of need shall be prepared and signed by the appropriate agency personnel and submitted to DRP.
 - b. Based on said determination, DRP shall prepare an Official Order for the secretary of the FAC to review and approve. The Official Order shall authorize acquisition of the property not to exceed the fair market value.
 - c. Upon the Secretary's approval, DRP shall be responsible for coordinating, directing and performing all aspects of the acquisition process. The requesting agency shall not be directly involved in the acquisition of the land except as follows:

1. Officials of the requesting agency may be asked to accompany a representative of DRP to assist in an explanation to the landowner of the Commonwealth's necessity to acquire the real property interest and the agencies future management of the property, if applicable.
2. The requesting agency shall cooperate with DRP during the acquisition phase.

5. **Contract Phase:**

- a. **Negotiation:** Agents of DRP shall negotiate in the name of the Commonwealth with the landowner. If the landowner is agreeable, a Land Contract shall be entered into with the landowner.
- b. **Survey:** If required by law, the FAC shall obtain a survey of the property.
- c. **Environmental Review:** The FAC shall conduct an environmental review of the property, and if environmental concerns are found, further testing shall be procured at the expense of the acquiring agency.

6. **Condemnation:**

- a. If the landowner refuses the Commonwealth's offer to purchase the property and a determination has been made by the director of DRP that the property cannot be acquired under by the steps outlined, the requesting agency shall be notified in writing.
- b. If the agency is able to acquire property through condemnation and determines it is necessary to proceed:
 1. The agency shall address to the secretary of the FAC a formal request to condemn the property;
 2. The request shall be sent to the director of DRP, and DRP shall then prepare an Official Order authorizing condemnation; and
 3. The agency's formal request and the Official Order shall be submitted for approval to the secretary of the FAC. If the request is approved, DRP shall move forward with acquisition.

7. **Final Steps:**

- a. DRP shall coordinate with FAC legal staff for preparation of closing documents.
- b. DRP shall conduct the closing with the landowner and record the necessary documents at the local courthouse.
- c. DRP shall provide a copy of the recorded deed or other necessary legal documents to the acquiring agency, Office of the Controller and the Secretary of State.

Relates to: KRS 45A.045; KRS Chapter 56

DISPOSITION OF REAL PROPERTY

1. Pursuant to KRS Chapters 45A and 56, DRP shall be responsible for the disposition of all real property owned by the Commonwealth except property owned by the Kentucky Community and Technical College System and universities that have elected to administer their real property functions pursuant to KRS 164A.555 – KRS 164A.630.
2. The agency requesting to surplus property shall forward to DRP a written request declaring the property surplus with all supporting documentation. Unless the secretary of the FAC determines it is in the best interest of the Commonwealth to proceed otherwise, the property shall be sold by sealed bid or at public auction, subject to the provisions of KRS 45A.045 and KRS 56.463.
 - a. Upon receipt of the agency's written request and all supporting documentation requested by DRP, including the agency's recommended manner of disposition, DRP shall review and evaluate the request.
 - b. DRP shall notify any governmental agency deemed to have a likely interest of the surplus real property availability.
 - c. If DRP concurs with the agency's recommendation, an Official Order authorizing the disposition shall be submitted to the secretary of the FAC for review and final approval.
 - d. If required by law, or if it is determined to be necessary by DRP, a survey and appraisal of the property shall be performed.
 - e. DRP shall publicize the availability of surplus real property. The publication shall include a description of the property, date of bid opening or auction date and any special restrictions. The requesting agency shall be responsible for advertising costs and any signage on surplus real property.
 - f. All administrative costs associated with disposition of the property shall be the responsibility of the requesting agency. If the secretary of the FAC approves a negotiated sale, associated costs may be passed on to the grantee.

Relates to: KRS 45A.045; KRS 56.463; KRS Chapter 45A and 56

Section 5:

Policies related to Surplus Property

FAP 220-19-00
SURPLUS STATE-OWNED PERSONAL PROPERTY

1. Authority to Dispose:

- a. Pursuant to KRS 45A.045(5), requests to sell, trade or otherwise dispose of state-owned personal property shall be submitted to the FAC Division of Surplus Property in accordance with Section 2 of this FAP. Requests shall be approved by the secretary of the FAC.
- b. Pursuant to KRS 45A.045(5), the secretary of the FAC may delegate the authority to declare and dispose of surplus state-owned personal property to an agency head requesting delegation. The request for delegation shall:
 1. Be signed by the agency head;
 2. Assure that only property not needed or deemed non-serviceable by the agency shall be declared surplus;
 3. Assure compliance with KRS Chapter 11A and that no employee of the Commonwealth shall personally benefit from the disposal of surplus property;
 4. Certify that disposal shall be in accordance with applicable federal and state laws and regulations, and FAC policies and procedures;
 5. Acknowledge that disposal of vehicles, boats, and other licensed equipment shall be excluded from the delegation unless specifically stated otherwise in the delegation, in accordance with Section 2 of this FAP; and
 6. Assure that disposal will serve the Commonwealth's best interests by weighing each of the disposal options provided in Section 2 of this FAP.
- c. An agency with offices in, or within five (5) miles of, Franklin County that has been delegated authority to dispose of state-owned surplus personal property shall deliver the property to the FAC Division of Surplus Property warehouse for actual disposal. This policy applies if the property is suitable for transfer or sale; otherwise contact the Division of Surplus Property for further instruction.
- d. An agency with offices more than five (5) miles outside of Franklin County that has been delegated authority to declare and dispose of state-owned surplus personal property may:
 1. Deliver the property to a FAC Division of Surplus Property warehouse for actual disposal, if property is suitable for transfer or sale; or
 2. Dispose of the property by one of the methods provided in Section 2 of this FAP.

2. Disposal:

- a. An agency wishing to dispose of state-owned personal property shall declare the disposal one of two ways:
 1. If the personal property shall be relinquished to the Division of Surplus Property warehouse, the agency shall submit an Authorized Surplus Request through the Surplus Property Management System (SPMS).
 2. If the personal property shall be disposed by another method other than relinquishing to the Division of Surplus Property warehouse, the agency shall submit a State-Owned Personal Property Declared Surplus Form. This form shall be prepared by the agency's property officer and approved by the agency head. The Division of Surplus Property shall determine the specific time, method, and grouping or bundling of items for disposal.

- b. Disposal of surplus personal property shall be by one of the following methods:
 - 1. Intra-agency or inter-agency transfer;
 - 2. Use of the property as a trade-in the procurement of a similar item with an outside vendor in accordance with FAP 111-54-00;
 - 3. Transfer to a unit of local government within the Commonwealth at a price determined by the Cabinet, and in accordance with Section 3 of this FAP;
 - 4. Transfer, at a price determined by mutual consent and in the Commonwealth's best interest, to a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, excluding a religious organization, or a nonprofit organization eligible to receive surplus federal property pursuant to 41 C.F.R. 101-44.207(c) and organized under the laws of the Commonwealth, another state, or the District of Columbia, or chartered under an Act of Congress, lawfully doing business in the Commonwealth, and serving a public purpose of an essentially governmental, civic, educational, or charitable nature, after first receiving from the recipient agency the certification and evidence of nonprofit status required in Section 3 of this FAP;
 - 5. Sale to the general public using either the sealed bid or auction, including consignment auction and internet auction methods of sale. Disposal by either of these methods shall be preceded by notice adequate to inform the general public of the sale, taking into consideration the estimated value of the items;
 - 6. Disposal in accordance with applicable state and federal waste management laws and regulations, if property is not suitable for transfer, trade, or sale; or
 - 7. Another method as determined in writing by the director of the Division of Surplus Property to be in the best interest of the Commonwealth.
 - 8. Disposal of EPA regulated materials-Hazardous Items in the manner prescribed by the EPA and in accordance with all their standards, polices and regulations.
- c. Property shall be delivered to the Division of Surplus Property warehouse, only after submitting an Authorized Surplus Request through the SPMS and having the request approved and scheduled by the Division of Surplus Property. The Division of Surplus Property shall retain all proceeds from disposal of property delivered to a Division of Surplus Property warehouse.
- d. Vehicles, boats, and other similar licensed equipment shall be declared surplus and disposed of only upon approval by the secretary of the FAC or his/her designee, unless an agency delegation specifically states that authority is delegated for these items.
 - 1. A request to surplus and dispose of vehicles, boats, or other similar licensed equipment shall be made as provided in Section 2.a.
 - 2. Requests shall be accompanied by a current Certificate of Title.
 - 3. If the vehicle, boat, or other similar licensed equipment is inoperable and cannot feasibly be restored to an operable condition, the agency shall note the facts on the request so that an appropriate and efficient disposal method may be selected.
 - 4. Proceeds from the sale of surplus vehicles, boats, or other licensed equipment shall be retained by, or returned to, the agency with a nominal handling charge set and deducted by the Division of Surplus Property, if that division conducts the sale.
- e. An agency that has been delegated authority to declare and dispose of state-owned surplus personal property shall:

1. Delete surplus items from agency inventory listings;
2. Maintain records of disposal;
3. Manage the accounting of any applicable federal interest in the property;
4. Retain the proceeds from the disposal of surplus property, unless the property has been delivered to the Division of Surplus Property warehouse; and
5. Make records of surplus property disposition available for audit by the FAC.

3. Eligibility and Receipt of Outside Organizations:

- a. A unit of local government in the Commonwealth or a nonprofit organization or entity may request and, for a nominal fee, purchase surplus state-owned personal property.
- b. Proof of eligibility of a unit of local government or tax-exempt nonprofit organization or entity shall be established prior to the purchase. Proof of eligibility may include:
 1. A Donee Authorization Card issued by the Division of Surplus Property;
 2. An IRS letter granting or recognizing tax-exempt status;
 3. A local unit of government purchase order; or
 4. A request from the entity on official local government letterhead.
- c. Payment for transferred property shall be by local government or nonprofit agency check only. Personal checks shall not be accepted.
- d. Title to any transferred property shall be in the name of the recipient agency.
- e. Personal property may be transferred to an approved entity above upon receipt of payment and of a signed acknowledgment. The acknowledgement shall include the description of the items, inventory number, serial number, quantity, transfer charge and a disclosure statement that addresses the retention and usage terms.

Relates to: KRS 45A.045; 200 KAR 5:302; KRS Chapter 11A

1. Federal surplus property received by the Commonwealth shall be acquired and distributed to eligible donee entities.
2. Eligible donee entities shall include a:
 - a. State agency or political subdivision thereof;
 - b. Unit of local government or subdivision thereof; and
 - c. Nonprofit educational or public health institution that is exempt from taxation under Section 501 of the federal Internal Revenue Code, for purposes of education or public health, and programs for older individuals which receive funds under the Older Americans Act of 1965, as amended, Title IV or Title XX of the Social Security Act, or Economic Opportunity Act of 1964, as amended, and other such organizations determined to be eligible under federal regulations and guidelines as amended from time to time.
3. Federal surplus property shall be offered, for a nominal fee, to eligible donee entities after completion of an Application for Eligibility, which includes a Donee Authorization, a Donee Agreement and a Nondiscrimination Agreement.
 - a. Each Authorization and Agreement form shall be signed by the chief executive officer of the donee organization, and approved by the director of the FAC Division of Surplus Property.
 - b. A Donee Authorization Card shall be issued to approve applicant organizations, after which the organization may receive federal surplus property.

Relates to: 41 CFR Chapter 101-102

Section 6:

Competitive Bidding Exceptions

COMPETITIVE BIDDING EXCEPTIONS: SPECIFIED BY LAW OR REGULATION

The following purchases are exempt by law from competitive bidding and may be purchased without prior approval from OPS:

1. **Contractual services where no competition exists**, such as electrical energy, telephone service, and other public utility services. KRS 45A.095(1)(a); 200 KAR 5:309(1).
2. **Works of art for museum and public display**. KRS 45A.050(2)(a); 200 KAR 5:309(7).
3. **Services of a visiting speaker, professor, expert witness, or performing artist**. A speaker is one who delivers a message before a group, but does not include one who conducts training by providing instruction or teaching a skill. KRS 45A.095(1)(f); KRS 45A.050(2)(c); 200 KAR 5:309(9).
4. **Rates fixed by law or ordinance**. KRS 45A.095(1)(b).
5. **Commercial items purchased for resale to the general public through a resale outlet maintained by a state agency**. The items shall:
 - a. Be purchased only from a wholesaler, manufacturer or producer; and
 - b. Not require modification or alteration before sale. KRS 45A.095(1)(d); 200 KAR 5:309(8).
6. **Subscriptions for the purchase of periodicals in either paper or electronic format**. A subscription may include a professional journal, newspaper, other required publication, but shall not include technology hardware or software services. KRS 45A.050(2)(b); 200 KAR 5:309(7).
7. **Copyrighted material in either paper or electronic format for which only one source of supply is available**. Examples of items commonly covered under this section include:
 - a. Library books. KRS 45A.095(1)(c).
 - b. Published books, maps, periodicals, and technical pamphlets. KRS 45A.050(2)(b); 200 KAR 5:309(7).
8. **Intergovernmental purchases** made between state agencies, political subdivisions, state universities, agencies of other states or agencies of the federal government. KRS 45A.660; 200 KAR 5:309(11).
9. **Kentucky-grown agricultural products**. Pursuant to KRS 45A.630 – KRS 45A.645.

COMPETITIVE BIDDING EXCEPTIONS: STANDING DETERMINATION OF NOT PRACTICABLE OR FEASIBLE

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

1. **Fresh meat, fresh dairy, fresh produce, fresh seafood and fresh eggs.** 200 KAR 5:309(14).
2. **Transcripts.** Purchase of court reporter services to furnish originals and copies of transcriptions of court proceedings, depositions, hearings and other legal proceedings, or public stenographer for public forums and meetings, if minutes or verbatim records are required.
3. **Advertisements, public media, public displays, billboards, signage and booths.** Dissemination of information and the purchase or rental of promotional related items for official agency use. Includes direct placement of advertising without production costs.
4. **Insurance and bonds under \$10,000.** The purchase of insurance and bonds of \$1,000 or more requires prior approval by the FAC's Division of State Risk and Insurance Services and OPS. A contract shall be created by the agency in the state's eProcurement system to document the selection and forwarded through the FAC's Division of State Risk and Insurance Services and OPS for electronic approval prior to a purchase of insurance or bonds. KRS 45A.022.
5. **Equipment repair service and parts.** If the cost exceeds \$5,000 for a single repair, an agency shall submit three (3) written quotes for the repair and explain why the repair cost is reasonable. If three (3) quotes are not feasible, the requesting agency shall submit written justification stating the reason why three (3) quotes cannot be obtained. If repairs will be made by agency personnel, repair parts may be obtained up to a replacement total of the agency's small purchase authority. If the repair cost represents a substantial percentage of equipment market value, an agency shall justify incurring repair expense versus the purchase of new or used equipment.
6. **Short-term equipment and supplies rental.** Lease of non-proprietary equipment and supplies for no more than six (6) months.
7. **Airfare, discount travel tickets.** An agency may purchase discount airfare or travel tickets for authorized employee travel requirements. All provisions of state travel regulations are applicable. 200 KAR 2:006.
8. **Conferences and Other Events Hosted by Agencies.** When the cost exceeds the agency's purchase authority, the agency shall obtain three (3) written quotes for all necessary event services. If it is determined that three (3) quotes are not feasible, the agency shall provide written justification as to why quotes were not obtainable. If specifications are revised after conducting the initial evaluation of quotes, all vendor(s) shall be advised of the revision(s) and given the opportunity to provide revised quotations. If appropriate, the agency may conduct best and final offers with the vendor(s) determined to be acceptable. The agency may also negotiate with the best evaluated offeror. Every effort shall be made to procure the services as cost effectively as possible.
9. **Vehicle motor fuels.** Vehicle motor fuels shall be purchased for use in state-owned vehicles and machinery only by fleet fuel credit cards provided and issued by the vendor awarded the current applicable Master Agreement (MA). The state procurement card may be used for out-of-state fuel purchases where the fleet fuel credit card is not accepted in accordance with FAP 111-58-00(3)(d)(5).
10. **Deaf and Hard of Hearing Interpreters.** Purchase of the services of deaf interpreters for public meetings, training sessions, or as needed to meet the requirements of the Kentucky Commission on the Deaf and Hard of Hearing Interpreter Referral Services Program (735 KAR 2:020(1)), the Rehabilitation Act (29 USC 794d), and the Americans with Disabilities Act (42 USC 126).

11. **Foreign language interpreters.** Purchase of the services of foreign language interpreters for public meetings, training sessions, or as needed to meet the requirements of the agency to provide service to the public in the execution of official duties of the agency.
12. **Other goods and services.** An agency may present electronic justification for purchases under this policy to OPS. Prior approval of the executive director of OPS shall be obtained, if the cost exceeds the agency's small purchase authority.

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

COMPETITIVE BIDDING EXCEPTIONS: SOLE SOURCE

A procurement shall be exempt from competitive bidding, if there is only one (1) known capable supplier of a commodity or service, due to the unique nature of the requirement, supplier or market condition.

The following items have been specifically determined to be exempt from bidding provided the using agency supports the purchase by written justification clearly substantiating the fact that the sole source item is the only item that will meet the needs of the agency. In addition, the using agency shall provide written justification from the vendor demonstrating that they are the sole manufacturer, sole distributor or sole authorized service agent. All justifications shall be sent electronically to the executive director of OPS for prior approval of all purchases in excess of the agency's single quote small purchase authority for the items listed below:

1. **Instructional materials, equipment, supplies or services.** An electronic statement describing the need in relation to a particular program is required. Items commonly covered by this policy include classroom and training aids such as films, special books, maps, tests and testing services. 200 KAR 5:309(5).
2. **Patented equipment.**
3. **Proprietary equipment and supplies.** Items that must be compatible with existing equipment or systems and which are available from one source only.
4. **Equipment lease or rental, excluding passenger vehicles. (Repealed 2016)**
5. **Proprietary service and maintenance agreements.** Preventative, scheduled and unscheduled maintenance or service agreements with either manufacturer or authorized service agent.
6. **Dues and organizational fees.** Fees payable to a professional society or national organization engaged in established activities related to the agency's authorized function in state government. Payment of an individual employee's dues to local organizations is not authorized under this policy. An electronic statement describing the function of the professional society or national organization as it relates to the agency's authorized function in state government is required. Prior approval from OPS is not required.
7. **Computer software that is copyrighted and available from only one source.** Copyrighted software, if only that software will meet the need of the application. See FAP 111-15-00 for other approval requirements.
8. **Other commodities, equipment and services available from only one source.** 200 KAR 5:309(15).

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

FAP 111-39-00
EMERGENCY PURCHASES

1. An “emergency condition” means 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. KRS 45A.095(3).
2. If an agency purchases goods, services or construction services under an emergency condition, but the purchase is within the agency’s small purchase authority, the agency shall process the purchase under the small purchase authority and not as an emergency purchase.
3. If an agency purchases goods, services or construction services under an emergency condition and the purchase exceeds the agency’s small purchase authority, the provisions of KRS 45A.095(4) shall apply.
 - a. The initial determination that an emergency condition exists shall be made by the head of the using agency.
 - b. Upon this determination and if the purchase will exceed the agency’s small purchase authority, the using agency shall coordinate with the FAC prior to making an emergency purchase, if time permits or if feasible.
 - c. If the emergency makes it impractical to consult in advance with the FAC, the head of the using agency may make the required emergency purchase.
 - d. The final determination for an emergency purchase, which exceeds an agency’s small purchase authority, shall be approved by the secretary of the FAC or designee.
4. After an emergency purchase that exceeds an agency’s small purchase authority has been made, the emergency purchase shall be fully documented by the agency head in a letter to the secretary of the FAC or in an electronic communication attached to an ordering or payment document in the state’s eProcurement system. The communication shall include:
 - a. An explanation of the emergency condition;
 - b. The name of vendor selected;
 - c. The amount of the procurement;
 - d. The other price quotations obtained; and
 - e. The basis for selection of vendor.
5. The documentation of the emergency purchase shall be routed to:
 - a. The director of OPS, if the purchase is for goods and services not related to construction projects; or
 - b. The director of DECA, if the purchase is for goods and services is related to construction projects.
6. Upon approval of the emergency purchase by the secretary of the FAC or designee, payment shall be made.
7. If the emergency purchase requires payment by a procurement card, the agency should contact his/her Procurement Card Program Administrator and OPS.

Relates to: KRS 45A.095; 200 KAR 5:309

COMPETITIVE BIDDING EXCEPTIONS: CONSTRUCTION AND CONSTRUCTION-RELATED SERVICES

The following items are not practicable or feasible for competitive bidding, in accordance with KRS 45A.080, KRS 45A.095 and 200 KAR 5:309. Only the specific items listed are exempt from competitive bidding. An agency shall not exceed its single quote small purchase authority without prior written approval from DECA.

1. **Proprietary materials for construction and construction-related services:** If the amount exceeds the agency's designated single-quote, construction, small purchase limit, DECA shall make the final determination as to whether the construction or construction-related services are proprietary.
2. **Proprietary building service and maintenance agreements for preventative, scheduled and unscheduled maintenance or service agreements with either manufacturer or authorized service agent:** Written justification shall identify the provider as a manufacturer or authorized service agent.
3. **Other construction and building maintenance materials and services available from only one source or are not practical to bid:** All purchases in excess of agency small purchase authority shall receive prior approval from the director of the DECA.

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

Section 7:

Internal Policies

FAP 111-25-00
CLOSING FISCAL YEAR PURCHASES

1. The FAC shall notify all state agencies by memorandum of the deadline dates for submission of each type of document affecting old-year business transactions processed in the state's eProcurement system and the earliest date for submitting new-year documents for processing.
2. Documents submitted for purchase with new-year funds shall not be processed until the chart of accounts information is loaded into the state's accounting system for the new-year, unless the agency chooses a non-accounting (no encumbrance) event type.
3. Requisitions requiring competitive bidding that arrive after the established deadline shall be accepted only if the agency provides sufficient justification as to why the cutoff date could not be met. Competitive bids from old-year funds may be approved only if there is sufficient time to guarantee delivery before June 30. A Requisition (RQS) that arrives after the established deadline may be processed only upon the approval of the executive director of OPS.
4. If OPS is unable to assure the delivery of goods and services by June 30 on an old-year RQS, the using agency may:
 - a. Authorize, in writing, the award of the contract for encumbrance on new-year funds;
 - b. Cancel the requirement and request the issuance of a new Solicitation in the new-year; or
 - c. Cancel the RQS in its entirety.
5. Payments for goods and services from current or old-year funds shall be received no later than June 30. Goods and services received after June 30 shall be paid from new-year funds.

FAP 111-58-00
PROCUREMENT CARD PROGRAM

1. Definitions:

- a. "Agency" means a spending unit.
- b. "Agency Head" means an individual who oversees the operations of the agency.
- c. "Agency Site Administrator" means an individual responsible for processing the procurement card documents, including receiving and reconciling receipts with transactions and ensuring payment to issuing bank is on time.
- d. "Authorized Signer" means an individual authorized to communicate with issuing bank, with respect to changes in the procurement card program for a specific agency.
- e. "Cardholder" means a Commonwealth of Kentucky employee who has a procurement card issued in his/her name and is the only person authorized for use of the card.
- f. "Custodial Card" means a shared procurement card issued to a functional unit.
- g. "Custodial Card Custodian" means a Commonwealth of Kentucky employee who has a custodial card issued in his/her name and has the responsibility of ensuring the compliance of procurement procedures for the card.
- h. "Functional Unit" means a location designated by the agency and approved by the Office of the Controller (OOC) to utilize a Custodial Card.
- i. "Procurement Card Program Administrator" means a designated individual within an agency who is responsible for overseeing and administering the functions of the Procurement Card Program.
- j. "Supervisor" means an individual who has a cardholder and/or custodian who reports to him/her.

2. Card Issuance:

- a. A procurement card may be issued to a Commonwealth of Kentucky employee, a custodian or a Kentucky National Guard member.
- b. The participating agency shall sign and accept the terms and conditions of the Procurement Card Program Site Agreement.
- c. If the Governor orders the Kentucky National Guard into active duty pursuant to KRS 38.030, a procurement card may be issued to a Kentucky National Guard member.
 - 1. Each participating Kentucky National Guard member shall sign and accept the terms and conditions of the Commonwealth of Kentucky Procurement Card Employee Usage Agreement.
 - 2. The procurement card program administrator of the Department of Military Affairs shall retain the card in a central location when not being used by the Kentucky National Guard member on active duty.
 - 3. The procurement card shall be cancelled at the conclusion of the Guard member's active duty.

3. Procurement Card Uses:

- a. The procurement card is the official purchasing card for the Commonwealth. No other purchasing cards shall be used without prior approval by the FAC.

- b. Purchases shall be for the use of the Commonwealth. No personal purchases shall be allowed.
- c. A procurement card may be used by a state employee for both the purchasing and payment of goods and services. Use of the procurement card shall be in accordance with the Commonwealth's procurement laws, regulations, policies and procedures and the Executive Branch Code of Ethics, except as modified herein.
- d. The procurement card may be used for the following transactions, if within the card's preset limit established by the OOC and the department head:
 - 1. Any purchase not prohibited in Section 3.e. of this policy, and not otherwise allowed by Subsections 2. - 8. of this section, that is no greater than the limit established for the card or the agency's small purchase authority, single quote limit; whichever is less.
 - 2. Any purchase from a Master Agreement (MA) with the exception of the transactions referenced in Section 3.e.6.
 - 3. Any utility payment, regardless of the dollar amount.
 - 4. Registration fees for employee training and conferences.
 - 5. Out of state purchases of fuel for motor pool vehicles only if the fleet fuel credit card is not accepted. The cardholder shall attach an approved authorization for travel outside of Kentucky and a statement that the fleet fuel credit card was not accepted by the vendor to the vendor's invoice and submit with supporting documentation.
 - 6. Photocopying costs, if the employee's agency is located outside of Franklin County.
 - 7. Purchases from Kentucky Correctional Industries.
 - 8. Purchases from the Department of Education's online bookstore or other allowable online work-related websites.
- e. The procurement card shall not be used for the following transactions:
 - 1. Travel and entertainment related expenses, except the OOC may authorize cards for the purchase of airline tickets or similar costs with prior authorization.
 - 2. Alcoholic beverages.
 - 3. Automotive gasoline, except as stated in Subsection 3.d. above.
 - 4. Cash advances.
 - 5. Salaries and wages.
 - 6. Lease purchases, unless expressly authorized by the OOC, in accordance with Section 49 of the Kentucky Constitution.
 - 7. Insurance premiums and bonds.
 - 8. Services covered by Personal Service Contract (PSC) statutes and regulations.
 - 9. Printing services, unless expressly authorized by the OOC, in accordance with Section 247 of the Kentucky Constitution.
 - 10. Purchase from another Commonwealth agency, except if expressly permitted by the FAC.

11. Used equipment, unless expressly authorized by the OOC.

12. Purchase from an auction, unless expressly authorized by the OOC.

4. Agency Responsibilities:

- a. Each head of an agency that is issued a procurement card shall select an agency procurement card program administrator who shall administer the program. To ensure proper separation of duties, the agency procurement card program administrator shall not be a cardholder.
- b. Each cardholder, custodial card custodian and procurement card user shall be informed of the level of supervisory approval needed for various purchases.
- c. An agency shall maintain the documentation for all transactions in accordance with the Kentucky Department of Libraries and Archives General Schedule for State Agencies. Receipts for source documentation shall include the vendor's name, date of purchase, description of each item purchased, price of each item purchased, total cost and cardholder name or card number. If an item is purchased over the Internet or by telephone, the agency shall maintain documentation by printout and/or handwritten notes.
- d. An agency shall ensure that the proper accounting structure is charged for the purchase.
- e. An agency shall process payments in the state's eProcurement system in sufficient time to pay the issuing financial institution. If authorization is not received in sufficient time, the agency shall be responsible for payment of interest charges. KRS 45.454, FAP 111-45-00, FAP 120-05-00.
- f. An agency shall reconcile all payments to the issuing bank's statement, 8010 infoAdvantage report and Visa File Extract.
- g. An agency shall ensure that all 1099 reportable purchases are coded to the proper object codes.
- h. An agency shall comply with its Internal Control Plan established in accordance with 200 KAR 38:070 in regard to procurement card transactions.
- i. To ensure the list of authorized users is accurate, agencies shall notify the OOC within five (5) business days when a procurement card is no longer needed or if the cardholder or the custodial card custodian for the agency changes. The OOC shall update the Cardholder List on a quarterly basis.

5. Procurement Card Program Administrator Responsibilities: The agency procurement card program administrator shall manage the overall agency operation of the agency's procurement card program, including oversight of duties performed by the agency site administrator. The procurement card program administrator shall:

- a. Ensure agency procurement card program administrators, authorized signers and agency site administrators attend training on the implementation and operation of the procurement card program as directed and provided by the FAC.
- b. Upon consultation with agency management, shall determine the agency's employees who will become cardholders and custodial card custodians.
- c. Approve and execute each Commonwealth of Kentucky Procurement Card Cardholder Usage Agreement.
- d. Develop and supervise mandatory training for each cardholder and custodial card custodian prior to issuance of the procurement card. Employees, who may use a custodial card, shall be trained prior to use of the card. The cardholder training shall cover duties, responsibilities and procurement policies.
- e. Oversee and coordinate the disputed charges process with the cardholder.

- f. Coordinate the payment process to ensure that timely remittance is made.
- g. Assure that purchased items required to be included in the fixed asset inventory are reported to the agency property officer or fiscal officer.
- h. Serve as the authorized signer with the financial institution, providing instructions to the bank on the associated controls for the agency's procurement cards.

6. Cardholder Responsibilities: A cardholder shall sign and accept the terms and conditions of the Commonwealth of Kentucky Procurement Card Cardholder Usage Agreement provided by the FAC.

- a. The cardholder shall be responsible for all activity on the card.
- b. The cardholder shall not share or loan the card to any other individual.
- c. The Commonwealth is a tax-exempt institution. As an agent of the Commonwealth, a cardholder shall ensure the proper use of the Commonwealth's tax exempt registration number and shall not pay sales and use tax on any transaction.
- d. The cardholder shall retain all receipts showing each credit transaction.
- e. A cardholder shall properly inspect all shipments, if applicable. In the case of returns, a cardholder shall coordinate the return directly with the supplier and contact the agency procurement card program administrator with any unresolved issues. Returns for cash are not permitted.
- f. A cardholder shall report a lost or stolen card immediately to the issuing bank and the agency's procurement card program administrator. A card that has been reported lost or stolen that is subsequently found shall be given to the agency procurement card program administrator.
- g. Responsibilities defined in Section 8.

7. Custodial Card Custodian Responsibilities: A procurement card may be issued to a custodian of a functional unit. Written justification shall be sent to, and prior approval shall be obtained from, the OOC for each card. Justification shall include an explanation of why the card is needed and document the expected types of transactions.

- a. The agency head or the agency head's designee shall sign a Procurement Card Program Custodial Card Agreement for the functional unit card provided by the FAC.
- b. The procurement card shall be stored in a secured area with access limited.
- c. The agency head shall assign one (1) employee in the functional unit to serve as the custodial card custodian. The custodial card custodian shall sign a Commonwealth of Kentucky Procurement Card Employee Usage Agreement and be responsible for the functional unit's procurement card, and shall have discretion to determine if an employee may use the card.
- d. If the location of the card is unknown for any period of time, the employee who signed out the card shall notify the issuing bank and the custodial card custodian immediately.
- e. Each employee using the custodial card shall sign a Commonwealth of Kentucky Procurement Card Employee Usage Agreement and shall receive a copy of this policy and other written material given to other cardholders in the cabinet or agency before using the functional unit's procurement card.
- f. Responsibilities defined in Section 8.

8. Cardholder and Custodial Card Custodian Responsibilities:

- a. Each cardholder and custodial card custodian shall reconcile purchases to transaction information provided by the financial institution and submit to the agency site administrator, at the end of each billing cycle or sooner as required by each agency site administrator, a valid receipt for each charge. The itemized receipt or email confirmation shall be issued by the merchant and identify the good or service purchased. Dues and subscriptions may be documented by an order form. The receipts for each procurement card cycle shall be submitted to the agency site administrator in sufficient time to approve each payment prior to the due date.
- b. Each procurement card cycle for which the cardholder or custodial card custodian has made purchases, the cardholder or custodial card custodian and the supervisor shall access his/her card activity and document that the purchases were received by the Commonwealth and were for the benefit of the Commonwealth and not for personal use. Each cardholder or functional unit's card custodian shall identify the purpose of the transaction.
- c. Purchases of food or beverage shall be accompanied by documentation explaining the reason for the purchase, justification of need and proof that they benefited the Commonwealth.
- d. Each cardholder or custodial card custodian shall reconcile transaction information provided by the financial institution to all cashier receipts and invoices to ensure the accuracy of that information. The cardholder or custodial card custodian shall address any questions regarding disputed charges to the vendor reported on the procurement card billing statement and attempt to reach a resolution. If a resolution cannot be reached with the vendor, the cardholder or custodial card custodian shall notify his/her agency procurement card program administrator to coordinate the disputed charges process.
- e. Each cardholder or custodial card custodian, who no longer needs a procurement card, shall return that card to the agency site administrator or the agency procurement card program administrator for cancellation.

9. Oversight and Management:

- a. The FAC shall maintain the overall responsibility for the procurement card program.
- b. The FAC may conduct an independent audit to ensure compliance with this policy by each agency.
- c. Each agency shall ensure that its employees adhere to this policy. Additionally, each agency shall take appropriate disciplinary actions whenever any violation of this policy is identified, and report such violation(s) and action(s) to the OOC. A violation may result in action at the discretion of the FAC in accordance with Kentucky Revised Statutes.
- d. The FAC may review reports and documentation associated with the procurement card program. Based on card usage, the FAC may determine that an agency or cardholder shall be subject to additional review.
- e. The FAC may determine that a procurement card site shall be closed due to administration of the site not complying with policy and procedure.

Relates to: KRS 45A.100

FAP 120-05-00
PROMPT PAYMENT TO VENDORS

1. **Originating agency to pay penalty:** An agency that originates and pays for a purchase shall determine under the provisions of KRS 45.451 - KRS 45.458 whether the Commonwealth owes the vendor a penalty and, if so, shall pay it. If feasible, the purchase payment and the penalty payment shall be transmitted together to the vendor. After payment, the FAC or the Kentucky State Treasurer's Office shall repay the agency for any penalty or portion of penalty caused by delays in those agencies.
2. **Account object codes for penalty payments:** If an agency prepares and processes a Payment Voucher more than thirty (30) working days after receipt of both satisfactory goods and services and satisfactory invoice, the agency may include the penalty payment as a separate item on the transaction. An object code shall be shown for the amount of the purchase payment and for the amount of the penalty.
 - a. The object code for a penalty caused by the agency is E370 for Personal Services and Operating Expenses, E613 for Capital Outlay Expenses and E770 for Capital Construction Expenses.
 - b. The object code for a penalty caused by the FAC or Kentucky State Treasurer's Office is E356.
3. **Date Stamp on invoices:** After receiving an invoice, a state agency shall place a receiving stamp on the invoice.
 - a. The stamp shall show the word "received", the month, day, and year, and the agency name. If the agency's name is not unique in state government, the name of the cabinet shall be included.
 - b. **Location of date stamp:** The originating agency's receiving date stamp shall be placed near the lower left corner of the front of the vendor's original invoice, or as near to that location as will not obscure other information on the invoice. If goods or services listed on the invoice are received, the agency shall enter to the right of the invoice received stamp the date the goods or services were received.
4. **Expense Transfer to reclaim penalty:** An agency that pays a penalty caused in total or in part by another agency shall process an Expense Transfer transaction to the FAC for the appropriate amount. The FAC shall determine which agency caused the penalty and charge or prorate the penalty accordingly.
5. **Multiple invoices paid on single document:** If more than one (1) invoice is paid on a Payment Voucher, each invoice shall be considered separately as to whether a penalty is due and, if so, the amount.
6. **Counting of time:** Within ten (10) working days, the originating agency shall:
 - a. Process the document to acceptance;
 - b. Respond to SAS regarding incorrect or incomplete transactions; and
 - c. Respond to OPS regarding incorrect or incomplete information.

Relates to: KRS 45.244; KRS 45.451- KRS 45.458

FAP 120-07-00
FISCAL YEAR CLOSING

1. "GAAP" means Generally Accepted Accounting Principles.
2. The FAC shall close out old-year transactions within thirty (30) days of June 30, the last day of the fiscal year.
3. On or about March 1 of each year, the secretary of the FAC shall provide all constitutional officers, cabinet secretaries, department heads and fiscal officers with a closing schedule for the current fiscal year that specifies the following:
 - a. The last calendar date on which old-year transactions shall be processed by SAS;
 - b. The first calendar date on which new-year transactions shall be processed by SAS;
 - c. The final date for budget, purchase and personnel actions related to the old-year;
 - d. Rules regarding the lapse or carry-forward of various year-end fund balances; and
 - e. General information regarding the time frame within which an agency shall provide closing financial data to SAS for GAAP reporting purposes. Training shall be offered to the agencies and shall be primarily oriented toward the recognition and measurement of accounts payable and receivable and capitalization of General Fixed Assets in order to record and report June 30 fund balances in compliance with GAAP for state government.
4. An agency head shall either serve as, or appoint an employee of the agency to serve as, fiscal officer. Examples of fiscal officer responsibilities include:
 - a. Establishing and maintaining a proper internal control structure;
 - b. Establishing and maintaining the state's accounting system chart of accounts;
 - c. Providing assurances that agency financial reports accurately reflect underlying activity;
 - d. Conducting fiscal operations under GAAP; and
 - e. Acting as a single point of contact with the Office of the Controller.

Relates to: KRS 45.229; KRS 45.237; KRS 45.242; KRS 45.244; KRS 45.251;
KRS 45.301; KRS 45.306 and 200 KAR 38.070

GRANTS TO NOT-FOR-PROFIT ENTITIES

1. A “grant” means a sum of money given to a nonprofit entity by a state agency for that entity’s activities. The entity’s activities are generally not supervised by the state agency, except wherein a final report is required to be submitted to the granting agency and for which final reports are subject to audit.
2. Agencies authorized by KRS authority may make grants to nonprofit entities.
3. Federal funds may only be used when grants are allowable, per the granting agreement/federal agency.
4. A sum given by a state agency to a nonprofit entity for a demonstration project would not necessarily be a personal service contract, but more likely a grant.

Relates to: KRS 45.237; KRS 45.251; KRS 45.301;
KRS 45.306; 200 KAR 38.070

FAP 120-08-07
ASSIGNMENT OF BENEFITS

1. A vendor wishing to assign part, or all, of the proceeds of a contract entered into with a state agency shall submit to SAS either an Assignment of Benefits form or a notarized statement with the following information:
 - a. The name, address and tax identification number (TIN) of the assignor and assignee;
 - b. The amount to be assigned; and
 - c. The Contract number.
2. If approved by the State Controller or designee, SAS shall establish an alternate vendor number for the assignee and record the vendor number in the upper right corner of the Assignment of Benefits form or notarized statement.
3. The original copy of the approved Assignment of Benefits form or notarized statement shall be retained by SAS. Copies shall be sent to the assignor, the assignee, OPS and the affected agency.
4. An approved Assignment of Benefits form or notarized statement shall apply to all future contracts that are renewals of the original contract assigned and shall be effective until the original contract and any renewals expire or are terminated or until a subsequent assignment of the contract proceeds is approved.

Relates to: KRS 45.237; KRS 45.251; KRS 45.301;
KRS 45.306 and 200 KAR 38.070

FAP 120-11-00
LOST OR STOLEN PROPERTY

1. State-owned property that has been lost and cannot be established as having been stolen shall be removed from the agency's inventory. A lost or stolen property record explaining the loss shall be maintained by the cabinet or agency head.
2. If state-owned property is stolen, the theft shall be reported to the police authorities in the county where the theft occurred. After receipt of a report from the police, the property officer shall delete the stolen item from the agency's fixed asset records.
3. If the stolen property is recovered and returned to the agency after deletion from its fixed asset records, the property officer shall restore the property to the agency's fixed asset records.
4. Records of lost and stolen property shall be subject to audit by the FAC.

Relates to: KRS 45.313; KRS 45A.045(5)

DECENTRALIZATION OF THE PRE-AUDIT FUNCTION

1. The FAC shall determine the capability of an agency to assume the pre-audit function and assess the agency's ability to retain the pre-audit function. If the FAC determines the agency has a capability to assume the pre-audit function, the agency shall assume pre-audit authority pursuant to KRS 45.121.
2. The pre-audit function shall consist of verification of the validity of claims. Verification shall include an edit applied to a document by the computerized system, as well as review of accounts and elements applied, and review of conformance with applicable rules, regulations or legal requirements.
3. An agency that assumes the pre-audit authority shall meet the following requirements:
 - a. An Authority Delegation Agreement and any applicable attachments to the Agreement shall be executed between the responsible official of the agency, the State Controller and the secretary of the FAC or designee. This Agreement shall incorporate by reference agency approval authorizations.
 - b. Periodic post-audit review may be made by the FAC to ensure the effective functioning of the pre-audit process. The audit may be performed randomly without any notice to the agency.
 - c. The agency shall adhere to the Kentucky Department for Libraries and Archives document retention schedule and FAC policies and procedures in regards to Document Retention, Prompt Payment of Vendors and Open Records Requests.

Relates to: KRS 45.121; KRS 45.237

FAP 120-14-00
UNHONORED CHECK PROCESSING

1. The Kentucky State Treasury shall separate, by agency, checks that are received and deposited but are not honored for payment by the banks upon which they are drawn.
2. The unhonored checks for agencies other than the Department of Revenue (DOR) shall be separated into two groups: those with a Receivable (RE) document reference and those without.
 - a. For unhonored checks of the DOR, the State Treasury shall prepare a decrease Cash Receipt (CR) document that charges a DOR clearing account for the unhonored checks. The DOR shall distribute the unhonored checks to the proper accounts returning the clearing account to a zero balance.
 - b. For unhonored checks of agencies other than the DOR, the State Treasury shall prepare a Non- Sufficient Funds document for checks that contain a RE document reference. This document shall charge the originating agency's accounts for the amount of the unhonored checks.
 - c. For unhonored checks of agencies other than the DOR, which are received without a RE document reference or with only a CR document reference, the State Treasury shall prepare a decrease CR document that charges the unhonored checks against the originating agency's accounts. The originating agency shall distribute the unhonored checks to the proper accounts, if the agency prefers an account other than the one selected by the State Treasury. The originating agency shall take whatever actions are deemed appropriate to collect these unhonored checks.
3. A new check shall be submitted by the vendor to the responsible agency and processed on a CR document as new revenue.

Relates to: KRS 45.237; KRS 45.242; KRS 45.244; KRS 45.251;
KRS 45.301; KRS 45.306 and 200 KAR 38.070

FAP 120-16-00

AUTOMOBILE LIABILITY INSURANCE REIMBURSEMENT

1. An agency may approve reimbursement to an employee for extended non-owned insurance coverage added to the employee's personal automobile liability coverage, if the employee is required to drive a state-owned vehicle not covered under the Commonwealth's auto liability coverage.
 - a. Reimbursement shall only be made for the cost of the extended non-owned coverage. Reimbursement shall not be approved for the entire cost of the auto liability insurance policy.
 - b. An employee driving a state-owned vehicle that is covered under the Commonwealth's auto liability insurance is personally insured to \$350,000 and shall not be reimbursed for any additional personal insurance coverage.
2. Pursuant to KRS 45.231, claims for payment not presented within the current fiscal year may be authorized with the approval of the secretary of the FAC.
 - a. Authorized claims shall be limited to the two (2) previous fiscal years. If an employee does not file a claim within this period, reimbursement shall not be approved.
 - b. Payment is subject to the availability of the agency's budgetary funds for the applicable fiscal year.
3. **Applying for reimbursement:**
 - a. To apply for reimbursement, an employee shall submit a Travel Payment Voucher for agency approval. The employee shall attach all supporting documentation to the Travel Payment Voucher.
 - b. The amount requested for reimbursement shall be documented in the miscellaneous section of the Travel Payment Voucher.

Relates to: KRS 44.055; KRS 45.231

FAP 120-19-00
INTERNAL REVENUE SERVICE FORM 1099 REPORTING

1. Section 6041 of the Internal Revenue Service (IRS) Code requires reporting of payments for services rendered aggregating \$600 or more in any calendar year. The Commonwealth's payments for services under Tax Identification Number (TIN) 61-0600439 are reported to the IRS by SAS, except for 1099-R forms used for retirement/pension benefit payments and 1099-G payments used for unemployment and tax refunds.
2. The IRS may impose penalties for failure to meet 1099 requirements. It is the responsibility of the agencies and institutions preparing information containing 1099 reportable payments to vendors to ensure errors and omissions are not made.
3. **Agency Responsibility for Accurate Reporting:**
 - a. Agencies shall ensure vendor file information is accurate. Information required for accurate 1099 reporting includes:
 1. Accurate vendor name (TIN name established with the IRS);
 2. Type of tax entity (individual, corporation, etc.);
 3. The vendor's TIN (social security number or federal identification number);
 4. The vendor's street address; and
 5. Proper classification of payments by using a 1099-reportable object code.
 - b. Any additions or changes to the vendor information required for 1099s shall be requested through SAS.
 1. Approval requires a signed Form W-9, "Request for Taxpayer Identification Number and Certification" (or acceptable equivalent) whenever those additions or changes affect any of the required elements on a W-9 form.
 2. The agency is responsible for maintaining the current W-9 forms (or acceptable equivalent) for vendor files setup outside of the normal processes.
 - c. Payments classified with objects that are potentially 1099 reportable shall be reviewed by agencies to ensure correct classification of expenditures involving both services and materials. Only the portions of payments that are for services are 1099 reportable.
 - d. An agency shall provide SAS with the information required to produce corrected 1099s by July 15 of each year.
4. **SAS Reporting Responsibilities:**
 - a. SAS shall maintain the object table to accurately classify service-related objects as 1099 reportable.
 - b. At the end of each calendar year, SAS shall produce 1099 forms and associated transmittal forms required within TIN 61-0600439 for dissemination to vendors and the IRS.
 - c. Each covered vendor shall be provided with a 1099 form no later than January 31, or the deadline established by the IRS.
 - d. SAS shall provide agency personnel with instruction about the collection, preparation, and reporting of 1099 information upon request.

Relates to: IRC Section 6041

FAP 120-20-01**PERSONAL PROPERTY AND VEHICLE INVENTORIES**

1. Each budget unit shall maintain a current fixed asset record of equipment having an original cost of \$500 or more and a useful life of greater than one (1) year.
 - a. In accordance with KRS 45.313, the FAC may conduct physical audits of fixed asset records; therefore, inventory records shall be made available to the FAC at any time.
 - b. Agencies shall enter records into the fixed asset system for non-expendable property that promotes financial reporting, safeguarding of assets and adequate insurance.
 - c. Expendable property shall be accounted for using the statewide inventory control system or another previously approved internal method of accounting for the flow of expendable property.
2. **General Provisions pertaining to Fixed Asset Records:**
 - a. A state agency shall maintain current records of physical properties and equipment and make appropriate additions and deletions to fixed asset records as property is acquired or disposed.
 - b. The administrative head of an agency shall be responsible and accountable for the custody and safekeeping of all personal property assigned to, purchased, or otherwise acquired by the agency. Each agency head shall either serve as, or appoint an employee of the agency to serve as, agency property officer with responsibility for both maintaining the agency's fixed asset records and taking the annual physical inventory.
 - c. Each budget unit shall review its fixed asset records as of June 30 each year to ensure completeness and accuracy.
 - d. If the review process reveals incorrect or inadequate information, the agency shall take the necessary steps to correct the discrepancies.
3. **Personal Property to be Recorded:**
 - a. All non-expendable property valued at \$500 or more shall be recorded as a line item. This record shall include agency number, state property identification tag number, make, description, model number, serial number, quantity, location by building and cost.
 - b. Cost, including freight, installation, auxiliary charges, less discount taken shall be used if purchase price is known. Appraised value, indexed back to acquisition date, shall be used if the purchase price is unknown.
 - c. The property officer of each agency shall affix a property identification tag to all non-expendable property. The property identification tag shall be affixed to the left side of the item when the item is in its normal operating position.
 - d. Furniture and equipment under the control of, but not owned by, an agency shall be listed under the guidelines of non-expendable property and shall note the percentage of state ownership, if any.
4. **Expendable Personal Property:**
 - a. A perpetual inventory record of the receipts and withdrawals of expendable supplies shall be maintained to determine past usage and appropriate stock levels.
 - b. Minimum reorder points for replenishing orders shall be established for each item that shall allow enough lead time for deliveries and prevent "stock-outs".

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

5. Vehicle Inventories:

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

Relates to: KRS 45.313; KRS 44.054; KRS 186.065

FAP 120-22-00
AGENCY SECURITY OFFICER

1. "Electronic signature" and "record" are defined in KRS 369.102.
2. An agency head shall either serve as, or appoint an employee of the agency to serve as, the agency security officer to designate authorized electronic signatures to the FAC, as prescribed by the SAS. The agency security officer shall be responsible for the control and continued maintenance of the assigned signature authority.

Relates to: KRS 45.121; KRS 45.237; KRS 45.242; KRS 45.244; KRS 45.251;
KRS 45.301; KRS 45.306 and 200 KAR 38.070

FAP 120-23-00
USE OF PUBLIC FUNDS

1. Expenditures of public funds shall only be allowed for carrying out the statutory responsibilities of the agency. Expenditures shall be reasonable in amount, beneficial to the public and not personal in nature.
2. The following shall be used to determine if the expenditure of public funds is appropriate:
 - a. The expenditure shall be deemed necessary for the statutorily defined function of the agency or will contribute materially to the effective accomplishment of the agency's function, and is not otherwise prohibited by law;
 - b. The expenditure does not conflict with established Attorney General Opinions, the Commonwealth's Constitution, the Kentucky Revised Statutes, or any agency's official interpretation of same; and
 - c. The expenditure shall be afforded by allotted budgetary funds in both intent and amount.
3. The following are examples of unallowable uses of public funds:
 - a. Alcoholic beverages, except for when an agency holds an alcoholic beverage license. An additional exception would be if alcoholic beverages were purchased for a statutorily-defined function of that agency;
 - b. Beverages for employees, including coffee, bottled or filtered water, etc. An exception to this would be providing water for outdoor work crew and at public meetings;
 - c. Donations, in accordance with Kentucky Constitution Section 177. An exception of this would be surplus property procedure expenditures;
 - d. Employee parties, including retirement receptions;
 - e. Employee recognition/retirement gifts. An exception would be an inexpensive plaque with no resale value;
 - f. Flowers;
 - g. Holiday cards;
 - h. Holiday decorations, except for those purchased to decorate parks and institutional lobbies, dining rooms and patient recreational areas;
 - i. Kitchen appliances for employee use, except for those installed as a permanent fixture of the building; and
 - j. Paper products, utensils, and dishes for employee use.

Relates to: KRS 45.237; KRS 45.242; KRS 45.244; KRS 45.251;
KRS 45.301; KRS 45.306 and 200 KAR 38.070

FAP 120-24-00
CASH HANDLING

1. "Cash" and "cash receipts" means currency, coins, checks, money orders and all other forms of payment that are not electronically transmitted to the Commonwealth.
2. **Segregation of Duties:** Strict control shall be maintained during the processing of cash receipts to ensure proper accountability.
 - a. Responsibilities and duties involving cash receipts shall be separated among different employees with respect to authorization, processing and recording, receiving funds, reviewing and monitoring, and the custodial functions, to ensure no one (1) employee or group of employees has total control over the cash handling process.
 - b. Duties shall be assigned systematically to a number of employees, when applicable, to ensure that effective checks and balances exist.
 - c. The responsibility for opening mail shall be assigned to employees who have no responsibilities for, or access to, files or documents pertaining to accounts receivable or cash accounts.
 - d. Bank accounts shall be reconciled by employees who have no responsibilities for cash receipts, disbursements or custody.
3. **Timely Deposits:** State agencies, departments, institutions, boards, commissions and other public entities subject to KRS 41.070 shall deposit cash, checks and other negotiable instruments into the State Treasury or a state depository bank account on the same day of receipt. A reasonable, longer period for the deposit of particularly identified funds or categories of funds may be accepted, if approved by the FAC. The FAC and/or the Kentucky State Treasury may request such documentation on a periodic basis. Examples of situations that may be considered as reasons for not depositing funds within three (3) business days include:
 - a. Receipts are collected in a field office or by field staff in locations that are not near a Temporary Depository;
 - b. Aggregate receipts on hand total less than \$500;
 - c. The entity has severely limited staff resources, such as boards or commissions with only one (1) or two (2) staff members; or
 - d. Volume of receipts received during peak times is so great that existing staff cannot meet the minimum requirements.
4. **Restrictive endorsement of checks and negotiable instruments:** Agencies shall restrictively endorse checks and negotiable instruments upon receipt before forwarding the checks or negotiable instruments to the State Treasury for deposit or depositing in a state bank account. A restrictive endorsement on checks and negotiable instruments deters the potential of theft or other loss. Any checks received erroneously shall not be endorsed and shall be sent back to the sender immediately.
5. **Recording of cash receipt transactions:** Agencies shall promptly record cash receipt transactions.
 - a. The duties of receiving cash and preparing the initial documentation shall be segregated from the duties of making entries into the agencies' or states' accounting system, posting of cash collections and making deposits.
 - b. Pre-numbered remittance advices and mail logs shall be used to document over-the-counter collections and cash received through the mail. The use of mechanical receipting devices, such as cash registers, may also be used.

- c. Agencies shall assign the responsibility for issuing pre-numbered remittance advices to a limited number of employees.
 - d. Cash shall be maintained in a safe or other locked storage device until deposited.
6. **Financial Reporting and Reconciliation:** Management shall perform reconciliations and independent supervisory reviews over the cash receipts process.
- a. Someone independent of the cash receipt function shall reconcile the mail log where cash and receipts are initially received, to the daily cash and receipts activity. A comparison of actual currency and coins deposited with actual currency and coins received shall be conducted.
 - b. Someone independent of the cash receipt process shall summarize cash receipts. This summary shall be compared to the State Treasury deposits to ensure that all collections are deposited intact. Cash receipts recorded in the state accounting system shall also be reconciled against an agency's internal accounting system.
 - c. Monies received on prepaid accounts shall be reconciled with deposits and posting to the accounting records.
7. **Safeguarding Cash Receipts:** Agencies shall establish physical control to secure and safeguard cash, checks and other negotiable instruments received.
- a. Cash, checks and other negotiable instruments, not deposited or processed at the end of the day, shall be placed in an area secured by some form of locking device, such as a safe, vault or locking file cabinet.
 - b. Cash, checks and mail containing related receipts shall not be left unattended during the day. They shall be locked anytime the clerk leaves his/her workstation.
 - c. At least two (2) people shall accompany cash at all times.
 - d. A dual control storage device requiring two (2) individuals to open the device is recommended.
 - e. Access to safes, vaults or other security devices shall be restricted to personnel whose job duties require such access.
 - f. Management shall periodically count the cash on hand and compare it to the cash receipt tickets.
8. **Suspected Loss of Public Funds:** In the event of the suspected loss of public funds, the agency shall:
- a. Notify the appropriate agency personnel, not involved in the suspected loss, prior to contacting outside agencies;
 - b. Notify the secretary of the FAC within 24 hours after discovery of the suspected loss. If the suspected loss is discovered on a weekend or holiday, the secretary of the FAC should be notified the next business day; and
 - c. Notify outside law enforcement or investigative agencies after discussing the loss with appropriate agency personnel and FAC.
9. **Responsible Parties:** The agency head or their designee shall be responsible for ensuring that cash handling procedures are implemented.
10. **Agency Internal Procedures on Cash Handling:** Agencies may implement stricter internal controls than those set forth in this FAP. The FAC and Kentucky State Treasury may, at any time, review an agency's internal policies to ensure the existence of adequate internal controls.

Related to: KRS 41.070; KRS 45.237; KRS 45.242; KRS 45.244; KRS 45.251;
KRS 45.301; KRS 45.306 and 200 KAR 38.070

PAYMENTS VIA THE CHECK WRITER PROCESS

1. The majority of payments issued by the Commonwealth as checks or electronic fund transfers (EFTs) are the result of a process in the statewide financial system referred to as the Check Writer process.
 - a. Examples of payments issued through this process are payroll, retirement, public assistance, child support, unemployment insurance and tax refunds.
 - b. Agencies may be assigned the responsibility per KRS 45.121. Responsibility for the processing of Check Writer payments is distributed between the agency and SAS to ensure the payment process keeps the proper level of segregation of duties.
2. **Agency Responsibilities:**
 - a. Agencies shall ensure payment information within each Check Writer file is accurate and in the prescribed format.
 - b. Agencies shall review payments to ensure correct classification of expenditures involving both services and materials, with only services being recorded as 1099 reportable. Tax identification numbers (TIN) and legal names of vendors must be accurate, especially on 1099 reportable payments.
 - c. Agencies shall have different employees load and departmentally certify each file to ensure segregation of duties at the departmental level. The statewide accounting system captures the user identification number and timestamp of both the table load function and the certification.
3. **Office of Statewide Accounting Services (SAS) Responsibilities:**
 - a. SAS shall confirm that the table load function and department certification were completed by two (2) employees by comparing the system-captured data. This confirmation shall be indicated by a Central Certification; the system captures the user identification number and timestamp for the Central Certification.
 - b. SAS shall complete the system jobs to generate the accounting document, generate any intercept documents, Form 1099 Posting, and produce files to be used for check and Automated Clearing House (ACH) generation by Treasury. The system captures the date and timestamp of each system job in the process.
 - c. SAS shall provide participating agency personnel with instruction about the Check Writer process upon request. Training manuals are available from the Division of Customer Resource Center.
4. **Treasury Responsibilities:** Check printing and ACH files are retrieved from the eMARS production server. Checks shall be printed and distributed in a timely manner. The ACH files shall be transmitted to the state's general depository banking institution.
5. **System-Enforced Segregation of Duties:**
 - a. There are two (2) security roles given to agency-level users: one (1) granted to agency staff designated to load Check Writer files and one (1) granted to agency staff designated to certify Check Writer files.
 - b. Users may have access to both security roles, but shall never be allowed to load and certify the same Check Writer file.
 - c. Only SAS staff shall be designated the role to centrally certify the Check Writer files, thus creating the print and ACH files for Treasury.

6. Additional Processing Guidelines:

- a. Check Writer files may be loaded and processed at any time during the processing day or night, but the agency shall be given cut-off times in order to accommodate intercept jobs and Treasury processing.
- b. Check Writer payments are subject to cash and budget/allotment controls as provided by KRS 45.242, KRS 45.244 and KRS 45.251.
- c. Payments may be partially or fully intercepted during the Check Writer process pursuant to KRS 45.237, KRS 45.238 and KRS 45.239.
- d. The Check Writer process captures the required information for Form 1099 reporting purposes, pursuant to Section 6041 of the Internal Revenue Service (IRS) Code.

Relates to: KRS 45.121; KRS 45.237; KRS 45.238; KRS 45.239; KRS 45.242;
KRS 45.244; KRS 45.251; KRS 45.301 and IRS Section 6041

FAP 120-26-00
IMPREST CASH FUNDS

Subject to the provisions of KRS 45A.655, a budget unit, if provided for by appropriation or if authorized by the FAC, may establish one (1) or more imprest cash funds for the purpose of making disbursements requiring prompt cash outlay, and to carry out the provisions of KRS Chapter 45A. The agency head shall assume full responsibility for the proper use of the imprest cash funds. The custodian, as provided in Section 4 of this FAP, shall administer the fund. An agency requesting imprest cash funds shall contact the Division of State Risk Management and Insurance Services to determine the amount of individual bonds that may be required.

1. **PROPER USE OF IMPREST CASH FUNDS:** The preferred methods of payment for all expenses are the state's eProcurement and accounting systems and the state Procurement Card. An agency shall use imprest cash funds only if it is impractical or impossible to make payments through one (1) of the preferred methods.
2. **IMPREST CASH SHALL NOT BE USED FOR THE FOLLOWING PURPOSES:**
 - a. Salaries or wages for Commonwealth employees.
 - b. Travel or any expense relating to travel or entertainment.
 - c. Legal fees.
 - d. Printing.
 - e. Lease or purchase of real property.
 - f. Freight or express, if the vendor is obligated to pay freight or express.
 - g. Payments on existing contracts.
 - h. Refund of fees or other receipts.
 - i. Purchase of scheduled items in excess of \$500 per category during the scheduled period.
 - j. Bond or insurance premium, except notary bonds.
3. **PETTY CASH FUNDS:** Petty cash funds shall not exceed \$50, except with special approval from OPS. Petty Cash funds may be used for purchases in which cash payment is necessary. Such funds may be established as sub-imprest cash funds and are authorized for the following purposes:
 - a. Postage.
 - b. Freight and express. Expenses for incoming freight and express shall not be paid, if shipping instructions were F.O.B. agency. An explanation shall be made to show the purpose for each payment.
 - c. Governmental publications.
 - d. Local market purchases of supplies, materials, services or fees, not to exceed \$25 per purchase, except with special authorization from the executive director of SAS.
4. **HOW TO ESTABLISH IMPREST CASH FUNDS:**
 - a. An agency shall submit a letter requesting an imprest cash fund to SAS. The request shall contain the following information:
 1. The amount of funds desired. This amount shall be approximately the sum of two (2) months of estimated imprest cash expenditures.

2. A list of items that the agency wishes to pay for from the imprest cash fund.
 3. An explanation of the need for imprest cash fund purchases rather than other established procedures.
 4. A proposed custodian and alternate. Only one (1) custodian and one (1) alternate shall be authorized unless need for an additional alternate is justified.
 5. The period for which imprest cash funds shall be appropriated.
 6. A statement that requires a bond to be executed immediately upon establishment of the fund.
- b. SAS shall evaluate the request and, if approved, prepare an imprest cash authority indicating the items approved for payment from the imprest cash fund and any financial restrictions applicable thereto. If approved, the request is forwarded to SAS, and a copy is sent to the agency.
 - c. Upon receipt of a copy of the approved authority, SAS shall prepare a warrant for the amount of the fund. The State Treasurer shall issue a check in the approved amount payable to the custodian of the fund.
 - d. The custodian shall write checks to make payments authorized by the authority and prepare an agency Imprest Cash Voucher. Agencies shall retain receipts and records of all purchases, and prepare a Summary of Disbursements and Requests for Reimbursement per the instructions from SAS.
5. **REVISION OF IMPREST CASH FUNDS:** An agency shall submit a Request for Changes in an imprest cash authority in writing to SAS. This request shall include the imprest cash authority number, the custodian and custodian I.D. number, and a complete explanation and justification of the requested changes. If approved, SAS shall prepare an amendment to the authority indicating the items changed.

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

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