

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