

Frequently Asked Questions about the Required Affidavit for Bidders, Offerors, and Contractors

What must the affidavit be executed for?

- Competitive bids for goods, commodities, non-professional services, or professional services (signed by all bidders, and notarized).
- Noncompetitively negotiated contracts (i.e. any sole source, not practical or feasible to bid, or emergency contracts) (signed by contractor, since no bid, and notarized)
- Small purchase awards, to include transactions without a written contract (over \$1000). (If taking quotes, must be signed by awarded contractor only, and notarized).
- Stand alone payments (PRCs). (Must be signed by the authorized company representative, and notarized.)

All Affidavits must be notarized in all circumstances, as the notary is witnessing the signature of the individual who is swearing under penalty of perjury.

What does the affidavit not have to be executed for?

- Stand-alone payments for GAX, such as utility payments and services incidental to utility services (e.g. repairs due to outage), court-ordered payments, postage.
- Procard payments.
- Purchases off Master Agreements (The affidavit will be obtained when MA is established and the agencies do not need to obtain affidavits for each individual purchase off an existing Master Agreement).
- Agreements between governmental agencies.
- Payments for dues, subscriptions.
- TPs for reimbursements to employees.
- Purchases or stand alone payments in amounts less than or equal to \$1000. Procurement requirements cannot be parceled, split, divided, or scheduled over a period of time in order to subvert the intent of this procedure.
- Agreement for the acquisition of real property.

Why is FAC making this change?

- The Campaign Finance Sworn Statement requirement is statutory under KRS 45A.110. The Finance and Administration Cabinet already requires that this form be signed and notarized for FAC contracts, and our legal office has advised that the form should also be executed for other agency contracts and small purchases as a matter of law.

What is the Annual Affidavit?

- The annual affidavit is revised Affidavit for Bidders, Contractors and Offerors that covers a one-year period and may be used by multiple agencies for multiple purchases/payments within the designated one-year period. The following is a link to the annual affidavit process: <https://finance.ky.gov/services/eprocurement/Documents/ANNUAL%20AFFIDAVIT%20PROCESS%202018.ppt>

Does this apply to renewals?

- Yes. When a contract (competitive or non-competitive) is renewed for another term, the affidavit should be re-executed as of the date of renewal unless an annual affidavit is on file and covers that time period.

Does this apply to contract modifications?

- No. The affidavit does not need to be re-executed each time a contract modification is done.

Do we have to modify existing contracts, which do not have the affidavit, just to add the affidavit?

- No. However, as existing contracts are modified for other reasons, have the vendor execute the affidavit at the same time.

Does the executed affidavit need to be attached to the contract in eMARS?

- Yes

Can we accept an email and/or faxed copy of the affidavit or does it have to be an original?

- We can accept faxes or scanned and emailed affidavits, as long as they have been signed and notarized and as long as it is not for an out-of-state vendor (which requires an actual notary seal). Have the vendor mail in the original.

Are prior arrangements exempt from the affidavit process?

- No- these would not be exempt.

We have been asked by several vendors if the cost of getting the affidavits notarized can be passed along to the state?

- No- it is part of them doing business with the Commonwealth.

If a vendor violates a part of the Affidavit, what action can be taken?

- Action could be taken against a vendor as indicated at the bottom of the affidavit: "failure to accurately disclose such information may result in contract termination, repayment of funds and other available remedies under law."

If we pay a vendor on an as needed basis, do we need to get an affidavit each time we make a payment or is the affidavit valid for a period of time?

- The annual affidavit covers a one-year period and may cover multiple agencies and multiple purchases/payments. The original affidavit does not cover a period of time, does the original affidavit be kept on file to cover multiple purchases/ payments or multiple agencies within a cabinet.

What if we encounter a vendor that refuses to provide the completed form?

- We cannot contract with them.

Can agency personnel that are Notaries notarize these affidavits?

- Yes, the notary is supposed to witness the signature, and there is no objection to a state employee performing those duties for a vendor. The agency could have some employees who have jobs that require them to make frequent purchases – like maintenance workers- become notaries so they can notarize the signatures.

Can we pay the cost of an employee to become a notary?

- The agency can reimburse an employee the cost of becoming a notary on a TP. Information on how to apply to become a notary is available on the Secretary of State's website. The application fee is \$10. A notary public's term of office is for four years.

Instead of having the vendor execute an affidavit for each purchase made, could we create a standing order in the form of a PO or PO2 and make payments against it?

- Yes, a "standing order" is a purchase order that has been issued to a vendor, against which purchases may be made. When repeated purchases of the same type of supply item are expected, multiple orders may be eliminated. Per the affidavit: "the award of a contract to the bidder or offeror or the entity which he/she represents will not violate any provisions of the

campaign finance laws of the Commonwealth.” If the vendor executes the affidavit for the standing order, this is sufficient.

The standing order can not exceed an agency’s small purchase authority or single quote limit, nor can procurement requirements 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 needs for like items will cost more than what it can purchase under its small purchase limit, the agency shall submit a Requisition to the Finance and Administration Cabinet, Office of Procurement Services for commodities and services.

New standing purchase orders must be issued each fiscal year.

Please use the template which has been set up in eMARS called **SOPO** - Standing/Open Purchase Order. It contains clauses that cover:

QUANTITY BASIS OF CONTRACT – ESTIMATED QUANTITIES

Any and all quantities mentioned in this Contract are purely estimates, and are not to be implied nor inferred as being guarantees. The State is obligated to buy only that quantity needed during the term of the contract.

FUNDING-OUT PROVISION

The Vendor agrees that if funds are not appropriated to the agency or are not otherwise available for the purpose of making payments, the agency shall be authorized, upon thirty (30) days written notice to the Vendor, to terminate this contract. The termination shall be without any other obligation or liability of any cancellation or termination charges.

CANCELLATION CLAUSE – 30 DAYS NOTICE

The Commonwealth may cancel the contract by giving written notice thirty (30) days prior to effective cancellation date. In the event such action is taken, the contract shall be null and void upon receipt of a Modification canceling the contract.

Make sure to incorporate your clauses by full text so they are included in the printed contract.

Where can I get a copy of the Affidavit?

- The annual affidavit can be accessed directly from this link: <https://finance.ky.gov/services/eprocurement/Documents/Annual%20Required%20Affidavit%20for%20Bidders%20Offerors%20and%20Contractors.pdf>
- The affidavit can be accessed directly from this link: http://finance.ky.gov/services/eprocurement/Documents/Attachment_2.pdf

