

**45A.375 Negotiations after competitive sealed bidding when all bids exceed available funds -- Action when no bids received.**

- (1) In the event that all bids submitted pursuant to competitive sealed bidding under KRS 45A.365 result in bid prices in excess of the funds available for the purchase, and the local public agency determines in writing:
  - (a) That there are no additional funds then available from any source so as to permit an award to the lowest responsive and responsible bidder; and
  - (b) The best interest of the local public agency will not permit the delay attendant to a resolicitation under revised specifications or revised quantities under competitive sealed bidding as provided in KRS 45A.365; then a negotiated award may be made as set forth in subsections (2) or (3) of this section.
- (2) Where there is more than one (1) bidder, competitive negotiations pursuant to KRS 45A.370 shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined in writing by the local public agency to be the lowest responsive and responsible bidders to the competitive sealed bid invitation after application of the reciprocal preference for resident bidders required in KRS 45A.494. Such competitive negotiations shall be conducted under the following restrictions:
  - (a) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and
  - (b) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror after application of the reciprocal preference for resident bidders required in KRS 45A.494. No discussion shall be conducted with offerors after submission of proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that award is to be made without discussions except as herein provided.
- (3) Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with KRS 45A.380.
- (4) Where, after invitation for bids has been made in accordance with KRS 45A.365 and no bids have been received from responsive and responsible bidders, the local public agency may proceed to acquire the supplies, services, or construction by noncompetitive negotiations in accordance with KRS 45A.380.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 162, sec. 14, effective July 15, 2010. -- Amended 1980 Ky. Acts ch. 250, sec. 11, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 76, effective January 1, 1980.