

#### **45A.085 Competitive negotiation.**

- (1) When, under administrative regulations promulgated by the secretary or under KRS 45A.180, the purchasing officer determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in KRS 45A.095 and 45A.100, a contract may be awarded by competitive negotiation, which may include the use of a reverse auction.
- (2) Adequate public notice of the request for proposals and any reverse auction shall be given in the same manner and circumstances as provided in KRS 45A.080(3).
- (3) Contracts other than contracts for projects utilizing an alternative project delivery method under KRS 45A.180 may be competitively negotiated when it is determined in writing by the purchasing officer that the bids received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate.
- (4) Contracts for projects utilizing an alternative project delivery method shall be processed in accordance with KRS 45A.180.
- (5) The request for proposals shall indicate the relative importance of price and other evaluation factors, and any reverse auction procedures.
- (6) Award shall be made to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the Commonwealth, taking into consideration price and the evaluation factors set forth in the request for proposals and the reciprocal preference for resident bidders required under KRS 45A.494.
- (7) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
  - (a) With respect to prices, where the prices are fixed by law, reverse auction, or administrative regulation, except that consideration shall be given to competitive terms and conditions;
  - (b) Where time of delivery or performance will not permit discussions; or
  - (c) Where it can be clearly demonstrated and documented from the existence of adequate competition or prior experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable best value procurement, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 63, sec. 4, effective July 15, 2010; and ch. 162, sec. 8, effective July 15, 2010. -- Amended 2003 Ky. Acts ch. 98, sec. 5, effective June 24, 2003. -- Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 28, effective May 30, 1997. -- Amended 1979 (1st Extra. Sess.) Ky. Acts ch. 9, sec. 2, effective

February 10, 1979. -- Created 1978 Ky. Acts ch. 110, sec. 18, effective January 1, 1979.

**Legislative Research Commission Note (7/15/2010).** This section was amended by 2010 Ky. Acts chs. 63 and 162, which do not appear to be in conflict and have been codified together.

**Legislative Research Commission Note (10/19/2004).** 2004 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 2, provides, "Notwithstanding KRS 18A.225, 45A.022, 45A.080, 45A.085, 45A.090, 45A.225 to 45A.290, or any other provision of KRS Chapter 45A to the contrary, retroactive to August 12, 2004, the Finance and Administration Cabinet shall implement the provisions of this Act by amending the previously negotiated contracts for public employee health insurance. The secretary of the Finance and Administration Cabinet shall provide an actuarial certification that the self-insured contract amounts are actuarially sound. Any contracts entered into or modified pursuant to this section shall be forwarded to the Legislative Research Commission."