

**45A.695 Personal service contract procedures -- Tax incentive agreements.**

- (1) Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract entered into by any contracting body or incur expenditures under a tax incentive agreement until notification of the personal service contract or tax incentive agreement is filed with the committee. Each personal service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.
- (2) Each personal service contract, tax incentive agreement, and memorandum of agreement shall be filed with the committee prior to the effective date and shall be accompanied by a completed proof of necessity form as established by the committee by promulgation of an administrative regulation, or equivalent information if submitted electronically. The proof of necessity form shall document:
  - (a) The need for the service or benefit to the Commonwealth of the tax incentive agreement;
  - (b) For personal service contracts and memoranda of agreement, the unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service;
  - (c) The total projected cost of the contract or agreement and source of funding;
  - (d) The total projected duration of the contract or tax incentive agreement;
  - (e) Payment information, in detail;
  - (f) In the case of memoranda of agreement or similar device, the reason for exchanging resources or responsibilities; and
  - (g) Such other information as the committee deems appropriate.
- (3) Adequate notice of the need for a personal service contract shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, state the relative importance of particular qualifications, and include the reciprocal preference for resident bidders required by KRS 45A.494.
- (4) The head of the contracting body or his or her designee may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (5) Award shall be made to the offeror determined by the head of the contracting body, or his or her designee, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written

documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.

- (6) The committee shall maintain a record or have readily accessible records of the date on which each personal service contract, tax incentive agreement, and memorandum of agreement was received and shall maintain or have access to electronic or paper files on all personal service contracts, tax incentive agreements, and memoranda of agreement. Except for records exempt from inspection under KRS 61.870 to 61.884, all personal service contracts, tax incentive agreements, and memoranda of agreement shall be made available for public inspection.
- (7) Payment on personal service contracts, tax incentive agreements, and memoranda of agreement submitted to the committee for approval shall not be made for services rendered or projects undertaken after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary of the Finance and Administration Cabinet. All personal service contracts, tax incentive agreements, and memoranda of agreement shall contain a provision that stipulates that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.
- (8) In the event of a governmental emergency as defined under KRS 45A.690, work may begin prior to filing notification of the personal service contract with the committee, if the secretary of the Finance and Administration Cabinet or his designee determines that the time involved in the normal review process would be detrimental to the Commonwealth's ability to act or procure the services and the normal process will not accommodate the governmental emergency. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the committee.
- (9) If a governmental emergency exists as defined under KRS 45A.690 and work is authorized to begin on a personal service contract immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet or his designee, setting forth in detail the nature of the emergency shall be filed with the committee, along with a copy of the personal service contract.
- (10)
  - (a) No payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.
  - (b) Invoices shall be submitted every ninety (90) days, unless the personal service contract specifies a different submission time period.
  - (c) Separate invoices shall be submitted for each distinct matter covered by the personal service contract, and shall be signed by the individual responsible for that matter.
  - (d) Each invoice shall contain the following information:

1. A description of the matter covered by the invoice;
  2. The date each service was performed;
  3. A full description of each service;
  4. The name and title of each individual who worked on the matter, and the time the individual spent on the matter;
  5. The subject matter and recipient of any correspondence;
  6. A full description of any work product produced, designating the way in which the work product is associated with the matter being invoiced;
  7. The hourly rate for each individual working on the matter, and the total charge for that individual for each matter invoiced;
  8. An itemized list of all disbursements to be reimbursed by the state for each matter invoiced;
  9. The total charge for each matter;
  10. The combined total for services and disbursements for the billing period;
  11. The tax identification number of the entity awarded the personal service contract; and
  12. An indication on each invoice of whether or not the invoice is final.
- (e) The issuance of an invoice to the Commonwealth constitutes an affirmation by the individual, firm, partnership, or corporation awarded the personal service contract that the invoice truly and accurately represents work actually performed and expenses actually incurred.
- (f) The head of the contracting body shall approve the invoice, indicating that the charges in the invoice reflect the value of the work performed, and all recorded costs and disbursements were reasonably and necessarily incurred in connection with the matter invoiced.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 55, sec. 4, effective April 5, 2010; and ch. 162 sec. 15, effective July 15, 2010. -- Amended 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 49, effective June 26, 2009. -- Amended 1998 Ky. Acts ch. 486, sec. 3, effective July 15, 1998, prevails over ch. 120, sec. 16, effective July 15, 1998. -- Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 33, effective May 30, 1997. -- Amended 1992 Ky. Acts ch. 55, sec. 11, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 496, sec. 15, effective July 13, 1990.

**Legislative Research Commission Note (7/15/2010)** This section was amended by 2010 Ky. Acts chs. 55 and 162 which do not appear to be in conflict and have been codified together.

**Legislative Research Commission Note (7/15/98).** This section was amended by 1998 Ky. Acts Chs. 120 and 486 which are in conflict. Under KRS 446.250, Acts ch. 486, which was last enacted by the General Assembly, prevails.