

**45A.825 Prequalification of interested firms -- Request for proposals -- Responses -  
- Procedures for evaluating proposals and negotiating contract -- Exception.**

- (1) (a) A firm shall not be considered for providing architectural, engineering, or engineering-related services to the Finance and Administration Cabinet or engineering or engineering-related services to the Transportation Cabinet unless the relevant procuring agency has prequalified the firm prior to notice of a request for proposals to which that firm intends to respond.
- (b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.
- (2) (a) The procuring agency shall consult with the user agency or user division before arriving at a request for proposals.
- (b) The request for proposals:
  1. Shall include as an evaluation factor whether the work tasks are to be performed in Kentucky or outside Kentucky;
  2. Shall indicate the relative weight of evaluation factors, including the reciprocal preference for resident bidders required by KRS 45A.494; and
  3. Shall establish a timetable for:
    - a. The selection committee's first meeting held pursuant to subsection (6) of this section; and
    - b. The selection committee's activities conducted pursuant to subsection (7)(b) of this section or subsection (8)(b), (d), and (e) of this section, as appropriate.
- (c) The procuring agency shall provide adequate public notice of a request for proposals and notice of the materials that the procuring agency will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the project evaluation sheet to be used by the relevant selection committee. The notice shall also set a deadline for filing responses to a request for proposals with the procuring agency. It shall be the intent of this subsection that firms in all regions of the Commonwealth are given an equal opportunity to be selected.
- (3) A firm shall respond to a request for proposals by submitting before the deadline, a completed form, devised by the procuring agency, which states the firm's experience and its qualifications for the project as described in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.
- (4) The employees of a procuring agency and the members of the selection committee shall keep all responses to a request for proposals confidential until the procuring agency has awarded a contract.
- (5) The secretary of the procuring agency shall designate a procuring agency employee to determine which firms have prequalified pursuant to subsection (1) of this section and have filed, in a timely fashion, responses to a request for proposals. He shall create a list of the firms which have done so and certify the list.

- (6) The procuring agency shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:
- (a) Elect from among the voting members of the committee a chairman and a vice chairman who shall hold their positions for the duration of the selection committee's participation in the project;
  - (b) Be provided with:
    - 1. The certified list created pursuant to subsection (5) of this section;
    - 2. The firms' responses to the request for proposals;
    - 3. The request for proposals;
    - 4. The notice of request for proposals; and
    - 5. The project evaluation sheets; and
  - (c) Discuss the future conduct of its affairs.
- (7) (a) When the Transportation Cabinet procures any engineering or engineering-related services, or when the Finance and Administration Cabinet procures architectural services for an estimated fee of less than fifty thousand dollars (\$50,000) or engineering or engineering-related services for an estimated fee of less than one hundred thousand dollars (\$100,000), this subsection and subsection (9) of this section shall govern the procurement process.
- (b) The selection committee shall meet in executive session to:
    - 1. Evaluate the materials with which it has been provided;
    - 2. Select the three (3) most qualified firms and rank them in order of preference, based upon the weighted evaluation factors established in the request for proposals; and
    - 3. Notify the procuring agency of the ranking.
  - (c) The procuring agency shall notify each firm which responded to the request for proposals, informing the firm of:
    - 1. The three (3) finalists;
    - 2. Their ranking; and
    - 3. The rest of the procedure that will be followed in the awarding of the contract.
  - (d) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.
- (8) (a) When the Finance and Administration Cabinet is procuring architectural services for an estimated fee of fifty thousand dollars (\$50,000) or more or engineering or engineering-related services for an estimated fee of one hundred thousand dollars (\$100,000) or more, this subsection and subsection (9) of this section shall govern the procurement process.
- (b) The selection committee shall meet in executive session to:
    - 1. Evaluate the materials with which it has been provided;
    - 2. Select, but not rank, the three (3) most qualified firms, based upon the

- weighted evaluation factors established in the request for proposals; and
3. Notify the procuring agency of the three (3) finalists.
- (c) The procuring agency shall notify each firm which responded to the request for proposals, informing the firm of:
    1. The three (3) finalists; and
    2. The rest of the procedure that will be followed in the awarding of the contract.
  - (d) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the procuring agency has awarded a contract.
  - (e) The selection committee shall meet in executive session to:
    1. Rank the three (3) finalists based upon the weighted evaluation factors established in the request for proposals; and
    2. Forward the ranking to the procuring agency.
  - (f) The procuring agency shall notify each finalist, informing the finalist of:
    1. His ranking; and
    2. The rest of the procedure that will be followed in the awarding of the contract.
  - (g) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.
- (9) The secretary of the procuring agency shall designate a procuring agency employee as the procuring officer in charge of negotiating a contract with the top-ranked firm, as determined by the selection committee, at compensation which the procuring officer determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the employee shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the procuring officer be unable to negotiate a satisfactory contract with the top-ranked firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The procuring officer shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, the purchasing officer shall formally terminate negotiations. The purchasing officer shall then undertake negotiations with the third-ranked firm. Should the purchasing officer be unable to negotiate a satisfactory contract with any of the selected firms, he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to KRS 45A.810.
- (10) Once a procuring officer has negotiated a contract, the procuring agency shall notify the other finalists, informing them of:
- (a) Which firm has successfully negotiated a contract; and

- (b) The rest of the procedure that will be followed in the awarding of the contract.
- (11) Notwithstanding the provisions of KRS 45A.045, when the Transportation Cabinet is the procuring agency, the negotiated contract shall take effect without the approval of the secretary of the Finance and Administration Cabinet.
- (12) The provisions of this section shall not apply to the procurement of architectural, engineering, or engineering-related services under KRS 45A.837 and 45A.838.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 162, sec. 17, effective July 15, 2010. -- Amended 1998 Ky. Acts ch. 120, sec. 19, effective July 15, 1998 and ch. 319, sec. 5, effective April 3, 1998. -- Amended 1996 Ky. Acts ch. 246, sec. 3, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 95, sec. 3, effective July 15, 1994. " Created 1992 Ky. Acts ch. 55, sec. 6, effective July 14, 1992.