

45A.370 Competitive negotiation.

- (1) A local public agency may contract or purchase through competitive negotiation, which may include a reverse auction, upon a written finding that:
 - (a) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or
 - (b) Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or
 - (c) The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsible bidder is notified of the intention to negotiate and is given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsible bidder.
- (2) Proposals shall be solicited through public notice pursuant to KRS 45A.365(3) or any other means which can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The request for proposals shall indicate the factors to be considered in the evaluation, including the reciprocal preference for resident bidders required by KRS 45A.494, and the relative importance of each factor, and the procedures to be followed if a reverse auction is used in the procurement.
- (3) 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 such prices are fixed by law, regulation, or reverse auction, except that consideration shall be given to competitive terms and conditions; or
 - (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 accurate prior cost experience with that particular supply, service, or construction item that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of the possibility that award may be made on the basis of initial offers.
- (4) 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. A request for proposals based on 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 after application of the reciprocal preference for resident bidders required by KRS 45A.494 submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that an award is to be made without discussion except as herein provided.

- (5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the local public agency based upon the evaluation factors set forth in the request for proposals and the reciprocal preference for resident bidders required by KRS 45A.494.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 63, sec. 8, effective July 15, 2010; and ch. 162, sec. 13, effective July 15, 2010. -- Amended 1998 Ky. Acts ch. 120, sec. 14, effective July 15, 1998. -- Created 1978 Ky. Acts ch. 110, sec. 75, effective January 1, 1980.

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.