KENTUCKY
MODEL PROCUREMENT CODE
FOR LOCAL GOVERNMENT

Tom Stratton, Procurement Manager
Kentucky Department of Education
Two Methods of Procurement for School Districts

- Bid Law, KRS 424.260
- Kentucky Model Procurement Code (KMPC), KRS 45A.345 – 460

Bid Law requires less record keeping but also has little flexibility.

Model Procurement requires more written documentation but also provides more procurement options.

The Kentucky Department of Education, Division of District Support encourages school districts to use the Model Procurement Code.
KRS 424.260
Bids for materials, supplies, equipment, or services.

Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, or district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than twenty thousand dollars ($20,000) without first making newspaper advertisement for bids.

Should consult with your local School Board counsel.
Kentucky Model Procurement Code

KRS Chapter 45A

- American Bar Association’s (ABA) Model Procurement Code was adopted by Legislation in 1978 and became law in 1979.

- ABA drafted the Model Procurement Code as a result of numerous public purchasing scandals across the country.

- Kentucky was the first state to adopt this procurement code.
Kentucky Model Procurement Code

KRS Chapter 45A

- There are currently 18 states operating under this code.

- KRS Chapter 45A is the statutory location of the Model Procurement Code.

- Highly flexible statutory framework.

- Establishes a set of ethical standards.
KMPC PUBLIC POLICY

KRS 45A.010(2) notes that the underlying public policy of the Kentucky Model Procurement Code (KMPC) is:

a) To simplify, clarify, and modernize the law governing purchasing by the Commonwealth;

b) To permit the continued development of purchasing policies and practices;

c) To make as consistent as possible the purchasing laws among the various states;

d) To provide for increased public confidence in the procedures followed in public procurement;

e) To insure the fair and equitable treatment of all persons who deal with the procurement system of the Commonwealth;

f) To provide increased economy in state procurement activities by fostering effective competition; and

g) To provide safeguards for the maintenance of a procurement system of quality and integrity.
WHO DOES THE KMPC APPLY TO?

The KMPC generally applies to the following:

- Expenditures of public funds by Kentucky state government (see KRS 45A.020);

- Expenditures of public funds by local public entities (e.g. cities, counties, school districts), which have adopted the KMPC pursuant to KRS 45A.343; and

- Expenditures of public funds by local public entities who may not have adopted the KMPC, but are using cooperative purchasing agreements in accordance with KRS 45A.300.
Administrative Regulations
KRS 45A.360

(1) A local public agency may adopt regulations, not inconsistent with KRS 45A.345 to 45A.460, governing the following:

a) Conditions and procedures for delegations of purchasing authority;
b) Prequalification, suspension, debarment, and reinstatement of prospective bidders;
c) Modification and termination of contracts;
d) Conditions and procedures for the purchase of perishables and items for resale;
e) Conditions, including emergencies, and procedures under which purchases may be made by means other than competitive sealed bids;
f) Rejection of bids, consideration of alternate bids, and waiver of informalities in offers;
g) Confidentiality of technical data and trade secrets information submitted by actual and prospective bidders or offerors.
Administrative Regulations
KRS 45A.360

(h) Partial, progressive, and multiple awards;

(i) Supervision of store rooms and inventories, including determination of appropriate stock levels and the management, transfer, sale, or other disposal of government-owned property;

(j) Definitions and classes of contractual services and procedures for acquiring them;

(k) Procedures for the verification and auditing of local public agency procurement records;

(l) Annual reports from those vested with purchasing authority as may be deemed advisable in order to insure that the requirements of this chapter are complied with; and

(m) Such other regulations as may be deemed advisable to carry out the purposes of KRS 45A.345 to 45A.460 or otherwise fulfill the local public agency's procurement responsibilities.
Administrative Regulations  
KRS 45A.360

(2) All local public agency ordinances and regulations pertaining to **procurement**, whether promulgated under KRS 45A.345 to 45A.460 or otherwise, **shall be maintained by the local public agency and shall be available to the public upon request** at a cost not to exceed the cost of reproduction.

(3) Local school districts may adopt policies, not inconsistent with KRS 45A.345 to 45A.460, governing the conditions and procedures under which purchases of supplies may be made elsewhere. These policies shall include a provision that supplies purchased under this section shall meet any applicable contract specifications and not exceed two thousand five hundred dollars ($2,500).
COMMON PROCUREMENT TERMS

- **Responsible bidder** - a person or an entity which has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

- **Responsive bidder** - person who has submitted a bid under KRS 45A.365 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.
COMMON PROCUREMENT TERMS

- **Evaluated bid price** - the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion.
GENERAL METHODS OF PROCUREMENT

There are 5 general methods of procurement:

1. Cooperative purchasing
2. Small purchase process
3. Competitive sealed bidding
   (Invitation for Bids – IFB)
4. Competitive negotiations
   (Request for Proposals – RFP)
5. Noncompetitive negotiations
   (Sole Source/Not practical to bid)
Cooperative Purchasing
Master Agreement - “State Price Contract”

Price agreements with a particular vendor to supply specific items at a specific unit price for a specific period.

Great first choice. Bidding and awarding already done by the Finance Cabinet. Items and services are ready for purchase.


IT purchases – KETS Contracts (Kentucky Education Technology System)
Several vendors have KETS Instructional Device contracts available for use by K-12 public districts with the Commonwealth of Kentucky. Link is on KDE’s website: http://education.ky.gov/districts/tech/kpur/Pages/Instr-Device.aspx
Cooperative Purchasing
Master Agreement - “State Price Contract”

When Should a Term Contract be Used?

1. To provide a continuing need.
2. To expedite the normal purchasing process (i.e. obtaining quotes).
Cooperative Purchasing
Master Agreement - “State Price Contract”

Why are Term Contracts Established?

1. Convenience of User.
2. Variety at a Fixed Price.
GSA

What is the GSA?

General Service Administration

The procurement agency of the U.S. government

- The GSA Cooperative Purchasing Program, authorized by statute, allows state and local governments to purchase a variety of commercial supplies (products) and services under specific GSA Schedule contracts to save time, money and meet their everyday needs and missions.

What is a GSA Price Agreement?

- A non-competitive negotiation between a vendor and the federal government which results in a 5 to 10 year contract.
Small Purchase Process

going outside of cooperative agreements

KRS 45A.300 (5) (Cooperative purchasing):

Nothing in this code shall limit or restrict the ability of local school districts to acquire supplies outside of the public purchasing agreements when the supplies and equipment meeting the same specifications as the contract items are available at a lower price elsewhere and the purchase does not exceed two thousand five hundred dollars ($2,500).
Small Purchase Process

1. **Statutory Authority**

Local government, KRS 45A.385:

The local public agency may use small purchase procedures for any contract for which a determination is made that the aggregate amount of the contract does not exceed twenty thousand dollars ($20,000) if small purchase procedures are in writing and available to the public.
Small Purchase Process

2. **General Practice**

Aggregate amount doesn’t exceed $20,000.

Cannot artificially split or divide purchases.

May require one quote or multiple quotes, depending on dollar thresholds established by local purchasing procedures.
Basic Small Purchase Procedure

*Sample language used in a current school district procurement manual*

a) Small purchases are hereby authorized for the procurement of necessary supplies, service, or construction; the cost and quality of which are such that any possible savings of public funds realized through the practice of other procurement procedures would not justify the administrative time and expense necessary for the conduct of competitive sealed bidding.

b) Purchases shall not be fragmented or artificially divided to avoid use of appropriate procurement methods. For example, the purchase of the same product from four different suppliers for $3,000 each is a violation.
Basic Small Purchase Procedure

Sample language used in a current school district procurement manual

c) No employee should use the small purchase procedure to bypass state price contracts, bids, etc., or to bypass conflict of interest regulations.
Basic Small Purchase Procedure

_Sample language used in a current school district procurement manual_

**Limits on Purchases**

1. $0 - $249.99 requires purchase order signed by the Superintendent.

2. $250 - $1,999.99 requires signed purchase order and documented three telephone quotes or three prices from competitive catalogs.

3. $2,000 - $19,999.99 requires signed purchase order and three written quotes from competitive vendors or suppliers.

4. $20,000 and over requires formal bidding by the Office of the Superintendent.
Tips When Obtaining Quotes From Vendors

- If obtaining phone quotes, advise vendors you’re obtaining quotes from several vendors. You cannot share the names of other vendors from whom quotes are being obtained.
- For email/fax quotes, have vendor email/fax his quote, terms, etc. to you complete with his signature.
- Always give a complete address for the “Ship To” location. Don’t use P.O. Box Numbers.
- If possible, always make freight terms F.O.B. Destination, not F.O.B. Factory.
Tips When Obtaining Quotes From Vendors

- Contact the manufacturer if a Brand Name is required to determine authorized dealers to promote competition.
- Consider establishing an acceptable brands list (ABL) when soliciting.

**ADVANTAGE of ABL**
- Promotes Competition

**DISADVANTAGE of ABL**
- Requires research and hands on evaluation of products. Can be time consuming.
Specifications

- "Specifications" means any description of a physical or functional characteristic of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

- Learn all you can about preparing specifications, especially when the bid requires a formal solicitation ($20,000+).
Specifications

- General or Generic Specifications
- Brand Name or Approved Equal
- Acceptable Brands List
- “No Substitute”
  - BEWARE! - Competition Killer
Want to learn how to write specs?

There are various workshops and seminars available to you.

Kentucky Public Procurement Association (KPPA)

National Institute of Governmental Purchasing (NIGP)
COMPETITIVE SEALED BIDDING

1. Statutory Authority
   KRS 45A.365

2. General Practice
   - This type of solicitation is commonly referred to as an Invitation For Bids (IFB).
   - Specifications are easily determined upfront and very concise.
   - Public notice of at least 7 days before bid opening – Internet or local newspaper of general circulation.
     KRS 45A.365(3)
COMPETITIVE SEALED BIDDING

2. General Practice

- Bids opened publically at a time and a place identified in the solicitation.
- Names of bidders and prices announced.
- Evaluation typically conducted by procurement officer in accordance with tight specifications and criteria established in the solicitation.
- A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price after the application of any reciprocal preference for resident bidders required by KRS 45A.494.
COMPETITIVE NEGOTIATION

1. Statutory Authority

KRS 45A.370

2. General Practice

- This type of solicitation is commonly referred to as a Request for Proposals (RFP).
- Timeframe is generally a more lengthy process than a competitive sealed bid.
- General specifications are identified upfront, but vendors have the flexibility to propose solutions which meet the needs of bidding agency.
- Bids are not opened publically.
- Evaluation typically conducted by an evaluation team, guided by a procurement officer, in accordance with general specifications and criteria established in the solicitation.
- May include discussions with bidders during the evaluation process.
KRS 45A.370(1)(a-c)

(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
COMPETITIVE NEGOTIATION

KRS 45A.370(1)(a-c)

(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.
COMPETITIVE NEGOTIATION

KRS 45A.370 (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.
1. **Statutory Authority**

KRS 45A.380

A local public agency may contract or purchase through noncompetitive negotiation only when a written determination is made that competition is not feasible and it is further determined in writing by a designee of the local public agency that:

(1) An emergency exists which will cause public harm as a result of the delay in competitive procedures; or

(2) There is a single source within a reasonable geographical area of the product or service to be procured; or
NONCOMPETITIVE NEGOTIATION

KRS 45A.380

(3) The contract is for the services of a licensed professional, such as attorney, physician, psychiatrist, psychologist, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; or an artist such as a sculptor, aesthetic painter, or musician, provided, however, that this provision shall not apply to architects or engineers providing construction management services rather than professional architect or engineer services; or

(4) The contract is for the purchase of perishable items purchased on a weekly or more frequent basis, such as fresh fruits, vegetables, fish or meat;
NONCOMPETITIVE NEGO Ti TION

KRS 45A.380

(5) The contract is for replacement parts where the need cannot be reasonably anticipated and stockpiling is not feasible;

(6) The contract is for proprietary items for resale;

(7) In school districts the contract relates to an enterprise in which the buying or selling by students is a part of the educational experience;

(8) The contract or purchase is for expenditures made on authorized trips outside of the boundaries of the local public agency;
KRS 45A.380

(9) The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids;

(10) The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, and unemployment insurance; or

(11) The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the local public agency.
2. General Practice continued

- Should be used as a last resort only.
- Requires strong justification.
- Approved contract period should be time-limited to allow for periodic re-evaluation.
- Agency should still, as a best practice, attempt to engage in normal competitive practices as much as possible, under the circumstances (for example obtain multiple quotes in lieu of a bid, if it is not practical or feasible to bid in an emergency, because time is of the essence).
ETHICS

KRS 45A.455 governs ethical standards for local government entities under the KMPC.

- In essence, these statutes note that any state or local public employee should **NOT** participate in a procurement, if that individual has a conflict of interest in the process (ex: a financial interest in the outcome of the process).

- As a best practice, public employees who are involved in the public procurement process should always exercise vigilance and common sense to ensure impartiality and fairness throughout the process.

- Perception is everything!
CONSEQUENCES OF VIOLATING KMPC

**Penalties**

KRS 45A.990 allows for criminal charges to be brought for violating the KMPC, which may result in criminal convictions ranging from Class A misdemeanors to Class C felonies.

KRS 45A.990(9) also clarifies that these penalties also apply to officials at local public entities which have adopted the KMPC.
# Terms and Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
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<tr>
<td>RQ (or) RQS</td>
<td>Requisition</td>
</tr>
<tr>
<td>MA</td>
<td>Master Agreement, Price Contract Prefix</td>
</tr>
<tr>
<td>PO</td>
<td>“Guaranteed” Contract Prefix</td>
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<tr>
<td>RFQ</td>
<td>Request for Quotation</td>
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<tr>
<td>IFB</td>
<td>Invitation for Bids</td>
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<td>RFP</td>
<td>Request for Proposals</td>
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<td>D&amp;F</td>
<td>Determination and Finding</td>
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<tr>
<td>45A</td>
<td>Kentucky Model Procurement Law</td>
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<tr>
<td>Addendum</td>
<td>Official changes to RFQs, IFBs, RFPs</td>
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<tr>
<td>BREACH</td>
<td>Contractor is in default of contract requirement(s)</td>
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<tr>
<td>PROTEST</td>
<td>Vendor formally protesting an award decision</td>
</tr>
</tbody>
</table>
HELPFUL RESOURCES

All State Agency Master Agreements


This is a comprehensive list of all Master Agreements that are established for use by not only all state agencies, but for any political subdivisions, as well, to include all school districts. In addition to this report, the most frequently asked for price lists by local governments are published on this site.
HELPFUL RESOURCES

Vendor Self Service (VSS)

School districts can access additional information on state contracts, and state solicitations by accessing the “Vendor Self Service System” at https://emars.ky.gov/online/vss/AltSelfService. By clicking public access, a user can search for any current or past solicitations by keyword search. These may help a school district research specifications, or other information. In order to see which vendor received an award, click on the details button, and go to the Notice of Award tab.

Also available at the “Vendor Self Service System” site is a tab for “Catalog Management”. District personnel can look up items to see if they are on an “All State Agency Master Agreement” by keyword, vendor name, supplier part number, or manufacturer.
HELPFUL RESOURCES

Vendor Self Service (VSS)
Public Access
Catalog Management
Keyword Search

“and” is the wildcard that allows for the search of all words. Without it, the system finds only those contracts with phrases exactly as entered.
### Catalog Search

**Show Me**
- All Catalogs

**Step 1:** Enter one or more of the following:
- Keyword Search
- Vendor Name
- Supplier Part Number
- Manufacturer Name

**Step 2:** Click on Go or hit <Enter>

**Step 3:** Select a line and click on Catalog Line Details for more information

**Keyword Search**: TRUCK AND DIESEL

<table>
<thead>
<tr>
<th>Supplier Part Number</th>
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HELPFUL RESOURCES

Open Door

School districts can access additional information about state government contracts, which they may be able to use at the local level, at [http://opendoor.ky.gov](http://opendoor.ky.gov).

Users can search by document id, vendor name, specific departments, and branches, category, contract amounts, effective begin and end dates.

Categories are broken down into high level commodity categories, e.g. Automotive Vehicles and Related Transportation Equipment; Foods: Staple Grocery and Grocers Miscellaneous Items; Furniture: Office.
HELPFUL RESOURCES

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IT Purchases, KETS contracts page (Kentucky Education Technology System)

Kentucky state government procurement
Office of Procurement Services
Finance and Administration Cabinet
502-564-4510
QUESTIONS?