

**KENTUCKY MUNICIPAL ENERGY AGENCY
PROCUREMENT POLICY AND REGULATIONS**

Adopted: _____, 2018

I. PURPOSE

The purpose of this Procurement Policy and Regulations is to present a proper practice in the procurement of goods and services, including construction and the acquisition of real estate, for the Agency.

II. GENERAL PROVISIONS

A. Scope. This policy shall apply to the expenditure of public funds irrespective of the source of the funds. Purchases shall be made and encumbrances shall be incurred for the benefit of the Agency in accordance with these policies and regulations.

B. Laws and Regulations. The Agency shall comply with any applicable federal and state laws, and regulations including the Kentucky Model Procurement Code for Local Public Agencies, Sections 45A.345 to 45A.460 of the Kentucky Revised Statutes (the “Act”), and with terms and conditions of any grant, gift or bequest consistent with law. To the extent that this policy may be adjudged to be inconsistent with the provisions of the Act, they are to be construed as may be necessary to conform to such statutory provisions, or, if the offending provision cannot be so construed, it is declared to be severable and its invalidity shall not affect the remaining provisions contained herein.

C. Budget Expenditures; Board Approval. No purchase shall be made and no encumbrance shall be incurred unless funds sufficient to cover the purchase or encumbrance have been budgeted and are available within the approved budget or unless the purchase or encumbrance is approved by the Board.

D. Budgetary Compliance. The President & CEO is the authorized officer charged with the responsibility of staying within the Agency’s budgets and authorizing no expenditures, except as provided herein, in excess of the budget or approval of the Board.

E. Public Policy. Public policy dictates that the fundamental mission of a public procurement function is to promote economy, efficiency, and effectiveness in the acquisition of goods and services and expenditure of public funds. To accomplish this public policy, in addition to the provisions of KRS 45A.450 to 45A.460, the Agency must at least:

- (1) Provide for public confidence.
- (2) Use fair and equitable treatment to all concerned.
- (3) Employ effective broad-based free and open competition.

- (4) Strive for maximum value for Agency expenditures.
- (5) Provide for work to be performed in a thoroughly professional and ethical manner, with honesty and integrity in compliance with applicable laws and regulations and the procedures and rules adopted by the Agency.
- (6) Provide safeguards for maintaining a procurement system of quality and integrity, including prohibition against conflicts of interest and gratuities.
- (7) Allow sufficient flexibility to serve the energy and power needs and services for its Members and their communities and meet emergency needs as they arise.

F. Violations of Agency Policy. In addition to KRS 45A.455, the following provisions shall be considered a violation of Agency policy:

- (1) For any bidder or prospective bidder, including its employee(s) or officer(s), in connection with a purchase by the Agency, to engage in any act or inaction, which is a restraint of trade, anti-competitive, or price-fixing, and not in accordance with fair practice guidelines.
- (2) For any Agency employee, officer, or Director to disclose, in advance of the opening of the bids, the content of any bid invited through the formal or informal competitive bidding procedure.
- (3) For any Agency employee, officer, or Director to actively participate in the awarding of a contract from which he will directly benefit.
- (4) For any Agency employee, officer, Director, or other person to misappropriate for personal use any item of public property.

G. Voidable Contracts. In addition to contracts that are void or voidable under the Act or applicable law, the following contracts are voidable at the discretion of the Agency:

- (1) Contracts that result from a conflict of interest under this Policy or other applicable law.
- (2) Contracts awarded to a person or firm that tried to influence the award of such contract by offering something of value to any Agency employee, officer, or Director.
- (3) Contracts awarded by an official or employee circumventing the requirements of this Policy or other applicable statute or regulation.
- (4) A contract, which was bid or awarded under circumstances prohibited under Section II-F above.

The Board hereby declares its intent that such contracts would not have been entered into on behalf of the Agency if the misconduct had been discovered prior to the execution of the contract. The Board further states that no Agency officer or employee has authority, either actual, apparent, or implied, to negotiate or execute any such contract, and that such contract shall, at the discretion of the Board, be voidable, unless the action of the Agency officers and employees in executing the contract is ratified by affirmative action of the Board after the misconduct was discovered and made known to the Board.

All persons or firms responsible for any misconduct prohibited by this Policy shall be liable for any losses incurred by the Agency as a result of the misconduct, including KRS 45A.460.

III. PURCHASE OF GOODS AND SERVICES

A. Competitive Process. Whenever the total price of a contract or purchase is estimated to exceed \$20,000, the contract shall be awarded as provided in KRS 45A.365. Contracts are not always required to be awarded to the lowest bidder, as the bid price may not be the sole determining factor when awarding contracts, as provided in the Act. At a minimum, the Agency shall give consideration to a bidder's ability to provide the required service(s), references, history of prior or similar services, local community impact, and a history of prior services to the Agency, as permitted by KRS 45A.395. Effort will be made in all purchases for goods or services to source Kentucky vendors whenever possible, as provided in KRS 45A.365(5) and 45A.494.

The Agency adopts these small purchase procedures pursuant to KRS 45A.385 for purchases where a determination is made that the aggregate amount of the contract does not exceed \$20,000 and the following matters shall be documented and complied with:

- (1) For purchases under \$1,000 no solicitation of proposals shall be required.
- (2) For purchases totaling between \$1,000 and \$5,000, proposals may be obtained verbally and recorded on a verbal quotation sheet. This verbal quotation sheet shall be available for review if requested by any director during board meetings.
- (3) For purchases totaling between \$5,001 and \$20,000, proposals shall be secured in writing or electronically and recorded.
- (4) For purchases in excess of \$20,000, the bidding process shall be in conformity with KRS 45A.365.

B. Purchase Authorization Approval. For purchases up to \$5,000, approval of the President or Chief Financial Officer shall be required. For purchases between \$5,001 and \$100,000, approval of the President and the Chief Financial Officer shall be required. For purchases in excess of \$100,000, approval of the Board shall be required.

Expenditures provided for in the Operating or Capital Budgets shall be deemed as approved by the Board.

The President is authorized to make purchases in excess of \$100,000, pursuant to KRS 45A.380(1), in the case of an emergency that poses a threat to the public health, welfare, or safety or for equipment or facility repairs or materials that require immediate action to continue the daily operation of Agency business. The President shall report these purchases at the next scheduled Board meeting.

C. Bid Award by Board. Prior to a Board meeting at which an award is to be considered by the Board, staff shall provide a summarized analysis of bids received, including some or all of the following information:

- (1) A list of bidders.
- (2) Whether a bid complies with the bid specifications.
- (3) Whether a bid complies with the schedule or time requirements specified.
- (4) Whether a bid complies with the specified terms and conditions and other administrative contract requirements contained in the invitation.
- (5) Compliance with risk management policy.
- (6) Whether a bid offers any alternative that may be considered under the terms of the invitation.
- (7) The price or cost to the Agency for the contract or supply.
- (8) Any other important information in making an award.

D. Budgeted or Board Approved Items. Funds designated for the purchase of goods or services under a particular budget line item may not be used for the purchase of goods or services under a different budget line item without the prior approval of the Board.

E. Reports. All expenses shall be reported to the Board within thirty (30) days following the end of the month of the date of expenditure by providing a complete listing of expenditures and amounts paid.

F. Petty Cash Account. Petty cash in an amount determined by the Chief Financial Officer may be established for the purposes of providing cash for miscellaneous cash purchases and other miscellaneous fees and items. Access to petty cash shall be limited to the Office Manager and the Chief Financial Officer. Petty cash funds may be used to purchase supplies, materials, equipment, and other services when the cost does not exceed \$100 and when written documentation of the purchase is maintained. Supplies, materials, equipment and other services regularly purchased and available to

the Agency through regular purchasing channels shall not be purchased using petty cash funds. Employees shall not be allowed to cash personal or payroll checks through petty cash.

G. Purchases Without Competition. The President may purchase supplies, goods, or services, and the Agency may enter into contracts through noncompetitive negotiation, pursuant to KRS 45A.380, under the following circumstances:

- (1) In the case of an emergency that poses a threat to the public health, welfare, or safety, as determined by the President.
- (2) When there is a sole source of supply as determined in writing by a staff member and approved by the President.
- (3) When the purchase or work is a continuation of previous purchases or work, and there exists a clear, potential economic benefit to the Agency to negotiate a contract directly with the firm that supplied the initial purchase or work.
- (4) As permitted by KRS 45.375(3) or (4), when the Agency receives only one or no response to its solicitation, request, or invitation for bids or proposals.
- (5) In the case of a small purchase or contract, pursuant to KRS 45A .385.
- (6) When the Board determines that it is in the best interest of the Agency to procure services pursuant to KRS 45A.380(3).
- (7) When the award to a specific supplier, service provider, or contractor is a condition of a contribution that will fund the full cost of the supply, service, or construction item.
- (8) Change orders representing the lesser of \$20,000 or 10% of the contract amount which are approved by both the President and the Chief Financial Officer. Each such approval shall be reported to the Board at its next regular Board meeting. Change orders for more than \$20,000 or more than 10% of the contract amount shall be submitted to the Board for approval.
- (9) Purchase and/or sale of Agency power supply in order to take advantage of market prices or to provide short term power supply to meet the needs of the Agency; provided that the purchase and/or sale is conducted pursuant to the Agency's Energy Risk Management Policy (the "Energy Risk Management Policy"), as amended from time to time by the Board. The Energy Risk Management Policy shall specify the products that are authorized, shall specify the persons who are authorized to enter into transactions on behalf of the Agency, and establishes the level of authority for each authorized person.

H. Bidder Pre-Qualification. When the President determines that it is in the best interest of the Agency to pre-qualify bidders for the award of any proposed contract, the President, or his designee, shall establish written criteria for such pre-qualification, as provided in KRS 45A.400, and such criteria shall be disclosed in the invitation for bids or request for proposals. Such criteria may include, but are not limited to, experience in performing contracts similar to that which will be awarded, net worth requirements (or similar evidence of financial responsibility), and evidence of insurability for the coverages and limits which will be required of the successful bidder.

I. Suspension or Debarment. (1) The President shall have the authority to suspend or debar any prospective bidder for a contract with the Agency when the President determines that such prospective bidder has engaged in any practice which is inimical to the purposes and objectives of the Act, or these policies, including, but not limited to, collusion with other prospective bidders, submission of false or misleading material or information to the Agency, or violation of any law governing public bidding.

(2) Any person or entity suspended or debarred from consideration for an award of a contract with the Agency shall not be considered for an award of any contract with the Agency unless and until the President rescinds the suspension or debarment, as provided for hereinafter, or the Board rescinds such suspension or debarment.

(3) When the President determines that any prospective bidder who has been suspended or debarred from consideration for an award of the contract with the Agency has rectified the circumstance which resulted in suspension or debarment, and is otherwise qualified to submit a bid, the President may lift the suspension or rescind the debarment upon such conditions as the President shall determine.