

PURCHASING POLICY MANUAL
Revised June 1, 2005

SECTION 1 - CONTRACT FORMATION:

POLICY TITLE: STANDARD SPECIFICATIONS

1. The University shall prepare, adopt, publish, and enforce written standard specifications for materials, equipment, and supplies.
2. All specifications shall be drafted so as to maximize, to the extent practicable, completion in fulfillment of the University's requirements.
3. The University shall maintain a current file of State, University, and other specifications.

Ref: KRS 45A.170

**POLICY TITLE: SOLICITATION INSTRUCTIONS AND GENERAL CONDITIONS–
COMMODITIES AND SERVICES**

1. DEFINITIONS

As used herein:

- (A) The term “solicitation” means Invitation for Bids (IFB) where the procurement is advertised, and Request for Proposal (RFP) where the procurement is negotiated.
- (B) The term “offer” means bid where the procurement is advertised, and proposal where the procurement is negotiated.

2. PREPARATION OF OFFERS:

- (A) Offerors are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the offeror’s risk.
- (B) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the solicitation and print or type his Name, Firm, Address, Telephone Number, and Date. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent are to be accompanied by evidence of his authority unless such evidence has been previously furnished to the issuing office.
- (C) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the Amount column of the Schedule for each item offered. In case of discrepancy between a unit price and extended price, the unit price will be presumed to be correct.
- (D) Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.
- (E) Offeror must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.
- (F) Time, if stated as a number of days, will include Saturdays, Sundays and holidays.

3. EXPLANATION TO OFFERORS

Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation, drawings, specifications, etc., must be requested in writing and with sufficient time allowed for a replay to reach offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to prospective offerors as an amendment of the solicitation, if such information is necessary to offerors in submitting offers on the solicitation or if the lack of such information would be prejudicial to uninformed offerors.

4. ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATIONS

Receipt of an amendment to a solicitation by an offeror must be acknowledged by signing and returning the amendment, or by letter or telegram. Such acknowledgement must be received prior to the hour and date specified for receipt of offers.

5. SUBMISSION OF OFFERS

- (A) Offers and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. The offeror shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror on the face of the envelope.
- (B) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by telegraphic notice, provided such notice is received prior to the hour and date specified for receipt.

- (C) Samples of items, when required, must be submitted within the time specified, and unless otherwise specified at no expense. If not destroyed by testing, samples will be returned at offeror's request and expense, unless otherwise specified by solicitation.

6. FAILURE TO SUBMIT OFFER:

If no offer is to be submitted, return the solicitation unless otherwise specified. Failure of the recipient to offer, or to notify the issuing office that future solicitations are desired, may result in removal of the name of such recipient from the mailing list for the type of supplies or services covered by the solicitation.

7. MODIFICATION OR WITHDRAWAL OF OFFERS

If this solicitation is advertised, offers may be modified or withdrawn by written or telegraphic notice received prior to the exact hour and date specified for receipt of offers. An offer also may be withdrawn in person by an offeror or his authorized representative, provided his identity is made known and he signs a receipt for the offer, but only if the withdrawal is made prior to the exact hour and date set for receipt of offers.

8. LATE OFFERS AND MODIFICATIONS OR WITHDRAWALS

Offers and modifications of offers (or withdrawals thereof, if this solicitation is advertised) received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered.

AWARD OF CONTRACT

- (A) The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the state price and other factors considered.
- (B) The state reserves the right to reject and or all offers and to waive informalities and minor irregularities in offers received.

A written award (or Acceptance of Offer) mailed (or otherwise furnished) to the successful offeror within the time for acceptance specified in the offer shall be deemed to result in a binding contract without further action by either party.

KENTUCKY SALES/USE TAX

Sales of tangible personal property or services to the State of Kentucky and its Constitutional Agencies are not subject to state sales or use tax.

COMPLIANCE STATE LAWS

It is agreed and understood that any contracts and/or orders placed as a result of this proposal shall be governed under state laws. The rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of Kentucky.

CONTRACT CHANGES

During the period of contract, no change will be permitted in any of its conditions and specifications unless the Contractor receives written approval from the Director of Purchasing. Should the Contractor find at any time that existing conditions make modification in requirements necessary he shall promptly report such matter to the Director of Purchasing for consideration and decision.

SELLER'S INVOICES

Invoices shall be prepared and submitted in triplicate (one copy shall be marked "original") unless otherwise specified. Invoices shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals.

ORDER OF PRECEDENCE

In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) Special Conditions; (b) Solicitation Instructions and Conditions; (c) General Provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise and (e) the specifications.

**POLICY TITLE: SOLICITATION INSTRUCTIONS AND GENERAL CONDITIONS–
CONSTRUCTION**

Please note these Instructions to Bidders and General Conditions are standard requirements for solicitations issued by Northern Kentucky University, which may be in the form of Invitations to Bid (ITB) or Requests for Proposals (RFP). If the solicitation is an Invitation to Bid, all terms contained herein apply as written. If the solicitation is in the form of a Request for Proposals, RFP terminology should be substituted. The following details the primary differences.

Invitation to Bid - The solicitation document issued by the university, typically containing concise established requirements and resulting in a formal sealed bid being submitted. The contract award is typically made to the qualified bidder submitting the lowest bid while meeting the requirements of the conditions and specifications. The offer is submitted on a university supplied, pre-printed bid document entitled a "form of proposal."

Request for Proposal - The solicitation document issued by the university, typically containing certain established requirements but resulting in a written proposal being submitted, rather than a lump sum bid. The contract award is based on a set of evaluation criteria with pre-determined weighted values. Evaluation is performed and scored by committee. Price is only one factor in the evaluated award. The offer is submitted as a written proposal responding to various requirements described by the RFP.

ARTICLE 1 – DEFINITIONS

- 1.1 Bidding/Contract Documents** include the Agreement between Owner and Contractor, the Form of Proposal, the Invitation for Bids, the Instructions to Bidders/General Conditions, the Payment and Performance Bond, the supplemental Conditions, the drawings, specifications, addenda issued prior to the execution of the contract, and modifications issued after execution of the contract. The Contract Documents incorporate by reference pertinent requirements of the Kentucky Revised Statutes.
- 1.2 The Owner** is Northern Kentucky University.
- 1.3 The Purchasing Agency** is the Purchasing Department, Northern Kentucky University, Highland Heights, KY 41099.
- 1.4 The Purchasing Officer** or Contracting Officer is the Director, Purchasing Department, or an authorized representative of that individual.
- 1.5 The Using Agency** is Northern Kentucky University.
- 1.6 Addenda** are written or graphic instruments issued by the Purchasing Department prior to the execution of the contract, which modify or interpret the bidding documents by additions, deletions, clarifications, or corrections.
- 1.7 The Prime Bidder** is one who submits a bid directly to the Owner for the work described in the bidding documents.
- 1.8 A Sub-bidder or Subcontractor** is one who submits a bid to a prime bidder for materials or labor for a portion of the work.

- 1.9** An **Alternate** is an amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in project scope or materials or methods of construction described in the bidding documents is accepted.
- 1.10** The **Work** includes the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipments, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.
- 1.11** The **Contract Sum** means the sum stated in the Agreement between Owner and Contractor including any authorized adjustments thereto; it is the total amount payable by the Owner to the Contractor for the performance of the work under the Contract Documents.
- 1.12** **Contractor** means the person, company or corporation with whom the Owner has executed the contract for construction.
- 1.13** **Work Order** means a written notice by the Owner to the Contractor, authorizing the Contractor to commence work under the contract and establishing the beginning date from which the time for completion shall be established.
- 1.14** The **Contract Completion Time** is the number of consecutive calendar days between the date of commencement for the work and the date of substantial completion of the work as established in the Agreement Between Owner and Contractor.
- 1.15** **Calendar Day** means a day of twenty-four hours measured from midnight to the next midnight.
- 1.16** **Change Order** means a written order to the Contractor signed by the Owner, issued after the execution of the contract, authorizing a change in the work or an adjustment in the Contract Sum or the Contract Time.
- 1.17** **Shop Drawings** means drawings, completion diagrams, schedules, and other data specially prepared for the work by the Contractor or any subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the work.
- 1.18** A **Field Order** is a written order issued by the Architect/Engineer, which clarifies or interprets the Contract Documents, or orders minor changes in the work which does not require a change order under Article 20.
- 1.19** A **unit price** is an amount stated in the bid as a price per unit of measurement for materials or services as described in the bidding documents.
- 1.20** The **Architect/Engineer** is the architectural or engineering firm that prepared the drawings and specifications.
- 1.21** A **bid proposal** is a complete and properly signed document, proposing to do the work or designated portion thereof for the sums stipulated therein supported by data called for by the bidding documents.
- 1.22** A **bid** is the sum stated in the bid proposal for which the bidder offers to perform the work described in the specifications and detailed on the drawings.

1.23 The **Contract Documents** are complementary, and what is required by one shall be as binding as if required by all. In case of conflicts between the various Contract Documents, the order of precedence will be as follows: (1) Addenda, (2) Division 1 – General Requirements of the Specifications, (3) Supplemental Conditions, (4) General Conditions, (5) Technical provisions of the Specifications, (6) Drawings.

ARTICLE 2 – BIDDER’S REPRESENTATIONS

2.1 Each Bidder by making his bid represents that:

- 2.1.1** He has read and understands the bidding documents and his bid is made in accordance therewith.
- 2.1.2** He has carefully examined the site of the proposed work and has familiarized himself with the local conditions under which the work is to be performed.
- 2.1.3** His bid is premised upon furnishing the work required by the bidding documents.

ARTICLE 3 – DISTRIBUTION, AND ADDENDA TO BIDDING DOCUMENTS

3.1 Copies

- 3.1.1** Bidders, sub-bidders/sub-contractors, and others may obtain from the Purchasing Officer bidding documents in the manner and for the charge, if any, stated in the Advertisement or Invitation to Bid.
- 3.1.2** Complete sets of bidding documents shall be used in preparing bids. The Purchasing Officer assumes no responsibility for misinterpretations resulting from the use of incomplete sets of bidding documents.
- 3.1.3** The Purchasing Officer, in making copies of the bidding documents available on the above terms, does so only for the purpose of obtaining bids on the work and does not confer a license or grant for any other use.

3.2 Interpretation or Correction of Bidding Documents

- 3.2.1** Bidders shall promptly notify the Purchasing Officer of an ambiguity, inconsistency or error which they may discover upon examination of the bidding documents or of the site and local conditions.
- 3.2.2** All questions regarding the meaning or interpretation of the bidding documents shall be directed in writing to the Purchasing Officer. Questions received less than ten (10) calendar days prior to the date for receipt of bids may not be answered.
- 3.2.3** Any interpretation, correction or change of the bidding documents shall be made by addendum, issue by the Purchasing Officer as provided in Article 3.4. Interpretations, corrections or changes of the bidding documents made in any other manner shall not be binding and Bidders shall not rely upon such interpretations, corrections and changes.

3.3 “Or Equal” Clause

3.3.1 Unless otherwise indicated in the bidding documents, the materials, products and equipment described or referenced by manufacturer’s or vendors’ names, trade names, catalogue numbers, etc., are intended to establish a standard of required function, dimension, appearance and quality. Unless otherwise stated, substitutes or “equal” items may be furnished or used If approved by the Purchasing Officer in consultation with the Architect/Engineer as provided in Article 7.2.2.

3.4 Addenda

3.4.1 Addenda will be mailed or delivered to all who are known by the Purchasing Officer to have requested and were furnished bidding documents.

3.4.2 Copies of addenda will be made available for inspection wherever bidding documents are on file for that purpose.

3.4.3 No addenda of a material nature will be issued later than seven (7) calendar days prior to the date for receipt of bids, except for addenda postponing the date for receipt of bids or withdrawing the Invitation to Bid.

3.4.4 The Bidder shall ascertain, prior to submitting his bid, that he has received all addenda issued by the Purchasing Officer for the particular bid invitation. The Bidder shall acknowledge receipt of all addenda in the Form of Proposal, or by a separate letter to the Purchasing Officer which is received at or prior to the hour and date specified for receipt of bids.

ARTICLE 4 – BIDDING PROCEDURE

4.1 Form and Style of Bids

4.1.1 Bids will be submitted on the bid forms (Form of Proposal) provided by the Purchasing Officer.

4.1.2 All blanks on the Form of Proposal form shall be filled in and all required support data shall be furnished.

4.1.3 Where so indicated by the makeup of the Form of Proposal, sums shall be expressed in both words and figures, and in the case of discrepancy between the two, the amount of words shall govern.

4.1.4 Any interlineation, alteration or erasure must be initialized in ink by the authorized representative of the Bidder who signed the bid.

4.1.5 All alternates specifically called for by the Owner shall be bid. Voluntary alternate proposals and/or an alternate to a lump sum proposal will not be considered unless specifically permitted by the conditions of the Advertisement for Bids or Invitation to Bid.

4.1.6 The Bidder shall make no additional stipulations on the bid proposal form nor qualify his bid in any other manner.

4.1.7 The Form of Proposal shall be signed by a person or persons legally authorized to bind the bidder to a contract. The bid proposal shall also include the legal name of the bidder and a statement indicating whether the bidder is a sole proprietorship, a partnership, a corporation, or any other legal entity. A bid by a corporation shall also identify the state of incorporation including federal ID number.

4.2 Bid Security

4.2.1 Bids shall be accompanied by a bid guarantee of not less than five percent (5%) of the amount of the base bid executed by a surety company authorized to do business in the Commonwealth of Kentucky.

This bid security secures the bidder's promise (1) to enter into a contract with the Owner on the terms stated in his bid proposal and (2) if required, to furnish bonds covering the faithful performance of the contract and the payment of all obligations thereunder. Should the Bidder refuse to enter into a contract or fail to furnish the required performance and payment bonds, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.

4.2.2 The Purchasing Officer shall retain the bid security of Bidders until either (a) the contract has been executed and performance bonds have been furnished, or (b) the specified time has elapsed so that bids may be withdrawn or (c) all bids have been rejected.

4.3 Submission of Bids

4.3.1 The completed bid, including Form of Proposal, bid security, and required support data, shall be enclosed in a sealed envelope. The envelope shall be addressed to the bid receipt clerk who receives the bids and shall be identified with the Bidder's name and address, the sealed bid invitation number, closing date and hour. If the bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "BID ENCLOSED" on the face thereof.

4.3.2 Bids shall be deposited at the designated location prior to the closing time and date for receipt of bids indicated in the Advertisement or Invitation to Bid, or any extension thereof made by addenda. Bids received after the closing time and date for receipt of bids may be considered for evaluation and award only (1) if no other bids were received within the legal advertisement period; (2) the re-advertisement time delay would seriously affect the operations of the Using Agency; and (3) in the reasonable judgment of the Purchasing Officer, the bid was finalized prior to the official closing time and date for the receipt of bid.

4.3.3 Bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids.

4.3.4 Oral, telephonic, or telegraphic bids or changes in bids by such methods are not permitted and will not receive consideration.

4.4 Modification or Withdrawal of Bid

- 4.4.1** Bids may be withdrawn prior to the closing time and date for receipt of bids (1) by a properly identified representative of the Bidder whose name appears on the bid envelope, or (2) by written request by an authorized representative of the Bidder, received by the receipt clerk prior to bid closing time.
- 4.4.2** Withdrawn bids may be resubmitted up to the closing time designated for the receipt of bids.
- 4.4.3** During the specified time period following closing time and date for receipt of bids during which bids remain open for the Owner's acceptance, a period of thirty (30) calendar days or the number of calendar days is stated in the Invitation to Bid, no Bidder may withdraw, modify or cancel its bid without the bid security being subject to forfeiture.

ARTICLE 5 – CONSIDERATION OF BIDS

5.1 Opening of Bids

- 5.1.1** Unless the Advertisement for Bids or Invitation to Bid indicates otherwise, all properly identified, timely bids will be publicly opened and read aloud. All such bids will be listed on the official bid tabulation, which will be made available to Bidders upon request.

5.2 Cancellation of Invitation to Bid, Rejection of Bids and Waiver of Technicalities or Informalities

- 5.2.1** The right to cancel the Invitation to Bid, to reject any and all bids, and to waive technicalities and minor irregularities in bids is maintained and preserved by the Purchasing Officer, when such action is determined to be in the best interest of Northern Kentucky University.
- 5.2.2** Grounds for the rejection of bids are stated in 200 K.A.R. 5:306. These grounds include, but are not limited to:
- (a) Failure of a bid to conform to the essential requirements of the Advertisement for Bids or Invitation to Bid.
 - (b) Failure of a bid to conform to requirements of the Contract Documents.
 - (c) Failure of a bid to conform to the delivery or completion schedule established in the bidding documents.
 - (d) Inclusion of a bid provision limiting the Bidder's liability to the Owner in a manner inconsistent with the provisions of the bidding documents.
 - (e) Unreasonableness of bid price, as determined by the Purchasing Officer.
 - (f) Non-responsibility of the bidder.
 - (g) Failure of a bidder to furnish a bid security in accordance with the requirements of the Advertisement for Bids or Invitation to Bid.
- 5.2.3** Minor or technical deficiencies or irregularities in a bid may be waived by the Purchasing Officer on behalf of the Owner when all of the following circumstances are present:

- (a) The Purchasing Officer determines that it will be in the Owner's best interest to do so; and
- (b) The technicalities or irregularities are mere matters of form not affecting the material substance of a bid, represent an immaterial deviation from or variation in the precise requirements of the Advertisement for Bids or Invitation to Bid, and have no more than a trivial or negligible effect on price, quality, quantity or delivery of supplies or performance of services being procured; and
- (c) The correction or waiver of the technicality or irregularity will not affect the relative standing of, or prejudice, other Bidders.

If the Owner does not waive the deficiency, the deficient bid shall be rejected.

5.3 Acceptance of Bid

- 5.3.1** It is the intent of the Purchasing Officer to award a contract in due course and after a reasonable bid evaluation period to the lowest responsive bid by a responsible Bidder provided the acceptable bid sum is within budgeted funds.
- 5.3.2** The Owner reserves the right to accept or reject any or all alternate bids if provided for in the bid documents. If alternates designated by the Owner are considered in the award, the alternate(s) will be accepted in the sequence in which they are listed on the bid proposal form and the lowest bid sum will be computed on the basis of the sum of the based bid plus and/or minus any alternates accepted.

ARTICLE 6 – QUALIFICATION OF CONTRACTORS

6.1 Statement of Bidder's Qualifications

- 6.1.1** The Bidder shall submit a statement of the Bidder's qualifications as part of the Form of Proposal. The Purchasing Officer shall have the right to make such inquiry as he deems necessary to determine the ability of the Bidder to perform the work in a prompt and efficient manner in accordance with the Contract Documents. The failure of a Bidder to promptly supply information in connection with the Purchasing Officer's inquiry may be grounds for a determination that such Bidder is non-responsive.
- 6.1.2** In determining the qualifications and responsibilities of the Bidder, the Purchasing Officer shall take into consideration the Bidder's experience, facility, previous work standing, financial standing, skill, quality and efficiency of construction plant and equipment proposed to be utilized on the project.
- 6.1.3** The right is reserved to reject any bid where an investigation and evaluation of the Bidder's qualifications would give reasonable doubt that the Bidder could perform the work in a prompt and efficient manner in accordance with the Contract Documents.

ARTICLE 7 – SUBCONTRACTOR, MATERIAL AND EQUIPMENT LISTING

7.1 Subcontractors

- 7.1.1 The Bidder will list the names of subcontractors proposed for each of the principal portions of the work (including those persons or entities who are to furnish material or equipment fabricated to a special design) in the designated place of the Form of Proposal.
- 7.1.2 The Bidder will be responsible for establishing to the satisfaction of the Purchasing Officer, the reliability and responsibility of the listed subcontractors. The Bidder may be required by the Purchasing Officer to provide additional information regarding listed subcontractors.
- 7.1.3 If, after due investigation, there is a reasonable objection to the qualifications of a listed subcontractor, the Bidder shall, upon written direction of the Purchasing Officer, submit the name of an acceptable substitute subcontractor with no change in bid price. The failure of the Bidder to promptly comply with this requirement may be grounds for rejection of the bids.
- 7.1.4 Any listed subcontractor to whom the Purchasing Officer does not make written objection prior to the giving of the Notice of Award shall be deemed acceptable to the Owner.
- 7.1.5 The Bidder shall make no other substitution for any listed subcontractor without first notifying the Purchasing Officer in writing of the intended substitution and the specific reason for the substitution. Such substitutions may be disapproved if the Purchasing Officer has reasonable objection.
- 7.1.6 Nothing contained in the bidding documents shall be deemed to create a contractual relationship between the Owner and any subcontractor.

7.2 List of Materials and Equipment

- 7.2.1 The Bidder shall submit a listing of major materials and equipment, including manufacturer's name, brand and/or catalog number in accordance with Article 13.1.2. The materials and equipment listing shall be that listing bound with the Form of Proposal.
- 7.2.2 Prior to the acceptance of a bid, the Purchasing Officer will make a preliminary review of the Bidder's list of materials and equipment. The Purchasing Office will advise the Bidder of the tentative acceptability of such materials and equipment, subject to satisfactory completion and approval of shop drawings, or direct such other action as may be necessary in order to meet the requirements of the Contract Documents. If any of the listed material or equipment is determined not to meet the requirements of the Contract Documents, the Bidder will be required to furnish other material or equipment meeting those requirements at no change in bid price. Preliminary review and acceptance of the above list shall not relieve the Bidder, as the contractor, of the obligation of furnishing equipment and materials in accordance with the Contract Documents.

ARTICLE 8 – UNIT PRICES

8.1 Submission

- 8.1.1 The Bidder shall submit with the bid a list of unit prices as designated on Form of Proposal.

- 8.1.2 Unit prices are to be used for the pricing of changes in the quantity of work from that indicated by the contract drawings and specifications, where such changes have been authorized in writing by the Owner in accordance with Article 20.
- 8.1.3 The unit price shall include all necessary labor, materials, equipment, appliances, supplies, plus overhead and profit.
- 8.1.4 Only one unit price shall be quoted for each designated item of work. The unit price shall be used to calculate price adjustments based on deductive as well as additive changes.
- 8.1.5 Unit prices shall apply to all phases of the work whether the work is performed by the Bidder or by the Bidder's (contractor) subcontractor.
- 8.1.6 For unit prices of a lump sum bid contract, the Owner reserves the right, prior to an award of contract, to evaluate the unit prices and adjust and/or reject any unit price that is determined by the Purchasing Officer to be unreasonable in amount.
- 8.1.7 Where a total sum bid is made by line item, and unit prices are quoted for estimated quantities of units of work, such unit prices are not subject to change. However, the Purchasing Officer reserves the right to correct mathematical errors in extensions and additions by the Bidder. In the latter case, the Purchasing Officer's corrected bid sum total shall supersede the Bidder's incorrect computer bid sum total.

ARTICLE 9 – BID BOND, PERFORMANCE BOND, PAYMENT BOND

9.1 Owner's Right to Require Bond

- 9.1.1 For all contracts in excess of \$25,000, Bidder shall furnish bid security in an amount equal to at least five percent (5%) of the amount of the bid. Security may be in the form of a bid bond, cashiers or certified check, irrevocable letter of credit or other form of security as approved by the Purchasing Officer. The successful contractor shall furnish a performance and payment bond in an amount equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract and for payment of all persons performing labor, including payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law, and furnishing materials, equipment, supplies, taxes, and other proper charges and expenses incurred or to be incurred in the performance of the contract. All bonds shall be executed by a surety company authorized to do business in the Commonwealth of Kentucky and the contract instrument or bond must be countersigned by a duly licensed Kentucky resident agency representing the company. Bonds shall be good for two (2) years after the final payment has been on the contract. The premiums shall be paid by the Bidder.
- 9.1.2 Performance and Payment bonds may be required for projects less than \$25,000 as determined by the Purchasing Officer. If the furnishing of such bonds is not provided for in the bid documents, but required by the Purchasing Officer subsequent to the award of contract, the successful Bidder shall then procure such bond and shall be reimbursed for the premium.

9.2 Time of Delivery and Form of Bonds

- 9.2.1** The Bid Bond shall be submitted with the bid. Successful Contractor shall deliver the required Performance and Payment bonds to the Purchasing Agency at the date of execution of the Agreement Between Owner and Contractor, or, with the approval of the Purchasing Officer, within ten (10) calendar days after that date. Otherwise, the Owner may at its option determine that the awardee has abandoned the contract, thereupon the proposal shall become null and void.
- 9.2.2** Unless otherwise specified in the bidding documents, bonds shall be written on the bonding company form, in the number of copies to be specified by the Purchasing Officer.
- 9.2.3** The Bidder shall require the Attorney-in-Fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his Power of Attorney. The date of the Power of Attorney shall not precede the date of the bonds. The bonds must be signed or countersigned by a resident agent, licensed to do business in the State of Kentucky.

ARTICLE 10 – AWARD OF CONTRACT

- 10.1.1** The issuance of an award of the contract is contingent upon (1) securing an acceptable bid that is within the amount of budgeted funds and (2) determining that the award of contract will be in the best interest of the University.
- 10.1.2** Unless otherwise provided in the bidding documents, the Agreement Between Owner and Contractor will be evidenced by the issuance of a purchase order incorporating by reference all bidding documents and bidder's offer.

ARTICLE 11 – BASIC LEGAL REQUIREMENTS

11.1 Authentication of Bid and Statement of Non-collusion and Non-conflict of Interest

An Authentication of Bid and Statement of Non-collusion and Non-conflict of Interest Document is bound with and included as part of the bid proposal form. The Bidder is required to complete and sign that document and submit it as a part of the bid. Failure to comply with this requirement shall invalidate the bid.

11.2 Foreign Corporate Firm

- 11.2.1** Foreign corporations doing business within the Commonwealth of Kentucky are required to be registered with the Secretary of State, New Capitol Building, Frankfort, Kentucky, and must be in good standing.
- 11.2.2** The foreign corporate Bidder, if not registered with the Secretary of State at the time of the bid submittal, shall be required to become registered and be declared in good standing prior to the issuance or receipt of a contract.

11.3 Domestic Corporation

- 11.4** **NUMBERING** Domestic corporations are required to be in good standing in accordance with the requirements of the Office of the Secretary of State.

ARTICLE 12 – TAXES

12.1 Kentucky Sales and/or Use Tax

12.1.1 Bidders are informed that construction contracts for the Commonwealth of Kentucky are not exempt from the provisions of the Kentucky Sales and/or Use Tax. All adjustments and allowances for the current sales/or use tax shall be provided for in the bid amount and no later adjustments to the Contract Sum will be permitted and/or made on this basis. Each bidder is responsible for determining his own tax liability. Bidders may contact:

Kentucky Revenue Cabinet
Division of Compliance and Taxpayer Assistance
Sales and Use Tax Section
200 Fair Oaks Lane
Frankfort, KY 40602
(502) 564-5170

12.2 Federal Excise Tax

12.2.1 The Commonwealth of Kentucky is entitled to exemption from Federal Excise Tax. All Bidders or subcontractors shall take this into consideration in their bid price.

12.3 Taxes, Workmen’s Compensation, etc.

12.3.1 The Bidder or contractor will be required to accept liability for payment of all payroll taxes or deductions required by local, state and federal law, including but not limited to old age pension, social security or annuities. Workmen’s Compensation Insurance shall be carried to the full amount as required by Kentucky Statutes. Bidder shall be in full compliance with KRS 341 and 342.

ARTICLE 13 – POST-BID REVIEW AND MATERIAL SUBMITTAL

13.1 Representative at Bid Opening

13.1.1 The Bidder may have an authorized representative at the bid opening for post-bid review of the apparent low bid or bids.

13.1.2 Unless otherwise provided in the bidding documents, the apparent low Bidder shall submit the material and equipment listing no later than one (1) hour after the close of the reading of the bids. The materials and equipment listing shall be that listing bound with the Form of Proposal.

13.1.3 The post-bid review should include representative of the Owner, the Architect/Engineer and the apparent low Bidder. Preliminary review shall be directed toward subcontractors, material listing, unit prices and qualifications of the Bidder.

13.1.4 The Bidder’s representative should have the authority and ability to respond to questions that arise during the post-bid review.

ARTICLE 14 – EQUAL EMPLOYMENT AND NONDISCRIMINATION

14.1 General Policy

14.1.1 The Commonwealth of Kentucky is committed to a policy of providing equal job opportunities on public contracts and prohibiting discrimination based on race, creed, color, sex, age, religion, national origin, or disability in employment.

14.1.2 The utilization of minority vendors and subcontractors is encouraged, whenever possible, on public works contracts. The Bidder and contractor should make full efforts to locate minority business persons. For assistance in identifying vendors and subcontractors, Bidders may contact: Kentucky Office for Minority Business Enterprises 2329 Capitol Plaza Tower, Frankfort, Kentucky 40601, or Office of Equal Opportunity, Contract Compliance, New Capitol Annex Building, Frankfort, Kentucky 40601. **BARB SET OUT both offices without numbering look at 12.1.1 for style.....verify addresses.**

14.2 Kentucky Equal Employment Act – 1978

14.2.1 The provision of KRS 45.560 and 45.640, known as the Kentucky Equal Employment Act of 1978, hereinafter referred to as the Act, shall be binding upon the declared successful Bidder and any subsequent contract awarded to the Bidder, except that a contractor or subcontractor otherwise subject to the provisions of KRS 45.570 is exempt as to any affirmative action or reporting requirements if:

- (a) The contract or subcontractor awarded is in the amount of \$250,000 or less, and the amount of the contract is not a subterfuge to avoid compliance with the provisions of this Act.
- (b) The contractor or subcontractor utilizes the services of fewer than eight (8) employees during the course of the contract.
- (c) The contractor or subcontractor employs only family members or relatives.
- (d) The contractor or subcontractor employs only persons having a direct ownership interest in the business, and such interest is not a subterfuge to avoid compliance with the provisions of this Act.

14.3 Reporting Compliance

14.3.1 Any Bidder not exempted from the affirmative action or reporting requirements of the Act shall, within five (5) calendar days after being declared the apparent low Bidder, submit to the Office of Equal Employment Opportunity, Contract Compliance, Finance and Administration Cabinet, the following:

- (a) A statement of intent to comply in full with all requirements of the Kentucky equal Employment Act of 1978.

- (b) A breakdown of the Bidder's existing work force, within the Commonwealth of Kentucky, indicating the race, sex, age, position held, county and state of residence and date of employment of each employee.

The above reporting shall be on forms provided by the Purchasing Agency, bound within the bid documents, and submitted in the manner prescribed on the forms.

- 14.3.2** Within ten (10) days after the receipt of this report, the Finance and Administration Cabinet, through its Office of Equal Employment Opportunity, Contract Compliance, will determine whether the Bidder's work force is reflective of the percentage of available minorities in the areas from which the Bidder's employees are drawn. If a determination is made that the Bidder's work force is reflective of the percentage of available minorities in this drawn area, the Bidder shall be "certified" and be thereby qualified for the contract and to bid on any contract covered by the Act without filing additional data for a period of six (6) months.
- 14.3.3** If it is determined by the cabinet that the Bidder's work force reflects an underutilization of minorities, the Bidder and the contracting agency shall be so notified and no certification be granted. The Bidder shall then have the option of filing with the cabinet an affirmative action project, indicating goals and timetables for recruiting and hiring minorities throughout the contractor's work force. The cabinet shall be available, upon request of any contractor, to furnish technical assistance in fulfilling the requirements of the Act.
- 14.3.4** If the Bidder is subsequently awarded the contract being sought, failure to comply with the goals and timetables set forth in the affirmative action plan shall be an unlawful practice under the Act and shall constitute a material breach of contract.
- 14.3.5** If the cabinet determines that the submitted affirmative action program does not fulfill the provision of the Act, the Bidder shall be so notified and no certification shall be granted.
- 14.3.6** If the Bidder's work force is not reflective of the percentage of minorities in the drawing area and he has complied with all other affirmative action requirements in the Act, he may certify by verified affidavit that he had made every reasonable effort to comply with said percentage requirements and he shall thereafter be entitled to all benefits of the Act.

ARTICLE 15 – SHOP DRAWING; SUBMITTALS

15.1 Submittals of Shop Drawings, Samples, etc.

- 15.1.1** The Contractor shall review, approve, and submit shop drawings, samples, and product data in accordance with the approved schedule as herein detailed. The Contractor's stamp of approval on any shop drawing or sample shall constitute a representation to Owner and Architect/Engineer that the Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, or he assumes full responsibility for doing so, and that he has reviewed or coordinated each shop drawing or sample with the requirements of the work and the Contract Documents.
- 15.1.2** The Architect/Engineer will review and approve, with reasonable promptness, the shop drawings, etc., or return for corrections as required. The review and approval shall be for conformance with the design concept of the project and for compliance with the information

given in the Contract Documents. The approval of a separate item will not indicate approval of the assembly in which the item functions.

15.1.3 The Contractor shall make any corrections required by the Architect/Engineer for compliance to the contract and shall return the required number of corrected copies of shop drawings and resubmit new samples until approved. The Contractor shall direct specific attention, in writing, or on resubmitted shop drawings, to revisions other than the corrections called for by the Architect/Engineer on previous submission.

15.1.4 Where a shop drawing or sample submission is required by the specifications, no related work shall be commenced until the submission has been approved by the Architect/Engineer. A copy of each approved shop drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Architect/Engineer.

15.1.5 The Architect's/Engineer's approval of shop drawings or samples shall not relieve the Contractor from his responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has in writing called the Architect's/Engineer's attention to such deviation at the time of submission and the Architect/Engineer has given written approval to the specific deviations, nor shall any approval by the Architect/Engineer relieve Contractor from responsibility for errors or omissions in the shop drawings.

ARTICLE 16 – PROTECTION OF WORK, PROPERTY, EMPLOYEES AND PUBLIC

16.3 Safety Precautions and Programs

16.2.4 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the project.

16.1.2 The Contractor shall comply with all federal, state, municipal, and OSHA law, rules, regulations, and code requirements.

16.2 Safety of Persons and Property NUMBERING This entire section through second 16.2 ?????????

16.2.1 The Contractor shall continuously maintain adequate protection of all work from damage and shall protect the Owner's property from injury or loss arising in connection with this contract. He shall make good any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property as provided by law and the Contract Documents.

16.2.2 The Contractor shall take all necessary precautions for the safety of employees on the work, and shall comply with all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the work is being performed.

16.2.3 The Contractor shall designate a responsible member of his organization on the worksite as safety officer whose duty shall be to enforce safety regulations. The name and position of the person so designated shall be reported to the Architect/Engineer by the Contractor.

16.2.4 In an emergency affecting the safety of life, or of the work, or of adjoining property, the Contractor, without special instruction or authorization from the Architect/Engineer or Owner, is hereby permitted to act at his discretion to prevent such threatened loss or injury.

16.3 Hazardous Materials

16.3.1 In the event the Contractor unexpectedly encounters on the site material reasonable believed to be asbestos, polychlorinated biphenyl (PCB) or other classified hazardous substances/materials which have not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the conditions to the Owner and Architect/Engineer in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other classified hazardous substances/materials or when it or they have been rendered harmless, by written agreement of the Owner and Contractor.

ARTICLE 17 – SURVEYS, PERMITS, FEES, NOTICES, AND TESTS

17.1 Owned-Furnished Surveys

17.1.1 The Owner will furnish whatever surveys are specifically required by the Contract Documents. Approvals, assessments, easements for permanent structures or permanent changes in existing facilities, and utility tap-on fees shall be secured and paid for by the Owner, unless otherwise provided in the Contract Documents.

17.2 Permits

17.2.1 Building, sewer, and water permits and similar kinds of permits required by local ordinances shall be obtained by the Contractor, but no fee shall be charged to or paid by the Contractor as the University is exempt from such charges. The Contractor shall procure and pay for any necessary licenses to do business in the locale of the work.

17.3 Notices

17.3.1 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the performance of the work.

17.4 Required Regulatory Tests and Inspections and Payment for Tests of Materials, Products, and Equipment

17.4.1 Regulatory agencies of the government having jurisdiction may require any work to be inspected, tested or approved. The Contractor shall assume full responsibility therefor, including related costs, unless otherwise noted, and shall furnish the Architect/Engineer the required certificates of inspection, testing or approval.

17.4.2 Tests of materials, products and equipment in place, required by the Architect/Engineer or the Owner, to prove quality standards shall be paid by the Owner. Should results of testing indicate that construction is not in compliance with contract documents, the contractor shall bear the cost of any additional tests of the materials, products or equipment.

17.4.3 The Contractor shall give the Architect/Engineer timely notice of readiness of the work for all inspections, tests or approvals.

ARTICLE 18 – INSPECTION OF WORK

18.1.1 The Owner, the Architect/Engineer, and their representatives shall at all times have access to the work whenever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection. The Architect/Engineer shall be given timely notification in order to arrange for proper inspection of any work performed outside of the normal working days or week.

18.1.2 If the specifications, the Architect's/Engineer's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Architect/Engineer timely notice of its readiness and inspection. Inspections by the Architect/Engineer shall be made promptly.

18.1.3 If any portion of the work should be covered contrary to the request of the Architect/Engineer, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect/Engineer, be uncovered for his observation and shall be replaced at the Contractor's expense.

18.1.4 If any other portion of the work has been covered, which the Architect/Engineer has not specifically requested to observe prior to being covered, the Architect/Engineer, with the Owner's approval, may request to see such work and it shall be uncovered by the Contractor. If such work be found in accordance with the Contract Documents, the cost of uncovering any replacement shall, by appropriate change order, be charged to the Owner. If such work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner, or a separate Contractor employed by the Owner, in which event the Owner shall be responsible for the payment of such costs.

ARTICLE 19 – INSURANCE

The Contractor shall provide and include in his Bid Price the cost of the following insurance:

The Contractor shall maintain the following minimum insurance:

- (1) Workmen's Compensation – Kentucky Statutes
- (2) Public Liability - \$5,000,000 combined single limit
- (3) Property Damage - \$5,000,000 combined single limit

(To include all vehicles and equipment owned or non-owned for use on the project)

Generally

The Contractor shall not commence work under this contract until he has obtained all insurance required under the conditions of the contract, nor shall the Contractor allow any subcontractor to commence work until all similar insurance required of the subcontractor has been obtained. The Contractor shall furnish the

Owner with satisfactory evidence that he has secured and is maintaining the required insurance coverage.

The Contractor shall furnish Builder's Risk Insurance, including the perils of fire, extended coverage, vandalism and malicious mischief in an amount of not less than one hundred percent (100%) of the insurable value of all the work, and the coverage, written on the Completed Value Form 17-C, latest edition, including extended coverage endorsement form #61, latest edition, and malicious mischief endorsement form # 205, latest edition, or on the "All Risk Completed Value Form." Such insurance shall be for the benefit of the Contractor, Owner and any subcontractor engaged on this project, as the Owner shall find their respective interest may appear. The Builder's Risk Insurance must be dated and in force prior to commencement of work. The insurance coverage required by the contract document shall be in compliance with the laws of the Commonwealth and shall be placed with a licensed resident local agent in Kentucky, who represents insurance companies authorized to do business in Kentucky. The contract amount shall be the insurable value unless otherwise noted in the Contract Documents.

There shall be an endorsement in each of the above policies reading as follows:

"It is hereby agreed that in event of a claim arising under this policy, the company will not deny liability by reason of the insured being a state, county, municipal corporation or government agency."

All insurance certificates shall be submitted in duplicate to the Owner and carry the provision that a 30-day written notice shall be given prior to cancellation by the company. The University requires the original Builder's Risk policy.

ARTICLE 20 – CHANGES IN THE WORK

20.1 Change Orders

20.1.1 The Owner, without invalidating the contract, may as the need arises, unilaterally order changes in the work in the form of additions, deletions or other revisions. Such changes in the work shall be authorized by Change Order signed by the Owner and Architect/Engineer. The Contract Sum and the Contract Completion Time will be adjusted accordingly.

20.1.2 The value of any such change in the work shall be determined by one of the following methods:

- (1) by mutual acceptance of a lump sum (which should be properly itemized and with sufficient supporting data to permit evaluation; to encompass/include not to exceed fifteen percent (15%) for overhead and profit of the actual cost of work), or
- (2) by unit prices stated in the Contract Documents or subsequently agreed upon; or
- (3) If none of the above methods are agreed upon; the Contractor, provided he received an order as above, shall proceed with the work for which he shall be paid the net cost of said work, plus fifteen (15%) percent of such cost.

20.1.3 It is agreed and understood that only one (1) fifteen percent (1 and 3 above) shall be added to the actual net cost of the work as defined herein, whether such work be done by the Prime

General Contractor with his own forces or by his subcontractor, and any distribution thereof shall be worked out between the Contractor and his subcontractor.

- 20.1.4** In “1” and “3” above, the Contractor shall keep and present in such form as the Architect/Engineer may direct, a correct account of all items in such form comprising the net cost of such work together with vouchers. The determination of the Architect/Engineer shall be final upon all questions of the amount and cost of extra work and changes in the work, and it shall include in such cost, the cost to the Contractor of all materials used, of all labor, common and skilled, of foremen, trucks and teams, and the fair rental of all machinery used upon the Extra Work, for the period of such use, which was upon the work before or which shall be otherwise required by or used upon the work after the Extra Work is done. If said Extra Work requires the use of machinery not already upon the work or to be otherwise used upon the work, then the cost of transportation of such machinery to and from the work shall be added to the fair rental, but said transportation shall not cover a distance exceeding one hundred (100) miles. The Architect/Engineer shall include in the cost of Extra Work the cost to the Contractor of all insurance applicable to such work, as required by these documents or by other Governmental authority having jurisdiction.
- 20.1.5** The Architect/Engineer shall not include in the net cost of Extra Work any cost or rental or small tools, or any portion of time of the Contractor or his Superintendent, or any allowance for the use of capital, or any additional bond premium, or any actual or anticipated profit, or any job or office overhead not previously mentioned, these items being considered as being covered by the added fifteen (15%) percent in Case “1” and “3”.
- 20.1.6** In all cases where Extra Work or Changes are covered by unit prices set forth in the Contract, the value of such Extra Work or changes shall be determined only upon the basis of such unit prices.
- 20.1.7** Pending final determination of value, payments on accounts of extra work or changes shall be made only upon the estimate of the Architect/Engineer.
- 20.1.8** The Architect/Engineer may authorize minor changes in the work, not involving extra cost and time extension, and not inconsistent with the purpose of the work.
- 20.1.9** If the contractor claims that any instructions by the Architect/Engineer involve additional cost and/or time extension, he shall give the Architect/Engineer written notice thereof within a reasonable time after the receipt of such instructions and before proceeding to execute the change in work.
- 20.1.10** **NUMBERING and indent on next line????? and on next two clauses**
- 20.1.11** On all change orders that exceed \$25,000 the Contractor shall submit the following certification:
- “I (the Contractor) certify to the best of my knowledge and belief, the cost of pricing data submitted Is accurate, complete and current as of the date of the proposed change.”
- 20.1.12** If the Owner and Contractor cannot agree on the effect of an ordered change on the Contract Completion Time, this matter may also be referred to the Architect/Engineer for determination.

20.1.13 If the Owner and/or Contractor do not agree with the Architect/Engineer's determination regarding the valuation of a change, the related adjustment to the Contract Sum or to the Contract Completion Time, the matter shall be subject to the disputes procedure set out in Article 31.

20.2 Minor Changes

20.2.1 The Architect/Engineer may authorize minor changes in the work which do not involve additional cost or extension of the Contract Completion Time, and which are not inconsistent with the intent of the Contract Documents. Such changes shall be effected by a Field Order issued by the Architect/Engineer, which shall be binding on the Owner and Contractor. The Contractor shall carry out such orders promptly. However, if the Contractor claims that a Field Order involves additional cost or a delay to completion of the work, he shall give the Architect/Engineer written notice thereof within a reasonable time after receipt of the Field Order. Otherwise, he shall be deemed to have waived any right to claim an adjustment to the Contract Sum or to the Contract Completion Time.

ARTICLE 21 – SUPERVISION AND CONSTRUCTION PROCEDURES

21.1 Supervision of the Work

21.1.1 The Contractor shall supervise and direct the work, using the Contractor's best skill and attention so as to ensure expeditious, workmanlike performance in accordance with the requirements of the Contract Documents. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures. He shall be responsible for the acts and omissions of persons directly employed by him, as he is for subcontractors. He shall be responsible for coordinating all portions of the work under the contract unless the Contract Documents give other specific instructions concerning these matters.

21.2 Obligation to Follow Contract Requirements

21.2.1 The Contractor shall not be relieved of obligations to perform the work in accordance with the Contract Documents either by the activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

ARTICLE 22 – LIENS

22.1.1 The filing and perfection of liens for labor, materials, supplies, and rental equipment supplied on the work are governed by KRS 376.195 seq.

22.1.2 The lien shall attach only to any unpaid balance due the contractor for the improvement from the time a copy of statement of lien, attested by the County Clerk, is delivered to the Owner, pursuant to the provisions of KRS 376.240.

22.1.3 Statements of lien shall be filed with the Campbell County Clerk and action to enforce the same must be instituted in the Campbell Circuit Court, Newport, Kentucky, pursuant to KRS 376.250(2).

ARTICLE 23 – TERMINATION

23.1 Termination of Contract for Convenience of Owner

23.1.1 The Owner may terminate the contract for its own convenience when it determines that such termination will be in the best interest of the University. When it has been determined that a contract should be terminated for the convenience of the University, the Owner shall give reasonable written notice and negotiate a fair and just settlement with the Contractor.

23.1.2 The Contractor shall have the burden of establishing the amount of compensation to which he believes himself to be entitled by the submission of complete and accurate cost data employed in submitting his bid or proposal for the contract, and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination for convenience.

23.1.3 If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply sufficient skilled workmen, adequate equipment, or proper material, or if he should fail without proper cause to make prompt payment to subcontractors, or for material or labor, or persistently disregard laws, ordinances, or the instruction of the Architect/Engineer, or otherwise be guilty of a substantial violation of any provision of the contract, then the Owner, upon the certification by the Architect/Engineer that sufficient cause exists to justify such action, may without prejudice to any other right or remedy and after giving the Contractor ten (10) days written notice by registered mail of declaration of default, take possession of the premises and all materials and building components thereon, and finish the work in accordance with the laws of the Commonwealth.

23.1.3 In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the expense of finishing the work, including compensation for additional managerial and administrative services, exceeds the unpaid balance of the contract price, the Contractor shall pay the difference to the Owner, along with other appropriate damages. The expenses incurred by the Owner, as herein provided, and the damages incurred through the Contractor's default shall be certified by the Architect/Engineer.

ARTICLE 24 – INDEMNIFICATION

24.1.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Architect/Engineer and their agents and employees from and against all claims, damages, losses and expenses, including attorney's work, provided that any such claim, loss, damage or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from, and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not is caused in part by a party indemnified hereunder. This basic obligation to indemnify shall not be construed to nullify or reduce other indemnification rights which the Owner would otherwise have.

24.1.2 In any and all claims against the Owner or the Architect/Engineer or any of their agents or employees by any employee of the Contractor, any subcontractor, any one directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee acts.

24.1.3 The obligations of the Contractor under this paragraph shall not extend to the liability of employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect/Engineer, his agents or employees, provided such giving or failure to give is the primary cause of injury or damage.

ARTICLE 25 – LABOR, MATERIALS, ETC.

25.1 Contractor Provisions

25.1.1 Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, temporary heat, hoist, supplies, appliances, transportation, and other facilities necessary for the execution and completion of the work. In the event the Owner elects to make available the electric power, at no cost, to the Contractor for construction purposes, it shall not be utilized as a means for temporary heat.

25.2 Contractor Warranties

25.2.1 The Contractor warrants to the Owner:

- (1) that the materials and equipment furnished under the contract will be of good quality and new unless otherwise required or permitted by the Contract Documents. The contractor shall guarantee that labor, equipment and materials will be free of defects for a period of one (1) year from the date of substantial completion with the exception of the period of time specified in the roof guarantee. Expendable items and wear from ordinary use are excluded from this guarantee. Prior to the final payment of the work, the contractor shall assemble and present the Architect/Engineer all guarantees and warranties required by the contract documents.
- (2) that the work will be free from defects not inherent in the quality required or permitted; and
- (3) that the work will conform to the requirements of the Contract Documents.

Work not conforming to these requirements, including unauthorized or unapproved substitutions, may be treated as defective. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor shall at all times enforce strict discipline and good order among his employees and subcontractors and shall not employ on the work any person unskilled in the work assigned to him.

ARTICLE 26 – CONCEALED CONDITIONS

26.1.1 If conditions are encountered at the site which are:

- (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or
- (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents,

Then notice by the observing party shall be given to the other party promptly before conditions are disturbed. If either party wishes to seek an equitable adjustment of the Contract Sum or the Contract completion Time, that party must notify the other party and Architect/Engineer of this fact prior to the conditions being disturbed, and in no event later than 20 calendar days after the conditions were first observed. Any resulting change in the Contract Sum or Contract Completion Time shall be incorporated in a change order.

ARTICLE 27 – CONSTRUCTION SCHEDULE

27.1.1 The Contractor shall prepare and submit for the Owner and Architect/Engineer's information and approval a construction schedule for the work. The schedule shall indicate the starting and completion dates of the various stages of the work, shall not exceed time limits established by the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the work, shall be related to the work of any other contractors on the project to the extent required by the circumstances, and shall provide for expeditious and practicable execution of the work.

ARTICLE 28 – CLEAN UP

28.1.1 The Contractor shall at all times keep the premises and surrounding area free from the accumulation of waste materials or rubbish caused by his operations in connection with the work. Upon completion of the work, and prior to final inspection and acceptance, the Contractor shall remove all remaining waste materials, rubbish, Contractor's construction equipment, tools, machinery, and surplus materials and leave the work (including but not limited to glass, hardware, fixtures, masonry, tile and marble) in a clean and useable condition satisfactory to the Architect/Engineer. Floors shall be cleaned and waxed in accordance with the requirements of the specifications. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may perform the cleaning tasks and charge the cost to the Contractor.

ARTICLE 29 – ASSIGNMENTS

29.1.1 Neither party to the contract shall assign the contract, or any portion thereof without the written consent of the other, nor shall the contractor assign any monies due or to become due to him hereunder without the previous written consent of the Owner.

ARTICLE 30 – PAYMENT

30.1.1 The Owner will make payments, less ten percent (10%) retainage, to the Contractor on the amount of the work performed or materials furnished for the work. Retainage can be

reduced, where appropriate, by the Architect/Engineer. The Purchasing Officer or Architect/Engineer reserves the right to determine method of payment (amount/time).

ARTICLE 31 – DELAYS AND EXTENSIONS TO TIME

- 31.1.1** It is agreed that time is of essence for each and every portion of this contract and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract.
- 31.1.2** If after award of contract, the Contractor becomes aware of a possible problem that could result in a delay of the completion of the project, the Contractor shall promptly notify the Purchasing Officer and Architect/Engineer in writing detailing the cause and probable effect of the problem. The Contractor shall include recommendations, alternative solutions and/or actions needed to alleviate the problem.
- 31.1.3** Nothing in the above item will be interpreted as relieving the Contractor of his or her contractual responsibilities; however, failure to notify promptly will be basis for determining Contractor's negligence in an otherwise executable delay.

ARTICLE 32 – RESOLUTION OF CLAIMS AND DISPUTES

- 32.1.1** Should either party to the contractor suffer damage because of wrongful act or neglect of the other party, or of anyone employed by him or other controversy arising under the contract (including but not limited to determination by the Architect/Engineer), such claim or controversy shall be made in writing within a reasonable time after the first occurrence of the event. Prior to the institution of any action in court, the claim or controversy (together with support data) shall be presented in writing to the Vice President of Administration and Finance, who by University policy is authorized to settle, compromise, pay, or otherwise adjust the claim or controversy with the Contractor. The Vice President of Administration and Finance, or his designee, shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise furnished to the Contractor. The decision shall be final and conclusive unless fraudulent, or unless the Contractor sues pursuant to KRS 45A.245. If the Vice President of Administration and Finance does not issue a written decision within the hundred and twenty (120) days after written request for a final decision, or within such longer period as might be established by the parties to the contract in writing, then the contractor may proceed as if an adverse decision has been received.
- 32.1.2** Any legal action entered against the Owner on the contract by the Contractor shall be brought in the Campbell Circuit Court and shall be tried by the court sitting without a jury. All defenses in law or equity, except the defense of government immunity, shall be preserved to the Owner.

ARTICLE 33 – FINAL INSPECTION, CERTIFICATION

- 33.1.1** The Architect/Engineer will conduct inspections to determine the dates of final completion. The Architect/Engineer will also receive and forward to the Owner, for the Owner's review, written warranties and related documents required by the contract and assembled by the Contractor.

33.1.2 The Contractor shall submit with the application for final payment an affidavit that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with the work have been paid or otherwise satisfied, along with such supporting evidence of payment as the Architect/Engineer requires. Final payment is conditioned on satisfactory compliance with this requirement.

33.1.3 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- (1) unsettled liens;
- (2) faulty or defective work appearing after substantial completion;
- (3) failure of the work to comply with the requirements of the Contract Documents; or
- (4) terms of any special warranties required by the Contract Documents

The acceptance of final payment by the Contractor shall constitute a waiver of all claims except those previously made in writing and identified by the Contractor as unsettled at the time of the final application for payment.

33.1.4 Prior to final payment for the work, the Contractor shall assemble and present to the Architect/Engineer all guarantees and warranties required by the Contract Documents. Additionally the contractor will provide "As-Built" Drawings prior to final payment.

ARTICLE 34 – INTERPRETATION OF CONTRACT DOCUMENTS

34.1.1 The Architect/Engineer will be the interpreter of the requirements of the Contract Documents and the judge of the performance there under by the Contractor, subject to the provisions of Article 32.

ARTICLE 35 – CONTRACT DOCUMENTS PROPERTY OF OWNER

35.1.1 All drawings, specifications and copies thereof remain the property of the Owner. They shall not be used on other work by any other party.

ARTICLE 36 – EMPLOYMENT PRACTICES

36.1.1 Any laborer, workman, or mechanic worked in excess of eight (8) hours per day or forty (40) hours per week, except in cases of emergency caused by fire, flood, or damage to life or property, shall be paid not less than one and one-half (1 ½) times the basic hourly rate of pay as fixed by law for all overtime worked. The determination of when an emergency exists shall be made by Northern Kentucky University, as the agency letting the contract as provided for by the law.

ARTICLE 37 – CONTRACTOR'S WARRANTY OF TITLE

37.1.1 The Contractor warrants and guarantees that title to all work, materials and equipment covered by any application for payment, whether incorporated in the project or not, will pass to Owner at the time of payment free and clear of all encumbrance.

ARTICLE 38 – SUBCONTRACTORS

38.1.1 The Contractor is fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them.

Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and a subcontractor.

38.1.2 Contractor's Payment to Subcontractors. The Contractor shall promptly pay each subcontractor upon receipt of payment from the Owner the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such subcontractor's work.

POLICY TITLE: TYPES OF CONTRACTS

1. General:

Purchase contracts and price contracts are the two major types of contractual arrangements which result from purchase requisitions. Purchase contracts are originated where the University obligates itself to purchase a specific quantity or amount at a specific price. Price contracts are used where a source of supply is established at a definite price, but normally without a guarantee of specific quantity. These contracts are issued by the Purchasing Department.

2. Purchase Contract:

This type of contract is established to purchase a specific quantity at a specific amount. Purchase contracts begin with the prefix "PO." Partial payments are permitted on purchase contracts if authorized by the Purchasing Department.

3. Notice of Award of Price Contract:

Price contract begins with the prefix "PCT". All references to a specific price contract must include the prefix and number. Example: PCT BP000322 or PCT 811-1093. These types of contracts must be used to establish price agreements with vendors for supplying specific items at a specific unit price for a definite period.

- a. The basic reason for the issuance of a price contract is the continuing need by the University for a specific service or commodity over a fixed period. Price contracts are established to include all departments or for a single department and are mandatory for use by the department unless specifically exempted or made optional in the price contract. Orders referenced to a price contract are processed on the University purchase order form.
- b. Established price contracts may be used by other state universities in Kentucky by receiving permission from the vendor awarded the price contract. Likewise, price contracts issued by other state supported universities in Kentucky may be use by NKU.

KRS 45A.135

POLICY TITLE: PURCHASE BY COMPETITIVE SEALED BIDDING

All bids shall be awarded on the basis of “best value” to the University. In the absence of specific criterion, “best value” shall be considered the bid at the lowest price while still meeting the specifications.

Formal competitive bidding is considered the normal method of procurement and desired on most purchases.

1. Formal Bid Requirements:

Competitive sealed bids must be solicited on "Invitation for Bid" form (or slight variation) that has been approved by the Purchasing Department. Sealed bids are required when the estimated amount of purchases exceeds:

\$20,000 for construction and insurance, \$10,000 for other purchases unless it is determined that the requirements should be obtained by competitive negotiation under KRS 45A.085, or otherwise determined by the Director of Purchasing.

2. Exceptions:

Issuance of an Invitation for Bids (IFB) or a Request for Proposal (RFP) is preferred in all cases except -

- a. See Policy on "Special Authorities".
- b. See Policy on "Emergency Purchase".
- c. Purchases under \$5,000 unless specifically forbidden in other policies.

3. Bidders List:

The Purchasing Department uses the bidders list and other sources of information to foster the highest possible level of competition among vendors interested in doing business with the University. "Invitation for Bid", or approved variations, are to be sent to at least ten (10) vendors if that many exist or more if the vendors are on the list applicable to a given commodity. An invitation is to be sent to each vendor, when there are ten (10) or fewer vendors on the list. Any additional qualified vendor within the terms specified by the Purchasing Department, may request invitations and be afforded an opportunity to bid.

4. Bid Publication:

In addition, the Purchasing Department must advertise all solicitations on its web site in accordance with KRS 45A.080 (3). The announcement of bids to be published in the newspaper shall contain the following information:

- a. The invitation number.
- b. General description of items to be purchased.
- c. Place from which a copy of the solicitation can be obtained.

The notice is published not less than seven (7) days before the bid opening date.

5. Advertising Time:

The minimum number of required calendar days between the bid mailing and the bid opening is typically fourteen (14) days.

6. Submission of Invitation for Bid:

Bidders shall submit one response only to a solicitation and shall not propose more than one price, model, and brand for each item listed in the bid invitation. Multiple or alternate bids offering more than one bid price in total (or by line item) shall be cause for rejection unless they are specifically called for in special provisions provided elsewhere in the solicitation. The Invitation For Bid must be signed in ink to be considered. Bids not conforming to this requirement shall be rejected.

The Purchasing Department will not accept telegraphic or facsimile (FAX) bids. All envelopes used for the submission of bids should include the following information:

- a. The words "Sealed Bid" or "RFP"
- b. The date and time of bid opening
- c. The invitation for bid number

Any unmarked bid will be opened and initialed for identification purposes upon receipt in the Purchasing Department. The envelope will be noted with the proper information and filed in the bid folder.

7. Telegraphic or Facsimile (FAX) Bids:

These are not acceptable when the Purchasing Department request sealed bids. Changes to written bids already submitted may be made by telegram or facsimile (FAX) provided such notice is received before the time set for opening of the bids. Telegraphic or facsimile (FAX) changes cannot mention unit price or total price, it can only refer to percentage change or numerical change.

8. Bid Changes or Withdrawals:

A vendor may withdraw or change his/her bid provided the request is made before the time set for opening bids. Withdrawal of a bid after opening is permitted only if clear and convincing evidence indicates that a bidder has made a bona fide error in preparation of his/her bid and such error will result in substantial loss to him/her. Proof in writing must be submitted to substantiate error or loss to the reasonable satisfaction of the Purchasing Department. The withdrawal of any bid under this paragraph must be done on a method of award basis, as set forth by the Invitation For Bid, e.g. line item, sub-total, total, etc. (See policy on General Conditions).

9. Receipt of Bids:

All formal bids are "time and date stamped" by the Purchasing Department upon receipt of the bid. All bids are filed by invitation number in a secure place to protect the integrity of the bid process.

No information is disclosed as to the number of bids received or the identity of the bidders.

10. Opening of Bids:

At the time designated for opening, the bids are removed from the files, opened, and read in public. All timely bids received in response to each invitation are opened and read aloud in an office designated by the invitation for bid. A bid received after the specified time has passed (for receiving bids) is noted but not considered, unless no other acceptable bids are received. No late bid is considered unless it is post-marked before the time set for opening. Bidders and all other interested persons may attend bid openings. After the bids are opened and read, a record of the bidders responding to the invitation is made and the bids for each invitation tabulated. The bid is then given to the responsible buyer for evaluation and final award.

11. Rejection of Bids:

Bids may be rejected for the following reasons:

- a. Non-responsive Bids: Any bid not in conformity with the requirements of the invitation for bid and the general conditions applicable to all bids.
- b. Alterations and Erasures: Bids containing any material alterations or erasures unless the change is initialed in ink by the bidder.
- c. Rejection of all bids: If it appears to be in the University's best interest, all bids may be rejected and invitations for bid containing the same or rewritten specifications, terms, and conditions reissued.

12. Parceled or Split Purchasing:

A department cannot split or parcel purchases over a period of time for the purpose of evading competitive bidding.

KRS 45A.080

POLICY TITLE: COMPETITIVELY NEGOTIATED CONTRACTS

1. When, in the opinion of the Director of Purchasing, specifications cannot be fairly and objectively prepared so as to permit competition as an invitation for sealed bids, or for highly technical equipment available from a limited number of sources of supply and for which specifications cannot practicably be prepared without being restrictive, a contract may be awarded for a procurement by competitive negotiation and this policy. All such determinations by the Director of Purchasing must be in writing and state clearly why it is considered impractical to invite bids, prior to initiating any action.
2. When it has been determined that it is not practical to invite competitive bids, action to obtain a procurement by competitive negotiation shall commence by adequate public notice of the request for proposals in the same manner as provided in KRS 45A.080(3).

The Request for Proposals (RFP) for competitive negotiations shall state:

- a. That the University purchasing officer proposes to enter into competitive negotiations with responsible offerors for procurement;
 - b. The date, hour, and place that written proposals shall be received;
 - c. The type of procurement involved and a description of the supplies or services sought;
 - d. The method of award listing the relative importance of price and other evaluation factors to be considered by the purchasing officer in determining the proposal most advantageous to the University;
 - e. Such other information as, in the opinion of the purchasing officer, may be desirable or necessary to reasonably inform potential offerors about the requirements of the procurement or the limits or bounds of the competitive negotiation proposed to obtain the procurement;
3. All written proposals received by the purchasing officer shall be kept secure and unopened until the date and hour set for opening the proposals.
 4. At the time and date specified in the RFP, all proposals received shall be transferred to the purchasing officer for the opening. This opening will not be open to the public and proposals shall not be subject to public scrutiny until negotiations between the purchasing officer and all offerors have been concluded and a contract awarded to the responsible offeror and which offer has been determined in writing to be most advantageous to the University.
 5. If it has been provided in the advertisement or request for proposals that an award may be made without written or oral discussions, or if it is determined that adequate information has been submitted in the proposals, the purchasing officer may award the contract to the responsible offeror submitting the proposal determined in writing to be the most advantageous to the University, and the published evaluation factors considered. If, after the proposal has been examined, it is determined that written and/or oral discussions should be conducted with the offerors, the purchasing officer shall determine in writing, based on an individual review, those proposals received from responsible offerors that are reasonably susceptible for award. Each responsible offeror shall be contacted informally for a scheduled discussion meeting. Discussions need not be conducted under the circumstances of or relative to the topics enumerated in KRS 45A.085 (6a, b, or c).

6. Discussions with offerors shall be held informally and may be conducted orally, in writing, or both, as determined by the purchasing officer in writing. If, however, after discussions with all responsible offerors have concluded, or after examination of the written proposals initially submitted, it is determined that no acceptable proposal has been submitted, any or all proposals may be rejected and, in the discretion of the purchasing officer, new proposals may be solicited on the basis of the same, or revised terms, or the procurement may be abandoned.
7. The purchasing officer shall prepare a written summary of all oral discussions with all responsible offerors and the general substance of the discussions. Only information pertinent to the proposal will be recorded.

HE-111-17

KRS 45A.085

KRS 45A.090

KRS 45A.695

POLICY TITLE: CONTRACTS, AWARDING OF

Contracts are awarded to the lowest responsive qualified bidder meeting all specifications and conditions of the invitation for bid.

1. Time Discounts:

Time or cash discounts shall not be considered.

2. Trade Discounts:

Trade discounts should be deducted by the vendor in calculating the unit price quoted, unless otherwise stated.

3. Quantity Discounts:

Quantity discounts should be included in the price of the item. When not included in the item price, the discount shall be considered only if the Purchasing Department or individual department deems it in the University's best interest. The unit price shown on the contract shall be the net price less the discount, unless otherwise stated.

4. Unit Price Governs:

In case of a discrepancy in the extension of a price, the unit or item price shall govern over the total price of all items.

5. Awards on an Aggregate or Individual Item Basis:

An award may be made to the lowest aggregate bidder for all items, group of items, or on an individual item basis, whichever is deemed to be in the University's best interest. The invitation for bid must state the method of award and how the bid is to be evaluated.

6. Responsibility of the Bidder:

The Purchasing Department may, at any time, make a supplemental investigation of the responsibility of any bidder, even though the bidder is on the bidders list. This may include investigations of the bidder's financial responsibility, capacity to produce or source of supply, performance record in the business or industry, compliance with state health rules and regulations, and any other matter relating to the bidder's probable ability to deliver in the quantity and at the time required by a contract award.

- a. If the Purchasing Department concludes on the basis of all available evidence that a particular bidder does not appear sufficiently responsible to assure adequate performance if the contract were awarded to him/her, the bidder may be disqualified to bid.
- b. When there is some doubt as to the responsibility of the low bidder, but the University's interest will be adequately protected by the filing of a performance bond, the low bidder may be required to file such a bond whether required by the invitation for bid or not, and upon filing of the bond the award may be made to such low bidder.

- c. The Purchasing Department shall not make a written determination of responsibility of a bidder until the bidder provides the University with a sworn statement made under penalty of perjury that he/she has not knowingly violated any provision of the campaign finance laws of the state of Kentucky and that the award of a contract to the bidder will not violate any provisions of the campaign finance laws of the state of Kentucky. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his/her conduct is of that nature or that the circumstance exists.

7. Conflict of Interest:

Contracts with the University in which members of the General Assembly, certain state officers, Board of Regents, or employees have interest, are limited by the state constitution and statutes governing conflict of interest.

8. Attempt to Influence Award:

No vendor who submits or intends to submit a bid shall give or offer to give, directly or indirectly, any money, article, or other thing of value to:

- a. Any officer or employee of the Purchasing Department or officer or employee of a department with delegated purchasing authority.
- b. Any officer or employee of any requisitioning department that has submitted or may submit a requisition for any item sold by such person.
- c. Any officer or employee of the Commonwealth of Kentucky who is a member of a committee whose duty is to recommend specifications for any commodity or equipment to be procured by the University.

All bids submitted by any person making or offering to make a gift in violation of this paragraph will be rejected and barred from further bidding for a period of time considered appropriate by the Director of Purchasing. The Attorney General, Commonwealth of Kentucky, will be advised in order that he/she may take such action, including criminal prosecution, as deemed appropriate.

9. Collusive Bids:

If it appears that there is reasonable ground to believe that there is an agreement among certain prospective bidders, to restrain competitive bidding by establishing a fixed price on commodities or equipment sought to be purchased by the University, or by any other means, the bids of all such bidders will be rejected, and the bidders and prospective bidders barred from further bidding for a period of time considered appropriate by the Director of Purchasing. The Director of Purchasing will notify the University of the fact upon which such action as deemed appropriate under the law.

10. No Satisfactory/Acceptable Bids Received:

If no satisfactory bids are received, the Purchasing Department or individual department may re-advertise in the same manner used originally or, if time does not permit and an emergency exists, purchase the items on negotiated basis. If it is deemed to be in the best interest of the University, price and other factors considered, the purchase may be finalized by a negotiated method. The

rejection of all bids and selection of the negotiated method of purchase must be fully documented in the bid file.

KRS 45A.075

KRS 45A.395

POLICY TITLE: METHOD OF BREAKING TIE BIDS

Tie low bids on the purchase of commodities may be broken in the following order if price and delivery are equal.

1. Time discount.
2. Kentucky vendor.
3. Vendor who has performed satisfactorily in the past over vendor who has not previously served the University or who has not performed in satisfactory manner.
4. Flip of coin, witnessed by at least two University personnel.

The bid file shall be documented listing one or more of the above listed factors.

POLICY TITLE: CONTRACT ADMINISTRATION

1. General:

Contracts awarded will be administered in accordance with the terms and conditions of the contract and sound principles of effective purchasing. The Purchasing Department relies on the various departments to ensure contracts are being completed or performed as written. If any contract problem, deviation, change, or delay arises which is not provided for in the contract, the matter should be handled between the Purchasing Department and the vendor.

2. Authorities:

Departments are not authorized to act outside contract provisions, in award coordination with vendors. Problems which may require contract changes, price adjustment, quantity variations, alternate items, delinquent deliveries, etc., should be documented and forwarded to the Purchasing Department. The buyer will then coordinate the matter in accordance with purchasing policy and initiate the necessary action or contract change if required.

3. Reporting:

Procedures for reporting Complaints Against the Vendor and Advice of Change in Order are covered in Section 3 of this manual.

KRS 45A. 035
BO 111-51-00

POLICY TITLE: MAINTAINING BIDDERS LIST

1. The Purchasing Department encourages open competition on commodities purchased, leased, or sold. Limitations on competition are permitted only when specific requirements are dictated by special conditions. The interest of several prospective bidders is important in obtaining the best competitive atmosphere.
2. If a vendor desires to receive written notice of commodities to be purchased or leased by the Purchasing Department for the University, he/she must submit an application to have his/her name placed on the Purchasing Department's mailing list.
3. Bidders Lists for various commodity and equipment classifications are maintained by the Purchasing Department. A vendor must submit his/her application to be placed on the "Bidders List" in writing.

POLICY TITLE: REMOVAL OR SUSPENSION FROM BID LIST

1. All vendors or firms submitting bids on invitations issued by the University agree to comply with all terms, conditions, and specifications of the Invitation. Failure to meet any term, condition, or specification is grounds for removal from the bid list.

The following acts may be specific reasons for removal -

- a. Failure to post bid or performance bonds required by the Director of Purchasing.
 - b. Substitution of commodities without approval in writing from the Purchasing Department.
 - c. Failure to meet terms and conditions specified in the bid.
 - d. Failure to replace inferior or defective materials, equipment, or supplies immediately after notification.
 - e. Failure to respond to three invitations received.
 - f. Falsifying invoices.
 - g. Collusion or collaboration with another or other vendors on University Invitation.
 - h. Falsifying information on the "Application to be placed on the Vendor's Bid List".
 - i. Refusal to accept a contract submitted as provided in the bid.
 - j. Failure to pay the Kentucky Sales-Use Tax or to file the Sales-Use Tax Report as required by law.
 - k. Failure to provide the Vendor Identification Number.
2. The Purchasing Department investigates allegations of any of these acts or of any violation of the terms, conditions, or specifications of an Invitation to Bid. If an investigation discloses the commission of one or more of the facts noted above, or a violation of any of the terms, conditions, or specifications of the Invitations to Bid, the Director of Purchasing may recommend to the Vice President appropriate disciplinary action, including placing the firm on probation, removal from the Bidders List, or a combination of both for a period not to exceed two years.
 3. Vendors removed from the Bidders List for disciplinary reasons may appeal the action to the University's appointed official or the appropriate Vice President. The appeal must be in writing, stating the reasons for reconsideration and must be made within two weeks from the date of notice of disciplinary action. The University's appointed official or Vice President shall take the action he/she deems necessary to review the facts of the case including holding formal hearings; his/her decision is final.
 4. No purchase of any type may be made from any vendor who has been removed from the Bidders List except for vendors removed for failure to respond to three invitations to bid. The University's Director of Purchasing will notify all other universities promptly of vendors removed from the bid list.

Ref: KRS 45A.110