

**KENTUCKY'S
ADMINISTRATION AND MANAGEMENT
OF MASTER AGREEMENTS AND CATALOG
MASTER AGREEMENTS**

February 2005 - PERFORMANCE AUDIT



**CRIT LUALLEN
AUDITOR OF PUBLIC
ACCOUNTS**

The Auditor Of Public Accounts Ensures That Public Resources Are Adequately Protected, Accurately Valued, Properly Accounted For, And Effectively Employed In Order To Raise The Quality Of Life For All Kentuckians Across the Commonwealth.



CRIT LUALLEN
AUDITOR OF PUBLIC ACCOUNTS

February 9, 2005

Mr. Robbie Rudolph, Secretary
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex
Frankfort, Kentucky 40601

Re: Performance Audit of Kentucky's Administration and Management of Master Agreements and Catalog Master Agreements for Commodities and Non-Professional Services

Dear Secretary Rudolph:

We present our report on Kentucky's Administration and Management of Master Agreements and Catalog Master Agreements for Commodities and Non-Professional Services. This is the first in a series of reports relative to Kentucky's contract practices. It is our hope that this audit will benefit program managers as they administer and manage this important government function. The contracting and procurement process is essential to healthy management of a state's resources and is included as a component of Governing Magazine's evaluation of Kentucky's management practices that resulted in an overall grade of "B+".

In accordance with Kentucky Revised Statute 43.090(1), the Finance and Administration Cabinet must notify the Legislative Research Commission and the Auditor of the audit recommendations it has implemented and of the recommendations it has not implemented, and reasons therefore, within sixty (60) days of the completion of the final audit. The audit report will be distributed pursuant to KRS 43.090.

Our Division of Performance Audit evaluates the effectiveness and efficiency of government programs as well as completing risk assessments and benchmarking of state operations. We will be happy to discuss with you at any time this audit or the services offered by our office. If you have any questions, please call Marcia Morgan, Director of the Division of Performance Audit, or myself.

We greatly appreciate the courtesies and cooperation extended to our staff during the audit.

Respectfully submitted,

A handwritten signature in cursive script that reads "Crit Luallen".

Crit Luallen,
Auditor of Public Accounts

cc: Governor Ernie Fletcher



February 9, 2005
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Executive Summary

Audit Objective

This performance audit was conducted to determine whether price contracts are appropriately administered and managed by the Commonwealth to ensure the best value is received. The focus of this audit report is the procurement of commodities and non-professional services using Master Agreements and Catalog Master Agreements. It addresses how these two types of contracts are established and utilized and how the Commonwealth might improve its administration and management of these agreements.

Background

All state contracts are established under the authority of KRS Chapter 45A et seq., and a multitude of Kentucky Administrative Regulations and Finance and Administration Policies. The Secretary of the Finance and Administration Cabinet has the legal responsibility to ensure that contracting methods and procedures follow the applicable requirements. The Office of Material and Procurement Services (OMPS) was created within the Finance and Administration Cabinet to provide the required oversight related to contracts and procurement.

A Master Agreement establishes a price agreement between an individual agency and a vendor for supplying specific commodities or non-professional services at specific unit prices during a specified time period. A Catalog Master Agreement establishes a price agreement for use by two or more agencies with a vendor supplying specific commodities or non-professional services at specific unit prices during a specified time period. When a commodity or non-professional service is needed, an agency can purchase the item under the agreed upon conditions of the Master Agreement or Catalog Master Agreement. These agreements should provide stability in prices and delivery terms, and allow agencies to avoid spending funds before the commodities or non-professional services are actually needed. Over the last five fiscal years (FY 2000 through FY 2004) the Commonwealth has spent over \$1.3 billion through Master Agreements and Catalog Master Agreements.

A Master Agreement is created for one agency to use. The individual agency may establish a Master Agreement on its own if it is for non-professional services with an expected annual value less than \$20,000. OMPS will create the Master Agreement for the agency when the requirement involves commodities or non-professional services with an annual value greater than \$20,000. In this instance, a state agency creates a purchase request and submits it to OMPS for review. OMPS procurement staff will determine if the commodity or non-professional service required by the agency could be found in an existing Master Agreement or Catalog Master Agreement and whether the agency can be added to that existing contract.

A Catalog Master Agreement is required to be established by OMPS and can be initiated by an agency purchase request or by OMPS. Once created, two or more agencies will use the agreement to purchase needed commodities and non-professional services from the contract. (Under certain circumstances the Transportation Cabinet is able to create Catalog Master Agreements.)

After the terms of a Master Agreement or Catalog Master Agreement are agreed upon by both the vendor and OMPS, the prices and contract terms are entered into the state's procurement system. The approved agencies are then able to make

Executive Summary

purchases from the contracts through a program known as Procurement Desktop (PD), which is a component of the Commonwealth's Management Administrative and Reporting System (MARS).

Audit Findings

The Finance and Administration Cabinet should improve its monitoring and evaluation procedures related to purchases of commodities and non-professional services. There is a lack of purchasing data and strategic analysis that weakens its ability to effectively manage Kentucky's purchases. The legal authority related to the establishment of the Master Agreements and Catalog Master Agreements was not recorded for 41% of the utilized agreements in FY 2004. There is a need for additional procurement training within state agencies and compliance reviews are not being conducted. Additionally, Kentucky did not obtain the lowest available price for 37 of the 89 commodities and non-professional services tested. Although innovative solicitation methods have been recently explored, additional price comparison resources should be utilized.

Kentucky's Procurement System Cannot Calculate the Number of Items Purchased or the Amount Spent on a Particular Item

OMPS cannot determine the number of items purchased by state government or the expense incurred for a particular type of item due to the limitations of Kentucky's procurement system within MARS. This data is needed to document the volume of activity of each of the commodities and non-professional services that the state purchases through its Master Agreements and Catalog Master Agreements. Without this data, it is not possible for OMPS to properly negotiate with vendors and take advantage of the state's buying power.

There Is No Formal Method for Strategic Analysis of State Government Expenditures

OMPS has no written guidelines for conducting a strategic analysis of established Master Agreements and Catalog Master Agreements and the associated expenditures. This means that there is no formal review to evaluate the necessity of, or the benefits and detriments related to, these agreements. In order to administer and manage Master Agreements and Catalog Master Agreements, OMPS needs to understand the buying habits and needs of all state agencies. Based on information provided by OMPS, it is not possible to determine if this understanding is being achieved on a comprehensive and consistent basis. Implementing a "spend analysis" process similar to that of some federal agencies and the state of Virginia would help to better collect and analyze state expenditure data.

The Legal Authority for Establishing Contracts Is Not Cited Accurately

The appropriate cited authority is not being assigned to many Master Agreements and Catalog Master Agreement. OMPS is responsible for ensuring that contracts are established in a manner consistent with the appropriate legal authority. A cited authority is assigned to document and track the laws and/or policies that determine how the contract was established. The cited authority for 36% of the 1,061 Master Agreements and Catalog Master Agreements created in FY 2004 was "Solicitation Authority," which is merely a default cited authority within the procurement system's computer software and does not reference any legal authority.

Additional Procurement Training Is Needed Within State Agencies

State agency procurement personnel would benefit from OMPS providing procurement training on specific topics and advertising training provided through professional procurement organizations. Compliance with procurement laws and policies cannot be achieved without proper training. Training is provided through the Customer Resource Center, but none of the courses offered completely address the needs expressed by some agency procurement officers nor does it match the scope of training provided by other states to their procurement personnel.

Executive Summary

Kentucky May Not Be Obtaining the Lowest Available Prices

The prices of 89 commodities and non-professional services covered by Master Agreements and Catalog Master Agreements were reviewed. Of the 89 commodities and non-professional services items reviewed, 37 (42%) were found to have higher prices than those in other public and private markets. Of the 89 items reviewed, 25 were for information technology products and services. Of these 25 items, 19 (76%) were found to have higher contract prices than other public and private markets. State agency personnel stated in our survey interviews that cheaper prices were available on the open market. It was not possible to determine if the lower prices found are fully comparable to those prices established in Master Agreements and Catalog Master Agreements, because KRS 45A.070(3) and FAP 111-10-00 allows the costs of additional value added considerations to be added to the final unit price. Also, potential cost savings based on the item's price differential could not be determined because the state's procurement system does not capture the number of commodities or non-professional services purchased through a Master Agreement and Catalog Master Agreement.

Regular Compliance Reviews Are Not Being Conducted by the Finance and Administration Cabinet

Regular and on-going compliance reviews of agencies' purchases are not being conducted by the Finance and Administration Cabinet. Without periodic reviews, the level of state agency compliance with procurement laws is unknown. Considering that Master Agreement and Catalog Master Agreement expenditures amounted to over \$345 million in FY 2004, failure to conduct compliance reviews creates a significant risk that errors in the procurement process may be causing avoidable waste.

Additional Observations Related to the Administration and Management of Master Agreements and Catalog Master Agreements

Observations were made during this performance audit that were considered noteworthy, but which are beyond the scope of this audit. The first two observations deal with the use of reverse auctions and consolidation of computer purchases through the Commonwealth Office of Technology. These are recent developments for which a conclusion of effectiveness or efficiency cannot yet be determined. The third observation relates to OMPS's review of prices found in agreements established by state universities.

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Abbreviations

APA	Auditor of Public Accounts
Cabinet	Finance and Administration Cabinet
CMA	Catalog Master Agreement
COT	Commonwealth Office of Technology
CPPB	Certified Professional Public Buyer (CPPB)
CPPO	Certified Public Purchasing Officer (CPPO)
FAP	Finance and Administration Policy
GAO	Government Accountability Office
IT	Information Technology
KAR	Kentucky Administrative Regulation
KPPA	Kentucky Public Procurement Association
KRS	Kentucky Revised Statute
MA	Master Agreement
MARS	Management and Administrative Reporting System
NIGP	National Institute of Governmental Purchasing
OMPS	Office of Material and Procurement Services
PD	Procurement Desktop

Introduction and Background

Introduction

For the Commonwealth to operate it must purchase commodities and services. In order to avoid inappropriate and inefficient use of state funds while making these purchases, contracts are established to determine qualified vendors and establish prices that will be acceptable to the Commonwealth during the contract period. According to Finance and Administration Policy (FAP) 111-37-00, four types of contracts for the procurement of commodities and services are used by the Commonwealth.

- **Award/Contracts – Established to purchase a specific quantity at a specific price.**
- **Purchase Orders –The same as an Award/Contracts except they are limited to procurement agreements made between state agencies.**
- **Catalog Master Agreements – These contracts establish a price agreement with a vendor to be used by two or more state agencies where the vendor will specify their goods and/or services at a specific unit price for a specific time period.**
- **Master Agreements – These contracts are similar to Catalog Master Agreements except they are between just one agency and a vendor.**

The focus of this audit report is the procurement of commodities and non-professional services using Master Agreements and Catalog Master Agreements. It will first address how these two types of contracts are established and utilized by the Commonwealth. The second portion of the report will highlight how the Commonwealth might improve its administration and management processes to increase efficiency and provide the best prices for commodities and non-professional services. Expenditures using Award/Contracts or Purchase Orders, were not reviewed and are not discussed in this report.

This report does not address Personal Service Contracts for professional services, Memoranda of Agreement, or Memoranda of Understanding because they have a different establishment process than contracts for commodities and non-professional services. KRS 45A.690 defines these types of contracts and their use in the Commonwealth’s procurement process.

Procurement of Commodities and Non-Professional Services

Master Agreements and Catalog Master Agreements are types of contracts that are sometimes known as price contracts or, in some states, term contracts. While the titles may sometimes differ for these types of contracts, the purpose is to establish a price agreement between a government entity and a vendor for specific commodities and/or non-professional services at specific unit prices for a specific period of time.

These contracts ensure a specific purchase price at the time an item is needed by a government entity during the contract period. When a certain commodity or service is needed, the agreed-upon conditions of the Master Agreement or Catalog Master Agreement will specify the price and the time frame in which the vendor must deliver. Stability in prices and “just in time” delivery add efficiency to government operations.

Over the last five fiscal years (FY 2000 through FY 2004) the Commonwealth has spent over \$1.3 billion through Master Agreements and Catalog Master Agreements. There has been an increase in the expenditures each year except FY 2004.

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Table 1
Master Agreement and Catalog Master Agreement Expenditures
By Fiscal Year

Fiscal Year*	Contract Type	Total Expenditures
FY 2000	CMA	\$41,245,164.45
FY 2000	MA	\$35,991,088.15
<i>FY 2000 Total</i>		<i>\$77,236,252.60*</i>
FY 2001	CMA	\$105,101,102.91
FY 2001	MA	\$137,515,791.74
<i>FY 2001 Total</i>		<i>\$242,616,894.65</i>
% Increase From FY 00		214.12%
FY 2002	CMA	\$145,333,496.77
FY 2002	MA	\$175,460,663.31
<i>FY 2002 Total</i>		<i>\$320,794,160.08</i>
% Increase From FY 01		32.22%
FY 2003	CMA	\$143,946,686.53
FY 2003	MA	\$214,417,606.98
<i>FY 2003 Total</i>		<i>\$358,364,293.51</i>
% Increase From FY 02		11.71%
FY 2004	CMA	\$125,485,025.42
FY 2004	MA	\$220,363,022.65
<i>FY 2004 Total</i>		<i>\$345,848,048.07</i>
% Increase From FY 03		-3.49%
Five Year Total	CMA	\$561,111,476.08
Five Year Total	MA	\$783,748,172.83
<i>Total Expenditures</i>		<i>\$1,344,859,648.91</i>

Source: Auditor of Public Accounts analysis based on data provided by the Finance and Administration Cabinet's Office of Materials and Procurement Services.

*In FY 2000 MARS was not fully operational and not all expenditures for the year were captured electronically.

Master Agreement and Catalog Master Agreement Establishment Methods

All Master Agreements and Catalog Master Agreements are established under the authority of FAP 111-37-00. According to FAP 111-45-00 there are five separate methods to establish these types of contracts and each of these methods are authorized by provisions of KRS 45A, KAR Title 200, Chapter 5, and Finance and Administration Policies. The Secretary of the Finance and Administration Cabinet (Cabinet) is vested with the responsibility to ensure that these methods, and the procedures used to engage in them, follow the requirements of the laws. For this purpose, the Cabinet created The Office of Material and Procurement Services (OMPS) to serve as the state's contracting oversight entity.

The five different establishment methods used by OMPS are:

Competitive Sealed Bidding – State Contracts entered into as a result of competitive sealed bidding are established under the authority of KRS 45A.080,

Introduction and Background

200 KAR 5:306, and FAP 111-35-00. In this process, OMPS advertises the specific criteria for the required commodity or service. Vendors are able to submit bids offering the commodity or service at the lowest price possible. On a prearranged date, OMPS will then open the vendors' bids to determine which vendors will be awarded the Master Agreement or Catalog Master Agreement. The winning bidder is determined by OMPS based on the vendor's price in the bid, as well as other "best value" criteria such as delivery time, warranties, product technical support, and product quality. Competitive sealed bidding is the establishment method that is to be used unless otherwise specified in the requirements for the other four methods.

Competitive Negotiation – State contracts entered into as a result of competitive negotiation are established under the authority of KRS 45A.085, 200 KAR 5:307, and FAP 111-57-00. These contracts typically are used when the Cabinet Secretary has determined that competitive sealed bidding is not practicable. This method of procurement allows for a greater amount of discussion between the Commonwealth and the vendor concerning the state's criteria for the needed commodity or service.

"Special Authority" – State contracts entered into as a result of "special authority" are established under a variety of statutes, regulations, and Finance and Administration Policies. This method of establishing contracts is used in three specific instances where the law exempts the state agency from using competitive sealed bidding. They include:

- **Exemptions Specified by Law or Regulation-** Authority is found in KRS 45A.050, KRS 45A.095, KRS 45A.300, KRS 45A.660, 200 KAR 5:309, and FAP 111-08-00. Examples of contracts exempted from competitive sealed bidding include agreements for purchasing works of art, subscriptions to periodicals, and copyrighted material.
- **Standing Determination of Not Practicable or Feasible** – Authority is found in KRS 45A.035, KRS 45A.022, KRS 42.0245, 200 KAR 5:309, 200 KAR 2:006, and FAP 111-09-00. Examples of contracts exempted from competitive sealed bidding include agreements for the purchase of fresh produce, advertisements, airfare, and interpreters.
- **Sole Source** – Authority is found in KRS 45A.095, 200 KAR 5:309, and FAP 111-10-00. Examples of contracts exempted from competitive sealed bidding include agreements for the purchase of proprietary equipment, dues and organizational fees, and other commodities or services that only have one source.

Noncompetitive Negotiation – State contracts entered into as a result of noncompetitive negotiation are established under the authority of KRS 45A.095, 200 KAR 5:309, FAP 111-08-00, FAP 111-09-00, and FAP 111-10-00. This method of establishment can be used in conjunction with those items and services listed under the "Special Authority" category. It also allows for negotiation with a vendor when competition for a commodity or service does not exist. Purchases made when emergency conditions exist are included in this category.

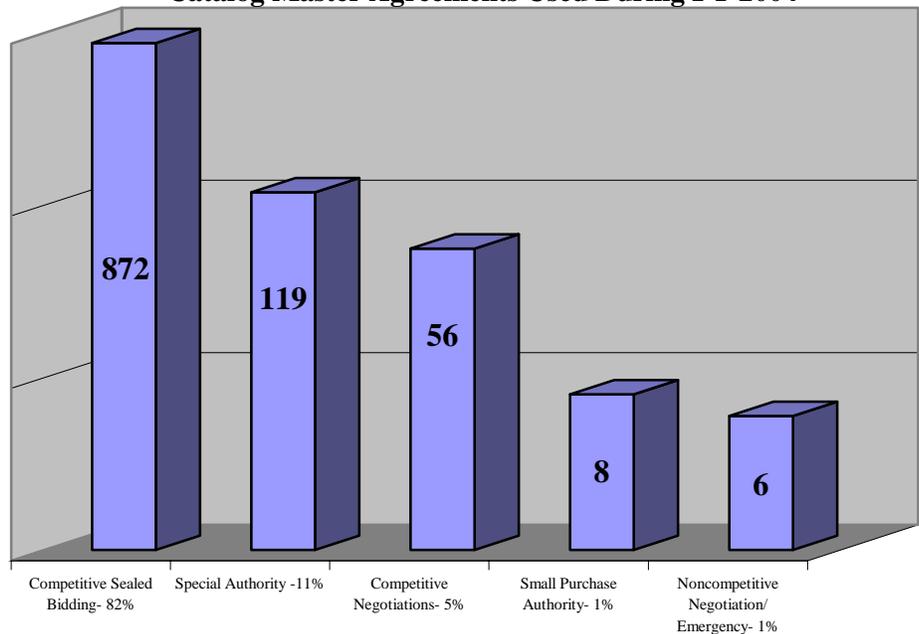
Introduction and Background

Small Purchase – State contracts that are for “small purchases” are established under the authority of KRS 45A.100, 200 KAR 5:302, and FAP 111-55-00. Contracts established through this method relate to the limits of an agency’s small purchase authority. In general, the small purchase authority is the dollar threshold placed on an agency’s expenditures when making a purchase outside of established contracts. An agency may request that OMPS make a purchase on their behalf when the needed commodity or service is greater than the agency’s small purchase limit but less than the limit established for OMPS. OMPS is then able to use its small purchase limit as the authority to create a contract for the agency to purchase through.

82% of Master Agreements and Catalog Master Agreements Utilized in FY 2004 Were Established by a Competitive Sealed Bidding Process

When establishing Master Agreements and Catalog Master Agreements, OMPS uses a competitive process for the majority of state contracts. Figure 1 illustrates the breakdown of how the 1,061 Master Agreements and Catalog Master Agreements used by agencies in FY 2004 were established.

Figure 1
Establishment Methods of the Master Agreements and Catalog Master Agreements Used During FY 2004



Source: Auditor of Public Accounts analysis based on data provided by the Finance and Administration Cabinet’s Office of Materials and Procurement Services on 08/03/04.

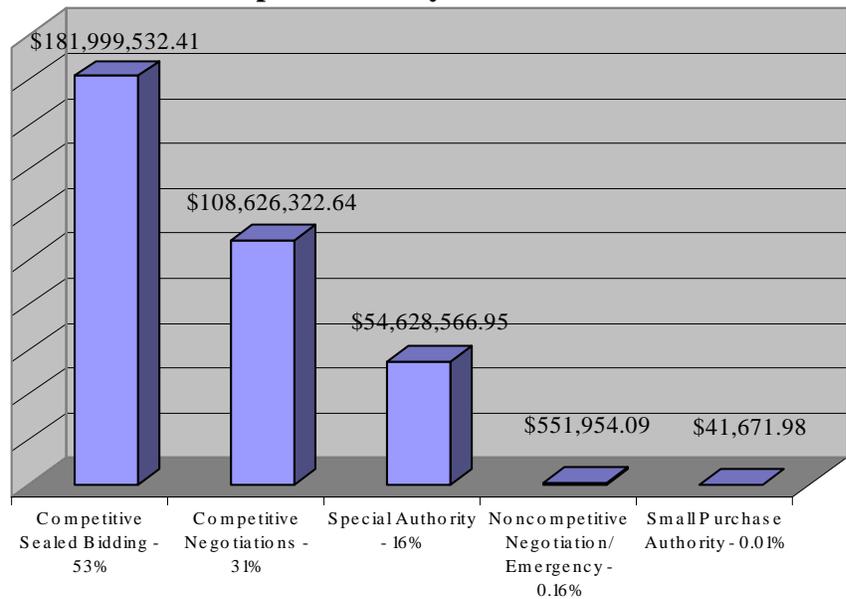
Competitive sealed bidding was the establishment method used 82% of the time in creating FY 2004 Master Agreements and Catalog Master Agreements. KRS 45A.080 requires competitive sealed bidding for all contracts exceeding the small purchase limit unless it is determined to be not practicable to do so. Competitive sealed bidding typically provides greater competition among vendors and encourages them to offer the best value for commodities and non-professional services.

Approximately 84% of Kentucky’s expenditures through Master Agreements and Catalog Master Agreements are made through contracts established in a

Introduction and Background

competitive nature. Figure 2 shows that competitive sealed bidding has 53% of all expenditures in FY 2004 and competitive negotiation makes up 31% of the expenditures. Contracts established through noncompetitive methods such as through a special authority or noncompetitive negotiations make up approximately 16% of total expenditures in FY 2004.

Figure 2
FY 2004 Expenditures by Establishment Method



Source: Auditor of Public Accounts analysis based on data provided by the Finance and Administration Cabinet’s Office of Materials and Procurement Services on 08/03/04.

Differences Between Master Agreements and Catalog Master Agreements

Master Agreements and Catalog Master Agreements establish price agreements with vendors so that agencies may purchase from established vendors as commodities and non-professional services are needed. There are, however, some differences between them.

A Catalog Master Agreement must be established by OMPS. Once created, two or more agencies may purchase from the contract. Either all state agencies will be able to purchase from it or only a limited number of agencies will be given permission based on specific needs for the commodities or non-professional services. As an example, law enforcement supplies may be needed by the Attorney General’s Office and the Kentucky State Police, but not by other state agencies. Other Catalog Master Agreements may be open for all state agencies to purchase from, such as office supplies. (Note: Under limited circumstances, the Transportation Cabinet’s Division of Purchases may also establish Catalog Master Agreements.)

A Master Agreement may be created by an individual agency if it is for non-professional services with an expected annual value of less than \$20,000. Non-professional services typically contracted by an agency include janitorial services and security guards, as examples, but may encompass any service not considered “professional.” The state’s procurement law does not define “non-professional services,” but “professional” services are included in the definition of “personal service contract” in KRS 45A.690(1)(f).

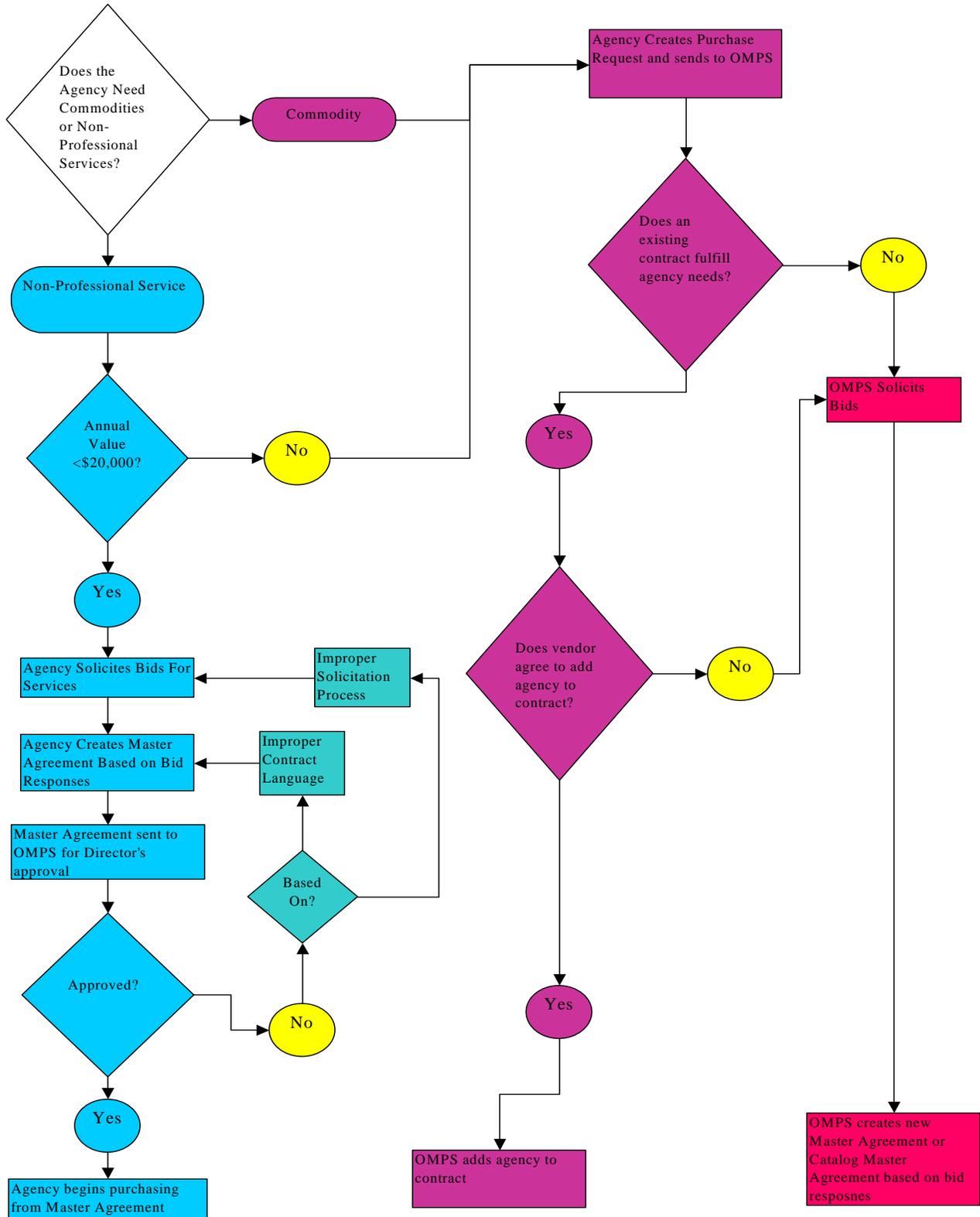
Introduction and Background

OMPS will create the Master Agreement for an agency when the requirement involves commodities and non-professional services with an annual value greater than \$20,000. Under this circumstance the creation of the Master Agreement will be in the same manner as if OMPS was creating a Catalog Master Agreement.

The flowchart in Figure 3 captures the process an agency follows to establish a contract for a needed commodity or nonprofessional service using the competitive sealed bidding process. It includes the OMPS creation process and the agency creation process for non-professional services under \$20,000.

Introduction and Background

Figure 3
Process Of Creating A Master Agreement



Source: Auditor of Public Accounts analysis.

Introduction and Background

As outlined in Figure 3, the purchase request is sent by the agency to OMPS to convey its needs for any commodities or for non-professional services valued greater than \$20,000 annually. An OMPS procurement agent reviews this request, providing a checkpoint in the administrative oversight process. This staff member first determines whether the commodity or non-professional service required by the agency can be found in an existing Master Agreement or Catalog Master Agreement. If there is an existing contract, the agency is added to the existing contract unless there are restrictions in the contract's terms and conditions that prohibit the agency being added to the contract. This process is designed to prevent the creation of numerous Master Agreements or Catalog Master Agreements for the same commodities or services.

Agencies Use Procurement Desktop to Purchase Commodities and Non-Professional Services

Once a Master Agreement or Catalog Master Agreement has been established, the prices and other contract terms are entered into the state's procurement system. The approved agencies are then able to make purchases from the contracts through a program known as Procurement Desktop (PD). It is the procurement module within the Commonwealth's electronic budgetary and financial accounting system known as the Management Administrative and Reporting System (MARS).

Agency personnel use PD to buy commodities and non-professional services through a function called "Market Basket," which allows them to search for and order needed items. PD will then make a record of this through an electronic invoice. The invoice documents the individual items purchased in a transaction as well as the name of the agency making the purchases.

Agencies Can Use Procards to Purchase Commodities and Non-Professional Services Through Master Agreements and Catalog Master Agreements

An agency can also use the state's Procurement Card (Procard) to make purchases through Master Agreements and Catalog Master Agreements. The Procard is a state credit card and functions in much the same way as personal credit cards do. Procards are assigned to state employees who are authorized to make purchases for their agencies as long as the purchases do not exceed the purchase limits on the card.

Procard purchases are not recorded in Kentucky's procurement system so there will be no record of the agency making a purchase through a Master Agreement or Catalog Master Agreement. The hard copy receipts evidencing Procard transactions are maintained by the agency to provide the purchase details, but they are not available in an electronic format.

Findings and Recommendations

Kentucky's Procurement System Cannot Calculate the Number of Items Purchased or the Amount Spent on a Particular Item(s)

OMPS cannot determine the number of items purchased by state government or the expense incurred for a particular type of item due to the limitations of Kentucky's procurement system embedded within MARS. This data is needed to document the volume of activity of each of the commodities and non-professional services that the state purchases through its Master Agreements and Catalog Master Agreements. Without this data, it is not possible for OMPS to properly negotiate with vendors and take advantage of the state's buying power.

The only data that can be accumulated and analyzed from the invoices maintained in Kentucky's procurement system is the total amount spent per transaction or the aggregate total of all transactions associated with a particular contract or agency. The invoices do record the items purchased, the number of items purchased and costs of each item, but this data cannot be electronically accumulated due to limitations within Kentucky's procurement system.

These limitations mean that OMPS can determine the total dollar amount spent on a transaction(s) but they are not able to accumulate how much was spent on a particular item or how much of a particular item was purchased. For example, OMPS does not know the number of pens or pencils purchased by state agencies under a price agreement. It only knows the total expenditures of all invoices associated with the state's office supply contract.

When Procard is used to purchase items through a Master Agreement or Catalog Master Agreement, there is no record of the items purchased in the procurement system. Procard data contains the vendor, the user, the amount spent on each transaction, and the transaction date, but not the commodities purchased. The details of Procard purchases are only maintained on the hard copy invoices at the agency and are not recorded electronically.

Expenditures through Master Agreements and Catalog Master Agreements totaled over \$345 million in FY 2004. The Commonwealth should be able to analyze expenditures of this magnitude and know exactly what and how much was purchased. Without this data, OMPS is not able to analyze the Commonwealth's purchasing trends and use this data to leverage the state's buying power and better negotiate with vendors. This inability to collect data also limits OMPS or any state agency in their ability to determine usage rates of commodities and non-professional services. This effectively removes a management tool that could help gauge appropriate commodity and service usage levels and avoid wasteful practices.

Recommendation: Kentucky's procurement system should be altered to allow for the accumulation of detailed data related to invoiced and Procard purchases.

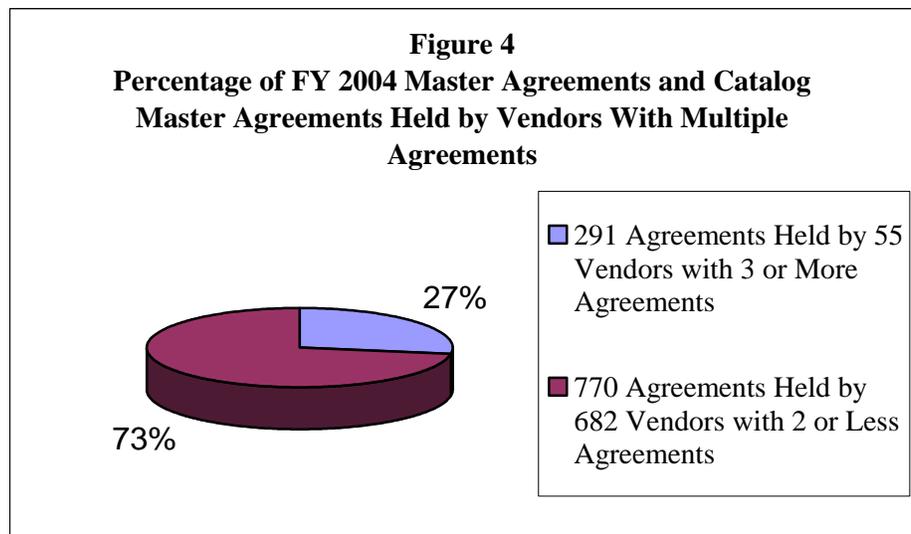
There Is No Formal Method for Performing a Strategic Analysis of State Government Expenditures

OMPS has no written guidelines for conducting a strategic analysis of established Master Agreements and Catalog Master Agreements and the associated expenditures. This means that there is no formal review to evaluate the necessity of, or the benefits and detriments related to, these agreements. In order to manage and administer Master Agreements and Catalog Master Agreements, OMPS needs to understand the buying habits and needs of all state agencies. Based on information provided by OMPS, it is not possible to determine if this understanding is being achieved on a comprehensive and consistent basis.

Findings and Recommendations

The only evaluation tool used by OMPS is a “usage report” but there are no written guidelines on when or how this report should be reviewed. (See Appendix III for a sample “usage report.”) According to OMPS officials, the “usage report” is reviewed by an OMPS purchasing agent when an agreement is due to be renewed. The “usage report” lists the total expenditures made through an agreement, the users of the agreement, and the invoice numbers associated with the agreement’s expenditures. It does not include specific information on the amount of each commodity or non-professional service that is purchased because this information is unavailable.

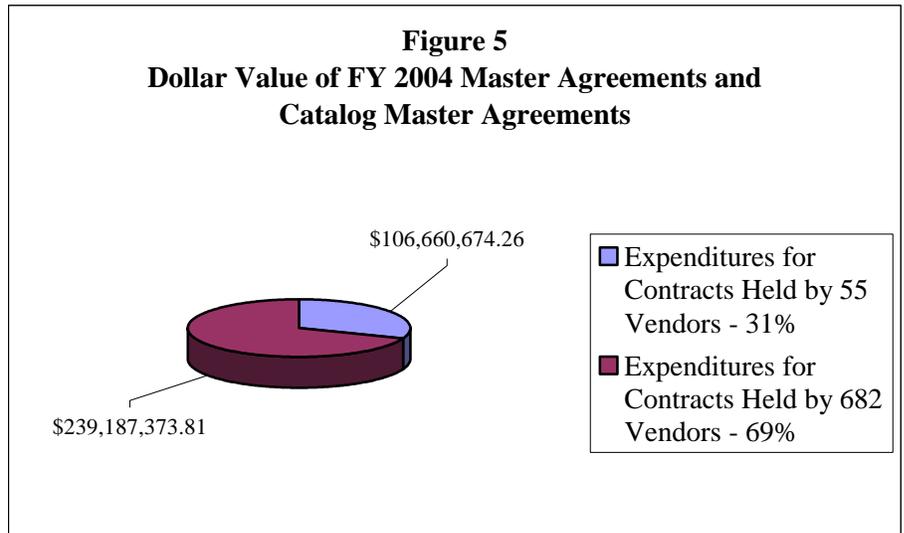
In FY 2004, state agencies made purchases from 1,061 different Master Agreements and Catalog Master Agreements that were established with 737 vendors. Of the 737 vendors, there were 55 that have three or more of these agreements with the Commonwealth with a collective total of 291 agreements. This means that 7.5% of the vendors held 27% of the total number of Master Agreements and Catalog Master Agreements that were used in FY 2004. (See Appendix IV for the list of vendors with multiple agreements.)



Source: Auditor of Public Accounts analysis based on data provided by the Finance and Administration Cabinet’s Office of Materials and Procurement Services on 08/03/04.

At the same time, the 291 agreements held by the 55 vendors made up 31% of all Master Agreement and Catalog Master Agreement expenditures made in FY 2004. With 7.5% of vendors holding 27% of FY 2004 contracts and nearly a third of the entire fiscal year’s expenditures, OMPS should evaluate these expenditures on a regular and consistent basis to better leverage the state’s buying power.

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Source: Auditor of Public Accounts analysis based on data provided by the Finance and Administration Cabinet’s Office of Materials and Procurement Services on 08/03/04.

OMPS does not have any written procedures for consolidating Master Agreements and Catalog Master Agreements even though it has consolidated agreements in three commodity and service areas. These three areas are office supplies, building supplies, and soft drinks. The decision to consolidate was not documented nor was the potential cost savings of the consolidation. The lack of written procedures also makes it difficult to conclude whether consolidation efforts should be pursued in other commodity or service areas.

“Spend Analysis” can be used to better collect and analyze expenditure data.

Several federal agencies and at least one state, Virginia, have begun using a strategic analysis tool referred to as “spend analysis” to gather expenditure data and formalize a review process of their procurement practices. Spend analysis has resulted in lower prices and some significant savings due to its providing a better understanding of the user agencies’ expenditure habits.

A September 2004 GAO report titled “Best Practices: Using Spend Analysis to Help Agencies Take a More Strategic Approach to Procurement” discusses the spend analysis process and assesses how it has been implemented in five federal agencies. This report defines “spend analysis” as a tool that provides knowledge about who the buyers are, who the suppliers are, how much is being spent for what goods and services, and where the opportunities are to leverage buying power. GAO’s analysis includes a breakdown of the spend analysis process into the following five key processes:

1. **Automation:** Data automatically compiled.
2. **Extraction:** Essential data culled from accounts payable and other internal systems.
3. **Supplemental information:** Additional data sought from other internal and external sources.
4. **Organization:** Review data to ensure accuracy and completeness; organize data into logical, comprehensive commodity and supplier categories.

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5. **Analysis and strategic goals:** Using standard reporting and analytical tools, data analyzed on a continual basis to support decisions on strategic-sourcing and procurement management in areas such as cost cutting, streamlining operations, and reducing the number of suppliers. Scope generally covers an organization's entire spending.

According to the GAO report, the federal Department of Veterans Affairs' use of spend analysis and adoption of a strategic approach to pharmaceutical procurement resulted in a savings of \$394 million in 2003. Additionally, it reported that the Department of Agriculture negotiated a discount agreement with a national office supply vendor that yielded savings of \$1.8 million to the agency's purchase cardholders. The discount was 10% less than the vendor's contracted price and required agency purchasers to use government purchasing cards and the national office supply vendor's electronic catalog and ordering system.

Implementing spend analysis is considered challenging and it relies on an accurate, automated information system. For spend analysis to be effective, data files must be accurate, complete, and consistent. There must also be a standard method for analyzing this data on a continual basis so that decisions on strategic sourcing or procurement management can be fully supported. It can be valuable to organize all of the organization's purchase data into comprehensive categories of suppliers and commodities, but due to the limitations with Kentucky's procurement system noted in the previous finding, it is not possible for OMPS to collect expenditure data based on commodity or service categories.

Other states have taken steps to overcome the difficulty of recording this type of data. By using the internet and initiating an electronic marketplace, the state of Virginia is able to more readily capture data about products purchased by each of their state agencies. This data is used to pinpoint the products purchased by most agencies and in turn create statewide contracts to procure these products at lower prices.

Maryland and Virginia have established an electronic marketplace with no development costs.

Both Maryland and Virginia have established an electronic marketplace with no development costs. These states have contracted with an information technology consulting firm to develop an internet-based system where state vendors can download their price catalogs into one website used by state personnel to make purchases. Vendors pay a small annual subscription fee to fund this new system. In Virginia the majority of this fee goes to the information technology firm that created the electronic marketplace to pay for development costs. As the costs are paid off, the majority of the fee will eventually go to the state.

Recommendation: OMPS should develop written guidelines for conducting a strategic analysis of established Master Agreements and Catalog Master Agreements and the associated expenditures. A strategic approach should include organizing the data into comprehensive commodity and non-professional service categories for the purpose of better leveraging the Commonwealth's buying power.

Findings and Recommendations

The Legal Authority for Establishing Contracts Is Not Captured Accurately

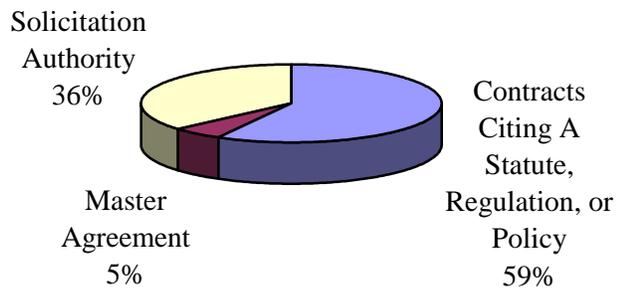
Recommendation: OMPS should consider developing an electronic marketplace for the purchase of the Commonwealth’s commodities in a manner that would utilize vendor subscription fees to pay for its development.

Of the 1,061 Master Agreement and Catalog Master Agreements used in FY 2004, 41% did not cite an actual legal source for the authority to establish the agreements. It is the responsibility of OMPS to ensure that contracts are established in a manner consistent with existing laws and regulations. To track these efforts, a “cited authority” is assigned to each agreement as they are created in Kentucky’s procurement system. However, OMPS has not developed a policy or regulation to guide staff when they are making this assignment.

According to OMPS data, 34 different cited authorities were used in establishing Master Agreements and Catalog Master Agreements. (See Appendix V for the list of cited authorities used.) The two terms, “Master Agreement” and “Solicitation Authority,” were recorded as cited authorities but did not refer to an actual legal source. These two terms were used for 41% of the 1,061 Master Agreements and Catalog Master Agreements with expenditures during FY 2004. All of the other cites referenced a statute, regulation, or Finance and Administration Policy as the authority for establishing a particular agreement. Examples of cited authorities that reference a law, regulation, or policy include:

- KRS 45A.080 Competitive Sealed Bidding
- KRS 45A.095 Noncompetitive Negotiations
- FAP 111-08-00-07 Copyrighted Material/One Source
- FAP 111-10-00-03 Proprietary Equipment and Supplies

Figure 6
Documented Cited Authorities for Master Agreements and Catalog Master Agreements



Source: Auditor of Public Accounts analysis based on data provided by the Finance and Administration Cabinet’s Office of Materials and Procurement Services on 8/3/04.

The term “Solicitation Authority” is the default entry recorded by the procurement system when the user does not change any information as to the cited authority. This means that for 36% of the agreements used in FY 2004, OMPS staff did not change the default citation to document the specific authority for establishing the agreement.

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According to OMPS, the use of “Master Agreement” as a cited authority takes place when a Catalog Master Agreement is used to create a Master Agreement. If the Catalog Master Agreement does not include specific unit pricing, a Master Agreement is established to include the price agreements for a particular agency. These instances primarily occur for printing services and capital lease equipment purchases. While the term “Master Agreement” may be an acceptable method for tracking these occurrences, there are no written guidelines that state that this is the method that should be used.

Currently the method for recording the cited authority to Master Agreements and Catalog Master Agreements is not based on any written guidelines and relies solely on the judgment of the staff member creating the agreement. OMPS could improve the information maintained for the Commonwealth by developing and monitoring written requirements that define the method for recording an agreement’s cited authority.

Recommendation: OMPS should develop written procedures for recording the cited authority for Master Agreements and Catalog Master Agreements. These procedures should address the proper use of “Master Agreement,” ensure that the default term “Solicitation Authority” is changed during the establishment of an agreement, and address how a staff member should document agreements that have more than one applicable cited authority.

Advanced Training Is Needed for Kentucky’s Procurement Officers

Procurement personnel within Kentucky’s state agencies would benefit from OMPS providing training on more specific procurement topics and advertising training provided through professional procurement organizations. Our survey of procurement personnel found that the training provided by OMPS was either not used or did not fulfill their needs. (See Appendix VIII for the survey questions.) Compared to procurement training offered in other states, the training provided or offered by the Cabinet’s Customer Resource Center is limited and lacks subject depth. Compliance with procurement laws and regulations and effective procurement practices cannot be achieved without adequate and comprehensive training. With expenditures of over \$345 million made through Master Agreements and Catalog Master Agreements in FY 2004, proper training is essential to ensure compliance, effectiveness, and efficiency.

Procurement staff at the higher levels within an agency responded that they did not make use of the training provided by the Customer Resource Center. These respondents also had the benefit of experienced and certified supervisors to provide “on-the-job” training. Certified procurement professionals will usually receive training through outside organizations like the Kentucky Public Procurement Association, which is the state chapter of the National Institute of Governmental Purchasing.

Procurement staff at smaller state agencies, when surveyed, suggested a need for better training on topics such as the creation of Master Agreements and detailed explanations of purchasing policies and procedures. These purchasing officers stated that they had received the initial training from the Customer Resource Center, but would like more extensive training in addition to training on the basic functions of Procurement Desktop.

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The Customer Resource Center provides three training classes that apply directly to job duties in contracting and procurement of commodities and non-professional services. These three training courses are: Purchasing 101, General Procurement, and Contracting. The following table illustrates the number of state employees that attended these three classes during the twelve-month period from 9/1/03 through 9/1/04.

Table 2
Customer Resource Center Class Activity

Class	Total Trained
Contracting	48
General Procurement	46
Purchasing 101	150

Source: Customer Resource Center, 9/1/03-9/1/04

The 2004 MARS Training Catalog provides a brief description of these courses.

- Contracting – provides training on soliciting bids, evaluating bids, and awarding the final contract.
- General Procurement – relates to the use of Kentucky’s electronic accounting system. Includes processing purchase requests and using the “Market Basket” function in Procurement Desktop.
- Purchasing 101 – covers similar material to the “General Procurement” class, except it also includes discussion of the Cabinet’s policies as they relate to procurement.

There are three one-day courses to train procurement officers that purchase more than \$345 million in commodities and non-professional services each fiscal year. There are no “refresher” courses to address new tools in procurement, revised procurement policies, and changing market conditions. The Cabinet has recognized the significance of training by requiring procurement personnel to complete a course in purchasing within one (1) year of employment in that position, pursuant to 200 KAR 5:302.

Training provided by professional organizations is not advertised by OMPS even though it could help satisfy the training needs of the Commonwealth’s purchasing officers at all levels. OMPS staff and some purchasing staff within the state agencies attend training provided by the Kentucky Public Procurement Association. Examples of classes offered are Ethics and Procurement, Procurement Code, Sourcing Minority Suppliers, and Compliance with KRS 45A. While the majority of OMPS staff attends training provided by this organization, it does not advertise these classes to the rest of the purchasing officers in state government that may not be aware of its existence.

In comparison, South Carolina’s OMPS counterpart, Materials and Management Office, provides specific procurement training and uses its website to advertise additional outside training. In-house training topics include Contract Administration, Legal Aspects of Purchasing, Business Practices, and SC Procurement Code In A Nutshell. These classes appear to provide more detailed procurement training than what can be found through the Customer Resource Center. Its website also advertised classes provided through the National Institute of Governmental Purchasing such as Sourcing in the Public Sector and Developing and Managing RFP’s in the Public Sector.

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Recommendation: OMPS should improve the training curriculum by offering more specific, detailed procurement training and developing a list of recommended outside procurement training that could be advertised either through the MARS Newsletter or the Finance and Administration Cabinet’s website. The classes already offered should be evaluated to determine their sufficiency in addressing the needs of all procurement staff.

Recommendation: OMPS should establish more intensive and appropriate training requirements for all state agency procurement officers authorized to make purchases through Kentucky’s procurement system and establish contracts for their agencies.

Kentucky May Not Be Obtaining the Lowest Available Prices for Commodities and Non-Professional Services

Lower prices for commodities and non-professional services were found when comparing the prices established in Master Agreements and Catalog Master Agreements to prices found in public and private market sectors. This price comparison could not be validated because the documented price within the agreement may also include other ancillary costs. Additionally, potential cost savings based on the price differentials could not be determined because the number of commodities and non-professional services purchased can not be obtained through Kentucky’s procurement system.

A sample of 89 commodities and services were selected to test the assertions made by the surveyed agency procurement officials that lower prices can be obtained through the open market than those established in Master Agreements and Catalog Master Agreements. A price comparison was made between the established price and the market price. In cases where market prices were not available, price lists from other state’s procurement websites were utilized to determine the prices paid for the selected commodity or non-professional services.

Price was the only criteria considered in this comparison. KRS 45A.070(3) defines “best value” as “a procurement in which the decision is based on the primary objective of meeting the specific business requirements and best interests of the Commonwealth. These decisions shall be based on objective and quantifiable criteria that shall include price and that have been communicated to the offerors as set forth in the invitation for bids.”

The price documented in the agreement may include additional associated costs, such as delivery or installation. FAP 110-10-00 allows the costs of value added considerations to be added to the final unit price. This makes it impossible to fully determine if the state is receiving the lowest price for the actual contract item.

In certain instances OMPS separates unit price from best value criteria, however the statutes, regulations, and policies are silent as to when or how this is to be included in the solicitation. The state of New York has recognized the need to separate commodities from the “best value” process by always requiring the “lowest price” to determine the prevailing bid for commodities. Instead their procurement policies only require shipping and a standard one-year warranty to be included in all commodity price contracts. The Auditor of Public Accounts agrees with this approach as it standardizes what is to be included in the unit price and excludes other costs. This standardization could be accomplished through proper implementation of our recommendation.

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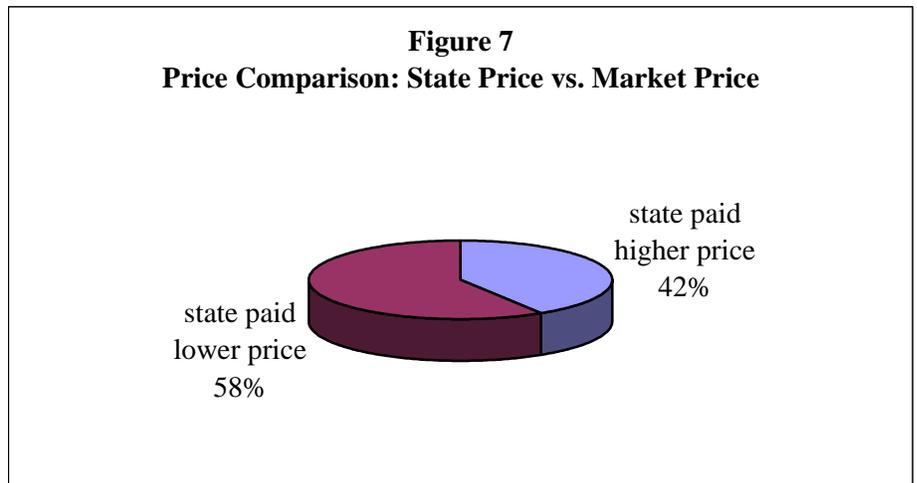
Table 3 summarizes the results of the price comparison of the 89 commodities and non-professional services reviewed. (For detailed information on the price comparison see Appendix VI).

Table 3
Price Variances Between State Price and Market Price

State Price Higher Than Market:	Number of Items
\$1000 and over	1
\$100 - \$999.99	7
\$10 - \$99.99	19
\$0 - \$9.99	10
Subtotal	37
State Price Lower Than Market:	
\$1000 and over	5
\$100 - \$999.99	7
\$10 - \$99.99	21
\$0 - \$9.99	19
Subtotal	52
Total	89

Source: Auditor of Public Accounts' Analysis.

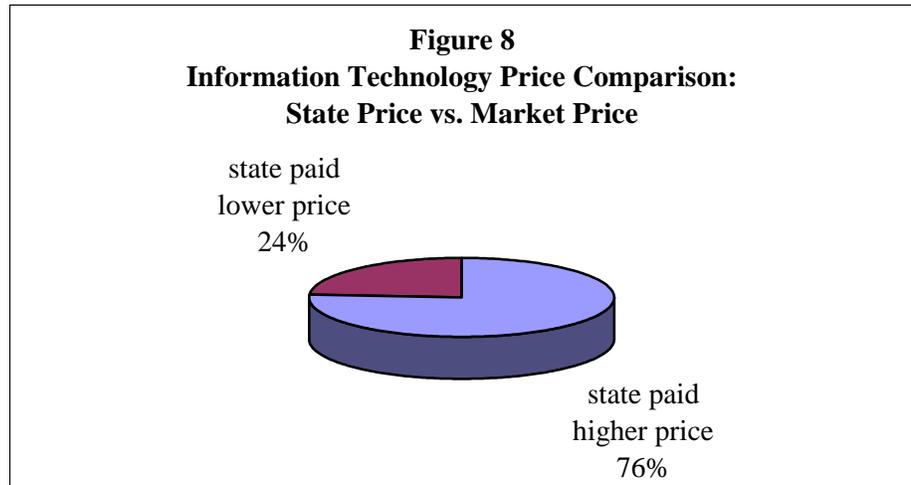
Of the 89 commodities and services reviewed, 37 (42 percent) could be found at a lower price in other public or private markets. (See Figure 7) In comparison, the Arkansas Division of Legislative Audit conducted a similar review of their state's commodity prices and found that 30% could be found at a lower price on the open market.



Source: Auditor of Public Accounts' Analysis.

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Of the 89 total items compared, 25 items are considered information technology products and non-professional services. In conducting a separate analysis of these 25 items, 19 (76%) were found to have lower market prices. (See Figure 8)



Source: Auditor of Public Accounts’ Analysis.

Under certain circumstances there may be a Master Agreement or Catalog Master Agreement that was not included in this sample, but where the price for a similar or exact commodity or non-professional service was lower than both the reviewed contract price and the reviewed open market price. This is due to OMPS creating multiple Master Agreements or Catalog Master Agreements for the same commodity or non-professional service where the contracted vendors may each provide different prices.

Potential cost savings cannot be calculated using the lower market prices found, due to the limitations of Kentucky’s procurement system that have been previously noted. OMPS was asked to determine the frequency and quantity of twelve (12) commodities and non-professional services purchased during a specific period but was unable to provide any information.

OMPS officials stated that prices in Master Agreements and Catalog Master Agreements are merely maximum amounts that will be paid by an agency. If an agency finds a cheaper price from a vendor not under contract with the Commonwealth, the agency has the option to negotiate with the contracted vendor to provide the commodity or non-professional service at the lower price. It is not required for the vendor to reduce the contracted price nor is there evidence that most agencies attempt to negotiate with the vendor.

Recommendation: OMPS should document the “actual” unit price separate from any additional costs. This is necessary to validate that Kentucky is receiving the best price.

Finance and Administration Policies (FAP’s) require state agencies to adhere to detailed procurement and documentation requirements, but the Cabinet is not conducting regular and on-going compliance reviews. According to OMPS, this is due to the decentralization of public procurement into the hands of all state

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agencies. Without periodic reviews, the level of state agency compliance with procurement laws is unknown. Considering that Master Agreement and Catalog Master Agreement expenditures amounted to over \$345 million in FY 2004 the failure to conduct compliance reviews creates a significant risk that errors in the procurement process may be causing avoidable waste.

Compliance with the following FAP's cannot be determined due to the lack of reviews:

FAP 111-28-00: says agency files shall contain copies of each best value calculation, tabulation, and award justification; copies of any correspondence related to any procurement transaction; and a record of the maintenance costs of each major item of motor or mechanical equipment.

FAP 111-55-00(2): says procurement requirements shall not be parceled, split, divided, or scheduled over a period of time in order to subvert the intent of this procedure.

FAP 111-55-00(3): says an agency file shall maintain a small purchase order file containing the price quotations requested, quotations received, a tabulation of prices offered, and comments by the agency concerning the basis for placing the order.

FAP 111-51-00: says OMPS will rely on the purchasing agency to ensure the contract is being completed or executed as written.

At least three other states in the southern region (Tennessee, South Carolina, and North Carolina) use their central procurement agencies to conduct compliance reviews of purchases on a periodic and scheduled basis. For example, North Carolina's Division of Purchase and Contract performs a compliance review of its agencies while also evaluating an agency's use of their small purchase authority. From these reviews, the Division generates a compliance report that is provided to each agency's executive office, to the State Auditor, and to the State Budget Officer.

The lack of an active, on-going review process sends the wrong message that compliance is optional until an agency makes a crucial mistake. The value of any prescribed policy is reduced when adherence is not verified. Business practices in government today require validation to promote public accountability.

Recommendation: Compliance reviews of state agency procurement practices should be performed periodically to ensure adherence with prescribed laws, policies, and procedures. The Finance and Administration Cabinet's Office of Internal Audit may be the appropriate entity to perform these reviews.

Additional Observations Related to the Management and Administration of Master Agreements and Catalog Master Agreements

Observations were made during this performance audit that were considered noteworthy, but which are beyond the scope of this audit. The first two observations deal with recent developments for which a conclusion of effectiveness or efficiency cannot yet be determined. The third observation relates to state universities. State universities are not within the scope of the audit, but we did discover an area that merits consideration by OMPS.

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Reverse Auctions Have Been Initiated: OMPS has initiated a process called “reverse auctions” that uses Internet communication capabilities so that vendors can simultaneously bid for state business on-line. Reverse auctions allow state procurement officials to receive bids from vendors on-line without communication delays. This process is an alternative to the traditional bidding process of requesting, receiving, and opening sealed paper bids at selected times. This new method has been used in the states of Florida, Maryland, Pennsylvania, and Virginia with the realization of cost savings on the purchase of simple commodities. For example, Pennsylvania reportedly used a reverse auction to purchase aluminum and saved \$3.7 million over three purchases.

To date, OMPS has conducted only one reverse auction under emergency regulation 200 KAR 5:375 (“Multi-step Competitive Sealed Bidding”). OMPS is seeking to establish a permanent regulation to enable it to use reverse auctions at the discretion of OMPS officials.

The emergency regulation provides for the establishment of a “reverse auction” as a “real-time, structured bidding process, usually lasting less than one (1) hour and taking place during a previously scheduled time and Internet location, during which multiple suppliers, anonymous to each other, submit revised, lower bids to provide the solicited good or service.”

Reverse auctions can be an effective solicitation method in certain areas of procurement, especially for relatively uniform, simple commodities. In the single instance OMPS has used a reverse auction, it was for a contract to purchase printers and workstations.

Consolidation of purchasing laptop and desktop computers through the Commonwealth Office of Technology: OMPS has centralized purchasing of some information technology (IT) products within the Commonwealth Office of Technology (COT). COT is now required to review all state agency purchases of laptop and desktop computers. By consolidating the purchases of laptop and desktop computers within COT, OMPS may be able to obtain lower prices by improving the solicitation process for these products and maintain consistent quality for all state agencies.

OMPS Does Not Review State Universities’ Procurement Contracts: OMPS should review state universities’ procurement contracts to gather price information that could lead to cost savings for the Commonwealth. Even though state agencies cannot purchase commodities or non-professional services through a state university procurement contract, OMPS should use this university price information for state agency price comparisons.

State universities are large public entities that should have contracted prices comparable to those obtained by state government. The University of Kentucky Purchasing Division has a very extensive procurement program, to purchase goods and services categorized in 302 commodity classes. OMPS should maximize available procurement resources to achieve additional cost savings for the Commonwealth.

Scope

We conducted our audit in accordance with *Government Auditing Standards* promulgated by the Comptroller General of the United States. The audit's purpose was to address the following objective:

To determine whether Master Agreements and Catalog Master Agreements were appropriately administered and managed by the Commonwealth to ensure the best value is received for commodities and non-professional services.

Our testing population and statistics are related to the Master Agreements and Catalog Master Agreements that incurred expenditures in fiscal years' 2000 through 2004. During this time period Kentucky agencies used a total of 2,001 different Master Agreements and Catalog Master Agreements. The Finance and Administration Cabinet provided this date on Master Agreements and Catalog Master Agreements to the APA on August 3, 2004.

Methodology

We reviewed Kentucky Revised Statutes, Kentucky Administrative Regulations, and Finance and Administration Policies for details of the state's procurement requirements of commodities and non-professional services.

It was also necessary to determine the circumstances that require Finance and Administration Cabinet oversight in establishing Master Agreements and Catalog Master Agreements, and those circumstances where agencies are able to negotiate their own price contracts. To address the audit's objective, we established the following three sub-objectives:

- How does the Finance and Administration Cabinet administer price contracts to ensure the Commonwealth receives the best value for commodities and non-professional services?
- Is the Finance and Administration Cabinet monitoring agencies' use of price contracts?
- Do Catalog Master Agreements and Master Agreements provide the best prices for commodities and non-professional services?

The personnel in the Finance and Administration Cabinet's Office of Materials and Procurement Services were interviewed concerning the administration and management practices associated with creating and using Master Agreements and Catalog Master Agreements.

We contacted six (7) states (New York, Tennessee, Indiana, Alabama, Mississippi, North Carolina, and South Carolina) to determine the procurement practices of their centralized purchasing agency for comparison to Kentucky's practices. We sought to determine if other states use a centralized method for establishing price contracts or if more control is given to the agencies in the negotiation of contracts.

We researched the Internet to locate reports on state procurement of commodities and non-professional services. These reports included audit reports, evaluations, and professional publications issued by state and federal agencies.

The following reports were found in connection with Master Agreements and Catalog Master Agreements:

- *Best Practices in Government, Components of an Effective Contract Monitoring System*, Georgia State Auditor, July 2003
- *Statewide Procurement Practices: Proposed Reforms Should Help Safeguard State Resources, but the Potential for Misuse Remains*, California State Auditor, March 2003
- *State Contracting: The State Can Do More to Save Money When Acquiring Goods and Services*, California State Auditor, October 1998
- *Department of General Services, Office of Procurement and Logistics*, Office of Legislative Audits, Maryland General Assembly, October 2000
- *Create a Statewide Contract Management Policy*, Recommendations of the Texas Controller, December 2000
- *BEST PRACTICES: Using Spend Analysis to Help Agencies Take a More Strategic Approach to Employment*, Government Accountability Office, September 10, 2004

We also reviewed information found on the websites of professional organizations such as the National Institute of Governmental Purchasing and the Kentucky Public Procurement Association.

From OMPS, we requested and received a list of procurement officials within six cabinets. We sent a survey form to each of the following cabinets to learn their experiences with Catalog Master Agreements and Master Agreements. All six agencies responded to the survey.

- Kentucky Transportation Cabinet
- Kentucky Commerce Cabinet
- Kentucky's Environmental and Public Protection Cabinet (EPPC)
- Kentucky Justice Cabinet
- Kentucky Department of Education
- Kentucky Cabinet for Health and Family Services

In addition we interviewed officials from the following offices to determine their respective procurement duties and responsibilities:

- Kentucky Office of the Attorney General
- Kentucky Secretary of State
- Auditor of Public Accounts

To perform a price comparison, we requested a list of all Master Agreements and Catalog Master Agreements that were created during the fiscal years of 2000, 2001, 2002, 2003, and 2004. OMPS returned a list that included 1,410 individual contracts that were classified as a Master Agreement or Catalog Master Agreement. The auditors used this list to develop a random sample of 28

contracts and requested the staff at the Office of Material and Procurement to provide copies of each contract.

A second list was requested to include all Master Agreements and Catalog Master Agreements that had incurred expenditures during fiscal years 2000, 2001, 2002, 2003, and 2004. Other details in this list included the total expenditure of each contract by fiscal year and the authority under which the Master Agreement or Catalog Master Agreement was established. This list included 2,001 contracts that were classified as a Master Agreement or Catalog Master Agreement. From this list, we took a judgmental sample of 32 contracts and the auditors used Procurement Desktop to print copies of the contracts.

The total sample size was 60 contracts and from this we took a judgmental sample of 89 commodities and non-professional services. We obtained the agreed upon prices for these commodities and non-professional services in the copies of the contracts. These contracted prices were compared to prices found by auditors for the same commodities or non-professional services using the Internet, email, or phone calls to vendors.

Award/Contract: An Award/Contract is established to purchase a specific quantity or amount at a specific price. *Finance and Administration Cabinet, Manual of Policies and Procedures, Section I Division of Material and Procurement Services, Policy No. FAP 111-37-00 (1.)*

Best Value means a procurement in which the decision is based on the primary objective of meeting the specific business requirements and best interests of the Commonwealth. These decisions shall be based on objective and quantifiable criteria that shall include price and that has been communicated to the offerors as set forth in the invitation for bids. *KRS 45A.070(3)*

Catalog Master Agreement: A Catalog Master Agreement shall establish a price agreement, for use by two or more state agencies, with a vendor for supplying specific goods and services at specific unit prices during a specified time period. An “All State Agency” Catalog Master Agreement may be used by any state agency. A Catalog Master Agreement may contain an option to renew for an additional time period. *Finance and Administration Cabinet, Manual of Policies and Procedures, Section I Division of Material and Procurement Services, Policy No. FAP 111-37-00 (3.)*

Cited Authority is a field within several Procurement Desktop (PD) documents that requires correct statutory, regulatory, or policy citations for the purchase to be legally processed. Proper completion of the Cited Authority field is required to comply with an agency’s pre-audit delegation agreement. *Finance and Administration Cabinet, Management Administrative and Reporting System, MARS Guideline: Procurement Desktop Cited Authority, Version 1.0, December 16, 2002, p.1, <http://mars.ky.gov/CitedAuthority.doc>*

Contract means all types of state agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; purchase orders; and insurance contracts except as provided in KRS 45A.022. It includes supplemental agreements with respect to any of the foregoing. *KRS 45A.030(7)*

Contract modification means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It includes bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option. *KRS 45A.030(8)*

Emergency Condition is a situation which creates a threat or impending threat to public health, welfare, or safety such as may arise by reason of fires, floods, tornadoes, other natural or man-made disasters, epidemics, riots, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of government, the preservation or protection of property, or the health or safety of any person. *KRS 45A.095(3)*

Master Agreement: A Master Agreement shall establish a price agreement between an individual agency and a vendor for supplying specific goods and services at specific unit prices during a specified time period. A Master Agreement may contain an option to renew for an additional time period. *Finance and Administration Cabinet, Manual of Policies and Procedures, Section I Division of Material and Procurement Services, Policy No. FAP 111-37-00 (4.)*

Noncompetitive negotiation. A contract may be made by noncompetitive negotiation only for sole source purchases, or when competition is not feasible, as determined by the purchasing officer in writing prior to award, under administrative regulations promulgated by the secretary of the Finance and Administration Cabinet or the governing boards of universities operating under KRS Chapter 164A, or when emergency conditions exist. Sole source is a situation in which there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, the supplier, or market conditions. Insofar as it is practical, no less than three (3) suppliers shall be solicited to submit written or oral quotations whenever it is determined that competitive sealed bidding is not feasible. Award shall be made to the supplier offering the best value. The names of the suppliers submitting quotations and the date and amount of each quotation shall be placed in the procurement file and maintained as a public record. *KRS 45A.095(1)*

Procurement means the purchasing, buying, renting, leasing, or otherwise obtaining of any supplies, services, or construction. It includes all functions that pertain to the procurement of any supply, service, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration; *KRS 45A.030(20)*

Services means the rendering by a contractor of its time and effort rather than the furnishing of a specific end product, other than reports that are merely incidental to the required performance of services; *KRS 45A.030(24)*

Small purchases.

(1) Procurements may be made in accordance with small purchase administrative regulations promulgated by the secretary of the Finance and Administration Cabinet, pursuant to KRS Chapter 13A, as follows:

(a) Up to ten thousand dollars (\$10,000) per project for construction and one thousand dollars (\$1,000) for purchases by any state governmental body, except for those state administrative bodies specified in paragraph (b) of this subsection; and

(b) Up to forty thousand dollars (\$40,000) per project for construction or purchases by the Finance and Administration Cabinet, state institutions of higher education, and the legislative branch of government.

(2) Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. At least every two (2) years, the secretary shall review the prevailing costs of labor and materials and may make recommendations to the next regular session of the General Assembly for the revision of the then current maximum small purchase amount as justified by intervening changes in the cost of labor and materials.

(3) The secretary of the Finance and Administration Cabinet may grant to any state agency with a justifiable need a delegation of small purchasing authority which exceeds the agency's small purchase limit provided in subsection (1) of this section. Delegations of small purchasing authority shall be granted or revoked by the secretary of the Finance and Administration Cabinet, in accordance with administrative regulations promulgated by the cabinet pursuant to KRS Chapter 13A. These administrative regulations shall establish, at a minimum, the criteria for granting and revoking delegations of small purchasing authority, including the requesting agency's past compliance with purchasing regulations, the level of training of the agency's purchasing staff, and the extent to which

the agency utilizes the Kentucky Automated Purchasing System. The administrative regulations may permit the secretary of the Finance and Administration Cabinet to delegate small purchase procurements up to the maximum amount specified in subsection (1)(b) of this section. *KRS 45A.100*

Sole Source is a situation in which there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, the supplier, or market conditions. Insofar as it is practical, no less than three (3) suppliers shall be solicited to submit written or oral quotations whenever it is determined that competitive sealed bidding is not feasible. Award shall be made to the supplier offering the best value. The names of the suppliers submitting quotations and the date and amount of each quotation shall be placed in the procurement file and maintained as a public record. *KRS 45A.095 (1)*

Supplemental agreement means any contract modification that is accomplished by the mutual action of the parties; *KRS 45A.030(25)*

Supplies means all property, including but not limited to leases of real property, printing, and insurance, except land or a permanent interest in land; *KRS 45A.030(26)*

OMPS Usage Report

Appendix III

Master Agreement/Catalog Master Agreement Annual Expenditures

8/1/2004

Buyer: DON ROBINSON

CONTRACT NO	M-00233032	EFFECTIVE DATE	05-Nov-2001
CONTRACT TITLE	Chair Kits	EXPIRATION DATE	04-Nov-2004
VENDOR	INDIANA CHAIR FRAME	TOTAL EXPENDITURES	\$ 257,381.55
ISSUING OFFICE	FAC DIV MAT AND PROC SVC	REMAINING RENEWALS	2
CONTRACT NO	M-01287455	EFFECTIVE DATE	21-Nov-2001
CONTRACT TITLE	DUO-BACK CHAIR KITS	EXPIRATION DATE	20-Nov-2004
VENDOR	GRAHL INDUSTRIES INC	TOTAL EXPENDITURES	\$ 22,270.40
ISSUING OFFICE	FAC DIV MAT AND PROC SVC	REMAINING RENEWALS	2
CONTRACT NO	M-03345440	EFFECTIVE DATE	10-Nov-2003
CONTRACT TITLE	Furniture Kits	EXPIRATION DATE	09-Nov-2004
VENDOR	FLEXCEL	TOTAL EXPENDITURES	\$ 73,750.00
ISSUING OFFICE	FAC DIV MAT AND PROC SVC	REMAINING RENEWALS	45

OMPS Usage Report

Appendix III

Master Agreement/Catalog Master Agreement Annual Expenditures

8/1/2004

Buyer: DON ROBINSON

CONTRACT NO. M-00233032	EFFECTIVE DATE 05-Nov-2001
CONTRACT TITLE Chair Kits	EXPIRATION DATE 04-Nov-2004
VENDOR INDIANA CHAIR FRAME	ANNUAL EXPENDITURES \$ 110,481.67
ISSUING OFFICE FAC DIV MAT AND PROC SVC	REMAINING RENEWALS 2

INVOICE #	BUYING ENTITY	INVOICE CREATOR	DATE	INVOICE AMT
I-04209161	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	07-Jun-2004	\$ 179.60
I-04203156	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	02-Jun-2004	\$ 523.95
I-04188608	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	21-May-2004	\$ 2,369.00
I-04142752	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	13-May-2004	\$ 2,808.75
I-04119228	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	11-May-2004	\$ 399.00
I-04119260	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	11-May-2004	\$ 3,834.15
I-04162530	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	11-May-2004	\$ 6,208.50
I-04162577	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	11-May-2004	\$ 7,228.00
I-04174142	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	11-May-2004	\$ 3,103.00
I-04082985	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	30-Mar-2004	\$ 838.30
I-04051650	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	22-Mar-2004	\$ 4,435.95
I-04054566	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	05-Mar-2004	\$ 297.20
I-04021949	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	19-Feb-2004	\$ 1,247.50
I-04029374	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	19-Feb-2004	\$ 199.60
I-04003459	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	28-Jan-2004	\$ 6,245.55
I-03463301	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	28-Jan-2004	\$ 8,807.40
I-03434838	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	22-Dec-2003	\$ 4,607.20
I-03417900	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	01-Dec-2003	\$ 2,129.87
I-03416861	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	01-Dec-2003	\$ 2,541.07
I-03416579	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	01-Dec-2003	\$ 1,759.40
I-03330648	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	06-Nov-2003	\$ 249.50
I-03391794	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	27-Oct-2003	\$ 1,077.30
I-03375874	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	15-Oct-2003	\$ 1,670.10
I-03375850	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	15-Oct-2003	\$ 1,203.75
I-03354615	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	14-Oct-2003	\$ 2,265.55
I-03131503	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	23-Sep-2003	\$ 29,953.50
I-03337962	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	23-Sep-2003	\$ 1,151.80
I-03337986	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	22-Sep-2003	\$ 137.27
I-03298387	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	28-Aug-2003	\$ 124.75
I-03290745	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	20-Aug-2003	\$ 232.62
I-03277926	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	19-Aug-2003	\$ 6,809.75
I-03270741	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	01-Aug-2003	\$ 1,844.89
I-03270803	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L. Sparkman	01-Aug-2003	\$ 3,997.90

CONTRACT NO. M-01287455	EFFECTIVE DATE 21-Nov-2001
CONTRACT TITLE DUO-BACK CHAIR KITS	EXPIRATION DATE 20-Nov-2004
VENDOR GRAHL INDUSTRIES INC	ANNUAL EXPENDITURES \$ 2,155.20
ISSUING OFFICE FAC DIV MAT AND PROC SVC	REMAINING RENEWALS 2

INVOICE #	BUYING ENTITY	INVOICE CREATOR	DATE	INVOICE AMT
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OMPS Usage Report

Appendix III

Master Agreement/Catalog Master Agreement Annual Expenditures

8/1/2004

Buyer: DON ROBINSON

CONTRACT NO M-01287455 - Continued	EFFECTIVE DATE 21-Nov-2001
CONTRACT TITLE DUO-BACK CHAIR KITS	EXPIRATION DATE 20-Nov-2004
VENDOR GRAHL INDUSTRIES INC	ANNUAL EXPENDITURES \$ 2,155.20
ISSUING OFFICE FAC DIV MAT AND PROC SVC	REMAINING RENEWALS 2

INVOICE #	BUYING ENTITY	INVOICE CREATOR	DATE	INVOICE AMT
I-03260545	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L Sparkman	04-Aug-2003	\$ 2,155.20

CONTRACT NO M-03345440	EFFECTIVE DATE 10-Nov-2003
CONTRACT TITLE Furniture Kits	EXPIRATION DATE 09-Nov-2004
VENDOR FLEXCEL	ANNUAL EXPENDITURES \$ 73,750.00
ISSUING OFFICE FAC DIV MAT AND PROC SVC	REMAINING RENEWALS 45

INVOICE #	BUYING ENTITY	INVOICE CREATOR	DATE	INVOICE AMT
I-04211084	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L Sparkman	09-Jun-2004	\$ 12,010.00
I-04182237	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L Sparkman	17-May-2004	\$ 12,960.00
I-04115764	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L Sparkman	14-May-2004	\$ 14,850.00
I-04115745	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L Sparkman	14-May-2004	\$ 5,100.00
I-04070095	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L Sparkman	19-Mar-2004	\$ 4,080.00
I-04060815	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L Sparkman	19-Mar-2004	\$ 12,950.00
I-04005882	421100 COR/CORRECTIONAL INDUSTRIES	Rebecca L Sparkman	28-Jan-2004	\$ 11,800.00

Vendors With Multiple Contracts

Appendix IV

Name of Vendor	# of Contracts	Total Payments in FY 2004
Accent Systems	14	\$2,578,129.19
Adecco Services	4	\$4,551,757.34
Aramark Uniform	7	\$596,054.00
Ashtown Co Inc.	7	\$147,746.66
Beechmont Press Inc.	3	\$101,283.61
Black Box Network Serv	5	\$795,043.54
Bryan Equipment Sales	3	\$84,728.43
Clems Refrigerated Foods	4	\$4,439,046.85
Command Uniforms	7	\$1,135,208.10
Community Services Project	9	\$2,760,674.78
Corporate Security Inc	9	\$778,250.86
Corrections Corporation of AME	3	\$14,023,350.46
Crothall Healthcare Inc	10	\$3,653,224.95
Crown Services Inc	6	\$3,391,325.42
Dell Marketing L P	4	\$785,625.45
Duplicator Sales and SVC	3	\$1,608,570.97
Edicott Microfilm Inc	3	\$34,546.63
Galls Inc	7	\$385,326.62
Gateway Press Inc	8	\$345,011.17
GE Capital	19	\$4,578,440.11
Gordon Food Service	3	\$108,653.93
Hagan, Ron	5	\$77,400.00
IBM Corporation	4	\$8,333,232.65
IKON Office Solutions	5	\$2,921,262.67
INTEC Bld. Services	6	\$407,798.63
J and F Janitorial Services	13	\$334,908.34
Jefferson Special Police Inc	4	\$631,667.02
Kentucky Uniforms Inc	4	\$218,500.34
Kiesler Police Supply	3	\$794,883.00
Kizan Technologies LLC	3	\$546,744.50
LKLP Comm Action Council	3	\$11,530,711.82
Logan Security Inc	5	\$434,086.96
MCSI	3	\$45,172.73
Medline Industries	3	\$140,894.23
Moore Business Forms	4	\$589,243.86
Mount Hope Security	4	\$137,124.05
National Linen Service	3	\$348,248.59
Palmer and Cay of Kentucky LLC	4	\$4,668,999.67
Pomeroy Computer Resource	16	\$12,739,629.13
Sanitors Services	4	\$123,428.73
Sara Lee Bakery Group	3	\$345,302.31
Software Spectrum EH CGE	3	\$225,132.89
SSC Service Solutions	3	\$129,905.08
Sysco Louisville Food Service	5	\$7,584,643.22
Systems Design Group Inc	9	\$1,319,762.47
Tabb Textile Co Inc	3	\$98,307.52
Tieco Inc	3	\$189,495.94
Tier Technologies Inc	3	\$2,650,346.77
Turfgrass South LLC	4	\$404,558.81
Underwriters Safety	4	\$1,161,038.47
US Cavalry	3	\$42,664.39
Victory Janitorial Services	3	\$94,501.87
Winchester Feed and Supply	3	\$80,276.55
XPEDX	4	\$225,455.64
XEROX Corp	4	\$203,346.34
TOTAL	291	\$106,660,674.26

FY 2004 Cited Authority Usage

Appendix V

Cited Authority	Number of MAs and CMAs	FY 2004 Expenditures
BO111-08-00-07 Copyrighted Material/One Source	1	\$480.00
BO111-08-00-08 Cooperative Purchases	2	\$134,869.32
FAP111-08-00-07 Copyrighted Material/One Source	3	\$113,922.00
FAP111-08-00-08 Cooperative purchases	6	\$10,650,587.76
BO111-09-00-11 Other Goods & Services	1	\$280,530.00
FAP111-09-00-05 Equipment Repair Service/Parts	1	\$20,570.00
FAP111-09-00-08 Supplies & Equip for Lab Studies	4	\$694,511.64
FAP111-09-00-09 Vehicle Motor Fuels	1	\$12,471,542.19
FAP111-09-00-12 Other goods and services	11	\$2,197,602.79
FAP111-10-00-01 Instructional materials, equip, sup, or service	2	\$646,627.50
FAP111-10-00-03 Proprietary equipment and supplies	11	\$8,434,071.03
FAP111-10-00-04 Equip lease or rent/not passengr vehicle	3	\$165,244.40
FAP111-10-00-05 Proprietary service & maint agreements	6	\$276,087.47
FAP111-10-00-07 Computer software/single source	19	\$7,913,013.84
FAP111-10-00-08 Other sole source commodities, equip, & serv	7	\$5,315,017.19
BO111-10-00-02 Patented Equipment	1	\$2,155.20
BO111-10-00-03 Proprietary Equipment & Supplies	1	\$2,735.40
BO111-10-00-08 Computer Software Copyrighted	1	\$31,121.15
FAP111-43-00 Personal Service Contracts	4	\$49,444.75
FAP111-44-00 Memorandum of Agreement	1	\$250,000.00
FAP111-55-00-06 Non-Professional Services	2	\$27,979.44
KRS 45A.045(8) GSA Based Contracts	14	\$614,836.34
KRS 45A.145 Multiyear contracts	1	\$7,864.84
KRS 45A.470 Preference Contract Goods & Services	15	\$4,324,020.87
KRS 45A.690(1)(d)4 University Agreements-Not MOA	1	\$3,731.83
Special Authority	119	\$54,628,566.95
FAP111-35-00 Competitive Sealed Bidding	208	\$60,630,233.84
KRS 45A.080 Competitive sealed bidding	220	\$50,855,507.16
Solicitation Authority	387	\$64,791,990.17
MASTER AGREEMENT	57	\$5,721,801.24
Competitive Sealed Bidding	872	\$181,999,532.41
KRS 45A.085 Competitive Negotiation	44	\$97,178,044.69
FAP111-57-00 Competitive Negotiations	12	\$11,448,277.95
Competitive Negotiations	56	\$108,626,322.64
KRS 45A.095 Noncompetitive negotiation.	3	\$43,866.89
FAP111-39-00 Emergency Purchase	3	\$508,087.20
Noncompetitive Negotiation/ Emergency	6	\$551,954.09
KRS 45A.100 Small Purchase Authority	8	\$41,671.98
Small Purchase Authority	8	\$41,671.98
Total	1061	\$345,848,048.07

Price Comparison Details

Appendix VI

Contract #	Vendor	Commodity/Nonprofessional Service	Type of Commodity/ Nonprofessional Service	State Price	Market Price or Entity Price
C-03360882	HOLT EQUIPMENT CO LLC	2004 John Deere Model 700H Crawler	Heavy Duty Equipment	\$99,835.00	\$160,067.00
C-03327839	KRON INTL TRUCKS INC	66 passenger school bus** (market price was state of South Carolina)	school bus	\$52,746.00	\$72,651.00
M-03348165	ADVANCED TURF EQUIPMENT INC	Steiner Tractor	Parks Equipment	\$15,676.00	\$20,348.00
M-03402602	FIRE DEPARTMENT SERVICE AND	Self contained breathing apparatus	Fire Safety	\$3,170.00	\$4,945.67
C-04084084	HONDA OF FRANKFORT	Honda Civic Hybrid	Motor Vehicle	\$18,503.00	\$19,650.00
M-03402602	FIRE DEPARTMENT SERVICE AND	Self contained breathing apparatus	Fire Safety	\$3,170.00	\$3,967.77
M-01381664	MERCURY MARINE	225 HP Mercury Outboard Motor	Outboard Motor	\$8,681.00	\$9,299.00
M-03137796	YALE KENTUCKIANA	Forklift Rental weekly rate	rental	\$245.00	\$500.00
M-99117676	BROCK MCVEY CO OF FKFT	2 Ton Tempstar Seer 10 split system heat pump	Heating Pump	\$926.99	\$1,153.00
C-00174852	CARDINAL ICE EQUIPMENT INC	Manitowac Air-Cooled Ice Maker QD-0272A	Ice Maker	\$1,818.75	\$2,020.00
C-00174852	CARDINAL ICE EQUIPMENT INC	Manitowac Air-Cooled Ice Maker QD-0132A	Ice Maker	\$1,378.86	\$1,510.00
C-01355321	GOODYEAR TIRE AND RUBBER COMPA	245/45R17 95V S2 Eagle MS	Tire	\$93.95	\$213.99
C-00174852	CARDINAL ICE EQUIPMENT INC	Manitowac Ice Storage Bin S-970	Ice Storage Bin	\$891.92	\$990.00
M-99145825	TEXACRAFT INC	Beach/Sand Chair	Furniture	\$55.00	\$129.99
C-03153179	BRYAN EQUIPMENT SALES	Stihl MS-390 - 20" Bar	Parks Equipment	\$306.27	\$375.20
M-03272221	FISHER SCIENTIFIC COMPANY	DF0145-17-0 Agar, Granulated 500g	Agriculture	\$ 69.12	\$136.05
C-00174852	CARDINAL ICE EQUIPMENT INC	Manitowac Ice Storage Bin S-170	Ice Storage Bin	\$443.29	\$505.00
Continued Next Page					

Price Comparison Details

Appendix VI

Contract #	Vendor	Commodity/Nonprofessional Service	Type of Commodity/ Nonprofessional Service	State Price	Market Price or Entity Price
M-02224509	SOUTHERN TOOL SUPPLY	Bucket/Wringer Combination	Janitorial Products	\$48.00	\$104.36
M-04185077	APRISA TECHNOLOGY	Nikon Coolpix 4300 Digital Camera	hardware	\$315.00	\$349.00
M-04141788	POMEROY IT SOLUTIONS	Dell Latitude D800 Notebook	hardware	\$1,705.00	\$1,738.00
C-03153179	BRYAN EQUIPMENT SALES	Sthl MS-250 - 16" Bar	Parks Equipment	\$201.42	\$231.20
C-00323108	LEXINGTON FRAMING SUPPS	Plexiglass, Acrylic	Framing Supplies	\$54.00	\$ 81.87
M-03270601	MAPSYNC	OmniStar Subscription	GIS	\$775.00	\$800.00
C-03153179	BRYAN EQUIPMENT SALES	Sthl Leaf Blower	Parks Equipment	\$151.00	\$175.20
M-03159501	GENERAL DATACOMM INC	Class 5 / Unit-to-Video (5ft.)	hardware	\$55.00	\$77.48
C-03165829	CLEMS REFRIGERATED FOODS	Decaffeinated Folgers .9 oz. per case	coffee	\$19.45	\$35.69
M-03462610	LYNWARD LLC DBA CLS SCREEN	Jacquard Arrowhead Collar and Cuffs Sports Shirt	clothing	\$15.16	\$29.07
M-04185077	APRISA TECHNOLOGY	Canon Printer	hardware	\$207.00	\$219.95
M-03327834	BULLER FIXTURE CO	Homer Laughlin - Grapefruit Bowl 8.25 oz.	tableware	\$97.35	\$109.00
M-03159501	GENERAL DATACOMM INC	SNMP SpectraComm 553 R/M (Single Port)	hardware	\$860.00	\$871.48
M-04072510	GALLS INC	stab resistant personal body armor	Police equipment	\$480.00	\$490.99
C-03255426	J AND J IND INC	Festival III carpet Antron Legacy Nylon dense textured pattern loop 30 oz. Carpet	Carpet	\$13.64	\$23.86
C-01223814	BROOKS CRUSHED STONE LLC	Masonry Sand Per Ton	Crushed Rock/Gravel	\$10.40	\$20.50
M-04071397	CRAIGS FIREARM SUPPLY INC	CTS Triple Phaser Smoke	Police equipment	\$27.31	\$36.40
C-03255426	J AND J IND INC	Applause Carpet Encore SD Nylon/6.6 dense textured loop 30 oz carpet	Carpet	\$12.58	\$20.25
Continued Next Page					

Price Comparison Details

Appendix VI

Contract #	Vendor	Commodity/Nonprofessional Service	Type of Commodity/ Nonprofessional Service	State Price	Market Price or Entity Price
M-03327834	BULLER FIXTURE CO	Homer Laughlin - Plate 5.5 inch	tableware	\$71.85	\$79.00
M-03327834	BULLER FIXTURE CO	Homer Laughlin - Saucer 5.5 inch	tableware	\$72.30	\$79.00
M-04071397	CRAIGS FIREARM SUPPLY INC	CTS Sting Ball	Police equipment	\$27.31	\$33.62
C-03097547	CEDAR CREEK SPORTS	cap	clothing	\$2.50	\$7.99
M-03272221	FISHER SCIENTIFIC COMPANY	DF0130-15-6 Bile Salts #3 100g	Agriculture	\$94.61	\$99.40
M-03064065	EVENFLO COMPANY INC	Car Seat	Car Seat	\$15.80	\$19.99
M-00221441	PENNS COUNTRY HAMS	Baked Country Hams (price per pound)	Food Product	\$4.90	\$8.40
C-02033842	MURPHYS CAMERA	Kodak Ektaflo Developer, Type 2	Photographic supplies	\$30.00	\$32.95
C-04005170	ENDICOTT MICROFILM INC	Kodak Direct Duplicating Microfilm	microfilm/fiche	\$27.76	\$30.33
M-02010503	BAMERT SEED COMPANY	Cheyenne Indiangrass (per pound)	Agriculture	\$6.49	\$8.78
C-00028012	KLOSTERMANS BAKING CO	Hot Dog Buns, Regular 6 (Fresh)	Food Product	\$1.15	\$2.59
C-04005170	ENDICOTT MICROFILM INC	Kodak Duplicating Microfilm	microfilm/fiche	\$54.20	\$55.20
C-03271297	KEANE INC	Programmer Consultant I (per hour)**	IT staffing	\$34.00	\$34.97
M-03462610	LYNWARD LLC DBA CLS SCREEN	Ladies Johnny Collar Pique Sport Shirt	clothing	\$12.55	\$13.46
C-04005170	ENDICOTT MICROFILM INC	Kodak Image HQ Microfilm	microfilm/fiche	\$9.81	\$10.56
C-99002445	COCA COLA BOTTLING CORP	12 oz Dasani plastic bottle (per case)	Food Product	\$7.75	\$7.99
C-03039865	FLA V O RICH DAIRIES LLC	Yogurt, Lowfat Strawberry (8 oz.)	Food Product	\$0.60	\$0.69
C-03271298	L3 COMMUNICATIONS GOVERNMENT	Programmer Consultant I (per hour)**	IT staffing	\$35.30	\$34.97
C-99030993	SARA LEE BAKERY GROUP	White Bread, Sandwich, 16 oz, Enriched Flour or Grain	Food Product	\$1.42	\$0.59
C-01254355	BOB BARKER CO INC	Bergamot, Black Orchid, 4 oz.	Personal Hygiene Supplies	\$7.85	\$6.88
Continued Next Page					

Price Comparison Details

Appendix VI

Contract #	Vendor	Commodity/Nonprofessional Service	Type of Commodity/ Nonprofessional Service	State Price	Market Price or Entity Price
M-03144016	"POMEROY COMPANIES, THE"	Roxio Easy CD Creator Software	software	\$14.71	\$13.50
C-03271289	AJILON LLC DBA AJILON	Programmer Consultant I (per hour)**	IT staffing	\$37.00	\$34.97
C-00261771	EVER READY FIRST AID	Eyewash Station - 16 oz.	First Aid Supplies	\$17.90	\$15.20
C-03271298	L 3 COMMUNICATIONS GOVERNMENT	Network Systems Administrator (per hour)**	IT staffing	\$42.49	\$36.97
C-03271289	AJILON LLC DBA AJILON	Network Systems Administrator (per hour)**	IT staffing	\$44.00	\$36.97
C-01254355	BOB BARKER CO INC	Liceall Shampoo	Personal Hygiene Supplies	\$39.20	\$31.39
M-04096741	SPECIALTY ENVELOPE	1000 White Kraft Envelopes	office supplies	\$60.95	\$53.00
M-02135131	BERNIES PHOTO CENTER INC	Olympus Infinity Zoom 80 35mm Camera	Photographic supplies	\$74.94	\$59.99
C-04049518	UNISOURCE WORLDWIDE INC	Strip Tac 60lb White 17x22	office supplies	\$225.82	\$209.70
C-03271297	KEANE INC	Project Manager (per hour)**	IT staffing	\$60.00	\$43.28
M-02263893	NATIONAL WORKWEAR	Caterpillar Boot Style 89370	Clothing	\$106.99	\$89.99
C-03271297	KEANE INC	Network Systems Administrator (per hour)**	IT staffing	\$54.00	\$36.97
C-04005170	ENDICOTT MICROFILM INC	Kodak Developer, Replenisher	microfilm/fiche	\$108.90	\$91.49
M-03272221	FISHER SCIENTIFIC COMPANY	Brucella Broth 500g	Agriculture	\$72.18	\$53.45
C-03271289	AJILON LLC DBA AJILON	Project Manager (per hour)**	IT staffing	\$72.00	\$43.28
C-03271298	L 3 COMMUNICATIONS GOVERNMENT	Project Manager (per hour)**	IT staffing	\$74.48	\$43.28
C-03464466	E AND H INTERGRADED SYST	Meridian Mail Networking Modern Package	software	\$445.00	\$400.50
C-03205610	ASAP SOFTWARE EXPRESS	Office Win32 English SA MVL	software	\$209.13	\$131.86
C-03252448	FRIEDRICH AIR CONDITIONING CO	Air Conditioner - Model KM20J30	Air Conditioner	\$480.00	\$430.00
Continued Next page					

Price Comparison Details

Appendix VI

Contract #	Vendor	Commodity/Nonprofessional Service	Type of Commodity/ Nonprofessional Service	State Price	Market Price or Entity Price
C-03143893	DELL MARKETING L P	BizTalk Server Dev 2004 All Languages MVL	software	\$284.00	\$233.64
C-01078693	KENNY PIPE AND SUPPLY	SS Sink 33X22 DBL	Plumbing Supplies	\$123.08	\$72.62
C-03205610	ASAP SOFTWARE EXPRESS	Excel Win32 English Lic/SA Pack MVL	software	\$256.44	\$204.86
C-03205610	ASAP SOFTWARE EXPRESS	Access Win32 English Lic/SA Pack MVL	software	\$256.44	\$204.86
C-04041392	BLACK BOX NETWORK SERV	Telephone Equipment-Auto attendant Module	hardware	\$623.84	\$570.00
C-01101540	SNAP ON INDUSTRIAL	Electronic Refrigerant Scale	Cooling device	\$226.20	\$154.45
C-04041392	BLACK BOX NETWORK SERV	Telephone Equipment-Auto attendant Module	hardware	\$982.24	\$898.00
C-03252448	FRIEDRICH AIR CONDITIONING CO	Air Conditioner - Model KP08A10	Air Conditioner	\$280.00	\$180.00
C-04041392	BLACK BOX NETWORK SERV	Telephone Equipment-Auto attendant Module	hardware	\$374.46	\$254.00
M-03174967	HENDERSON SEWING MACHINE CO	Juki Sewing Machine, Model DLN5410	Sewing Machine	\$2,650.00	\$2,499.99
C-03464466	E AND H INTERGRATED SYST	Ultra Hard Drive	software	\$1,750.00	\$1,575.00
C-03329064	"MCCORD, MIKE"	Excalibur Lightbar	Police equipment	\$795.00	\$529.99
M-99096611	APPLE COMPUTER INC	Powermac G5	Hardware	\$2,299.00	\$1,956.00
C-03143893	DELL MARKETING L P	Class Server All Languages MVL	software	\$4,499.00	\$3,701.88
C-03327839	KRON INTL TRUCKS INC	66 passenger school bus** (market price was state of North Carolina)	school bus	\$52,746.00	\$47,562.00

**Where a range of values is given by the vendor, the auditor selected the upper value of the range for comparison to the Finance and Administration Cabinet's price. Where a range of values is given by the Finance and Administration Cabinet, the auditor selected the lower price.

KRS 42.0245 Division of Risk Management.

KRS 45A.022 Application of chapter to insurance contracts.

KRS 45A.035 Secretary to adopt regulations.

KRS 45A.070 Definitions for KRS 45A.070 to 45A.180.

KRS 45A.080 Competitive sealed bidding.

KRS 45A.085 Competitive negotiation.

KRS 45A.095 Noncompetitive negotiation.

KRS 45A.100 Small purchases.

KRS 45A.660 Waiver of requirements on purchase from government.

200 KAR 5:302. Delegation of authority.

200 KAR 5:306. Competitive sealed bidding.

200 KAR 5:307. Competitively negotiated contracts.

200 KAR 5:309. Noncompetitive negotiations.

200 KAR 5:375. Multistep Competitive Sealed Bidding.

FAP 111-08-00. COMPETITIVE BIDDING EXCEPTIONS: SPECIFIED BY LAW OR REGULATION

FAP 111-09-00. COMPETITIVE BIDDING EXCEPTIONS: STANDING DETERMINATION OF NOT PRACTICABLE OR FEASIBLE

FAP 111-10-00. COMPETITIVE BIDDING EXCEPTIONS: SOLE SOURCE

FAP 111-35-00. COMPETITIVE SEALED BIDDING

FAP 111-37-00. CONTRACT TYPES

FAP 111-45-00. PAYMENT DOCUMENTS

FAP 111-55-00. SMALL PURCHASE PROCEDURE FOR GOODS AND NON-PROFESSIONAL SERVICES

FAP 111-57-00. COMPETITIVE NEGOTIATIONS

FAP 111-58-00. PROCUREMENT CARD PROGRAM

Relates to: KRS 45A.100

42.0245 Division of Risk Management.

(1) There is established within the Department for Administration in the Finance and Administration Cabinet the Division of Risk Management. The division shall be headed by a director who shall be appointed by the secretary of the Finance and Administration Cabinet subject to the approval of the Governor.

(2) The Division of Risk Management shall:

(a) Oversee and assist the management of the state fire and tornado insurance fund established in KRS Chapter 56;

(b) Develop and manage programs of risk assessment and insurance for the protection of state property not covered by the state fire and tornado insurance fund;

(c) Advise the secretary of the Finance and Administration Cabinet on the fiscal management of programs relating to life insurance, workers' compensation, and health care benefits for state employees;

(d) Serve as the central clearinghouse for coordinating and evaluating existing and new risk management programs within all state agencies;

(e) Develop financing techniques for risk protection; and

(f) Develop and implement other risk management, insurance, and self-insurance programs or other functions and duties as the secretary of the Finance and Administration Cabinet may direct the office to undertake and implement within the general statutory authority and control of the Finance and Administration Cabinet over state property and fiscal affairs of the executive branch of state government, including, but not limited to, those areas pertaining to tort and contractual liability, fidelity, and property risks.

(3) Nothing in this section shall be construed or interpreted as affecting the operation of the employee benefit programs generally administered by the Division of Employee Benefits within the Personnel Cabinet and of the State Risk and Insurance Services programs administered by the Department of Insurance. However, both of those departments shall coordinate the operation of life insurance, workers' compensation, health care benefit programs, and other self-insured programs with the Division of Risk Management.

(4) All cabinets, departments, boards, commissions, and other state agencies shall provide to the Division of Risk Management the technical advice and other assistance the Division of Risk Management or the secretary of the Finance and Administration Cabinet shall request in the performance of the functions of the division as described in this section.

(5) The secretary of the Finance and Administration Cabinet shall have the power and authority to promulgate administrative regulations pursuant to KRS Chapter 13A for purposes of implementing a risk management program for the executive branch of state government. Any administrative regulations promulgated by the secretary shall be administered by the Division of Risk Management.

Effective: June 21, 2001

History: Amended 2001 Ky. Acts ch. 164, sec. 3, effective June 21, 2001. – Amended 1998 Ky. Acts ch. 82, sec. 12, effective July 15, 1998; and ch. 154, sec. 62, effective July 15, 1998. -- Renumbered by Reviser of Statutes and amended 1994 Ky. Acts ch. 116, sec. 3, effective July 15, 1994; and ch. 216, sec. 4, effective July 15, 1994. -- Created 1990 Ky. Acts ch. 377, sec. 1, effective July 13, 1990.

Formerly codified as KRS 42.0192.

Legislative Research Commission Note (7/15/94). This statute was formerly codified as KRS 42.0192 and was renumbered by the Reviser of Statutes pursuant to KRS 7.136(1)(a) because of changes made by 1994 Ky. Acts ch. 216, sec. 4.

45A.022 Application of chapter to insurance contracts.

(1) This chapter shall apply to all insurance contracts purchased by the Commonwealth, except where the commissioner of insurance determines, with the concurrence of the secretary of Finance and Administration Cabinet, that:

(a) An emergency exists;

(b) Competition is not feasible; or

(c) The annual premium is less than ten thousand dollars (\$10,000).

(2) Notwithstanding subsection (1) of this section, the health insurance contract or contracts for state employees as authorized by KRS 18A.225 shall be subject to the provisions of KRS 45A.080, 45A.085 and 45A.090.

Effective: June 21, 2001

History: Amended 2001 Ky. Acts ch. 164, sec. 4, effective June 21, 2001. – Amended 1998 Ky. Acts ch. 82, sec. 13, effective July 15, 1998. -- Amended 1988 Ky. Acts ch. 5, sec. 7, effective July 15, 1988. -- Amended 1984 Ky. Acts ch. 23, sec. 2, effective July 13, 1984. -- Created 1982 Ky. Acts ch. 406, sec. 10, effective July 15, 1982.

45A.035 Secretary to adopt regulations.

(1) The secretary of the Finance and Administration Cabinet shall have power and authority over, and may, except as otherwise expressly provided in this code, adopt regulations pursuant to KRS Chapter 13A and consistent with this code governing the purchasing, management, and control of any and all supplies, services, and construction, and other items required to be purchased by the Commonwealth. The secretary shall consider and decide matters of policy with regard to state procurement. The secretary shall have the power of review with respect to the implementation of regulations and policy determinations.

(2) Regulations shall be adopted governing the following:

- (a) Conditions and procedures for delegations of purchasing authority;
- (b) Prequalification, suspension, debarment, and reinstatement of prospective bidders;
- (c) Small purchase procedures;
- (d) Conditions and procedures for the purchase of items for resale;
- (e) Conditions and procedures for the purchase of agricultural products in accordance with KRS 45A.645;
- (f) Conditions and procedures for the use of source selection methods authorized by this code, including emergency purchases;
- (g) Opening and rejection of bids or offers, consideration of alternate bids, and waiver of informalities in offers;
- (h) Confidentiality of technical data and trade secrets information submitted by actual or prospective bidders or offerors;
- (i) Partial, progressive, and multiple awards;
- (j) Supervision of storerooms and inventories, including determination of appropriate stock levels and the management, transfer, sale, or other disposal of state-owned property;
- (k) Definitions and classes of contractual services and procedures for acquiring them.

The secretary may adopt such other regulations as deemed advisable to carry out the purposes of this code.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 344, sec. 8, effective July 15, 2002. – Created 1978 Ky. Acts ch. 110, sec. 8, effective January 1, 1979.

45A.070 Definitions for KRS 45A.070 to 45A.180.

As used in KRS 45A.070 to 45A.180, unless the context in which they are used clearly requires a different meaning:

- (1) "Cost-reimbursement contract" means a contract under which the Commonwealth reimburses the contractor for those contract costs, within a stated ceiling, which are allowable and allocable in accordance with cost principles as provided in KRS 45A.215, and a fee, if any.
- (2) "Established catalogue price" means the price included in the most current catalogue, price list, schedule, or other form that:
 - (a) Is regularly maintained by the manufacturer or vendor of an item;
 - (b) Is either published or otherwise available for inspection by customers; and
 - (c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.
- (3) "Best value" means a procurement in which the decision is based on the primary objective of meeting the specific business requirements and best interests of the Commonwealth. These decisions shall be based on objective and quantifiable criteria that shall include price and that have been communicated to the offerors as set forth in the invitation for bids.
- (4) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.080 of this code.
- (5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.085, 45A.090, 45A.095, 45A.100, or 45A.180.
- (6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (7) "Responsive bidder" means a person who has submitted a bid under KRS 45A.080 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 98, sec. 3, effective June 24, 2003. – Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 26, effective May 30, 1997. – Amended 1990 Ky. Acts ch. 496, sec. 3, effective July 13, 1990. -- Created 1978 Ky. Acts ch. 110, sec. 15, effective January 1, 1979

45A.080 Competitive sealed bidding.

(1) Contracts exceeding the amount provided by KRS 45A.100 shall be awarded by competitive sealed bidding unless it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is not practicable shall include:

- (a) Whether specifications can be prepared that permit award on the basis of best value; and
- (b) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.

(2) The invitation for bids shall state that awards shall be made on the basis of best value. In any contract which is awarded under an invitation to bid which requires delivery by a specified date and imposes a penalty for late delivery, if the delivery is late, the contractor shall be given the opportunity to present evidence that the cause of the delay was beyond his control. If it is the opinion of the purchasing officer that there is sufficient justification for delayed delivery, the purchasing officer may adjust or waive any penalty that is provided for in the contract.

(3) Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication in a newspaper or newspapers of general circulation in the state as determined by the secretary of the Finance and Administration Cabinet not less than seven (7) days before the date set for the opening of the bids. The provisions of this subsection shall also apply to price contracts and purchase contracts of state institutions of higher education.

(4) Bids shall be opened publicly at the time and place designated in the invitation for bids. At the time the bids are opened, the purchasing agency shall announce the agency's engineer's estimate, if applicable, and make it a part of the agency records pertaining to the letting of any contract for which bids were received. Each bid, together with the name of the bidder and the agency's engineer's estimate, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.

(5) The contract shall be awarded by written notice to the responsive and responsible bidder whose bid offers the best value.

(6) Correction or withdrawal of bids shall be allowed only to the extent permitted by regulations issued by the secretary.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 509, sec. 1, effective July 14, 2000. – Amended 1998 Ky. Acts ch. 120, sec. 10, effective July 15, 1998. -- Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 27, effective May 30, 1997. -- Amended 1996 Ky. Acts ch. 60, sec. 2, effective July 15, 1996. - - Amended 1994 Ky. Acts ch. 278, sec. 1, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 282, sec. 1, effective July 15, 1982. -- Amended 1979 (1st Extra. Sess.) Ky. Acts ch. 9, sec. 1, effective February 10, 1979. -- Created 1978 Ky. Acts ch. 110, sec. 17, effective January 1, 1979.

45A.085 Competitive negotiation.

(1) When, under administrative regulations promulgated by the secretary or under KRS 45A.180, the purchasing officer determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in KRS 45A.095 and 45A.100, a contract may be awarded by competitive negotiation.

(2) Adequate public notice of the request for proposals shall be given in the same manner and circumstances as provided in KRS 45A.080(3).

(3) Contracts other than contracts for projects utilizing an alternative project delivery method under KRS 45A.180 may be competitively negotiated when it is determined in writing by the purchasing officer that the bids received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate.

(4) Contracts for projects utilizing an alternative project delivery method shall be processed in accordance with KRS 45A.180.

(5) The request for proposals shall indicate the relative importance of price and other evaluation factors.

(6) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Commonwealth, taking into consideration price and the evaluation factors set forth in the request for proposals.

(7) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:

(a) With respect to prices, where the prices are fixed by law or administrative regulation, except that consideration shall be given to competitive terms and conditions;

(b) Where time of delivery or performance will not permit discussions; or

(c) Where it can be clearly demonstrated and documented from the existence of adequate competition or prior experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable best value procurement, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 98, sec. 5, effective June 24, 2003. – Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 28, effective May 30, 1997. – Amended 1979 (1st Extra. Sess.) Ky. Acts ch. 9, sec. 2, effective February 10, 1979. -- Created 1978 Ky. Acts ch. 110, sec. 18, effective January 1, 1979.

45A.095 Noncompetitive negotiation.

(1) A contract may be made by noncompetitive negotiation only for sole source purchases, or when competition is not feasible, as determined by the purchasing officer in writing prior to award, under administrative regulations promulgated by the secretary of the Finance and Administration Cabinet or the governing boards of universities operating under KRS Chapter 164A, or when emergency conditions exist. Sole source is a situation in which there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, the supplier, or market conditions. Insofar as it is practical, no less than three (3) suppliers shall be solicited to submit written or oral quotations whenever it is determined that competitive sealed bidding is not feasible. Award shall be made to the supplier offering the best value. The names of the suppliers submitting quotations and the date and amount of each quotation shall be placed in the procurement file and maintained as a public record. Competitive bids may not be required:

- a) For contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;
- (b) Where rates are fixed by law or ordinance;
- (c) For library books;
- (d) For commercial items that are purchased for resale;
- (e) For interests in real property;
- (f) For visiting speakers, professors, expert witnesses, and performing artists;
- (g) For personal service contracts executed pursuant to KRS 45A.690 to 45A.725; and
- (h) For agricultural products in accordance with KRS 45A.645.

(2) The chief procurement officer, the head of a using agency, or a person authorized in writing as the designee of either officer may make or authorize others to make emergency procurements when an emergency condition exists.

(3) An emergency condition is a situation which creates a threat or impending threat to public health, welfare, or safety such as may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of government, the preservation or protection of property, or the health or safety of any person

(4) The Finance and Administration Cabinet may negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency shall be fully explained, in writing, by the head of the agency for which the purchase is to be made. The explanation shall be approved by the secretary of the Finance and Administration Cabinet and shall include the name of the vendor receiving the contract along with any other price quotations and a written determination for selection of the vendor receiving the contract. This information shall be filed with the record of all such purchases and made available to the public. Where practical, standard specifications shall be followed in making emergency purchases. In any event, every effort should be made to effect a competitively established price for purchases made by the state.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 344, sec. 9, effective July 15, 2002. – Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 30, effective May 30, 1997. – Amended 1990 Ky. Acts ch. 496, sec. 4, effective July 13, 1990. -- Created 1978 Ky. Acts ch. 110, sec. 20, effective January 1, 1979.

KRS 45A.100 Small purchases.

(1) Procurements may be made in accordance with small purchase administrative regulations promulgated by the secretary of the Finance and Administration Cabinet, pursuant to KRS Chapter 13A, as follows:

- (a) Up to ten thousand dollars (\$10,000) per project for construction and one thousand dollars (\$1,000) for purchases by any state governmental body, except for those state administrative bodies specified in paragraph (b) of this subsection; and
- (b) Up to forty thousand dollars (\$40,000) per project for construction or purchases by the Finance and Administration Cabinet, state institutions of higher education, and the legislative branch of government.

(2) Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. At least every two (2) years, the secretary shall review the prevailing costs of labor and materials and may make recommendations to the next regular session of the General Assembly for the revision of the then current maximum small purchase amount as justified by intervening changes in the cost of labor and materials.

(3) The secretary of the Finance and Administration Cabinet may grant to any state agency with a justifiable need a delegation of small purchasing authority which exceeds the agency's small purchase limit provided in subsection (1) of this section. Delegations of small purchasing authority shall be granted or revoked by the secretary of the Finance and Administration Cabinet, in accordance with administrative regulations promulgated by the cabinet pursuant to KRS Chapter 13A. These administrative regulations shall establish, at a minimum, the criteria for granting and revoking delegations of small purchasing authority, including the requesting agency's past compliance with purchasing regulations, the level of training of the agency's purchasing staff, and the extent to which the agency utilizes the Kentucky Automated Purchasing System. The administrative regulations may permit the secretary of the Finance and Administration Cabinet to delegate small purchase procurements up to the maximum amount specified in subsection (1)(b) of this section.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 320, sec. 2, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 225, sec. 1, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 60, sec. 1, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 323, sec. 1, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 496, sec. 5, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 384, sec. 1, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 384, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 282, sec. 2, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 242, sec. 1, effective July 15, 1980; and ch. 250, sec. 19, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 21, effective January 1, 1979.

45A.660 Waiver of requirements on purchase from government.

The Finance and Administration Cabinet may, for satisfactory reason consistent with its responsibility to attempt in every practical way to ensure that state agencies are acquiring their real needs through the application of best value criteria, waive any requirements of this code in instances where purchases are made by the Commonwealth of Kentucky or any agency thereof from the federal government or any agency thereof or from any other state government or any agency thereof.

Effective: May 30, 1997

History: Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 32, effective May 30, 1997. -- Created 1990 Ky. Acts ch. 496, sec. 8, effective July 13, 1990

200 KAR 5:302. Delegation of authority.

RELATES TO: KRS 45A.045(3), 45A.675

STATUTORY AUTHORITY: KRS 45A.035(2)(a), 45A.045(3), (5), 45A.100(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035(2)(a) requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations relating to conditions and procedures for delegations of purchasing authority. KRS 45A.045(5) requires the secretary of the cabinet to promulgate administrative regulations establishing the method of disposal for personal property of the state, if disposal has been delegated to a state agency. KRS 45A.100(3) requires the secretary of the cabinet to promulgate administrative regulations concerning the granting or revocation of delegations of small purchasing authority by the cabinet. This administrative regulation establishes requirements that will provide uniformity for all delegations of authority by the Finance and Administration Cabinet and ensure the competency of the agency receiving the delegated authority in the proposed delegated area of purchasing. In addition, this administrative regulation establishes the requirements for the Secretary of the Finance and Administration Cabinet to waive the small purchase authority limitations pursuant to KRS 45A.100.

Section 1. Delegation of Purchasing Authority Other than for Small Purchases. (1) A secretary's order may delegate Finance and Administration Cabinet purchasing authority pursuant to KRS 45A.045(3). A government agency requesting a delegation from the Finance and Administration Cabinet under KRS 45A.045(3) shall submit to the secretary proof of competency in the proposed delegated area, demonstrated by staff experience and training and the resources available to the agency to perform the purchase delegation.

(2) The secretary's order shall specify the authority the agency shall receive, the purpose for which the delegation is given, and the period of time for which the delegation is valid.

(3) An agency receiving delegation shall comply with the provisions of KRS Chapter 45A and all other purchasing statutes, administrative regulations, policies and procedures of the Finance and Administration Cabinet.

(4) An agency holding a delegation shall certify annually to the secretary by July 1, that it is in compliance with all purchasing laws, administrative regulations and policies.

(5) A delegation of purchasing authority by the secretary shall remain in force according to the original terms unless modified, or until rescinded by the secretary.

(6) A delegation of purchasing authority for an agency's individual requirements, or to authorize procurement activities by an agency for preestablished and limited periods of time may be granted by the Commissioner of the Department for Administration or the Commissioner for the Department for Facilities Management, or their designees, as appropriate, setting forth the type of procurement activity or function and fixing the limits and restrictions on the exercise of the delegation and its duration. A delegation granted under this section shall not be extended or renewed except with the approval of the Secretary of the Finance and Administration Cabinet.

Section 2. Small Purchase Authority Delegation Exceeding an Agency's Statutory Small Purchase Limit Under KRS 45A.100. (1) The Secretary of the Finance and Administration Cabinet may delegate purchasing authority that exceeds the agency's small purchase limit set out in KRS 45A.100 by secretary's order. The order shall set forth the type of procurement activity or function delegated and any limitations or restrictions on the exercise of the authority.

(2) An agency request for small purchase delegation above the limits established in KRS 45A.100 shall be submitted to the secretary, approved by the head of the agency submitting the request, and shall contain the following information:

(a) Total dollars spent each of the two (2) preceding fiscal years under the agency's existing small purchase authority;

(b) Number of small purchase transactions represented by those dollar figures for each fiscal year;

(c) A description of the agency's organizational structure, which shall demonstrate that the delegation is appropriate to the agency's size and procurement needs;

(d) A description of the agency's internal controls, which shall ensure adequate safeguarding of assets and the separation of purchasing, accounting, and receiving functions;

(e) Documentation that the agency has prepared and implemented a plan to identify and utilize small business and small minority business suppliers and the agency's future goals in this respect;

(f) An action plan showing how the agency plans to reach its goals;

(g) Acknowledgment that the agency is aware of, and in compliance with, the provisions of KRS 45A.500 and 200 KAR 5:330 relating to recycled material content products;

(h) Every record of control weakness or noncompliance relating to procurement practices issued to the agency by the Auditor of Public Accounts, internal auditors, or the Finance and Administration Cabinet Division of Administrative Policy and Audit, for each of the past two (2) fiscal years, the agency's response to the finding, and any corrective measure taken; and

(i) a list of the agency's procurement personnel, below the level of branch manager, to whom the agency will give authority for purchases at the requested higher small purchase limits and their professional purchasing certification or training.

(3) An agency shall set a minimum goal of five (5) percent utilization of small business and small minority business suppliers.

(4) An agency shall report its progress toward meeting its utilization goal upon the secretary's request.

(5) Procurement personnel of an agency granted delegated purchasing authority shall, within one (1) year after the granting of the delegation or within one (1) year of employment in government in a procurement position, whichever is sooner, have completed a course in purchasing offered by the Finance and Administration Cabinet's Division of Material and Procurement Services and Division of Contracting and Administration, or the introductory course in purchasing offered by the National Institute of Governmental Purchasing, or an equivalent course offered by the National Association of Purchasing Management.

(6) An agency requesting delegated purchasing authority shall utilize each on-line function of the state's procurement system that has been offered to the agency.

(7) The Division of Material and Procurement Services and the Division of Contracting and Administration may request periodic procurement audits by the Division of Administrative Policy and Audit of the agencies to which small purchase delegation above the limits established in KRS 45A.100 has been granted. Such audits shall investigate an agency's compliance with the provisions of KRS Chapter 45A, purchasing administrative regulations and the Finance and Administration Cabinet Manual of Policies and Procedures. If an agency demonstrates deficiencies in procurement expertise or practice, the division shall recommend that the secretary revoke or amend any delegations granted under this administrative regulation. Authority shall not be extended or renewed except with the approval of the secretary.

Section 3. Delegation of Authority to Declare and Dispose of Surplus Personal Property. (1) A secretary's order may delegate Finance and Administration Cabinet authority pursuant to KRS 45A.045(5).

(2) A delegation shall only be granted to the agency head.

(3) An agency head requesting delegation of authority to declare and dispose of surplus personal property from the Finance and Administration Cabinet under KRS 45A.045(5) shall submit a request to the Secretary of the Finance and Administration Cabinet.

(4) The request shall assure that:

(a) Only property surplus to the agency's need shall be declared surplus and disposed of;

(b) No employee of the Commonwealth shall personally benefit from the disposal of surplus property; and

(c) Disposition shall be in accordance with applicable federal and state laws and regulations, including the executive branch code of ethics and Finance and Administration Cabinet manual of policies and procedures established in 200 KAR 5:021. (23 Ky.R. 1468; Am. 1924; eff. 11-11-96; 24 Ky.R. 927; eff. 12-15-97; 30 Ky.R. 668; 1460; eff. 1-5-2004.)

200 KAR 5:306. Competitive sealed bidding.

200 KAR 5:306 Competitive Sealed Bidding

RELATES TO: KRS 45A.080

STATUTORY AUTHORITY: KRS 45A.035, 45A.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements KRS 45A.080.

Section 1. (1) The purchasing agencies of the Commonwealth shall provide adequate public notice of solicitations pursuant to KRS 45A.080(3).

(2) In addition to any other public notice given pursuant to KRS 45A.080(3), solicitations shall be posted to the Finance and Administration Cabinet's procurement website.

Section 2. The purchasing officer or other employee of the purchasing agency designated to open the bids shall determine when the time set for opening bids has arrived and shall so declare the time to those present for the bid opening. The purchasing officer or designee shall, in the presence of all persons in attendance, open all bids received as of that date and hour. If practical, the names of the bidders and the amounts of their bids may be read aloud to the persons present. Except if it is deemed impractical, due to the nature or complexity of a solicitation, a bid tabulation summary sheet shall be prepared for each solicitation recording the name of each bidder, a description of the supplies or services bid, and the amounts of the bids received. The bid tabulation summary sheet shall be permanently retained in the solicitation file and shall be available for public inspection. Inspection of bids by interested persons shall not be permitted during the formal bid opening process.

Section 3. The bids shall be examined by the purchasing officer responsible for the procurement for any clerical or technical errors, reviewed for technical compliance with the terms of the solicitation, and the supplies or services bid evaluated for conformity with the specifications contained in the solicitation. A bidder shall, if requested by the purchasing officer responsible for the procurement, clarify, in the format specified by the purchasing officer, any matter contained in the submitted bid about which the purchasing officer has question or believes in good faith needs to be clarified. The bid of any bidder who fails or refuses, within a reasonable time, to give a clarification, if requested to do so by the purchasing officer, shall not be considered further for an award on the basis of that solicitation. The clarification shall be incorporated in any contract awarded on the basis of that bid. After a reasonable bid evaluation period, the contract shall be awarded to the responsive and responsible bidder whose bid offers the best value to the Commonwealth. After evaluation of the bids, including consideration of any clarifying information submitted, the purchasing officer may determine that no satisfactory bid has been received and all bids may be disqualified. At the discretion of the purchasing officer, the solicitation may be cancelled and new bids solicited on the basis of the same or revised specifications, or competitive negotiations undertaken for the procurement. The basis for the disqualification of all bids and subsequent action taken or to be taken with respect to the solicitation shall be recorded and filed in the solicitation file relating to the procurement.

Section 4. (1) The right to disqualify any bid and to waive technicalities and minor irregularities in bids shall be preserved in the case of all solicitations issued by purchasing agencies within the Finance and Administration Cabinet or pursuant to delegations of purchasing authority by the Finance and Administration Cabinet.

(2) Grounds for the disqualification of bids include:

- (a) Failure of a bid to conform to the essential requirements of a solicitation.
- (b) Failure to conform to the specifications contained or referenced in a solicitation, unless the solicitation authorized the submission of alternate bids and the items offered as alternatives meet the requirements specified in the solicitation.
- (c) Failure to conform to a delivery schedule established in a solicitation.
- (d) Imposition of conditions which modify the terms and conditions of the solicitation, or limit the bidder's liability to the state on the contract awarded on the basis of a solicitation.
- (e) Submission of an unreasonable price. Any determination by the purchasing officer that a bid is unreasonable as to price shall be documented.
- (f) Nonresponsibility of a bidder.
- (g) Failure to furnish a bid guarantee if required by a solicitation.
- (h) Other cause as documented by the purchasing officer in a determination and finding.

(3) Technicalities or minor irregularities in bids, which may be waived if the purchasing officer determines that it will be in the Commonwealth's best interest to do so, are mere matters of form not affecting the material substance of a bid or an immaterial deviation from or variation in the precise requirements of the solicitation having no or a trivial or negligible effect on price, quality, quantity, delivery of supplies, or performance of the services being procured, the correction or waiver of which will not affect the relative standing of, or be otherwise prejudicial to other bidders. The purchasing officer may give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in a bid, or waive the deficiency if it is advantageous to the Commonwealth to do so.

Section 5. If a mistake in a bid is claimed, and the purchasing officer determines that a material mistake was made in the bid and that due to this mistake, the bid submitted was not the bid intended, the bidder shall be permitted to withdraw the bid. If a mistake in a bid is claimed after the award and execution of a contract, the contractor shall be required to perform according to the terms and conditions of the contract, unless it is determined in writing by the Finance and Administration Cabinet that a material mistake had been made in the original bid and the contractor will sustain a financial loss if required to perform the contract according to its terms. A reduction or diminution in profit margin shall not be deemed a financial loss under this section. If it is determined that a material mistake has been made in a bid after the award of a contract, and the contractor will sustain a financial loss if required to perform the contract, the contract shall be rescinded and the contractor shall be ineligible to submit a bid upon resolicitation for the commodity or service. (5 Ky.R. 573; Am. 946; eff. 7-17-79; 18 Ky.R. 1357; 2201; eff. 1-10-92; 23 Ky.R. 1405; 1925; eff. 11-11-96; 24 Ky.R. 929; eff. 12-15-97; 30 Ky.R. 672; 1462; eff. 1-5-2004.)

200 KAR 5:307. Competitively negotiated contracts.

RELATES TO: KRS 45A.085, 45A.090

STATUTORY AUTHORITY: KRS 45A.035, 45A.085

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.085 authorizes the secretary to promulgate administrative regulations concerning contracts awarded by competitive negotiation. This administrative regulation implements the provisions of KRS 45A.085 and 45A.090 relating to competitively negotiated contracts.

Section 1. A contract may be awarded by competitive negotiation if the purchasing officer determines in writing that:

- (1) Due to the complex nature or technical detail of a particular procurement, specifications cannot be fairly and objectively prepared so as to permit competition in the solicitation of sealed bids;
- (2) High technology electronic equipment is available from a limited number of sources of supply and specifications cannot practicably be prepared except by reference to the specifications of the equipment of a single source of supply;
- (3) Solicitation of competitive sealed bids is not practicable; or
- (4) Conditions described in KRS 45A.085(3) or 45A.090(1) exist.

Section 2. (1) If it has been determined that it is not practical to solicit competitive bids as provided in Section 1 of this administrative regulation, except if such determination is based on the existence of the conditions mentioned in KRS 45A.085(3) or 45A.090(1), action to obtain a procurement by competitive negotiations shall commence by solicitation of written proposals in the manner specified by KRS 45A.080(3), 200 KAR 5:306, and 200 KAR 5:307.

(2) A solicitation of proposals for competitive negotiations shall state:

- (a) That the purchasing agency proposes to enter into competitive negotiations with responsible offerors;
- (b) The date, hour and place that written proposals shall be received;
- (c) The type of procurement involved;
- (d) A description of the supplies or services sought;
- (e) Detailed specifications, or the location where detailed specifications may be obtained;
- (f) The evaluation factors to be considered in determining the proposal most advantageous to the Commonwealth;
- (g) The proposed method of award of contract;
- (h) 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 of the competitive negotiations;
- (i) The existence of a funding limitation, if determined to be in the best interest of the Commonwealth; and
- (j) The amount of the funding limit, if it is determined by the Director of the Division of Material and Procurement Services or the Director of the Division of Contracting and Administration for procurements undertaken by those divisions that disclosure of the amount of the funding limit will promote competition and will be in the best interest of the Commonwealth.

(3) If a funding limit has been established, proposals that exceed the funding limit may be rejected. Section 3. All written proposals received by the purchasing agency in response to a solicitation shall be kept secure and unopened until the date and hour set for opening the proposals. Proposals not clearly marked as such may be opened for identification purposes, and shall be appropriately identified with reference to the particular procurement and resealed until the time for opening proposals.

Section 4. At the close of business on, or at the beginning of the next business day after the date fixed for receiving proposals for competitive negotiations, all proposals received as of the close of business on that date shall be transmitted to the purchasing officer for the procurement for opening. Proposals shall not be subject to public inspection until negotiations between the purchasing agency and all offerors have been concluded and a contract awarded to the responsible offeror submitting the proposal determined by the purchasing officer in writing to be the most advantageous to the Commonwealth, based upon the price and the evaluation factors set forth in the solicitation.

Section 5. (1) The purchasing officer shall examine each written proposal received for general conformity with the terms of the procurement. If it has been provided in the solicitation that an award may be made without written or oral discussions, the purchasing officer may, upon the basis of the written proposals received, award the contract to the responsible offeror submitting the proposal determined in writing to be the most advantageous to the Commonwealth. If, after the proposals have been examined, it is determined that written or oral discussions should be had with the offerors, the purchasing officer shall determine in writing, based on an individual review, those proposals received that are eligible to be selected for award of a contract. Each responsible offeror that is eligible to be selected for award of a contract shall be contacted by the purchasing officer and a meeting scheduled for discussion of the offeror's proposals. The purchasing officer shall not be required to conduct discussions under the circumstances of or relative to the topics enumerated in KRS 45A.085(6)(a), (b) or (c).

(2) Discussions with offerors shall be held informally and may be conducted orally, in writing, or both, as determined by the purchasing officer to be the most advantageous to the Commonwealth. If, 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, all proposals may be rejected and, in the discretion of the purchasing officer, new proposals may be solicited as provided in Sections 1 to 4 of this administrative regulation, or the procurement may be abandoned.

(3) Procedures for conducting negotiations and for the manner in which proposals will be evaluated shall be established by the purchasing officer for each procurement and shall be set forth in the request for proposals. The purchasing officer may request offerors to submit written clarification or explanation of their proposals and the proposal of any offeror who fails to respond or to request an extension of time to respond within the time requested, may be rejected.

(4) Proposals shall be evaluated based on factors stated in the request for proposals. Numerical or other appropriate rating systems may be used. All evaluation documentation, scoring, and summary conclusions shall be in writing, and made a part of the file records for the procurement.

(5) The purchasing officer may notify offerors that as of a date stated negotiations shall be closed and further negotiations modifications or clarifications of proposals shall not be received.

Section 6. The purchasing officer shall prepare a written summary of all oral discussions in competitive negotiations setting forth both the dates and the general substance of the discussions. Verbatim records of the discussion shall not be required.

Section 7. If, after solicitation for proposals to enter into competitive negotiations only one (1) proposal responsive to the solicitation is received, the purchasing officer may commence negotiations with the single offeror and any resulting contract entered into with that offeror shall be deemed to have been competitively negotiated and awarded in accordance with KRS 45A.085 and this administrative regulation. The terms and conditions of the contract shall not in any material respect deviate in a manner detrimental to the purchasing agency from the terms and conditions specified in the solicitation for proposals. (5 Ky.R. 574; Am. 947; eff. 7-17-79; 9 Ky.R. 1025; 1194; eff. 4-6-83; 18 Ky.R. 1359; eff. 1-10-92; 30 Ky.R. 674; 1463; eff. 1-5-2004.)

200 KAR 5:309. Noncompetitive negotiations.

RELATES TO: KRS 45A.095

STATUTORY AUTHORITY: KRS 45A.035, 45A.045, 45A.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.095(1) requires the cabinet to promulgate administrative regulations concerning noncompetitive negotiations. This administrative regulation implements the provisions of KRS 45A.095.

Section 1. Contracts may be awarded on the basis of noncompetitive negotiations only for:

- (1) Telephone, electrical energy, and other public utility services;
- (2) Other services provided within a defined geographic area pursuant to a franchise awarded pursuant to law by a city, county, or other political subdivision authorized to award the franchise;
- (3) Purchase or lease of a telephone system to serve the internal needs of state agencies or institutions;
- (4) Commodities, equipment, or services available from a sole source, as determined by the purchasing officer in writing;
- (5) Instructional materials, equipment, or supplies available from a sole source and necessary to a particular instructional program, as determined by the purchasing officer in writing;
- (6) Special supplies or equipment required for laboratory or experimental studies and necessary to a particular study, as determined by the purchasing officer in writing;
- (7) Contracts or subscriptions for the purchase of published books, maps, periodicals, technical pamphlets, and except for those specially commissioned for use by an agency which shall be contracted for as provided by subsection (9) of this section, recordings, films, and works of art for museum or public display;
- (8) Commercial items purchased from a wholesaler, manufacturer, or producer of the item for resale to the general public through a resale outlet maintained by a state agency;
- (9) Professional, technical, scientific, or artistic services, or agreements with multiple vendors of medical or health care and related services, and fixed rates of payment for those services as prescribed by state or federal law or regulations, and entered into for the benefit of persons who are wards of the Commonwealth, or who are otherwise entitled pursuant to law to the provision of health care and related services by the Commonwealth;
- (10) Commodities, supplies, equipment, or construction services that would ordinarily be purchased on a competitive basis if an emergency has been declared in the manner prescribed by KRS 45A.095(2) and (3);

(11) Supplies, equipment or services from the Government of the United States, another state, or a political subdivision of the Commonwealth, or nonprofit organization organized under the laws of the Commonwealth, another state or the District of Columbia, or chartered under an Act of Congress, and lawfully doing business in the Commonwealth of Kentucky, and serving a public purpose of an essentially government, civic, educational or charitable nature;

(12) Contracts with vendors who maintain a general service administration price agreement with the United States of America, if the contract between the Commonwealth and the vendor does not authorize a price higher than is contained in the contract between general service administration and the vendor;

(13) Purchase of real property or interests in real property;

(14) Purchase of fresh food and perishable items which cannot reasonably be acquired through competitive sealed bidding; and

(15) Purchase of limited goods or services that cannot reasonably or practically be obtained through competitive sealed bidding as determined by the Director of the Division of Material and Procurement Services.

Section 2. Contracts for professional, technical, scientific, or artistic services under Section 1(9) of this administrative regulation shall be awarded as provided in KRS 45A.690 to 45A.725, except that contracts for architectural or engineering services shall be awarded in accordance with KRS 45A.800 to 45A.838. (5 Ky.R. 576; Am. 949; eff. 7-17-79; 18 Ky.R. 1362; eff. 1-10-92; 30 Ky.R. 676; 1465; eff. 1-5-2004.)

FINANCE AND ADMINISTRATION CABINET

Office of the Secretary

(New Administrative Regulation)

200 KAR 5:375. Multistep Competitive Sealed Bidding.

RELATES TO: KRS 45A.080

STATUTORY AUTHORITY: KRS 45A.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements a multistep bidding process under the provisions of KRS 45A.080.

Section 1. Definitions. (1) "Acceptable" means the unpriced technical offer is compliant with technical specifications described in the solicitation.

(2) "Multistep sealed bidding" means a two (2) phase process consisting of a technical first phase composed of one (1) or more steps in which bidders may submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

(3) "Potentially acceptable" means the unpriced technical offer is materially compliant with the technical specifications described in the solicitation, thereby providing a reasonable expectation of being made acceptable by amendment to the offer. If the bidder does not amend the offer by the specified date, the offer shall be deemed unacceptable.

(4) "Prebid conference" means a meeting or discussion with the purchasing officer and interested bidders.

(5) "Reverse auction" means a real-time, structured bidding process, usually lasting less than one (1) hour and taking place during a previously scheduled time and Internet location, during which multiple suppliers, anonymous to each other, submit revised, lower bids to provide the solicited good or service.

(6) "Unacceptable" means the unpriced technical offer is not materially compliant with the technical specifications described in the solicitation to such an extent that there is no reasonable assurance that, by amendment, the offer will meet or exceed the specifications and other requirements.

Section 2. General Terms. (1) Except for the variations described in this administrative regulation, the provisions of 200 KAR 5:306 shall apply to multistep bidding.

(2) Reverse auction may be used as a form of competitive bidding in a multistep bidding process, and as an alternative to sealed bidding if it is determined by the purchasing officer that it is in the best interest of the commonwealth.

(3) A contract resulting from multistep bidding shall not be awarded for an amount greater than the published price in an existing fixed-price contract with the commonwealth for a substantially similar good or service that was solicited through competitive sealed bids.

Section 3. Multistep Sealed Bidding. (1) The multistep sealed bidding method may be used if the procurement officer determines in writing that:

(a) Definite criteria exist for evaluation of technical proposals and more than one (1) technically qualified source is expected to be available; or

(b) A reverse auction is in the best interest of the commonwealth; and

(c) It will be advantageous to the purchasing agency to:

1. Invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;

2. Conduct discussions for the purposes of facilitating understanding of the technical offer and, if appropriate, obtaining supplemental information, permitting amendments of technical offers, or amending the purchase description;

3. Accomplish subsections (a) and (b) of this section prior to soliciting priced bids; and

4. Award the contract to the responsive and responsible bidder providing the best value to the commonwealth.

(2) Prebid conferences in multistep sealed bidding. Prior to the submission of unpriced technical offers, the procurement officer may conduct a prebid conference. If a reverse auction shall be part of Phase Two, the process shall be explained during the prebid conference. The issuing agency may respond to questions and concerns during the conference, but the official response from the issuing agency shall be in writing and shall be provided to all potential bidders who attended the prebid conference.

Section 4. Procedure for of Multistep Sealed Bidding. (1) Multistep sealed bidding shall be initiated by the issuance of a solicitation as required by KRS 45A.080 and FAP 111-35-00. The multistep solicitation shall state:

(a) That unpriced technical offers are requested;

(b) Whether price bids are to be submitted at the same time as unpriced technical offers or if a reverse auction shall be conducted. If a price bid is required with the unpriced technical offer, the price bids shall be submitted in a separate sealed envelope.

- (c) That it is a multistep sealed bid procurement, and priced bids shall be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;
- (d) The criteria to be used in the evaluation of the unpriced technical offers;
- (e) That the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers in accordance with subsection (5) of this section;
- (f) That bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data that are to remain confidential;
- (g) That the good or service being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable; and
- (h) The manner in which the second phase reverse auction shall be conducted, if applicable.

(2) Amendments to the solicitation. After receipt of unpriced technical offers, amendments to the solicitation shall be distributed only to bidders who submitted unpriced technical offers, and those bidders shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the solicitation shall be canceled in accordance with KRS 45A.105, and a new solicitation issued.

(3) Receipt and handling of unpriced technical offers. Unpriced technical offers shall be opened publicly, identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the specified date and time. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder. Prior to Phase Two of the multistep bidding process, a technical offer shall be shown only to purchasing agency personnel and those involved in the selection process who have a legitimate interest in the offer.

(4) Evaluation of unpriced technical offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the solicitation. A bidder shall submit a technical offer in sufficient detail so as to substantially comply with the technical specifications of the solicitation. The unpriced technical offers shall be categorized as:

- (a) Acceptable;
- (b) Potentially acceptable; or
- (c) Unacceptable.

(5) Discussion of unpriced technical offers.

(a) The procurement officer may hold a conference with all bidders at any time during the evaluation of the unpriced technical offers. The purchasing officer may discuss with bidders, including any subcontractor or supplier of goods or services, acceptable and potentially acceptable bids. Discussions may be conducted for the purposes of facilitating understanding of technical offers and specifications and may include, but shall not be limited to:

1. . Obtaining supplemental information,
2. Amendments to the technical offer,
3. Amendments to the solicitation, or
4. A potentially-acceptable offer being amended to become an acceptable offer

(b) During the course of these discussions the procurement officer shall not disclose any information derived from one (1) unpriced technical offer to any other bidder. Once discussions have begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. The procurement officer shall notify all bidders in writing when no additional supplemental information may be submitted.

(6) Technical evaluation. The evaluation of technical offers shall be in writing. If the solicitation is for computer hardware, software and related services, the purchasing agency shall comply with FAP 111-15-00(2). A written record shall be maintained and become a part of the bid file.

(7) Unacceptable unpriced technical offer. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file. A bidder whose technical offer is determined to be unacceptable shall not be allowed to amend or supplement the technical offer.

(8) The procurement officer may initiate Phase Two of the multistep bidding if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that there are not sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers, the procurement officer shall issue an amendment to the solicitation or engage in technical discussions as set forth in subsection (5) of this section.

(9) Mistakes during multistep sealed bidding. Mistakes may be corrected or bids may be withdrawn during:

- (a) Before unpriced technical offers are evaluated;
- (b) After any discussions have commenced under subsection (5) of this section;
- (c) If responding to any amendment of the solicitation; or
- (d) In accordance with 200 KAR 5:306 and FAP 111-35-00.

Section 5. Procedure for Phase Two of Multistep Sealed Bidding. (1) Upon the completion of the multistep bidding process, no public notice shall be required for Phase Two. The procurement officer shall either:

- (a) Open price bids submitted in from bidders whose unpriced technical offers were found to be acceptable; if the offers have remained unchanged and the solicitation has not been amended;
- (b) Invite each bidder whose technical offer was determined to be acceptable to submit a price bid; or
- (c) Conduct a reverse auction.

(2) If in the best interest of the commonwealth, the reverse auction shall be an open and interactive process where pricing is submitted, made public immediately, and bidders are given opportunity to submit revised, lower bids, until the bidding process is closed.

(3) The solicitation of price bids for a reverse auction shall establish a date and time for the beginning and close of the reverse auction. The closing date and time may be a fixed point in time or may remain dependent on a variable specified in the solicitation.

(4)(a) Following receipt of the first bid after the beginning of the reverse auction, the lowest bid price shall be posted electronically, and updated as other bidders submit bids.

(b) At any time before the closing date and time, a bidder may submit a lower bid.

(5) Mistakes during reverse auctions.

Withdrawal. If a mistake in a bid is attributable to an error in judgment, the bid may not be withdrawn. If a mistake in a bid is inadvertent, withdrawal or correction may be permitted at the discretion of the procurement officer and to the extent it is not contrary to the interest of the purchasing agency or the fair treatment of other bidders. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn due to an inadvertent mistake after the closing date and time, the procurement officer shall determine in writing whether to:

1. Award the contract to the next lowest responsive vendor;
2. Cancel the solicitation; or
3. Reopen Phase Two bidding to all bidders whose technical offers were determined acceptable during:
 - (b) If Phase Two bidding is reopened, the procurement office shall notify all other bidders whose technical offers were determined acceptable during of the new date and time for the beginning and close of Phase Two bidding
 - (c) Confirmation of bid. If it appears from a review of the bid that a mistake has been made, the bidder shall be requested to confirm the bid. Situations in which confirmation shall be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in subsection (5)(a) of this section are met.

ROBERT B. RUDOLPH, Jr., Secretary

APPROVED BY AGENCY: July 14, 2004

FILED WITH LRC: July 14, 2004, at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 26, 2004, at 10 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by August 19, 2004, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Angela C. Robinson, Assistant General Counsel, Finance and Administration Cabinet, Room 374 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Marisa Neal

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation promulgates policies and procedures for commonwealth agencies to solicit commodities and services through a multistep competitive sealed bid process, which may include bidding during an online reverse auction. A reverse auction features a single buyer and multiple bidders, with the price falling from bid to bid. The reverse auction ends when no bidder is willing to offer a lower price within a designated period of time. A contract will be awarded to the bidder offering the commonwealth the best value.
 - (b) The necessity of this administrative regulation: This new administrative regulation sets out the requirements and procedures for state agencies to solicit commodities and services using a multistep bidding process that consists of a technical first phase composed of one or more steps during which bidders may submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The Finance and Administration Cabinet is required by KRS 45A.035 to promulgate administrative regulations governing procurement by state agencies.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all parties regulated by the Finance and Administration Cabinet of the policies and procedures for awarding contracts through a multistep competitive bidding process, and it permits the use of reverse auctions.

- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
- (a) How the amendment will change this existing administrative regulation: N/A
 - (b) The necessity of the amendment to this administrative regulation: N/A
 - (c) How the amendment conforms to the content of the authorizing statutes: N/A
 - (d) How the amendment will assist in the effective administration of the statutes: N/A
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all state agencies, and to all individuals, firms, organizations, and political subdivisions seeking contracts with the commonwealth.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation is intended to result in savings for state agencies when goods or services are procured through this multistep bidding process. When used by other governmental entities, reverse auctions have resulted in savings of fifteen to twenty percent of historic costs. Vendors will be required to bid online at an Internet site if a reverse auction is determined to be in the best interest of the commonwealth.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: 0
 - (b) On a continuing basis: 0
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
- (9) TIERING: Is tiering applied? Tiering is not applied. The characteristics of the commodity or service sought by a state agency will determine if the solicitation will be conducted using a multistep competitive bidding process.

FAP 111-08-00

COMPETITIVE BIDDING EXCEPTIONS: SPECIFIED BY LAW OR REGULATION

The following purchases are exempt by law from competitive bidding and may be purchased without prior approval from the Finance and Administration Cabinet, Division of Material and Procurement Services:

1. **Contractual services where no competition exists**, such as electrical energy, telephone service, and other public utility services. KRS 45A.095(1)(a); 200 KAR 5:309(1)
2. **Works of art for museum and public display**. KRS 45A.050(2)(a)
3. **Services of a visiting speaker, professor, expert witness, or performing artist**. KRS 45A.095(1)(f)
4. **Rates fixed by law or ordinance**. KRS 45A.095(1)(b)
5. **Commercial items purchased for resale to the general public through a resale outlet maintained by a state agency**. The items shall:
 - a. be purchased only from a wholesaler, manufacturer, or producer; and
 - b. not require modification or alteration before sale. KRS 45A.095(1)(d); 200 KAR 5:309(6)
6. **Subscriptions for the purchase of periodicals in either paper or electronic format**. A subscription may include a professional journal, newspaper, or other required publication. KRS 45A.050(2)(b); 200 KAR 5:309(5)
7. **Copyrighted material in either paper or electronic format for which only one source of supply is available**. Items commonly covered under this section include:
 - a. Library books. KRS 45A.095(1)(c)
 - b. Published books, maps, periodicals, and technical pamphlets. KRS 45A.050(2)(b)
 - c. Department of Education, Free Text Book Program.
8. **Cooperative purchases** made between state agencies, political subdivisions, state universities, agencies of other states, or agencies of the federal government. KRS 45A.300; KRS 45A.660; 200 KAR 5:309(9)

FAP 111-09-00

COMPETITIVE BIDDING EXCEPTIONS: STANDING DETERMINATION OF NOT PRACTICABLE OR FEASIBLE

1. The Division of Material and Procurement Services has determined that the following specific items are not practicable or feasible for competitive bidding. Only the specific goods or services listed are exempt from competitive bidding. Except when noted below, an agency shall not exceed its small purchase authority without the prior approval of the Division of Material and Procurement Services.

Fresh produce, fresh seafood and fresh eggs. KRS 45A.035(2)(d); 200 KAR 5:309(12)

2. **Transcripts.** Purchase of court reporter services to furnish originals and copies of transcriptions of court proceedings, depositions, hearings and other legal proceedings, or public stenographer for public forums and meetings if minutes or verbatim records are required.
3. **Advertisements, public media, public displays, billboards, signage, and booths.** Dissemination of information and the purchase or rental of promotional related items for official agency use.
4. **Insurance and bonds under \$10,000.** The purchase of insurance and bonds of \$1,000 or more requires prior approval by the Department of Insurance, the Division of Risk Management, and the Division of Material and Procurement Services. A Master Agreement or contract shall be created by the agency in the state's procurement system to document the selection and forwarded through the Department of Insurance, the Division of Risk Management, and the Division of Material and Procurement Services for electronic approval prior to a purchase of insurance or bonds. (KRS 45A.022 and KRS 42.0245)
5. **Equipment repair service and parts.** If the cost exceeds its small purchase authority, an agency shall submit multiple written quotes for the repair and explain why the repair cost is reasonable. If repairs will be made by agency personnel, repair parts may be obtained up to a replacement total of the agency's small purchase authority. If the repair cost represents a substantial percentage of equipment market value, an agency shall justify incurring repair expense versus the purchase of new or used equipment.
6. **Short-term equipment rental.** Lease of non-proprietary equipment for no more than six (6) months.
7. **Airfare, discount travel tickets.** An agency may purchase discount airfare or travel tickets for authorized employee travel requirements. All provisions of state travel regulations are applicable. (200 KAR 2:006)
8. **Supplies and equipment for laboratory or experimental studies.** Food, clothing, equipment, supplies or other materials to be used in laboratory and experimental studies. An electronic statement setting forth the need in relation to the studies, and justifying the procurement of such supplies or equipment on a sole source basis is required. (200 KAR 5:309(4))
9. **Vehicle motor fuels.** Vehicle motor fuels shall be purchased for use in state-owned vehicles and machinery only by credit cards provided and issued by the vendor awarded the current applicable Master Agreement. The state procurement card may be used for out-of-state motor pool vehicle fuel purchases, in accordance with FAP 111-58-00.

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10. **Deaf Interpreters.** Purchase of the services of deaf interpreters for public meetings, training sessions, or as needed to meet the requirements of the Americans with Disabilities Act.

FAP 111-10-00

COMPETITIVE BIDDING EXCEPTIONS: SOLE SOURCE

A procurement shall be exempt from competitive bidding if there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, supplier, or market condition. The following items have been specifically determined to be exempt from bidding provided the using agency supports the purchase by written justification clearly substantiating the fact that the sole source item is the only item that will meet the needs of the agency. Prior approval of the electronically sent justification by the director of the Division of Material and Procurement Services is required for all purchases over \$5,000 or the agency's single quote small purchase authority, whichever is less, for the items listed below:

1. **Instructional materials, equipment, supplies, or services.** An electronic statement describing the need in relation to a particular program is required. Items commonly covered by this policy include classroom and training aids such as films, special books, maps, tests and testing services.
2. **Patented equipment.** An electronic statement describing the need in relation to a particular service or equipment that justifies the procurement on a noncompetitive basis is required.
3. **Proprietary equipment and supplies.** Items that must be compatible with existing equipment or systems and which are available from one source only. An electronic statement describing the need in relation to a particular existing system or piece of equipment that justifies the procurement on a noncompetitive basis is required. The Division of Material and Procurement Services shall make the final determination as to whether:
 - a. the equipment or supplies are proprietary; and
 - b. the amount exceeds the lesser of \$5,000 or the agency's designated single-quote small purchase limit.
4. **Equipment lease or rental, excluding passenger vehicles.**
5. **Proprietary service and maintenance agreements.** Preventative, scheduled, and unscheduled maintenance or service agreements with either manufacturer or authorized service agent. Justification shall identify provider as manufacturer or authorized service agent.
6. **Dues and organizational fees.** Fees payable to a professional society or national organization engaged in established activities related to the agency's authorized function in state government. Payment of an individual employee's dues to local organizations is not authorized under this policy.

7. **Computer software that is copyrighted and available from only one source.** Copyrighted software, if only that software will meet the need of the application. See FAP 111-15-00 for other approval requirements.
8. **Other commodities, equipment and services available from only one source.** All purchases in excess of agency small purchase authority shall receive prior approval of the director of the Division of Material and Procurement Services.

(KRS 45A.095 (1))
(200 KAR 5:309)

FAP 111-35-00

COMPETITIVE SEALED BIDDING

1. **Competitive Bid Requirement:** Competitive sealed bids shall be solicited in the state's procurement system. Competitive sealed bidding shall be required for all purchases, except purchases made in accordance with KRS 45A.100 or KRS 45A.085. Unless otherwise permitted by law, only the Division of Material and Procurement Services or an agency with delegated authority or limited special authority may issue a competitive Solicitation or Request for Proposal. Purchases of major items of equipment estimated to cost \$100,000 or more and equipment projects that constitute a computer or telecommunications system, as defined by 14 KAR 1:010, estimated to cost \$400,000 or more, shall receive prior approval of the Governor's Office of Policy and Management pursuant to KRS 45.750 - 45.810.
14. **Competition Among Vendors:** A Solicitation shall be distributed to the vendor community by posting it to the Commonwealth's procurement website.
15. **Bid Publication:** The Division of Material and Procurement Services or an authorized agency may advertise a Solicitation in a major newspaper of general circulation in the Commonwealth, to be designated by the Department for Administration. The advertisement shall contain not less than the following information:
 - a. The Solicitation or proposal number.
 - b. The name of the using agency.
 - c. A general description of items or services to be purchased.
 - d. The date, time, and place at which Solicitation responses shall be opened.
 - e. An address or phone number from which the Solicitation or proposal may be requested.
 - f. The notice, if advertised, shall be published at least seven (7) days prior to the opening of bids.

16. **Best Value Procurement:** In accordance with KRS 45A.080, contracts issued in response to competitive sealed bids shall be awarded on the basis of best value criteria, as defined in KRS 45A.070(3). A Solicitation shall clearly identify the procurement as a best value award, shall contain the measurable best value criteria, and shall clearly explain how the criteria shall be used in the evaluation and award process. Best value shall be based on objective and quantifiable criteria that shall include price.
17. **Minimum Times to be allowed for Bid Response:** Bid openings shall be held no sooner than seven (7) days after Solicitations are uploaded electronically to the Commonwealth's procurement website.
18. **Submission of Bids:** A bidder shall submit one response to a Solicitation and shall not propose more than one model and brand for each item listed in the Solicitation, except for tiered pricing. Multiple or alternate bids offering more than one bid price in total or by line item shall be rejected unless specifically called for in the Solicitation.
 - a. An envelope used for the hard copy submission of a bid shall bear the following information:
 - (i) The date and time of the bid opening.
 - (ii) The bid or quotation number.
 - b. A bid response submitted using the online bid response feature of the state's procurement system shall contain all required information for the Solicitation.
 - c. An online bid response that is incomplete or not marked as formal and authenticated by the vendor with an electronic signature shall be considered non-responsive and shall not be eligible for award.
 - d. A vendor who submits an online bid response may submit an exact hard copy of the response as backup, in accordance with FAP 110-10-00(5)(b).
7. **Use of Facsimile (FAX) Equipment:** A faxed response to a Solicitation for competitive sealed bids shall not be accepted.
8. **Bid Changes or Withdrawals:** A vendor may withdraw or change a bid if a request is made before the time set for opening bids. Withdrawal of a bid after opening shall be permitted only if clear and convincing evidence indicates that a bidder has made a bona fide error in the preparation of a bid and the error will result in substantial loss to the bidder. Proof shall be submitted to substantiate error and loss to the reasonable satisfaction of the Division of Material and Procurement Services. The withdrawal of any bid under this paragraph shall be completed on a method of award basis as set forth by the Solicitation, for example line item, group, and total Purchase Request.

9. **Receipt of Bids:**

a. Online bid responses shall be assigned a date and time stamp from the state's procurement system at the time of final approval and submission by the vendor. The state's procurement system will not allow submission of online responses after the published date and time for bid closing. Online bid responses shall be secured electronically and shall not be viewable by the Commonwealth until the published date and time for bid closing.

b. All competitive bids, in hard copy, shall be time and date stamped by the Division of Material and Procurement Services or authorized agency upon receipt. All bids shall be filed by Solicitation number in a secure place to protect the integrity of the bid process. No information shall be disclosed as to the number of bids received or the identity of the bidders.

10. **Opening of Bids:** At the time designated for bid opening, online and hardcopy bids shall be opened and may be read or otherwise made available to the public. No late online bid responses shall be received or considered. A hardcopy bid received after the time specified in the Solicitation shall not be considered, unless no other bids are received. For morning bid opening, no late bid shall be considered unless it is postmarked or logged into the courier tracking system on or before the day before the bid opening. For afternoon bid opening, no late bid shall be considered unless it is postmarked or logged into the courier tracking system on or before 12 noon of the day of the bid opening.

11. **Bid Evaluation:** State agencies shall award each competitively solicited contract from a bid evaluation in the state's procurement system.

(KRS 45A.080)
(200 KAR 5:306)

FAP 111-37-00

CONTRACT TYPES

1. **Award/Contract:** An Award/Contract is established to purchase a specific quantity or amount at a specific price.
 - a. Partial payment is not permitted on an Award/Contract unless authorized by the Finance and Administration Cabinet's Division of Material and Procurement Services or other issuing agency, on the document. A Receiving Report indicating partial or final delivery shall be used to authorize payment for commodities on a purchase order. Payment for services may be made without a Receiving Report. All payments against a contract shall be made in the state's procurement system, using a Receiving Report or Invoice that references the contract.
 - b. If a delivery time is specified and the goods or services are not delivered on time, the agency shall contact the vendor and, if the vendor fails to resolve the problem, the agency shall file an official Vendor Tracking document with the Division of Material and Procurement Services.
 - c. When delivery is made, the agency shall inspect the product for compliance with contract specifications, completeness, and condition, explaining any exposed damage on the bill of lading or waybill before accepting delivery. The agency shall notify the vendor and the delivering carrier of any concealed damages, within seven (7) days after delivery, and note any damage or discrepancies in the Receiving Report.

2. **Purchase Order:** This type of contract is established by a state agency to purchase a specific quantity or amount at a specific price from another state agency.
3. **Catalog Master Agreement:** A Catalog Master Agreement shall establish a price agreement, for use by two or more state agencies, with a vendor for supplying specific goods and services at specific unit prices during a specified time period. An "All State Agency" Catalog Master Agreement may be used by any state agency. A Catalog Master Agreement may contain an option to renew for an additional time period.
 - a. A state agency shall buy from a Catalog Master Agreement unless exempted in the contract terms by the Division of Material and Procurement Services or the issuing agency, or as stated in subsection (c) and FAP 111-55-00.
 - b. A Catalog Master Agreement may be issued by the Division of Material and Procurement Services if the annual estimated expenditure exceeds \$20,000. In this instance, the Division of Material and Procurement Services may issue an "All State Agency" Catalog Master Agreement.
 - c. Items covered by an "All State Agency" Catalog Master Agreement may be purchased locally, not from the Catalog Master Agreement, if the aggregate dollar amount of the total requirement is less than \$1,000 or the amount stipulated in the Catalog Master Agreement.
 - d. Procurement requirements shall not be parceled or split over a period of time in order to subvert the intent of this policy.
 - e. A Catalog Master Agreement shall be issued by the Division of Material and Procurement Services or the Transportation Cabinet's Division of Purchases. An agency shall not add additional items to a Catalog Delivery Order or Invoice that are not listed on a Catalog Master Agreement.

Master Agreement: A Master Agreement shall establish a price agreement between an individual agency and a vendor for supplying specific goods and services at specific unit prices during a specified time period. A Master Agreement may contain an option to renew for an additional time period.

- a. Partial payments may be made against a Master Agreement. An agency may initiate payment against a Master Agreement by using an Invoice that references the document in the state's procurement system.
- b. A Master Agreement in which the annual estimated expenditure exceeds \$20,000 shall be issued only under the authority of the Division of Material and Procurement Services, with the exception of a Personal Service Contract, Memorandum of Agreement, or grant period.

(KRS 45A.135)

FAP 111-45-00

PAYMENT DOCUMENTS

1. **GENERAL:** Contracts, including Award/Contracts, Purchase Orders for internal vendors, Personal Service Contracts, Memoranda of Understanding, Memoranda of Agreement, Master Agreements (MA), and Catalog Master Agreements (CMA) are special purpose documents used for authorizing purchases and payments for commodities and services procured by the Commonwealth.
2. An Award/Contract, MA, or CMA may be established by:
 - a. Competitive Sealed Bid (KRS 45A.080, FAP 111-35-00); or
 - b. Competitive Negotiation (KRS 45A.085, FAP 111-57-00); or
 - c. Noncompetitive Negotiation (KRS 45A.095, FAP 111-08-00, FAP 111-09-00, FAP 111-10-00, FAP 111-39-00); or
 - d. Special Authority (FAP 111-08-00, FAP 111-09-00, FAP 111-10-00); or
 - f. Small Purchase (KRS 45A.100, FAP 111-55-00).
3. An Award/Contract, MA, or CMA shall not be required for the following items:
 1. Transactions that can be made by Journal Voucher;
 2. Items that can be purchased or paid by Imprest Cash or Procurement Card under the agency's small purchase authority;
 3. Transactions that can be handled by inter-account.
4. A vendor invoice may be required for payments against an Award/Contract, MA, or CMA, if specified in the purchasing document. The original vendor invoice, if required, shall be retained in the agency for the period of time required by the appropriate document retention schedule. The invoice shall be on the official invoice form of the vendor.
5. An agency shall ensure that adequate funds are available for immediate payment before placing an order.
6. An agency shall select the appropriate payment method for all goods and services. For payments against a document that has been entered into, and encumbered funds within, the state's procurement and accounting systems, an agency shall process an electronic invoice that will liquidate the encumbrance when payment is authorized. If exercising small purchase authority, or if specifically authorized in the terms of the contract, an agency may make payments using a Procurement Card. All payments referencing contracts and awards established in the state's procurement system shall be made in the state's procurement system and reference the appropriate award.

7. If an agency pays a vendor more than thirty (30) working days after receipt of both satisfactory goods or services and satisfactory invoice, the agency shall determine under the provision of KRS 45.451 – KRS 45.458 whether the Commonwealth owes the vendor a penalty. The agency shall pay the penalty in accordance with FAP 120-05-00.

FAP 111-55-00

SMALL PURCHASE PROCEDURE FOR GOODS AND NON-PROFESSIONAL SERVICES

1. This procedure shall not be used for printing or professional service contracts. The small purchase procedure may be used for other purchases by an agency if the cost is estimated to be no more than the amounts listed in Table I.
2. Procurement requirements shall not be parceled, split, divided, or scheduled over a period of time in order to subvert the intent of this procedure. An agency shall make its purchases based on sound business planning with the goals of economy and efficiency in mind and shall consider storage capacity and product shelf life when purchasing commodities. If an agency's projected needs for like items will cost more than what it can purchase under its small purchase limit, the agency shall submit a Purchase Request to the Finance and Administration Cabinet, Division of Material and Procurement Services for commodities and services. Quotes may be obtained by telephone, fax, or by posting a Solicitation to the Commonwealth's procurement website. Refer to FAP 220-10-00 for the small purchase procedure for construction services.

Table I, Quotations Required for Commodity and Service Purchases

Agency Small Purchase Limit	One Quote Request for Purchases Equal to or Less Than	At Least Three Quotes Requested or Posted to the Commonwealth's Procurement Website if Between
\$1,000	\$1,000	N/A
\$3,000	\$1,000	\$1,000 and \$3,000
\$5,000	\$3,000	\$3,000 and \$5,000
Higher than \$5,000	\$5,000	Over \$5,000

3. An agency shall maintain a small purchase order file containing the price quotations requested, quotations received, a tabulation of prices offered, and comments by the agency handling the small purchase concerning the basis for placing the order. The agency shall retain these records for audit and review purposes.

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4. Agencies of the Finance and Administration Cabinet shall request quotations as detailed in Table II for commodity and service purchases of less than \$20,000.

Table II, Price Quotes Required for Finance and Administration Cabinet Agencies,

Number of Quote Requests Required	For All Purchases, Other than Construction, Costing
One	Less Than \$5000
At Least Three (3) or *Posted the Commonwealth's Procurement Website	Between \$5000 and \$20,000

*The posting of a request for quotes on the Commonwealth's procurement website shall satisfy the above requirements.

5. **Master Agreement (MA) and Catalog Master Agreement (CMA) Items.** Items available on MA or CMA may be purchased under small purchase authority from another vendor if the aggregate dollar amount of the total requirement is less than either \$1,000 or the higher amount required for a minimum order in a specific MA or CMA.
6. **Solicitation Procedure for Non-professional Services for Agencies with Small Purchase Limits Less than \$20,000.** If a non-professional service totals between an agency's small purchase limit and \$20,000, an agency may solicit services using the state's procurement system and posting the requirement to the Commonwealth's procurement website for solicitations. A Master Agreement or Award/Contract shall be created by the agency to document the selection and forwarded to the director of the Division of Material and Procurement Services for electronic approval prior to a purchase of services.
7. **Procedure For Agencies Seeking Delegated Higher Small Purchase Limits**
The secretary of the Finance and Administration Cabinet may grant to a state agency, with a justifiable need, the limited delegated authority to purchase specific items whose costs frequently exceed the agency's small purchase limit provided in KRS 45A.100(1), in accordance with 200 KAR 5:302.
8. The Division of Administrative Policy and Audit may perform periodic procurement audits of the various agencies for compliance with the provisions of KRS 45A and the Finance and Administration Cabinet Manual of Policies and Procedures, and, if an agency demonstrates deficiencies in procurement expertise or practice, shall recommend that the secretary revoke or amend any delegations granted under this policy.

(KRS-45A.100)
(200KAR 5:302)

FAP 111-57-00

COMPETITIVE NEGOTIATIONS

1. A contract may be awarded by competitive negotiation if, under regulations issued by the secretary of the Finance and Administration Cabinet, the purchasing officer determines in writing that the use of competitive sealed bidding is not practical.
2. The Finance and Administration Cabinet, Division of Material and Procurement Services shall use a Request for Proposal (RFP) for solicitations by competitive negotiation. The RFP shall include comprehensive performance requirements, technical provisions, separate cost provisions, and specific evaluation criteria for evaluating offers. Contract awards shall be based upon cost and technical evaluation criteria set forth in the RFP.
3.
 - a. An agency needing to purchase services or commodities by RFP shall forward a Purchase Request and a copy of the supporting documentation electronically to the Division of Material and Procurement Services. The supporting documentation shall include, at a minimum, information on specifications, performance requirements, and evaluation criteria. An agency shall contact the Division of Material and Procurement Services to receive a copy of the standard format as soon as possible after identifying the requirement for an RFP.
 - b. A purchase involving computer-related services or equipment shall receive prior approval by the Governor's Office for Technology in accordance with FAP 111-15-00.
 - c. The Division of Material and Procurement Services shall review the agency Purchase Request and supporting materials and return the draft document to the requesting agency with comments if clarifications, revisions or additions are needed.
 - d. The requesting agency shall make any necessary changes or modifications to the draft document and prepare the draft RFP. The requesting agency and the Division of Material and Procurement Services shall review the entire proposal and make any necessary final changes.
 - e. The Division of Material and Procurement Services shall put the material in final RFP format and distribute the RFP to prospective offerors. Posting the RFP to the Commonwealth's procurement website shall satisfy the distribution requirement. State agencies shall suggest possible offerors or vendors to be solicited.
 - e. The requesting agency shall nominate a technical evaluation committee, and if applicable, a cost evaluation committee for the project and submit the nomination to the Division of Material and Procurement Services for confirmation. The committees shall be comprised of members who are state employees, unless approval for appointment of non-state employees is granted by the secretary of the Finance and Administration Cabinet.
 - f. Vendors shall submit all responses to RFPs to the Division of Material and Procurement Services. Following receipt of responses to the RFP, the Division of Material and Procurement Services shall determine which offers have met the general conditions of the RFP and are acceptable for award.

The technical proposals for those offers determined acceptable for award shall be transmitted to the technical evaluation committee for evaluation. If applicable, the cost proposals determined acceptable for award shall be transmitted to the cost evaluation committee. The evaluation committees shall review and evaluate all offers determined to be acceptable for award in accordance with the criteria set forth in the RFP. Members of the evaluation committees shall forward their signed evaluations and comments to the Division of Material and Procurement Services.

- g. Upon receipt and review of the evaluations and scores, the Division of Material and Procurement Services shall determine if "Best and Final Offers" are appropriate. If used, the call for "Best and Final Offers" shall be sent only to those firms determined acceptable for award. After best and final responses are received, the Division of Material and Procurement Services shall award the contract in accordance with the award methodology stated in the RFP.
4. An agency having a project that may be best handled by competitive negotiation shall contact the Division of Material and Procurement Services for further coordination and guidance on procedures.

(KRS 45A.085)
(200 KAR 5:307)

FAP 111-58-00

PROCUREMENT CARD PROGRAM

A procurement card may be used by a state employee for both the purchasing of goods and services, and the payment for those purchases. The use of a procurement card by employees of the Commonwealth is authorized as another payment option to the One Price Quotation procedure of FAP 111-55-00 for purchases listed in section 5 of this policy. Use of this card shall be in accordance with the Commonwealth's procurement laws, regulations, policies and procedures and the Executive Branch Code of Ethics. A purchase transaction processed against a procurement card shall comply with the requirements of the Finance and Administration Cabinet Manual of Policies and Procedures, except as modified herein. Each agency shall ensure that its employees adhere to this policy. A violation may result in action at the discretion of the Finance and Administration Cabinet in accordance with Kentucky Revised Statutes.

1. A participating agency shall sign and accept the terms and conditions of the Commonwealth of Kentucky Procurement Card Site Agreement. A procurement card may be issued to a Commonwealth of Kentucky employee, an organizational unit, or Kentucky National Guard member as authorized in section 3 of this policy.
2. Each frequent user should be issued an individual card. An employee issued an individual card shall sign and accept the terms and conditions of the Commonwealth of Kentucky Procurement Card Cardholder Agreement provided by the Finance and Administration Cabinet. An individual card embossed with an employee's name shall be used exclusively by that employee and shall not be shared or loaned to other employees.

3. A procurement card may be issued to an organizational unit that is logistically separate from the associated cabinet or agency. Written justification shall be sent to and prior approval shall be obtained from the Office of the Controller for each card. Justification shall include an explanation of why the card is needed, expected types of transactions, and how the organizational unit functions within a cabinet or agency. In addition to the other sections of this policy, controls and restrictions on procurement cards issued to organizational units are as follows:
- a. Procurement cards shall not be shared between organizational units of a cabinet or agency.
 - b. Not more than one organizational unit procurement card shall be issued to one physical location.
 - c. The agency head or the agency head's designee shall sign the Commonwealth of Kentucky Procurement Card Cardholder Agreement for the organizational unit card provided by the Finance and Administration Cabinet.
 - d. The procurement card shall not be used for purchases from the Internet.
 - e. The procurement card shall be stored in a secured area with access limited.
 - f. The agency head shall assign one employee in the organizational unit to serve as the procurement card custodian. The custodian shall be responsible for the organizational unit's procurement card, and shall have discretion to determine if an employee may use the organizational unit's card.
 - g. The procurement card custodian shall maintain a detailed card use log that includes the cardholder's name, cardholder's signature, date and time logged out, date and time logged in, vendor, and items to be purchased.
 - h. Each purchase shall be pre-approved before the card may be logged out.
 - i. The employee using the organizational unit's card and the procurement card custodian shall ensure that all cardholder duties are performed for each transaction.
 - j. If the location of the card is unknown for any period of time, the employee who signed out the card shall notify the issuing bank, the organizational unit's manager, the organizational unit's procurement card custodian, and the agency's procurement card program administrator.
 - k. The card number shall not be written down, retained or used at the discretion of an employee.
 - l. Each employee shall receive a copy of this policy and other written material given to other cardholders in the cabinet or agency before using the organizational unit's procurement card

4. A card may be issued to a Kentucky National Guard member, if the Governor orders the Kentucky National Guard into active duty pursuant to KRS 38.030. Each participating National Guard member shall sign and accept the terms and conditions of the Commonwealth of Kentucky Procurement Card Cardholder Agreement. The procurement card program administrator of the Department of Military Affairs shall retain the card in a central location when not being used by the Kentucky National Guard member on active duty. The card shall be cancelled at the conclusion of the Guard member's active duty.
5. The procurement card may be used for the following transactions, if within the card limit:
 - a. Any purchase not prohibited in section 6 of this policy, and not otherwise allowed by subsections b-h of this section, that is no greater than the limit established for the card or the agency's small purchase, single quote limit, whichever is less.
 - b. Any purchase from a Master Agreement or Catalog Master Agreement. If the contract purchase is greater than the single purchase limit established for the card, the order shall be processed electronically on the state's procurement system.
 - c. Any utility payment, regardless of the dollar amount.
 - d. Registration fees for employee training and conferences.
 - e. Out of state purchases of fuel for motor pool vehicles only if the state fleet management fuel card is not accepted. The cardholder shall attach an approved authorization for travel outside of Kentucky and a statement that the fleet management card was not accepted by the vendor to the vendor's invoice and submit with the transaction report.
 - f. Photocopying costs if the employee's agency is located outside of Franklin County.
 - g. Purchases from Kentucky Correctional Industries.
 - h. Purchases from the Department of Education's online bookstore.
6. The procurement card shall not be used for the following transactions:
 - a. Travel and entertainment related expenses and advances.
 - b. Alcoholic beverages.
 - c. Automotive gasoline, except as stated in subsection 5(e) above
 - d. Cash advances.
 - e. Salaries and wages.
 - f. Legal services.
 - g. Lease purchases.

- h. Insurance premiums and bonds.
 - i. Services covered by Personal Service Contract statutes and regulations.
 - j. Printing services.
 - k. Purchase from another Commonwealth agency, except if expressly permitted by the Finance and Administration Cabinet.
 - l. Used equipment.
 - m. Purchase from an auction.
7. An agency shall ensure that, for every card issued, the Cardholder Controls Merchant Category Code Group on the Purchasing Card Cardholder Account form lists the code for liquor store as an excluded merchant category.
 8. Purchases shall be for the use and benefit of the Commonwealth. No personal purchases shall be allowed.
 9. A cardholder shall report a lost or stolen card immediately to the issuing bank, the cardholder's supervisor, and the agency's procurement card program administrator. A new card shall be issued if approved by the cardholder's supervisor. A card that has been reported lost or stolen that is subsequently found shall be given to the agency procurement card program administrator.
 10. A cardholder shall, as an agent of the Commonwealth, ensure the proper use of the Commonwealth's tax exempt registration number.
 11. A cardholder shall properly inspect all shipments. In case of returns, a cardholder shall coordinate the return directly with the supplier and contact the agency program administrator with any unresolved issues. Returns for cash are not permitted.
 12. An agency shall maintain the documentation for all transactions in accordance with the General Schedule for State Agencies, FAP 111-28-00 and FAP 120-21-00. Receipts for source documentation shall include the vendor's name, date of purchase, description of each item purchased, price of each item purchased, total cost, cardholder name or card number, and signature of cardholder or designee.
 13. An agency shall ensure that the proper classification structure is charged for the purchase.
 14. An agency shall attempt to resolve a dispute with the vendor. If a resolution is not achieved, the agency shall report the dispute to the issuing bank.

15. Each head of an agency that is issued a procurement card shall select an agency procurement card program administrator who shall administer the program. To ensure proper separation of duties, the agency procurement card program administrator shall not be a cardholder. The Finance and Administration Cabinet shall train the agency procurement card program administrator on the implementation and operation of the procurement card program. The agency program procurement card administrator shall manage the overall agency operation and cardholder training, with duties to include but not be limited to the following:
 - a. Determination of the agency's employees and organizational units who may receive procurement cards;
 - b. Approval and execution of each Cardholder Agreement;
 - c. Development and provision of mandatory training for each cardholder and organizational unit card custodian prior to issuance of the procurement card. Employees who may use an organizational unit's card shall be trained prior to use of the card. The cardholder training shall cover duties, responsibilities and procurement policies. Authorized signers and agency procurement card program administrators shall attend training as directed by the Finance and Administration Cabinet.
 - d. Assignment of a default accounting structure for each card;
 - e. Coordination of the disputed charges process;
 - f. Distribution of activity reports;
 - g. Coordination of the payment process to ensure that timely remittance is made;
 - h. Establishment of a procedure to provide reasonable assurances that cardholders receive no monetary benefit from use of the card; and
 - i. Assurance that purchased items required to be included in the fixed asset inventory are reported to the agency property officer or fiscal officer.
16. An agency shall receive and distribute information on all purchases to all cardholders and any associated approving personnel. The cardholder or organizational unit's card custodian shall reconcile the procurement card billing statement at the end of each billing cycle to all cashier receipts and invoices to ensure the accuracy of the statement. The cardholder shall address any questions regarding disputed charges to the vendor reported on the statement and attempt to reach a resolution. If a resolution cannot be reached with the vendor, the cardholder shall contact the procurement card program administrator.
17. An agency shall establish internal controls, including separation of duties, to ensure that applicable procurement and payment policies are followed. The agency's fiscal officer shall develop a written plan establishing such controls. This plan shall include the following procedures at a minimum:
 - a. Each cardholder and procurement card user shall be informed, in writing, of the specific goods and services that they may purchase with the procurement card, without prior supervisor approval.
 - b. Each cardholder and procurement card user shall request prior supervisor approval for any purchase not explicitly authorized in writing in accordance with subsection a. of this section.

- c. Each cardholder and organizational unit's card custodian shall submit to the agency card administrator, on at least a monthly basis, a valid receipt for each charge. The itemized receipt or email confirmation shall be issued by the merchant and identify the good or service purchased. Dues and subscriptions may be documented by an order form. The receipts for each procurement card cycle shall be submitted to the administrator within four (4) business days after the end of the cycle.
- d. Each procurement card cycle for which the cardholder or organizational unit's card custodian has made purchases, the cardholder or organizational unit's card custodian and his or her immediate supervisor shall sign a statement that the purchases were for the benefit of the Commonwealth and not for personal use. Each cardholder or organizational unit's card custodian shall identify the purpose of the transaction, if it is not readily understandable based on the goods procured. This statement shall be submitted to the administrator within four (4) business days after the end of the cycle.
- e. Purchases of food or beverage shall be accompanied by documentation explaining the reason for the purchase, justification of need, and proof that they benefited the Commonwealth. Examples of this documentation include, but are not limited to, prior approval memo, meeting minutes and board calendars.
- f. Each cardholder and organizational unit's card custodian shall receive a monthly statement from the financial institution that holds the procurement card contract. Each cardholder and organizational unit's card custodian shall reconcile the activity report against the monthly statement to ensure the accuracy of billing by the financial institution. The cardholder and organizational unit's card custodian shall verify that each listed charge is valid and matches the transaction documentation, identify any disputed charges, and reconcile credits in the same manner.
- g. Each agency shall take appropriate disciplinary actions whenever any violation of this policy is identified. For the first substantiated violation, the agency shall, at a minimum, issue an appropriate reprimand, including specific notice that a second violation will result in revocation of card privileges and further potential disciplinary action up to and including dismissal. Any substantiated second violation within two (2) years of the first violation shall automatically result in revocation of card privileges, in addition to further disciplinary action as warranted. Any violation that involves the use of the card for personal purposes shall require the agency to collect reimbursement of the charge, along with revocation of card privileges and disciplinary action as either or both may be deemed appropriate under the circumstances.
- h. During each cycle, each agency procurement card administrator shall report to his or her secretary or agency head and to the Office of the Controller any noncompliance by any card cardholder or organizational unit's card custodian or card user, or shall attest that all purchases are in compliance with this policy. Transaction validation shall include, but is not limited to, identifying transaction amounts that exceed either monthly or single transaction limits, split transactions, transactions with unidentified or restricted vendors, use of multiple cards by employees not so authorized, transactions during employee vacations and weekends, and declined transactions.

- i. Each agency shall establish a process to examine and monitor compliance with this policy by cardholders, organizational unit's card custodians, card users, authorized signers and agency procurement card administrators. The results of reviews shall be documented and retained.
18. An agency head shall either serve as, or appoint an employee of the agency to serve as, the authorized signer with responsibilities including, but not limited to giving instruction to the authorizing bank, and signing each Procurement Card Cardholder Agreement on behalf of the agency as provided by the Finance and Administration Cabinet.
19. An agency shall process payments in the state's procurement system in sufficient time to pay the issuing bank. If authorization is not received in sufficient time, the agency shall be responsible for payment of interest charges.
20. An agency shall ensure that all 1099 reportable purchases are coded to the proper object codes.
21. The Finance and Administration Cabinet shall maintain the overall responsibility for the procurement card program, and shall take the following actions to ensure that each participating agency is in compliance with this policy:
 - a. The Finance and Administration Cabinet shall make available a report for each cardholder to identify his or her charges, to attach the valid receipts, and to confirm through both cardholder and supervisory signature that the goods and services were for the use of the Commonwealth.
 - b. The Finance and Administration Cabinet may conduct an independent audit to ensure compliance with this policy by each agency.
 - c. Monthly, the Finance and Administration Cabinet shall review reports and documentation submitted by agencies. Based on card usage, the cabinet may determine that an agency or cardholder shall be subject to additional review.
 - d. The Office of the Controller annually shall review the number of procurement cards issued based on the organizational structure of the agency, ensure that a cardholder's use of the procurement card warrants the continued issuance of the card, and spending limits for cards.

Questions for Agency Procurement Officers:

1. What authority has the agency been granted in creating Catalog Master Agreement and/or Master Agreement contracts to be used by the agency? What specifically defines this authority? Are there limits to this authority?
2. Who in the agency is responsible for the establishment of CMA/MA contracts? What are their credentials for this position? Are these required by your agency?
3. Who in the agency is responsible for the oversight of the actual purchases made through established CMA/MA contracts? What are their credentials?
4. Does your agency have any written policies or procedures that are related to the establishment or use of CMA/MA contracts? If so, please provide a copy.
5. What type of training does your agency provide for procurement officers concerning the establishment and use of CMA/MA contracts?
6. What type of training is provided to your agency by Finance concerning the establishment and use of CMA/MA contracts? How often is this training provided? How many from your agency have attended this training in the last 12 months?
7. What type of assistance does Finance provide to your agency in the establishment and use of CMA/MA contracts?
8. How does Finance make your agency aware of Catalog Master Agreements that are available for your agency to use?
9. Does your agency use any particular procedure for determining the existence of a CMA/MA contract prior to making a purchase? If these procedures are written please provide a copy.
10. Does Finance conduct any monitoring or oversight activities to ensure the proper usage of CMA/MA contracts by your agency?
11. Does your agency conduct any internal reviews of its procurement activities such as audits or desk reviews? If so, who conducts them?
12. Please explain your agency's policy on the use of procurement cards (Procard) with regards to CMA/MA contracts.
13. Does your agency conduct any research of its procurement activities to determine if certain products or services should be added to an existing CMA/MA contract or made part of a new one?
14. What does your agency do to locate new products and vendors?
15. How many CMA/MA contracts established by your agency concern the use of non-professional services? Does your agency ever review these types of contracts for possible consolidation within your agency or with another agency to get better prices?
16. Is your agency capable of purchasing commodities and non-professional services outside of CMA/MA contracts if it is shown to provide significant cost savings?
17. In your opinion, do the prices found in CMA/MA contracts established by Finance best reflect the prices found in the open market place or do the CMA/MA contracts provide some savings?



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ROBBIE RUDOLPH
SECRETARY

MEMORANDUM

TO: Marcia Morgan, Director
Division of Performance Audit
Auditor of Public Accounts

FROM: Robbie Rudolph, Secretary
Finance and Administration Cabinet

A handwritten signature in black ink that reads "Robbie".

DATE: December 15, 2004

SUBJECT: Response to Audit Report

We have reviewed your report of December 9, 2004, on the Audit of Master Agreements and Catalog Master Agreements and offer the following responses:

Finding: Kentucky's Procurement System Cannot Calculate the number of Items Purchased or the Amount Spent on a Particular Item.

Recommendation: Kentucky's procurement system should be altered to allow for the accumulation of detailed data related to invoiced and Procard purchases.

Response: The Finance and Administration Cabinet is analyzing the next generation of software that will be implemented to replace the MARS system. The target date for implementation is July 1, 2006. No modifications will be made to the existing system until a final decision has been made on the MARS upgrade. Since a new generation of software is anticipated to be implemented in July 2006, there will likely be no further modifications to the existing MARS system. Moreover, the proposed modifications are extremely expensive and are not funded in any budget requests from the Finance and Administration Cabinet, because they would not be practical to make to an existing system, when they could be done in a more cost-effective manner as part of a future upgrade.

Finding: There is no Formal Method for Performing a Strategic Analysis of State Government Expenditures.

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Response: The APA finding in this area states: “ Implementing spend analysis is considered challenging and it relies on an accurate, automated information system. [...] but due to the limitations with Kentucky’s procurement System noted in the previous finding, it is not possible for OMPS to collect expenditure data based on commodity or service categories.”

As noted in previous responses, such a recommendation is impossible to implement without an upgrade to the PD system. No upgrades will be performed until the Commonwealth converts to the next generation of MARS software on or after July 1, 2006.

Recommendation: OMPS should develop written guidelines for conducting a strategic analysis of established Master Agreements and Catalog Master Agreements and the associated expenditures. A strategic approach should include organizing the data into comprehensive commodity and non-professional service categories for the purpose of better leveraging the Commonwealth’s buying power.

Recommendation: OMPS should consider development an electronic marketplace for the purchase of the Commonwealth’s commodities in a manner that would utilize vendor subscription fees to pay for its development.

Response: The Commonwealth will continue to make every effort to leverage limited resources in the most effective manner practicable.

Finding: The Legal Authority for Establishing Contracts is not Captured Accurately.

Recommendation: OMPS should develop written procedures for recording the cited authority for Master Agreements and Catalog Master Agreements. These procedures should address the proper use of “Master Agreement,” ensure the default term “Solicitation Authority” is changed during the establishment of an agreement, and address how a staff member should document agreements that have more than one applicable cited authority.

Response: The major theme of this finding appears to be the use of the default setting of “Solicitation Authority” as the cited authority for MA and CMA documents. This is a broad category used to describe any agreement that has been entered pursuant to a competitive bid process. There is no statute, regulation or policy that requires the cited authority to be placed on the face of a contract document. The only real issue is the cited authority field is used to report on the number of contracts that have been issued via competitive bid vs. non-competitive means. The lack of a specific reference for the term “Solicitation Authority” in no way impedes the reporting capabilities of the system, nor does it affect the legality of the contract or the ability of executive branch agencies to use the contracts. There is no performance degradation, and this does not impede the ability of OMPS or other executive branch agencies to perform their mission in accordance with KRS Chapter 45A.

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Finding: Advanced Training is Needed for Kentucky's Procurement Officers.

"While the majority of OMPS staff attends training provided by this organization [KPPA], it does not advertise these classes to the rest of the purchasing officers in state government that may not be aware of its existence.

Response: KPPA is a statewide organization of all public procurement officials in the Commonwealth, including local governments and political subdivisions. Each agency in the Executive Branch is represented in the membership of KPPA, and those agencies do a commendable job of advertising KPPA events. The OMPS web site home page has a link to the KPPA web site, and the KPPA web site maintains a schedule of all training events.

Recommendation: OMPS should improve the training curriculum by offering more specific, detailed procurement training and developing a list of recommended outside procurement training that could be advertised either through the MARS Newsletter or the Finance and Administration Cabinet's website. The classes already offered should be evaluated to determine their sufficiency in addressing the needs of all procurement staff.

Response: OMPS works with all agencies of the executive branch on a daily basis to maintain and continually improve the quality of the procurement process. Unfortunately, given the current severe fiscal constraints which all agencies are experiencing, there are no additional resources available to devote to development of training classes without budgetary and personnel cap relief. We will continue to leverage the limited resources available to provide for the most effective use possible.

Recommendation: OMPS should establish more intensive and appropriate training requirements for all state agency procurement officers authorized to make purchases through Kentucky's procurement system and establish contracts for their agencies.

Response: OMPS works with all agencies of the executive branch on a daily basis to maintain and continually improve the quality of the procurement process. Unfortunately, given the severe fiscal constraints which all agencies are experiencing, there are no additional resources available to devote to development of training classes without budgetary and personnel cap relief. We will continue to leverage the limited resources available to provide for the most effective use possible.

Finding: Kentucky May Not Be Obtaining the Lowest Available Prices for Commodities and non-Professional Services.

Recommendation: OMPS should document the "actual" unit price separate from additional costs. This is necessary to validate that Kentucky is receiving the best price.

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Response: KRS Chapter 45A requires all bids to be awarded on the basis of “Best Value” procurement, and price is only one of the determining factors for selection and award of a contract. It is not practical or possible to ask vendors to provide separate pricing for warranty, delivery, service response time, or other best value criteria in every bid. Every competitive bid is posted publicly on the Commonwealth’s eProcurement website. Every vendor has the ability to view and respond to any and all solicitations, offering their prices in open competition with other vendors.

In reality, there is no such thing as the lowest absolute price on any item, because on any given day, any vendor can beat a competitor’s price on any item. The object of the Commonwealth is to establish realistic and competitive contracts that provide the best value to the Commonwealth over time. Contract prices are established maximum amounts. Vendors are always able and encouraged to offer lower prices than are in their contract. If an agency finds an identical item for a lower price at a local store, they can demand that the contract vendor lower their price to match the local competition.

OMPS appreciates the APA’s findings on this issue and will attempt to break out separate costs for Best Value criteria where practical. Beginning in November 2004, OMPS and COT personnel started discussions on and are coordinating efforts to identify ancillary costs for technology equipment in an effort to restructure cost and procurement models for future contracts. OMPS will also work to institute a process for checking market prices against a sampling of contract prices on a regular basis to help determine if pricing strategies are serving the best interests of the Commonwealth.

Additional Observation: OMPS Does Not Review State Universities’ Procurement Contracts. Even though state agencies cannot purchase commodities or non-professional services through a state university procurement contract, OMPS should use the university price information for state price comparisons.

Response: The report correctly states that executive branch agencies are not allowed to use contracts issued by universities, as the universities have no statutory authority to issue contracts on behalf of other agencies. Additionally, university contracts often receive educational discounts for goods and services that are not allowed or authorized for other government entities, thus limiting the effectiveness of price comparisons. An excellent example of such a contract is computer equipment and software, where educational institutions receive prices that are far below any other market.

The Finance and Administration Cabinet appreciates the APA time and effort in this matter.

Contributors To This Report

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Copies of this report or other previously issued reports can be obtained for a nominal fee by faxing the APA office at 502-573-0067. Alternatively, you may order by mail:

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browse web site: <http://www.auditor.ky.gov>

Services Offered By Our Office

The staff of the APA office performs a host of services for governmental entities across the state. Our primary concern is the protection of taxpayer funds and furtherance of good government by elected officials and their staffs. Our services include:

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General Questions

General questions should be directed to Jeff Derouen, at (502) 573-0050 or the address above.