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Applies To: Colleges and the System Office
Procedure Responsibility: KCTCS Purchasing

# Exceptions to Sealed Bidding

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## Section 4.9.1 - General

A. KCTCS business procedures require that competitive bids be solicited for purchases of $40,000 or more if the items or services are not covered by a price contract or other special purchase authority. Requests for exceptions must be justified in writing by the appropriate college business officer or end user of the business unit. KCTCS Purchasing must approve all requests for exceptions referenced in this section. Both the business officer and the end user are liable for contracts issued through this procedure if the decision is based on false or incomplete information. All such requests shall be fully substantiated.

B. Any request for exception must be documented with a thorough and equitable evaluation of alternatives. Special or unique features may be used as a consideration; however, price, quality and/or delivery terms may not be used as a basis for an exception justification. A memo requesting the approval of an exception must be submitted and be referenced in the comments of the requisition when requesting an exception to sealed bidding purchases. This memo will be made a part of the official file and will be available for inquiry and audit documentation purposes. Request for exception may not be used for the purpose of expediting a purchase which otherwise would not qualify as a single source.

C. KCTCS Purchasing shall review all requests for the determination of a purchase transaction to be an exception to sealed bidding. If the request is approved, KCTCS Purchasing will authorize each transaction to be processed in accordance with business procedures or offer an alternative with means of documentation.

**Section 4.9.2 - Exceptions to Sealed Bidding: Single Source**

Purchase transactions are exempt from competitive bidding when there is only one (1) 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 business unit supports the purchase by written justification clearly substantiating the fact that the item or items are available from only one source. Prior approval by KCTCS Purchasing is required for all purchases over $10,000 for the items listed below.

A. Instructional materials or services for which only one source of supply is available. A written statement describing the need in relation to a particular instructional program is required. Items commonly covered by this policy include: classroom and training aids such as films, special books, maps, tests and testing services.

B. Patented equipment for which a single source of supply is available. A written statement from the business unit to KCTCS Purchasing describing the need in relation to a particular service or equipment that justifies the procurement on a noncompetitive basis is required.

C. Proprietary equipment and supplies. Items that must be compatible with existing equipment or systems and which are available from one source only. A written 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. KCTCS Purchasing will make the final determination as to whether the equipment or supplies are proprietary when the amount exceeds $10,000.

D. Equipment lease or rental for which a single source of supply is available (excluding passenger vehicles).

E. Proprietary service and maintenance agreements. Preventative, scheduled, and unscheduled maintenance or service agreements with equipment manufacturer and/or authorized service agent. Written justification must identify the provider as manufacturer or authorized service agent.

F. Advertisements and public media. Dissemination of information, advertisements or promotional items (includes newspaper, periodical, highway, public transit, etc., advertising).

G. 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 higher education or government. Individual employee's dues to local organizations are not eligible under this policy.

H. Computer software that is copyrighted and available from only one source. Sole source copyrighted software for which only that software will meet the need of the application.

I. Other commodities, equipment and services that may be determined to be available from only one source. All purchases in excess of small purchase authority must receive prior approval of KCTCS Purchasing.

**Section 4.9.3 - Exceptions to Sealed Bidding: By specific law or regulation**

The following purchases are exempt by law from competitive bidding and may be purchased without prior approval from KCTCS Purchasing.

A. Contractual services where no competition exists; i.e., public utilities. KRS 45A.095(1)(a); 200 KAR 5:309(1)

B. Works of art for museum and public display. KRS 45A.050(2)(a).

C. Services of visiting speakers, professors, expert witnesses and performing artists. KRS 45A.095(1)(f). A Personal Service Contract may be required in accordance with KRS 45A.690-725.

D. Where rates are fixed by law or ordinance. KRS 45A.095(1)(b).

E. Commercial items purchased for resale to the general public through a resale outlet maintained by a state agency. Such items shall be purchased only from a wholesaler, manufacturer or producer and should not require modification or alteration of the item before sale. KRS 45A.095(1)(d); 200 KAR 5:309(6)

F. Subscriptions for the purchase of periodicals. Such items may include professional journals, newspapers, or other required publications. KRS 45A.050(2)(b); 200 KAR 5:309(5)

G. Copyrighted material for which only one source of supply is available. Items commonly covered under this section include: Library books KRS 45A.095(1)(c); published books, maps, periodicals, technical pamphlets KRS 45A.050(2)(b); and the Department of Education, Free Textbook Program.

H. Purchases made between state agencies, political subdivisions, state universities, agencies of other states or agencies of the Federal government do not require formal bidding. KCTCS may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any supplies, services, or construction with any other public unit or foreign purchasing activity. A personal service contract or memorandum of agreement may be required in certain cases. (KRS 45A.300; KRS 45.660; 200 KAR 5:309(9)

I. Purchase requirements that are exempt from competitive bidding by a specific statute or regulation. (The business unit must cite the specific statute or regulation on the payment document.)

**Section 4.9.4 - Exceptions to Sealed Bidding: Not Feasible/Practical**

Certain specific types of procurements are not practicable or feasible for competitive sealed bidding. Therefore, as prescribed in KRS 45A.080(1) and KRS 45A.095(1), the following specific items are not practicable or feasible for sealed bidding. (Only the specific goods or services listed are exempt unless otherwise approved by specific request.)

A. Fresh produce, fresh seafood, and fresh eggs. KRS 45A.035(2)(d)

B. Hearing aids.

C. Transcripts. Purchase of court reporter services to furnish originals and copies of transcriptions of court proceedings, hearings and other legal proceedings or public stenographer for public forums and meetings where minutes or verbatim records are required.

D. Public displays (billboards, booths, etc.) Purchase of displays costing less than $10,000 for scheduled events.

E. Insurance and bonds covered by price contracts. Purchase of insurance and bonds not covered by price contract requires prior approval of KCTCS Purchasing. KRS 45A.022 and KRS 42.192.

F. Equipment repair service and parts.

G. Supplies and equipment for laboratory or experimental studies. Food, clothing, equipment, supplies or other materials to be used in laboratory and experimental studies. A written statement setting forth the need in relation to the studies and justifying the procurement of such supplies or equipment on a noncompetitive basis is required. 200 KAR 5:309(4).

H. Other goods and services where it is not practical or feasible may be considered as exceptions to sealed bidding. The unit requesting the good or service must present written justification for purchases to KCTCS Purchasing. Prior approval is required in all cases.

I. Deaf Interpreters. Purchase the services of deaf interpreters for public meetings, training sessions, or as required by the American Disabilities Act (ADA).

**END OF PROCEDURE**