

MEMORANDUM No. 32

TO: Kentucky School Architects

FROM: Greg Dunbar, AIA, Manager
District Facilities Branch

DATE: December 17, 2013

RE: Procurement

Over the last few years the traditional forms of procurement have given way to non-traditional forms such as direct purchasing of materials and cooperative bidding and purchasing of building components and services. Some of these practices have led to confusion and, in some cases, practices that do not conform to statute and regulation.

PROPRIETARY SPECIFICATIONS:

As noted in **MEMORANDUM No. 5 - School Project Materials and Product Specification, March 20, 2009**, the requirement to specify at least (3) equal products for the construction of schools was discussed. This requirement comes from the Model Procurement portion of the Kentucky Revised Statutes KRS 45A.415;

1. KRS 45A.415 Specifications – Items considered equal may be furnished – Proprietary products.
 - (1) The local public agency shall use specifications which assure the maximum practicable competition to meet the agency’s needs.
 - (2) Local public agencies shall ensure that every invitation for bids or request for proposals provides that an item equal to that named or described in the specification may be furnished. The specifications may identify a sole brand in cases where, **in the written opinion of the chief procurement officer, documented unique and valid conditions require compatibility, continuity, or conformity with established standards.** An item shall be considered equal to the items named or described if, in the opinion of the owner and design professional responsible for the specifications;
 - a. It is at least equal in quality, durability, strength, design, and other criteria deemed appropriate;
 - b. It will perform at least equally the function imposed by the general design for the public work being contacted for or the material being purchased; and
 - c. It conforms substantially to the detailed requirements for the item in the specifications.
 - (3) A specification which describes a product which is proprietary to one (1) company may be used only when no other kind of specification is reasonably available to describe requirements.

This office will allow the specification of proprietary items if the district provides a “written opinion of the chief procurement officer, documenting unique and valid conditions require compatibility, continuity, or conformity with established standards”. The opinion shall be provided by a letter submitted with the Contract Documents and list each proprietary item individually and addressing the need for this sole item as noted in the statutes.

COOPERATIVE PURCHASING

If you have any questions or comments, please do not hesitate to call me or Tim Lucas at 502-564-4326 or email Greg.Dunbar@education.ky.gov or Tim.Lucas@education.ky.gov.