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KENTUCKY DEPARTMENT OF EDUCATION

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MEMORANDUM No. 45

TO: Design Professionals and Construction Managers providing services to KY's K-12 Public Schools

FROM: Greg Dunbar, MBA, AIA, Manager, District Facilities Branch

DATE: August 12, 2019

The attached communication relates to the post-bid document submittal and bond sale approval process regarding capital construction projects financed in whole or in part by the sale of revenue bonds. It was sent to district personnel and fiscal agents. KDE has implemented a web-based bond system which provides an orderly process with increased transparency and accountability related to post-bid document submittals and KDE's approval for the sale of these bonds. The system requires the submission of a KDE approved post-bid revised BG-1 by the district's fiscal agent in addition to the submittal of the required financial documentation. The changes resulting from the implementation of the KDE Bond Sales Program and FACPAC will be reflected in the next revision to **702 KAR 4:160 Capital Construction Process** but are being applied now as shown in bold Italic font below.

Construction Bids, Contracts, and Bond Sales.

- (1) Negotiation of the bid price shall not be allowed, except in accordance with KRS 45A.375 for those districts under the Model Procurement Code.
- (2) The local board shall submit to the department for review and approval:

In FACPAC

(a) Each proposed contract;

(b) ***For each proposed contract***, a completed KDE Purchase Order Summary Form, if owner direct purchase orders are utilized;

A signed, completed KDE Purchase Order (PO) Summary Form (attached PDF file), allows the successful bidder, design professional and the district to confirm, by signature, the accuracy of the listed vendors and tax exempt purchase amounts. The signed KDE PO Summary Form, in conjunction with the Purchase Order(s) created in FACPAC, can serve as place holder(s) until the vendor and district signed KDE FACPAC Purchase Order Forms can be attached and submitted for final KDE approval. Pursuant to Architect Memo No. 42, after January 1, 2019, only FACPAC forms will be accepted - third party facsimiles will not be accepted.

(c) The revised post-bid BG-1 to coincide with the proposed project costs;

In The KDE Bond Sale Program

(d) Preliminary official statement;

(e) Notice of revenue bond sale;

(f) Official terms and conditions; and

(g) Plans of financing.

KDE approved revised post-bid BG-1

(3) The board shall submit to the department for review and approval the following documentation for projects that are bid:

In FACPAC

- (a) Each bid tabulation;
 - (b) Bid security;
 - (c) KDE Form of Proposal for each successful bidder;
 - (d) Written recommendation of the design professional and CM, if utilized, regarding the awarding of the contract;
 - (e) Written rationale for the additional cost if the accepted bid exceeds the BG-3 Form by ten (10) percent or more.
- (4) If a bond sale is pending, ***the documents required by (2)(a), (2)(b), (2)(c), and (3)(a) through (3)(e) above are recommended to be submitted to the department a minimum of twenty-five (25) working days prior*** to the scheduled bond sale date.
- (5)(a) Discrepancies between the proposed contract and bidding documents shall be remedied prior to approval.
(b) Approval of the proposed contract by the department shall not indicate the contract is the best or the most reasonable.
- (6) Documents (2)(d), (2)(e), (2)(f) and (2)(g) above and the KDE approved post-bid BG-1 shall be submitted in the KDE Bond Sale Program at least ten (10) working days before the scheduled bond sale or the sale date will be postponed as a function of the system.***
- (7) The board shall contract with a fiscal agent to assist in meeting all reporting, filing, and selling requirements for securing the financial approval of the department if school revenue bonds are proposed for sale.
- (8) The department shall issue the written approval for the financing plan, authorize the bond sale, and issue the approval letter for the chief state school officer or a designee.
- (9) The board shall submit to the department:
- In FACPAC***
- (a) A copy of each signed contract and purchase order;
 - (b) Each contractor's insurance certificate required by law and by contract to hold the board safe from loss until the project is completed or until an occupancy permit is received by the board; and
 - (c) A copy of each 100 percent performance and payment bond in compliance with KRS 45A.435.

If you have any questions regarding the above, please contact me at your convenience.

Attachment

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