Kentucky Executive Branch Procurement

Legislative Oversight And Investigations Committee

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Abstract

This report presents an evaluation of Kentucky's executive branch procurement policies. KRS Chapter 45A, generally known as the Model Procurement Code, sets rules for procurement. The Office of Procurement Services in the Finance and Administration Cabinet issues general guidance for procurement and manages the solicitation process for most agencies. Once contracts are awarded, the agency requesting the good or service typically administers the contract. Kentucky procurement policy allows individual agencies to conduct their own procurements for small purchases but expects competitive bidding or negotiation for goods or services above those small purchase limits. Noncompetitive procurement is allowed for specific scenarios such as emergencies, goods or services provided by a single vendor, or good or services that are not practicable or feasible for competitive processes. Due to the scale of executive branch procurement, a risk-based analysis was used to select specific areas for review. Staff estimate that more than 500,000 awards and delivery-order records appear across the document types reviewed, with the majority following expected processes. When procurements are entered into the statewide accounting system, they are expected to indicate the authority for the procurement but the authorities are sometimes incorrect. In three instances, agencies appeared to exceed their small purchase authority, though these appear to be errors. In three other awards, awards exceeded the maximum allowed amount for the contract. In at least four instances, agencies appeared to have split purchases to remain within their small purchase authority. Fifteen master agreements, pre-established contracts for goods and services, were modified multiple times with some moving beyond their original scope. This level of modification is allowed in Kentucky but may limit competition and is generally not recommended at the federal level of procurement. While the Finance Cabinet has an internal audit function, it has typically not reviewed procurement processes. Emergency contracts allow noncompetitive procurement for exceptional events but 435 emergency awards exceeded two years, with the longest running for over 8 years. While exigent events may take multiple years to resolve, there was no indication that these awards were still needed across years. An emergency award for debris clearance exhibited multiple issues with emergency awards. For noncompetitive awards in general, many used a non-specific authority but provided minimal justification. Agencies are required to submit performance evaluations of vendors, but it appears that vendors could receive multiple negative evaluations and continue to be awarded contracts. The report presents 13 recommendations and 1 matter for legislative consideration.

Foreword

Legislative Oversight and Investigations Committee staff appreciate all those who provided assistance with this report. Staff at the Finance and Administration Cabinet's Office of Procurement Services responded to information requests and helped staff understand how solicitations, awards, and contract modifications are processed and recorded in eMARS. Staff at the Division of Engineering and Contract Administration in the Finance Cabinet were helpful in explaining how the division procures and manages capital construction contracts. Staff from the Kentucky Transportation Cabinet provided feedback on contracts it issued. We are grateful for their cooperation and assistance in putting this report together. We also thank the staff at the Cabinet for Health and Family Services, the Justice and Public Safety Cabinet, the Education and Labor Cabinet, and the Energy and Environment Cabinet for their assistance.

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Summary

Procurement is the process state agencies use to buy goods and services. The Kentucky Model Procurement Code, KRS Chapter 45A, requires that most purchases be made through competition and names the secretary of the Finance and Administration Cabinet (FAC) as the chief purchasing officer of the commonwealth. FAC's Office of Procurement Services (OPS) reviews procurement plans and processes solicitations, but the agencies that award contracts remain responsible for administering them. The code also allows several methods that do not require full competition, including small purchases, emergency purchases, sole source awards, and awards for which competitive bidding is determined not to be practicable or feasible.

The major objectives for this study were:

- Determine whether executive branch agency procurements comply with applicable statutes, administrative regulations, and statewide policies.
- Assess whether competitive procurement documents include required and decision-critical elements.
- Evaluate whether noncompetitive procurements, including sole source and competitive exemption contracts, are adequately justified and supported by documentation.
- Assess whether contracts, amendments, renewals, and related payments are accurately and timely recorded and traceable in the statewide accounting system.

This study examined executive branch procurement recorded in eMARS, the statewide accounting and procurement system, from FY 2018 through FY 2026. Grant awards and legislative and judicial branch procurement were excluded. Staff assessed compliance with statutes and regulations, the completeness of competitive procurement documents, the justification for noncompetitive awards, and whether contracts could be traced to payments. Award records were analyzed by award type and by cited authority. Awards that fell outside typical values received documentation reviews.

Most Kentucky procurement is routine. The majority of awards are small and are processed through established channels. The issues identified during review are exceptions within that larger population. They are significant because many were processed without being stopped by eMARS or by review, and several involve large dollar amounts. Because of eMARS data limitations, some issues could be identified only by reviewing individual documents.

Major Conclusions

This report has 10 major conclusions:

- The majority of procurement processes from FY 2018 to FY 2026 appear to follow intended procurement practices.
- Cited authorities are sometimes incorrect.
- Small purchase authority was exceeded in at least three instances.

- Purchase splitting may have been used to exceed small purchase limits.
- At least three awards exceeded approved maximums.
- The Finance Cabinet's audit process generally does not review procurement.
- Some contracts were modified and extended across decades, which may impede competitiveness.
- Emergency contracts may have exceeded emergency conditions.
- Noncompetitive awards had minimal justification.
- Negatively reviewed vendors continue to receive awards.

Recommendations And Matter For Legislative Consideration

Every award in eMARS must list a cited authority, which is the statute, regulation, or policy that permits that type of award. The field is never blank, but it is frequently populated with text that is not an actual cited authority. Some awards list a master agreement number, a description of the purchase, or an informal note in place of an authority. A separate cited authority description field was blank for more than 11,500 transaction lines coded as small purchases. Incorrect or inadequate entries make it harder to identify noncompetitive awards and confirm they were justified.

Recommendation 3.1

The Finance and Administration Cabinet (FAC) should require that the Cited Authority Description auto-populate from a validated table keyed to the Cited Authority field rather than accept free text and should provide additional training to agency and Office of Procurement Services purchasing staff on correct cited-authority selection and entry. FAC should provide the Legislative Oversight and Investigations Committee with an estimated cost for modifying eMARS to allow the functionality needed to fulfill this recommendation.

Agencies may make small purchases without formal bids up to a limit delegated by the FAC secretary. KRS 45A.100 sets $100,000 as the maximum for select entities. Of more than 36,000 small purchase records, three exceeded $100,000 and were approved in eMARS. Two of the records relate to the same project. The documentation suggests neither underlying purchase was actually a small purchase. The first, a heating and cooling contract at the Kentucky International Convention Center, appears to have been formally bid but recorded as a small purchase. The second, consisting of sewage hauling at the Simpson County rest area, was approved as an emergency purchase.

Recommendation 3.2

The Finance and Administration Cabinet should implement a hard stop in eMARS that would prevent any award coded as a small purchase from being approved or modified above the agency's delegated small purchase authority or the $100,000 statutory maximum.

Recommendation 3.3

The Finance and Administration Cabinet should correct the classification of the Kentucky International Convention Center and Simpson County Rest Area awards in the system of record to reflect their actual procurement basis.

KRS 45A.100(2) prohibits dividing a purchase into smaller pieces to stay under the small purchase limit. OPS officials told staff they catch attempted splits before approval but did not describe how. Staff grouped small purchases that shared the same date, vendor, agency, unit, and industry code and found six groups that were likely split. In one, an agency priced two environmental projects estimated at about $26,500 and $29,700 at $19,999.99 each, one cent below its limit. In another, two electrical installations at the same training site had quotes identical to the penny.

Recommendation 3.4

Consistent with KRS 45A.100(2), the Finance and Administration Cabinet should operationalize a preapproval screening control to flag same-day, same-vendor, same-department, same-unit, and same-industry code clusters for review before an award is approved rather than after.

Staff verified three awards on which payments exceeded the approved amount. A lawn care order was paid exactly twice its authorized amount, possibly a result of a duplicate payment. eMARS displayed a warning, but the payment went through. A software license order closed approximately $1,450 over its ceiling with no explanation in the file. The third was a small overage on a janitorial supply order consistent with normal shipping charges. Because eMARS allowed these payments, a risk exists where similar overpayments could occur without detection.

Recommendation 3.5

The Finance and Administration Cabinet should consult with CGI to determine the feasibility of configuring eMARS so that a closed or expended amount cannot exceed the approved header amount without a formal, approved modification.

FAC policy allows its Office of Policy and Audits to conduct periodic procurement audits of agencies and to recommend that the secretary revoke or reduce an agency’s small purchase authority when deficiencies are found. In practice, FAC’s internal audit process generally does not review procurement outside of procurement card or small purchases. Without periodic review, the cabinet may have difficulty identifying the types of problems described in this report after awards are made.

Recommendation 3.6

The Finance and Administration Cabinet should evaluate opportunities for the Office of Policy and Audits to review procurement activities to ensure policies are appropriately followed.

Master agreements (MAs) are long-term contracts that set prices and terms without guaranteeing quantities. The typical MA in the analyzed dataset ran less than 4 years and was modified fewer than five times, but some were far outside that range. One has been in place since 1995, and another has 266 versions. Most long-running contracts are noncompetitive technology and telecommunications agreements. The value of an initial competition or justification declines as markets and technology change. When an award is extended for decades, other vendors never get the chance to compete for the work as it exists today.

Recommendation 3.7

The Finance and Administration Cabinet should set mandatory rejustification intervals for long-running noncompetitive master agreements and sole-source contracts after which the award is either competitively rebid or formally reapproved on the current record.

Emergency purchases let agencies buy without competition when there is a threat to public health, welfare, or safety. They are generally meant to be short term. Of 1,602 emergency awards, 435 that were not federal grants appear to have remained open more than 2 years, and the longest ran more than 8 years. Of the 25 emergency awards with the largest gap between approved and spent funds, only three were less than a year old, and 19 of the 25 belong to the Department of Military Affairs, with the other six belonging to the Department of Highways.

Recommendation 3.8

The Finance and Administration Cabinet should require periodic rejustification of emergency awards that remain open beyond a defined duration such as 2 years, and document the specific statutory basis whenever a biennium exemption under KRS 45A.145 is granted.

The debris removal contracts that followed the 2022 eastern Kentucky floods show how an emergency award can expand. The Transportation Cabinet gave bidders less than 24 hours to respond to the original solicitation. In January 2023, months after the initial response, the cabinet used a no-bid emergency request to raise the not-to-exceed amount from $20 million to $200 million and to add private property, commercial, and demolition work. Federal rules allow noncompetitive procurement only during the period of actual emergency.

Recommendation 3.9

The Finance and Administration Cabinet should require a documented determination of whether the expanded scope remains within the genuine emergency period or requires competitive reprocurement for any future disaster-response contract expansion.

For the eastern Kentucky flood contract, the contractor was paid by the ton, which rewards heavier loads. The MA required the state to verify every load, but federal reviewers reported that monitors often were not watching the work. Of about 25,000 load tickets, 62 were mapped to impossible locations, and some loads had both paper and duplicate electronic tickets. Some billed quantities were not physically possible. One order billed about 180,000 tons of mulch hauled away from about 18,400 tons of debris ground into mulch.

Recommendation 3.10

The Finance and Administration Cabinet should require an independent load-ticket verification as a condition of per-unit payment on future debris-removal contracts.

Price changes were not analyzed. One line-item billed hauling at $30 per ton-mile, 10 times the $3 rate in the MA and in other lines of the same order. LOIC staff confirmed that this was an error in eMARS and that actual payments against the line used the $3.00 rate. Although a dramatic overspend did not occur, this example demonstrates that it is possible. In January 2024, the cabinet approved a 3.4 percent increase on every unit price based on a general inflation index. The MA required firm proof of industry-wide price changes, and the approving official wrote that he was not familiar with calculating price escalation.

Recommendation 3.11

The Finance and Administration Cabinet should require a documented price analysis, consistent with 2 CFR 200.324, before approving any price escalation request on an active emergency or disaster-response contract.

Agencies may award contracts without bidding when bidding is determined not practicable or feasible, a broader standard than sole source. There were 9,233 such awards worth about $2.47 billion. About 87 percent of those dollars are coded to a general “other goods and services” category, so what was bought cannot be identified without opening each document. Many written determinations stated only that not bidding was in the best interest of the commonwealth, with no further explanation. Most of these awards are small, but the coding and boilerplate limit oversight of the larger ones.

Recommendation 3.12

The Finance and Administration Cabinet should require more specific cited-authority sub-coding for "not practicable to bid" awards so that the underlying goods or services can be identified without individual document review and should establish more stringent content requirements for the written determination and finding to prevent boilerplate justification language.

KRS 45A.190(3) requires agencies to review contractor performance during and at the end of a contract, and FAC policy requires agencies to record performance evaluations in eMARS. Staff reviewed 23,202 evaluations covering 8,211 awards. About half had no substantive comments, and about one in eight did not say whether the vendor should be used again. Of 2,656 vendors with evaluations, 723 received another award after an evaluation recommended against using them, and 443 had multiple negative evaluations in a row.

Recommendation 3.13

The Finance and Administration Cabinet should require a narrative justification and supervisory sign-off whenever an agency awards further work to a vendor with an outstanding "do not recommend" evaluation on file.

FAC policy FAP 111-51-00 indicates that an agency should file a PE if a vendor problem occurs that the vendor fails to resolve. The policy also requires an evaluation at completion or renewal. As a result, ongoing awards can go years without a documented evaluation that other agencies could use when making their own awards.

Matter For Legislative Consideration 3.A

The General Assembly may wish to consider requiring annual Performance Evaluations for all ongoing awards.

Chapter 1

Executive Branch Procurement

Overview Of Statewide Procurement Activity FY 2018 To FY 2026

The Kentucky Model Procurement Code, KRS Chapter 45A, sets rules for procurement of goods and services. The Office of Procurement Services (OPS) in the Finance and Administration Cabinet (FAC) manages many solicitation processes, but the user agencies are responsible for contract administration.

On December 10, 2025, the Legislative Oversight and Investigations Committee (LOIC) asked staff to conduct a review of executive branch procurement policies. Kentucky state government buys a wide range of goods and services to carry out its work, from road paving to disaster debris removal. The Kentucky Model Procurement Code, KRS Chapter 45A, sets the rules for these purchases. The Finance and Administration Cabinet's (FAC) Office of Procurement Services (OPS) manages the solicitation process for many of them, while the agencies that award contracts handle day-to-day administration. This report examines executive branch procurements from FY 2018 through FY 2026.The study did not include legislative or judicial branch procurements or grant awards.

Procurements from FY 2018 to FY 2026 were reviewed based on data in eMARS, the statewide accounting system.

To provide context for Kentucky's procurement activities, LOIC staff examined the overall population of procurement and contracting recorded in the statewide accounting system (eMARS) for FY 2018 to FY 2026.[a] A large update to eMARS made accessing information prior to 2018 difficult or impossible. Staff performed a two-pronged descriptive analysis, one organized by award document type and a second organized by the statutory or regulatory authority cited to justify the award. The data were drawn from Enterprise Business Intelligence (EBI) reporting connected to eMARS.[1] This section summarizes the data analyzed. It is intended to show the scale and general character of state procurement activity, most of which proceeded through routine channels without evidence of irregularity. Specific exceptions to the general pattern are identified in Chapter 3.

[a] eMARS is the abbreviation for electronic Management Administrative Reporting System, though the full name is not commonly used in procurement guidance.

Most Kentucky Procurement Follows Routine Processes

The majority of transactions are modest in value, complete in a single version, supported by a valid authority, and generally follow expected policies. There were a small number of exceptions that are identified and discussed in Chapter 3.

Taken as a whole, the reviewed contract data indicate that the state processes a high volume of procurement transactions. Staff estimate that more than 500,000 award and delivery-order records appear across the 10 active document types reviewed.[b] The majority of these transactions are modest in dollar value, complete in a single version, and supported by a valid cited authority.[2] The findings presented in Chapter 3 were identified through targeted analysis of statistical outliers, high-risk cited-authority categories, and specific transactions flagged by other audit evidence. They represent a comparatively small number of awards measured against the full population described above, and should be weighed accordingly. They are specific, documented exceptions warranting corrective action and do not represent a general characterization of procurement practices across the Finance and Administration Cabinet.

Procurement Document Types

While 19 procurement types are available in eMARS, only 10 were in active use during the review period.

Nineteen document type codes are configured in eMARS to record procurement and contracting transactions; ten were in active use during the period reviewed. In descending order of volume, the active types were:

- **DO (Delivery Order):** an order placed by a state agency against an already established Master Agreement (MA) for a specific quantity of goods or services.
- **PO (Purchase Order):** a standalone award to purchase goods or non-professional services at a specific price; not tied to a preexisting MA and usually subject to small purchase limits.
- **PON2 (Proof of Necessity 2):** an award used for single-vendor, agency-specific contracts; the standard document code for personal service contracts (PSCs) and memoranda of agreement (MOAs).
- **MA (Master Agreement):** a long-term, overarching contract that sets fixed prices and terms with a vendor but does not guarantee a specific purchasing quantity upfront.

[b] Staff derived this figure from record counts returned by Enterprise Business Intelligence (EBI), the reporting system connected to eMARS, for the 10 eMARS document types that contained at least one record. The counts total 520,042. Staff present the figure as an estimate because the counts reflect a single data pull from EBI, and eMARS is a live system in which agencies continue to enter, modify, and finalize documents. Totals will therefore differ from any later pull.

- **DO4 (Delivery Order for Punch-Out MA):** an electronic delivery order submitted against a "PunchOut" catalog MA, used when the agency pays the vendor after receiving goods and a proper invoice.
- **CT (Contract):** a formal contract document typically used for larger, non-routine agreements, such as capital construction or complex enterprise contracts.
- **DO3 (Delivery Order on Procurement Card):** an electronic delivery order against a MA that authorizes the agency to pay upfront using a state procurement card (ProCard).
- **CTRP1 (Contract Regarding Real Property):** a specialized contract document used to manage state real estate transactions and property leases.
- **CBDL (Commodity-Based Document Line):** a system-level document type used primarily for back-end financial processing, such as managing, rolling, or lapsing encumbrances at fiscal year-end.
- **PON3 (Proof of Necessity – Multi-Vendor):** a purchase-order document used to establish multi-provider or multi-agency agreements, distinguishing it from the single-vendor PON2.[3]

Delivery orders (DO) made up the majority of transactions reviewed, consistent with their role as the routine mechanism agencies use to draw against already competitively awarded MAs. PON3s accounted for the fewest transactions.[4] Table 1.1 shows the document types reviewed by staff and the number of records in eMARS for the review period.

Table 1.1
Number Of Document Types Reviewed In eMARS
FY 2018 To FY 2026

Code	Document Type	eMARS Records
DO	Delivery Order	272,893
PO	Purchase Order	63,528
PON2	Proof of Necessity 2	49,205
MA	Master Agreement	40,796
DO4	Delivery Order for Punch-Out MA	36,000
CT	Contract	30,378
DO3	Delivery Order on Procurement Card	17,643
CTRP1	Contract Regarding Real Property	6,794
CBDL	Commodity-Based Document Line	2,104
PON3	Proof of Necessity – Multi-Vendor	701

Source: Staff analysis of eMARS data.

Scale And Tendency Of Procurement Awards

For each document type, staff calculated the mean, median, minimum, and maximum for multiple variables, including quantity ordered; award length; number of modifications; and approved, spent, and unspent funds.[5] The median is the more representative measure of a typical transaction because a small number of large awards, principally Medicaid managed-care payments funded through federal pass-through dollars, pull the averages for several document types into the billions.[6]

The median value of the two most common procurement methods were $2,496 and $3,545, indicating that most procurements in Kentucky are for relatively small purchases. Most of these purchases do not have modifications.

The median purchase order and delivery order were valued at $2,496 and $3,545, respectively, and the median award of any type ran fewer than five months with a single version.[c] This appears to be consistent with the routine, low-dollar transactions these document types are designed to process. Contract (CT) document types, which OPS reserves for larger and more complex agreements, carried a substantially higher median of $277,632. These figures indicate that the overwhelming majority of individual procurement transactions in the state are modest in size and are completed without significant modification.

A relatively small number of MAs and contracts show unusually long durations, high modification counts, or rapid cost growth, and a small number of individual transactions show payments exceeding their approved ceiling. Those instances are analyzed individually in Chapter 3. Extremely large dollar figures, in the billions, were associated with certain DO and PON3 awards; all of these were confirmed to be Medicaid Managed Care Organization payments passed through from federal funds and are not, by themselves, indicative of a procurement control weakness.[7]

Noncompetitive Procurement Categories

Each award in eMARS has a cited authority that justifies the award and, where applicable, indicates its exception from competitive methods.

Every award recorded in eMARS carries a cited authority, which consists of a statute, regulation, or policy provision that justifies the award and, where applicable, the exception it takes from full and open competition.[8] There are dozens of distinct cited-authority codes in use. Consistent with a risk-based approach, the cited-authority analysis was limited to the four categories most often associated with control weaknesses in procurement audits of other states: small purchase, emergency, sole source, and not-practicable-or-feasible-to-bid awards.[9] If these higher-risk

[c] A version refers to the iteration of the contract. For example, the initial contract is the first version. If it is revised, it becomes the second version.

categories are adequately controlled, lower-risk categories are likely well controlled.

- **Small Purchase:** an expedited method for routine transactions below an agency's delegated dollar limit. $1,000 by default, up to $100,000 where the finance secretary has delegated a higher small purchase authority. No competitive bidding or external approval is required, though agencies must retain records of informal quotes.
- **Emergency:** a noncompetitive award used when a situation threatens public health, welfare, or safety and the cost exceeds the agency's small purchase authority; a formal written justification is required above that threshold.
- **Sole Source:** a noncompetitive award used when an agency formally justifies that only one vendor can meet the requirement, typically proprietary software, specialized parts, or patented equipment.
- **Not Practicable or Feasible to Bid:** a broader noncompetitive classification for circumstances in which standard competitive bidding is not feasible or would not benefit the state; requires a written determination.

Table 1.2
Number Of Noncompetitive Procurement Types Reviewed
By Primary Statute And Implementing Policy
FY 2018 To FY 2026

Procurement Type	Primary Statute	FAC Policy	eMARS Records
Small purchase	KRS 45A.100	FAP 111-55-00	35,957*
Emergency	KRS 45A.095(1)	FAP 111-39-00	1,602
Sole source	KRS 45A.095(2)(b)	FAP 111-10-00	Not separately quantified**
Not practicable or feasible to bid	KRS 45A.095(2)	FAP 111-09-00	9,233

*This estimate assumes that purchase orders with small purchase cited authorities of FAP 111-55-00, FWP 111-55-00, FAP 220-10-00 and FWP-220-10 represent the entire small purchase universe.
** Sole source and not-practicable-or-feasible awards frequently share overlapping cited-authority codes in eMARS, and many cited-authority descriptions are blank, which prevented staff from isolating a reliable total record count for sole source awards specifically. Staff were, however, able to provide descriptive statistics for the sole source group that could be identified.[10]
Source: Staff analysis of eMARS data, KRS 45A.095, KRS 45A.100, FAP 111-09-00, FAP 111-10-00, FAP 111-39-00, and FAP 111-55-00.

Small purchases were, by a wide margin, the highest-volume category reviewed: more than 36,000 transactions were recorded, the majority well under the $20,000 threshold used as the outer bound of agency SPA delegations.[11] Only three small purchase transactions in the entire population exceeded $100,000, the

statutory ceiling for the highest-delegated agencies. Not-practicable-or-feasible-to-bid awards, though fewer in number, represented a larger aggregate dollar value: 9,233 awards collectively worth approximately $2.47 billion.[12] Emergency awards were the smallest category by volume, with 1,602 award lines identified; the substantial majority showed a small number of modifications consistent with a short-term response to an acute condition, though a limited number of long-running or heavily modified emergency awards are discussed among the findings.[13]

Major Objectives

This study had four major objectives.

The major objectives for this study were:

- Determine whether executive branch agency procurements comply with applicable statutes, administrative regulations, and statewide policies.
- Assess whether competitive procurement documents include required and decision-critical elements.
- Evaluate whether noncompetitive procurements, including sole source and competitive exemption contracts, are adequately justified and supported by documentation.
- Assess whether contracts, amendments, renewals, and related payments are accurately and timely recorded and traceable in the statewide accounting system.

Major Conclusions

This study has 10 major conclusions.

This report has 10 major conclusions:

- The majority of procurement processes from FY 2018 to FY 2026 appear to follow intended procurement practices.
- Cited authorities are sometimes incorrect.
- Small purchase authority was exceeded in at least three instances.
- Purchase splitting may have been used to exceed small purchase limits.
- At least three awards exceeded approved maximums.
- The Finance Cabinet's audit process generally does not review procurement.
- Some contracts were modified and extended across decades, which may impede competitiveness.
- Emergency contracts may have exceeded emergency conditions.
- Noncompetitive awards had minimal justification.
- Negatively reviewed vendors continue to receive awards.

Structure Of This Report

Chapter 2 provides an overview of the executive branch procurement process.

Chapter 2 provides an overview of the contracting process for executive branch agencies. It covers the file types used to establish documents, the methods to establish those documents, how FAC oversees the initial portion of the procurement process, and briefly summarizes the contract process after contracts are created.

Chapter 3 reviews 10 areas of procurement anomalies.

Chapter 3 reviews 10 areas in which Legislative Oversight staff discovered procurement anomalies. These areas provide more detail that support the report's major conclusions. This chapter has 10 finding areas, 13 recommendations, and 1 matter for legislative consideration.

Chapter 2

Executive Branch Procurement Methods And Processes

Executive branch agencies apply different procurement methods based on the goods and services bought as well as the amount of authority granted to them by FAC.

Across Kentucky's executive branch, individual agencies use different procurement methods depending on the type of good or service bought and the amount of discretion allocated to them under state law. Despite differing procurement types, every method operates within the same statutory framework set by the Kentucky Model Procurement Code, KRS Chapter 45A, and is administered by the Finance and Administration Cabinet.[14] The code designates FAC as the central procurement and contracting agency of the state and names the FAC secretary as the state's chief purchasing officer.[15] The code transfers all rights, powers, duties, and authority relating to procurement to the secretary.[16] The secretary, in turn, distributes procurement activities among the cabinet's divisions.[17] The Office of Procurement Services within FAC serves as the lead function for the executive branch's non-construction, non-professional-service procurements exceeding agencies' small purchase authority.[18]

FAC and OPS primarily assist during the early stages of procurement beyond an agency’s delegated small purchase authority and generally do not play an ongoing, hands-on role in managing contracts once they are awarded. OPS's statutory and administrative role is centered on the solicitation process itself: setting procurement policy, issuing solicitations, and reviewing higher-risk projects during planning. Day-to-day contract administration such as monitoring performance, approving payments, and resolving changes or disputes, remains the responsibility of the procurement specialists within the awarding agency.[19]

Overview Of The Kentucky Model Procurement Code

The basis of procurement activity in Kentucky is the Kentucky Model Procurement Code, codified in KRS Chapter 45A.

Procurement by executive branch agencies of the Commonwealth of Kentucky is governed primarily by the Kentucky Model Procurement Code, codified in KRS Chapter 45A. The code was enacted to simplify, clarify, and modernize the law governing state purchasing; increase public confidence in procurement procedures; achieve economy by fostering effective competition; and maintain a procurement system of quality and integrity.[20]

OPS within FAC serves as the central procurement agency. OPS is responsible for purchasing on behalf of an agency when the purchase exceeds that agency's delegated authority.

FAC is designated as the central procurement authority for the state's executive branch. Within FAC, OPS serves as the central procurement agency responsible for purchasing commodities and non-professional services on behalf of state agencies when those purchases exceed an agency's delegated small purchase authority. FAC supplements the statutory framework through its Finance Administration Policies (FAPs), a set of administrative policies that implement and operationalize the requirements of KRS Chapter 45A.

The Kentucky Model Procurement Code establishes a procurement method hierarchy. If a purchase exceeds an agency's delegated authority, competitive procurement is preferred to ensure bid awards are based on best value offers or are the most advantageous to Kentucky. Noncompetitive negotiation is used in unique situations.

The Kentucky Model Procurement Code establishes a hierarchy of procurement methods, each with its own procedural requirements and oversight obligations. The code favors competitive procurement by requiring procurements above small-purchase authority to use competitive bidding unless there is justification in writing that competitive negotiation is necessary. The associated statutes emphasize that bid awards should be based on best value offers or those most advantageous to Kentucky.[21] Noncompetitive negotiation is treated as a solution for unique situations, such as when there is an emergency or a single provider.[22] The code solidifies that open competition produces the best value for the state and protects the public from waste, favoritism, and abuse. Non-competitive methods are permitted only in narrowly defined circumstances and are subject to heightened documentation and approval requirements.

Annual Procurement Plan And Risk Self-Assessment. Agencies must submit an Annual Procurement Plan to OPS as required by statute. OPS then reviews the plan and determines which planned procurements require a risk self-assessment before the agency may submit a requisition.[23]

The Division of Contract Management's role in the contract process is strictly advisory and supportive and the responsibility for executing the contract remains with the agency.

Division Of Contract Management. The Division of Contract Management (DCM) "monitors compliance with procurement and contract implementation," but is explicitly advisory and supportive, not managerial.[24] The Contract Management Guide (CMG) project team, hosts recurring status meetings, or requests a Contract Management Plan for high-risk projects, but the responsibility for executing the contract remains with the agency. DCM may take direct project-management control only in a genuine crisis, and only after FAC and OPS management formally request the transition from the agency.[25]

DCM reviews agencies' Annual Procurement Plan. Depending on the risk identified, DCM may take no further action, request more information, provide feedback on the agency's specifications, set

up a recurring "meet and confer" schedule with the agency, or require the agency to submit a Contract Management Plan after award.[26]

Risk Assessment Is Ambiguous. The CMG is explicit that there is no formula for quantifying procurement risk. Instead, risk determination is defined as a matter of experience and judgment based on factors such as dollar value, complexity, payment method, staff experience, and public impact. Risk must be reassessed continually by the contract manager, not just at the planning stage, through final payment.[27]

Procurement Types

The Kentucky Procurement Manual (KPM) serves as the official guide for procurement of goods and services for executive branch agencies.

Once an agency has completed planning, it must select a procurement method. The Kentucky Procurement Manual (KPM) is published by the Office of Procurement and serves as the official guide for procurement of goods and services.[28] It identifies five primary methods: competitive sealed bidding through requests for bids, competitive negotiation through requests for proposals, noncompetitive negotiation, competitive bidding exceptions, and small purchase authority. The KPM also includes procurement options that are exceptions to competitive bidding, including sole source, not practicable or feasible to bid, exempt by law purchases, and emergency procurement. Each of these procurement methods impose different obligations on executive branch agencies.[29] Table 2.1 outlines agency responsibilities for each procurement method.

Table 2.1
Procurement Methods And
Responsibilities Of Agency

Method	Issuer	Negotiation Allowed?	Agency's Distinct Responsibility
Request for bids	OPS (unless agency has delegated authority)	No	Precise, defensible specifications; public bid opening
Requests for proposals	OPS (except professional services)	Yes	Evaluation team management; D&F documentation
Personal service contracts*	Agency	Yes	Agency runs full RFP lifecycle with less OPS involvement
Noncompetitive negotiation and bidding exceptions**	OPS or DECA for construction; the agency for exempt items within its authority	Yes, for sole source and emergency purchases; otherwise generally not addressed	Justify and document the exception; obtain an approved SPR1 when required
Small purchase authority***	Agency, by purchase order	No. The award goes to the lowest quote that meets specifications, unless best value justifies another choice	Obtain the required quotes, avoid splitting purchases, and keep a file supporting the award

Note: OPS = Office of Procurement Services; D&F = determination and findings; RFP = request for proposals; DECA = Division of Engineering and Contract Administration.
*A contract for professional services, solicited by RFP under a separate statutory track.
**Awards without competition. These cover sole source, emergencies, and goods or services exempt from bidding by law or OPS determination.
*** Purchases within the agency's small purchase limit. The limit is $1,000 unless the FAC Secretary delegates a higher one.
Source: Kentucky Procurement Manual.

Competitive sealed bidding is the primary method for procurement under the Kentucky Model Procurement Code, unless there is written justification to not use bids.

Competitive Sealed Bidding. KRS 45A.080 establishes the procedural framework for competitive sealed bidding. It is the primary method of procurement under the Kentucky Model Procurement Code unless there is written justification for not using bids.[30] The method is designed to award contracts based on price and responsibility, maximizing competition while maintaining procedural integrity. An agency should use a request for bids (RFB) when requirements are clearly defined, price is the primary basis for award, and negotiation is unnecessary. Under this method:

- OPS issues the RFB on the agency's behalf unless the agency holds delegated purchasing authority to issue it directly.
- The agency may not negotiate price, specifications, terms, or conditions with bidders once the RFB is issued, unless a statute specifically authorizes negotiation.

- Award goes to the lowest responsive, responsible bidder offering the best value to the state; evaluation is comparatively simple because price takes priority.
- Bids must be opened publicly or through a reverse auction at the time and place stated in the solicitation, and all bids become subject to open records release immediately after opening.
- The agency must allow a minimum solicitation posting period, and any addendum extending time to meet that minimum posting requirement must be considered before it is issued.[31]

The use of competitively negotiated proposals, also known as requests for proposals (RFPs) is appropriate when it is determined in writing that it is not practical or advantageous to Kentucky to use competitive sealed bidding.

Competitively Negotiated Proposals. Where competitive sealed bidding is determined in writing to be either not practicable or not advantageous to the state, KRS 45A.085 provides for procurement through competitive sealed proposals, commonly known as requests for proposals (RFPs).[32] Unlike competitive sealed bidding, RFPs permit negotiation and the evaluation of factors beyond price alone. An agency should use an RFP when competitive sealed bidding is not practicable or advantageous, typically because factors other than price matter, or because the agency cannot define fully objective award criteria. The determination that competitive sealed bidding is not appropriate must be made in writing before an RFP is issued and must be maintained in the procurement file. Distinct agency responsibilities include:

- OPS issues the RFP on the agency's behalf in most cases, but negotiations are permitted and often expected, unlike under an RFB.
- The agency must publish evaluation criteria and their relative weights in the solicitation; criteria not disclosed in the solicitation cannot be used later to score or disqualify a proposal.
- The agency should assemble an evaluation team of three to five stakeholders or subject-matter experts, led by the buyer as a non-voting chair, and each member must sign a non-disclosure statement before seeing proposals.
- Proposals are not subject to open records requests until negotiations conclude and a contract is awarded, unlike bids under an RFB.
- If the agency uses oral presentations, discussions, or best and final offers (BAFOs), it must invite all eligible vendors on equal terms and may not disclose one proposal's contents or standing to another vendor during negotiation.
- The agency must prepare a determination and findings (D&F) that documents the award decision, including which proposals were non-responsive, how the evaluation was conducted,

whether BAFOs or oral presentations occurred, and the identity of any vendors with whom the agency negotiated.[33]

Personal service contracts (PSCs) are a subset of the RFP procurement method that are statutorily defined agreements for services requiring professional skill or judgment.

Personal Service Contracts. Personal service contracts (PSCs) are a defined subset of the RFP method that functions differently than standard RFPs. A personal service contract is a statutorily defined agreement for services requiring professional skill or judgment. The CMG's examples include legal, medical, auditing, consulting, and training services. Unlike other RFPs, the agency itself issues the solicitation and manages the procurement, because OPS is excluded from issuing RFPs for professional services on behalf of other agencies. OPS's role is confined to a mandatory preposting review. Agencies must submit a draft RFP to OPS at least one week before the intended issuance date, and OPS reviews all PSC RFPs before they are posted to the state's eProcurement website.[34] Once posted, the requesting agency receives and scores proposals and negotiates with the highest-scoring vendor.[35]

The Government Contract Review Committee reviews new PSCs and amendments at monthly meetings and holds the authority to disapprove of contracts. FAC's role at this stage is limited to verifying that required documentation, such as the Proof of Necessity form, is complete before the contract receives final approval in eMARS.[36] OPS separately determines, based on precedent rather than a fixed list, whether a given procurement should be classified as professional or nonprofessional.[37] The statutory basis for requiring an RFP for professional services is separate from the general RFP authority and should be cited independently in agency procurement files.

For procurements conducted through competitive sealed bidding and competitive negotiation, OPS administers the solicitation process directly. Under FAP 111-57-00, an agency's request for proposals is issued by OPS, which determines which offers are suitable for award, transmits qualifying technical proposals to the agency's evaluation committee, schedules and facilitates evaluation meetings, and awards the contract following any negotiation or best-and-final-offer processes.[38] OPS also determines, based on precedent rather than a fixed list, whether a given procurement should be classified as a professional service or a non-professional service subject to OPS administration.[39]

Small Purchases And Delegated Purchase Authority

Agencies are delegated small purchase authority by FAC. Each agency has a threshold under which they can purchase without using the central competitive sealed bidding process administered through OPS.

KRS 45A.100 authorizes simplified procurement procedures for purchases that do not exceed the small purchase threshold established by regulation.[40] Purchases at or below this threshold may be made by agencies under delegated purchase authority without using the central competitive sealed bidding process administered by OPS.[41]

Delegated Purchase Authority. Delegated purchase authority allows agencies to conduct procurement for lower-value purchases independently, reducing administrative burden and improving procurement speed for routine acquisitions. However, this delegation is subject to conditions established by FAC and does not exempt agencies from the code's broader requirements of fair dealing and fiscal responsibility. According to FAC, "Procurements conducted within an agency's delegated authority… remain subject to that agency's own internal controls rather than FAC review."[42]

A significant control risk associated with small purchase authority is the practice of "splitting," or artificially dividing a single procurement need into multiple smaller transactions to remain within the small purchase threshold and avoid competitive bidding requirements. KRS 45A.100 and FAP 111-35-00 prohibit this practice.[43] Similar risks have been identified in other states' audits: Louisiana's Legislative Auditor found that agencies sometimes exceeded their delegated purchase authority without approval.[44] Georgia's Department of Audits and Accounts identified instances of purchases being structured to avoid competitive bidding thresholds.[45]

According to FAC, if a purchase is flagged for artificial splitting, OPS reviews the agency's small-purchase activity using eMARS data for the preceding 12 months. The review considers commodity codes, dates, descriptions, dollar amounts, and vendors, with transactions analyzed by commodity code and vendor to identify similar or substantially identical purchases that may indicate an attempt to circumvent applicable procurement requirements or statewide Master Agreements. Potential instances are documented and reported to the executive director for review. If appropriate, the executive director notifies the procuring agency and requests a corrective action plan.[46]

Purchases exceeding an agency's threshold require a requisition to OPS for review and approval.[47] The FAC's Office of Policy and Audits may also conduct periodic procurement audits of agencies' compliance with their delegated authority and may recommend that the secretary revoke or amend an agency's delegation if deficiencies are found, a mechanism OPS itself may invoke by requesting such an audit.[48]

For procurements within an agency's delegated authority, OPS's role is largely related to process infrastructure; it maintains the systems and agreements agencies use to purchase without OPS involvement. For procurements exceeding that authority, and for any procurement an agency seeks to exempt from competition, OPS makes certain documented decisions during solicitation. In competitive negotiations it conducts, OPS decides which offers qualify for evaluation and award.[49] The FAC secretary or a designee approves exemptions from personal service contract requirements and final emergency purchase determinations above an agency's small purchase authority.[50]

Noncompetitive And Exception Methods

Methods of noncompetitive procurement are available in instances of emergency, sole source, or not practicable or feasible to bid.

State law requires competitive solicitation whenever possible, but the KPM identifies specific statutory and regulatory exceptions. Agency responsibilities under these exceptions are narrower in scope but carry a heavier documentation responsibility, because the agency must justify the reason for a noncompetitive solicitation rather than rely on the competitive process itself to establish how to best meet the agency’s needs.

Emergency Procurement. KRS 45A.095 permits noncompetitive negotiation only under specifically defined circumstances, including genuine emergency conditions. The emergency authority is not a general waiver of competitive procurement requirements and must not be used as a matter of administrative convenience.[51] Emergency purchases are permitted only where an emergency condition creates a threat or impending threat to public health, welfare, or safety. The agency must follow FAC policy on emergency procurement procedures and cite the appropriate statutory emergency-purchase authority.

Definition Of Emergency Condition. KRS 45A.095(3) defines an emergency condition as follows:

> Emergency condition means 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 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.[52]

The definition is illustrative rather than exhaustive, but its common theme is immediacy and threat to public welfare. Routine operational needs do not meet this standard. The fact that competitive procurement would be slower or less convenient does not qualify a situation as an emergency within the meaning of the statute.

In the case of emergency procurements, the head of the procuring agency must explain the condition in writing.

Documentation And Approval Requirements. The Model Procurement Code imposes strict documentation and approval requirements as a condition of valid emergency procurement. The head of the procuring agency must fully explain the emergency condition in writing and submit a Strategic Procurement Request (SPR1) along with any supporting documentation for review and approval by FAC and the cabinet secretary.[53] That written explanation must be approved by the secretary of FAC before payment is authorized, and must be filed as part of the public record of the procurement.

For emergency procurements involving construction, FAP 220-11-00 assigns the Division of Engineering and Contract Administration (DECA) with the Department for Facilities and Support Services responsibility for assisting the FAC secretary in reviewing and processing emergency procurement requests.[54] DECA is the primary operational unit processing emergency construction procurements on behalf of the state.[55] The FAP reinforces the statutory requirement that the agency head's written justification be approved by the FAC Secretary or designee prior to payment authorization.

Sole Source And Not-Practicable-Or-Feasible Procurement. KRS 45A.095(1) authorizes noncompetitive negotiation in two circumstances beyond genuine emergencies: sole source purchases, where only one vendor is capable of providing the required goods or services; and situations where competition is not feasible, as

determined in writing by the purchasing officer prior to award.[56] Both circumstances require advance written justification and represent narrow exceptions to the competitive procurement preference.

To use sole source or not-practicable-or-feasible competitive exceptions, the agency must have a written justification for the method.

As with emergency procurement, the statute and implementing FAP policies require that a written determination of sole source or not-practicable-or-feasible status be made before the contract is awarded.[57] This determination must identify the specific basis for the conclusion that competition is not available or feasible, and must be maintained in the procurement file. Retroactive justifications do not satisfy the statute's requirement that the determination precede the award.

Sole source and not-practicable-or-feasible determinations are susceptible to overuse and abuse when oversight mechanisms are inadequate. A 2016 review by the New Mexico Legislative Finance Committee found that sole source procurement was among the most frequently misused non-competitive procurement methods, recommending formal review processes and cost comparison analyses as safeguards.[58] While Kentucky's statute does not currently prescribe a mandatory public posting requirement for sole source awards, best practices identified by the National Association of State Procurement Officials (NASPO) recommend public notice of such determinations as a transparency measure.[59]

OPS's role in noncompetitive procurement is explicitly evaluative rather than administrative. When an agency determines a procurement to be sole source or not practicable or feasible to bid, the agency submits a Strategic Procurement Request (SPR1) and any documents supporting their conclusion to OPS for review.[60] The executive director of OPS is responsible for determining whether a competitive exemption is warranted, and agencies requesting such an exemption must submit supporting justification for OPS's review.[61] For emergency purchases exceeding an agency's small purchase authority, KRS 45A.095 and FAP 220-11-00 require final approval by the FAC secretary or the secretary's designee before the purchase may proceed.

Contract Formation And Award

Contracts are typically built from the same terms and conditions template used in the originating solicitation.

Once an award decision is made, the same core obligations apply regardless of which method produced the award. The resulting contract is typically built from the same terms and conditions template used in the originating solicitation, so that everything that

governed the competition also governs the contract, except for any changes agreed to in negotiation and documented in the contract itself.[62]

- Contracts must be signed by individuals with authority to bind their agency; original or electronic signatures are both acceptable.
- The award must be entered into eMARS with all required supporting documents, since that entry constitutes the public notice of award and starts the statutory protest timeframe.
- If a protest is filed, the agency must provide FAC's Office of General Counsel a written response addressing each assertion, and the solicitation or contract performance is halted until a determination is issued.[63]

Contract Administration Responsibilities After Award. The CMG treats post-award administration as the phase where agency responsibility is most consistent across contract types in structure, but most variable in intensity. The level of contract administration required should match the contract's complexity, dollar value, and risk.[64]

A designated contract manager is assigned to every contract after an award decision is made.

Designating And Limiting The Contract Manager's Authority. Every contract needs a single designated contract manager, though additional staff may assist depending on size and complexity. The CMG lists the contract manager's core duties, including serving as point of contact, managing and documenting changes, monitoring performance, verifying invoices, and performing closeout. Similarly, the CMG includes a list of activities that the contract manager is never authorized to do:

- Instruct the contractor to begin work before the contract is fully executed.
- Modify the scope of the contract outside the formal amendment process.
- Direct work that is not specifically described in, and funded by, the contract.
- Extend the contract term without an executed amendment.
- Allow the contractor to incur costs beyond the contract's dollar limit.[65]

The Contract Management Guide (CMG) recommends at least a phone conversation for low-risk, low-dollar contracts and a full conference for higher-risk contracts.

Post-Award Conference. A kick-off meeting is not mandatory for every contract, but the CMG recommends at least a phone conversation for low-risk, low-dollar contracts and a full conference for higher-risk or more complex ones. The factors that should drive this decision include contract type, dollar value, contract length, delivery urgency, and the agency's prior experience with the contractor. The conference must never be used

to change contract terms; its purpose is to confirm a shared understanding of scope, terms, technical and reporting requirements, payment procedures, and the authority limits of each side's contract managers.[66]

The CMG recommends that contract monitoring should be based on project risk and complexity rather than dollar value alone.

Performance Monitoring. The CMG states that monitoring should track risk and complexity rather than dollar value alone. For example, a large but simple contract may need little monitoring, while a smaller but complex or high-risk contract may need close oversight. The CMG describes two principal monitoring tools:

- Site visits, which are recommended for more complex or higher-risk contracts, and should use a documented, contractor-specific checklist that references the exact contract requirement being tested, specifies (without disclosing to the contractor) the sample being reviewed, and is reported in writing even when a problem is corrected on the spot.
- Desk reviews, or comparisons of contractor-submitted reports against contract requirements, budget, prior periods, and known operating conditions.

For some highly technical contracts, the agency may assign monitoring to an independent third-party consultant rather than performing it with agency staff.[67]

The CMG singles out client services contracts for special caution: because acceptance of a service is not inherently evidence that an invoice should be paid, contract managers for this contract type must build in mechanisms to withhold future payment if performance problems surface after an earlier invoice has already been paid.[68]

Payment Approval And Withholding. The Contract Management Guide summarizes the requirements and recommended practices for approving and withholding contractor payments:

- Program staff must approve invoices before payment, consistent with FAC's Prompt Payment to Vendors policy; late-payment penalties are set by statute.
- Payment may be made only after receipt, full inspection, acceptance of goods or services, and required approvals; the agency may never pay for goods or services not yet received.
- For contracts with progress or scheduled payments, the agency must verify that billing matches actual, measurable progress; incurred costs or submitted invoices alone are not sufficient evidence of progress.

- The agency may withhold payment for a material breach, invoice errors, unsupported costs, recovery of prior overpayment, or non-conforming performance.[69]

Change Management

The CMG distinguishes three categories of changes to a contract: administrative, directed, and constructive.

The CMG distinguishes three categories of change, each with different agency obligations, and this distinction applies uniformly whether the underlying contract originated as an RFB, RFP, or PSC:

- Administrative changes, including billing address updates, typographical corrections, or changes in assigned agency personnel do not require a written amendment because they do not affect either party's rights.
- Directed changes, such as price, delivery schedule, quantity, deliverables, key personnel, or terms and conditions require a formal written contract modification and are not effective until that modification is finalized in the state's eProcurement system.
- Constructive changes, where a contractor performs added work believing the agency implicitly ordered it (for example, by accelerating a schedule or delaying invoice approval), can create a contractor claim for added compensation and generally still require a written modification to resolve.[70]

A related but separate constraint governs how far any change may go. For example, because state law requires competition, any amendment must stay within the scope of the original solicitation. A change is judged by whether it is so material or substantial that other vendors might have participated had the change been part of the original solicitation; if so, the change amounts to a new procurement and cannot be handled as a contract modification.[71]

Example Executive Branch Agency Procurement Processes

Agencies are primarily responsible for their own procurement activities. OPS plays a support role in this process.

Under the Kentucky Model Procurement Code, primary responsibility for procurement rests with the individual executive branch agency that identifies the need, plans the acquisition, and administers the resulting contract.[72] Before each fiscal year, an agency must submit an estimate of its anticipated competitive-bid needs to FAC through an Annual Procurement Plan.[73] Each agency must also designate a programmatic contract manager, who works with the agency's purchasing officer, communicates with the contractor, and monitors performance after award.[74] OPS supports this process but does not manage individual contracts. Unless noted, staff have not compared responses with agency procurement

records and the responses should be read as agency views rather than verified processes.[75]

Cabinet For Health And Family Services Procurement Process

Staff surveyed procurement agents within the Cabinet for Health and Family Services (CHFS) as a case study for how the procurement process plays out at the agency level.

According to cabinet officials, the initial decision to procure goods or services originates with department leadership, program staff, and budget staff. The request is submitted to the Office of Administrative Services (OAS) Division of Procurement and Grant Oversight (DPGO) via an electronic internal purchase requisition for review. Ultimately, DPGO determines if the procurement can proceed as requested.[76]

FAC's OPS is not involved in the initial requisition for individual procurements, but statute states that, prior to the beginning of the fiscal year, agencies shall provide FAC with an Annual Procurement plan, consisting of "an estimate of all needs for supplies, materials, and equipment during that year which will have to be required through competitive bidding."[77] Likewise, the selection of procurement method is made by the procurement team at the Cabinet for Health and Family Services (CHFS) in collaboration with the program area of need. Scope, along with estimated cost, complexity, and funding source requirements are all factors that determine the appropriate procurement method.[78]

The Finance and Administration Cabinet's Customer Resource Center and OPS provide eMARS assistance to agencies when needed.

Use Of eMARS. CHFS has staff who are well-versed in the use and functionality of eMARS. Many of the issues encountered while using the system are handled internally; however, FAC's Customer Resource Center and OPS provide assistance when needed. CHFS procurement staff noted that the eMARS statewide accounting system could be improved with upgrades to overall processes, citing the incorporation of grants management modules and a vendor invoice submission module.[79]

Vendor Performance Monitoring. According to CHFS staff, vendor performance evaluations (PE) are required anytime there is a vendor complaint by an agency. Whether vendor performance evaluations are required for every procurement is not clear; completed vendor performance evaluations are contained in eMARS. CHFS procurement staff review previous vendor PEs when constructing a new procurement. Negative vendor PEs are "used as part of the vendor responsibility determination process for future procurements."[80]

CHFS's procurement documentation is maintained in eMARS.

Award Management. According to CHFS staff, procurement records are maintained in eMARS through vendor PE documents and delivery orders (DOs). Contract modifications and amendments are documented in eMARS and are associated with their specific procurements. CHFS staff indicated that some departments "may maintain working contract files to document the day-to-day interactions, such as communications with vendors, deliverables, reports, meeting notes, etc."[81] It is unclear if these files are always submitted in eMARS, or if they sometimes exist somewhere else. Record retention for contracts is determined by the Department for Libraries and Archives.

Amendments and renewals to contracts involve an examination of departmental need, review of vendor performance, and the submission of a request to DPGO for either a renewal or a modification. DPGO is ultimately responsible for determining if renewals are available for the current contract, or if a modification is appropriate to the scope of the contract. OPS sometimes provides assistance or guidance when deciding between continuing an existing contract or opening a new procurement.[82]

CHFS procurement agents participate in training through the Kentucky Procurement Institute.

Training. CHFS staff who create procurement documents in eMARS must complete training through the Kentucky Procurement Institute. Employees are required to earn the Kentucky Certified Procurement Specialist (KCPS) credential within 1 year of taking a procurement-related position. To earn this credential, staff must complete six courses:

- A core certificate in procurement foundations, offered by either the National Institute of Governmental Purchasing (NIGP) or the National Association of State Procurement Officials (NASPO)
- Introduction to Kentucky Public Procurement
- Introduction to Professional Service Contracts
- Advanced Kentucky Public Procurement
- A core certificate in sourcing and contracting, offered by either NIGP or NASPO
- Kentucky Contract Administration

After completing this training, staff can turn to several reference tools maintained by OPS, FAP manual, the Kentucky Procurement Manual, and the Contract Management Guide. The Division of Professional Services and Training within OPS is responsible for providing procurement training and has recently updated and implemented the Learning Management System to deliver training to executive branch agencies. OPS also offers follow-up and specialized training sessions at Kentucky Public Procurement Association events.[83]

OPS is available to advise agency procurement agents as needed, but the agency is generally responsible for choosing a procurement method and for writing the scope of work and evaluation criteria for solicitations.

Office Of Procurement Services Role In Procurement Decisions. CHFS generally decides which procurement method to use on its own, though OPS is available to advise when needed. CHFS procurement officers are trained to make these decisions in line with KRS Chapter 45A, 200 KAR Chapter 5, and FAC policy. When OPS directly administers a procurement, it plays a larger role in choosing the method.

CHFS writes the scope of work and evaluation criteria for its solicitations. OPS gives final approval before the solicitation is posted. OPS supplies RFP and contract templates. Within CHFS, the Division of Procurement and Grant Oversight creates templates for cost proposals, bid tabulations, and technical review tools and maintains the cabinet's standard contract language. OPS also issues written guidance through the FAP manual, the Kentucky Procurement Manual, and the Contract Management Guide.[84]

CHFS must submit written justification to OPS for every noncompetitive procurement. OPS reviews and approves these justifications. OPS is not involved in how a specific RFP is evaluated unless the agency asks for help. Instead, OPS supports evaluators through training, including Kentucky Procurement Institute classes, sessions at Kentucky Public Procurement Association events, and guidance in Sections 3.4 and 3.5 of the Kentucky Procurement Manual. Responsibility for following applicable laws, policies, and procedures during the evaluation rests with the agency's Buyer of Record.[85]

For procurements CHFS handles on its own, OPS acts as an overseer, checking that submitted documentation complies with applicable laws, policies, and procedures. For procurements OPS conducts on CHFS's behalf, CHFS must still meet all applicable requirements, but OPS is ultimately responsible for managing and carrying out the procurement. CHFS generally described OPS as a partner that takes on a range of roles depending on the procurement, rather than fitting neatly into either an approver/gatekeeper role or an active-partner role.[86]

Other Agency Procurement Processes

Committee staff also surveyed the Justice and Public Safety Cabinet (JPSC), the Education and Labor Cabinet (ELC), and the Energy and Environment Cabinet (EEC).

In addition to the response from CHFS, LOIC staff received responses from the Justice and Public Safety Cabinet (JPSC), the Education and Labor Cabinet (ELC), and the Energy and Environment Cabinet (EEC).

For the three responding agencies, all said the user program area initiated the procurement process and all followed the Model Procurement Code.

Identifying Needs And Choosing A Method. All three cabinets said the program area that needs a good or service starts the process. They differed in how they document that need. JPSC pointed to its biennial budget request, which includes a schedule of planned contract activity. ELC enters requests into an internal electronic system for approval. EEC uses budget planning and an internal purchase request form, which is required for purchases over $1,000, all information technology purchases, and major vehicle repairs.[87] All three said they choose a procurement method by following KRS Chapter 45A, administrative regulations, and FAC policy. Only EEC described how that choice is made in practice: the requesting division and EEC's procurement branch weigh the type of purchase, its estimated cost, and the legal requirements that apply.[88]

Use Of eMARS. JPSC, ELC, and EEC described eMARS as their main procurement system. They handle most eMARS questions in house. JPSC and ELC refer unresolved problems to FAC's Customer Resource Center or OPS; EEC relies mostly on its own staff and turns to OPS when needed.[89]

Vendor Performance Monitoring. JPSC and EEC said they complete Performance Evaluation (PE) documents in eMARS and consider past performance when evaluating vendors. EEC said it reviews prior PEs for that purpose and described the most detailed monitoring, including report reviews, site visits, and audits.[90] ELC said it documents vendor performance "when there is an issue with a vendor."[91] FAC policy requires agencies to complete a PE when every contract is completed or renewed, not only when problems arise.[92] If ELC's answer reflects its practice, that practice is narrower than policy requires.

Records And Renewals. JPSC, ELC, and EEC keep procurement records in eMARS. They gave different answers on whether OPS tells them what to keep and for how long. JPSC said it follows the OPS Contract Management Guide together with state records retention schedules. EEC said OPS does not provide such guidance and that retention periods come from the Kentucky Department for Libraries and Archives.[93] All three said they decide for themselves whether to renew a contract or rebid it, and consult OPS when needed. EEC also noted that OPS manages renewals for MAs.[94]

Kentucky Procurement Institute (KPI) provides eMARS walkthroughs.

Training. All three cabinets named FAC as their main source of procurement training. JPSC pointed to the Kentucky Procurement Institute (KPI) certificate program. ELC said its staff attend an annual Kentucky Public Procurement Association training that it

said OPS staff conduct. EEC said procurement staff must complete KPI courses within one year of starting in procurement and that EEC also provides its own training, procurement guide, and eMARS walkthroughs.[95]

All three responding agencies described OPS as serving an approval role, with advice available on request.

Office Of Procurement Services Role In Procurement Decisions. When asked whether OPS is mainly an approver or an active partner, JPSC, ELC, and EEC described a review-and-approval role, with advice available on request.[96] The cabinets said they draft solicitations and justifications for noncompetitive purchases themselves, using OPS templates, and OPS approves or rejects them in eMARS. EEC added that OPS may require a requested noncompetitive purchase to be bid competitively instead.[97] Evaluating proposals is mostly left to the agencies, guided by KPI training and the Kentucky Procurement Manual. EEC noted that OPS takes the lead when a purchase exceeds the agency's small purchase authority.[98]

The surveyed agencies had suggestions to improve the procurement process: better communication from OPS, a way to reach all state procurement staff at once, more prompt answers from OPS, and an intensive "procurement academy" in anticipation of a retiring workforce.

Suggested Improvements. ELC and EEC asked for better communication from OPS. ELC asked for a way to reach all state procurement staff at once. EEC asked for more timely and concise answers, especially during active procurements.[99] JPSC raised a workforce concern: experienced procurement staff are retiring, many offices have only one procurement position, and no college degree leads directly to the field. JPSC suggested that FAC, if it had the resources, could run a short, intensive "procurement academy" to train new staff.[100]

Chapter 3

Identified Procurement Irregularities

Major Conclusions

This chapter identifies irregularities discovered in the procurement process through staff research. Generally, FAC is not statutorily responsible for ensuring executive branch compliance with the Kentucky Model Procurement Code, however, procedural review of procurement activities could prevent future issues.

To determine whether state procurement policies are effectively implemented, policies were compared against procurement documents in the statewide accounting system, eMARS.[d] Staff found that:

- The majority of procurement processes from FY 2018 to FY 2026 appear to follow intended procurement practices.
- Cited authorities are sometimes incorrect.
- Small purchase authority was exceeded in at least three instances.
- Purchase splitting may have been used to exceed small purchase limits.
- At least three awards exceeded approved maximums.
- The Finance Cabinet's audit process generally does not review procurement.
- Some contracts were modified and extended across decades, which may impede competitiveness.
- Emergency contracts may have exceeded emergency conditions.
- Noncompetitive awards had minimal justification.
- Negatively reviewed vendors continue to receive awards.

Most of these findings are not an indication of general noncompliance with statute, regulations, or policies. Most reviewed procurement activity followed routine, established methods. The findings in this report describe exceptions within that activity. Additionally, many of the findings of past irregularities predate the current administration. The analysis focused on areas of higher risk to identify potential areas of vulnerability and inefficiency. While the situation has clearly improved in the studied period, the Office of Procurement Services did not provide a description of the standard methodology used to ensure these risks do not become problematic. One goal of this study is to identify areas where written policies would help ensure that the

[d] eMARS is the abbreviation for electronic Management Administrative Reporting System, though the full name is not commonly used in procurement guidance.

risks identified do not recur under future administrations. Any improvement would involve effort and cost, necessitating an evaluation of whether this benefit outweighs the cost.

Methodological Considerations

Staff analyzed the statewide accounting system, eMARS, as the primary source of procurement data for this study, however, it is possible that additional information was maintained internally and therefore excluded from analysis.

This analysis requires caveats. Information in eMARS is only useful when staff accurately and completely enter information into the system. It is possible that additional information or more complete justifications were maintained internally. However, eMARS serves as the system of record for financial information and any material not entered into its systems is at risk of being lost.

Staff relied on the statewide accounting system, eMARS, as the primary source of procurement data for this study. eMARS is designed first to process and record financial transactions, such as encumbrances, payments, and fund balances. Its reporting tools are primarily designed for accounting and financial reporting rather than for procurement oversight. The Finance and Administration Cabinet has stated that its quality assurance for statewide reports focuses mainly on whether those reports are financially accurate.[101]

Accessibility and traceability are limiting factors with eMARS.

Although procurement data may be robust in some cases, accessibility and traceability are limiting factors with eMARS. Those data include the need for the purchase, the method of solicitation, and the justification for a noncompetitive award. When that information exists, it is typically stored in attachments or free-text fields, or potentially kept in agency files outside the system. Prior LRC studies of state procurement encountered similar conditions.[102]

EMARS contains dozens of cited authority codes, which agencies use to record the legal basis for an award. Staff did not analyze all of them in depth. Instead, staff reviewed all cited authorities entered since 2018 to determine if cited authorities matched a statute, regulation, or Finance Cabinet policy. Then, staff selected the authorities with the greatest potential for misuse for a deeper review, based on the results of audits conducted in other states that reviewed similar procurement authority types. Because the selection was based on judgment rather than a statistical method, the results describe only the authorities selected; they cannot be used to draw conclusions about authorities staff did not review. Additionally, eMARS had a large update in 2018, making accessing files beyond that year difficult or impossible. This study analyzes historical procurement trends and incidents since 2018.

Some issues highlighted below predate the current administration, while others have persisted.

An analysis of ProCard activity was not conducted because procurement card data are recorded and stored separately from other procurement-related data and the Office of Policy and Audit (OPA) told staff that it is currently conducting an audit of ProCards.

Procurement Cards. Procurement cards, commonly referred to as ProCards, are Visa credit cards issued to commonwealth employees that can be used to purchase approved commodities directly from vendors.[103] While procurement cards represent a high-risk area, procurement card data are recorded and stored separately from other procurement-related data and require different analysis. Additionally, the Office of Policy and Audit (OPA), within OPS told LOIC that it is currently conducting an audit of procurement cards, so the results of that audit will likely be more in-depth than what LOIC would be able to provide in the context of this study, which has a much broader scope.

However, a preliminary review of procurement card data found areas which could merit further review. For example, in approximately 40 percent of the procurement card records, there is no supervisory contact listed in the system. Other cards have inception-to-date spending amounts which conflict with their spending limits. For example, one card with an annual spending limit of $750,000 is currently listed as having spent $3.3 million, despite the fact that it has only been effective for 3 years, which would authorize it to spend only up to $2.25 million. Another card has its expiration date in 2023, yet still shows transactions occurring in 2025. Further study would be required to determine whether these are representative of a systemic issue with procurement cards, or whether there is a legitimate explanation requiring further understanding of the procurement card dataset.

The use of eMARS data resulted in two limitations. Sole source and emergency procurement awards can be difficult to separate. Many small purchase records do not include a description of cited authority.

Limitations. Award records were downloaded from eMARS and its reporting tool, EBI, and grouped by cited authority code. This approach has one primary limitation and a second issue that affects mostly small purchases.

First, some codes are used for both sole source and emergency awards, so the two types cannot always be separated. Where a code covered both types, staff counted the awards as sole source. Staff chose this approach to keep the analysis of emergency awards separate. As a result, counts and totals for sole source awards may be overstated, and those for emergency awards may be understated.

Many small purchase records do not include a description of the cited authority. Without a description, the type of award could not be determined. Grouping records by description instead of by code

would not have solved the problem of overlapping award types. Instead, it would have created a different problem where every award with a blank description is excluded from analysis.

This chapter contains 10 finding areas, 13 recommendations, and 1 matter for legislative consideration.

Cited Authorities Are Sometimes Incorrect

While the eMARS "Cited Authority" field is a required field, the space is frequently filled with information unrelated to the intended legal citation.

The eMARS "Cited Authority" field, which purchasing officers are required to complete for every award, is frequently populated with text that is not an actual citable statute, regulation, or FAP provision. Multiple MAs list the MA's own document ID number as the cited authority rather than a legal citation. Several agencies did this for MAs primarily related to printing services.

The description field for cited authority is also frequently blank. In the reviewed data, cited authority is blank for at least 11,507 transaction lines, all coded to FAP-111-55-00 for small purchases. Because the authority references an established FAP there is no issue if the initial cited authority is correct. Furthermore, as FAC noted, "the accurate reference for the cited authority is the critical piece of information rather than the second field, which is the description of that cited authority. Often, descriptive fields in eMARS are optional, informational only, and not the best way to confirm compliance. Reviewing the attached documentation is the best way. The referenced descriptive field will infer information based on specific cited authorities established by FAC."[104]

Four master agreements (MAs) cited "AGREEDSETTLEMENT" upon advice of Finance Cabinet General Counsel.

Four MAs contained transaction lines that cite "AGREEDSETTLEMENT," which refer to a 2013 Transportation Cabinet settlement, which is not a reference to a statute, regulation, or FAP. FAC stated that the AGREEDSETTLEMENT code "was created by FAC Office of Procurement Services based on guidance from FAC General Counsel due to the result of a court settlement involving multiple procurements."[105]

A Kentucky Higher Education Assistance Authority (KHEAA) grant is cited as "KHEAA>$20,000," which describes only that special approval was needed to exceed the department's small purchase authority and does not identify which FAP provision, likely FAP-111-10-00 or FAP-111-39-00, authorized the award.

Three small-purchase awards exceeding $100,000 reference using vendor quotes but cite a statute that sets the small-purchase ceiling.

Three small-purchase awards exceeding $100,000 all cite "KRS 45A.100-RFQ(M)," and are described in the system as "RFQ Small Purchase with Minority Vendor Consideration." This description does not have a basis in KRS 45A.100, which contains

no reference to requests for quotes (RFQs) or minority-vendor consideration and functions only to set the small-purchase dollar ceiling.[106]

One contract cited "small purchase" as its authority despite indicating that a request for bids had been conducted prior to the award.

Separately, a Finance Cabinet HVAC testing-and-balancing contract for the KY International Convention Center was entered into eMARS with "small purchase" as the cited authority description, despite indicating that a request for bids was conducted by having a title starting with "RFB-79-18."[107] FAC explained that this was "an isolated administrative oversight involving the incorrect classification of the procurement in eMARS rather than an issue with the actual procurement process. The contract in question was procured through a normal, publicly advertised Request for Bids (RFB) process and subsequently awarded in accordance with established construction procurement procedures. This administrative error in classification is unusual for DECA, and the contract documentation should clearly establish that the procurement was competitively bid and properly awarded."[108]

A Transportation Cabinet rest-area sewage lift station contract is coded as a small purchase in eMARS and the award documentation, despite the internal authorization memos invoking KRS 45A.095 and FAP 111-39-00 for emergency-purchase authorities and a Transportation Cabinet memo describing a pump failure requiring an emergency response.[109] FAC stated that the original contract was established under the incorrect Department and Unit codes and that "we had to cancel the original and create a new contract." Additionally, "the scope of the project expanded and KYTC sought approval for an Emergency Purchase." EMARS does not allow for the correction of those elements, but KYTC will ensure the correct cited authority is selected on future contracts.[110]

Criteria. KRS 45A.045 requires that every contract be made under FAC-promulgated administrative regulations or FAC approval directly. The FAC Manual of Policies and Procedures is incorporated by reference as an administrative regulation under that statute.[111] Purchasing officers are required to enter the applicable cited authority in eMARS following SPR1 approval. SPR1s are a document type that outlines the justification for a contract. For personal service contracts, OPS is separately required to review the cited authority for accuracy.[112] KRS 45A.100 governs small purchase thresholds and contains no minority-vendor or RFQ provision.

Effect. Inaccurate cited-authority data obscures the true legal basis relied upon for individual awards from both agency management

and external reviewers, complicating verification that an award was properly authorized.

Recommendation 3.1

Recommendation 3.1

The Finance and Administration Cabinet (FAC) should require that the Cited Authority Description auto-populate from a validated table keyed to the Cited Authority field rather than accept free text and should provide additional training to agency and Office of Procurement Services purchasing staff on correct cited-authority selection and entry. FAC should provide the Legislative Oversight and Investigations Committee with an estimated cost for modifying eMARS to allow the functionality needed to fulfill this recommendation.

Small Purchase Authority Exceeded In Three Instances

While the majority of small purchase awards reviewed had no issues, staff identified three instances in which purchases exceeded the agencies' small purchase authority, likely due to errors.

Most agencies have a small purchase statutory limit of $1,000. Statute allows for select entities to exceed that limit up to $100,000 with the approval of the FAC secretary.[113] Of more than 36,000 small purchase awards recorded in eMARS, three exceed that limit.[114] The majority of small purchase awards reviewed had no issues, and the issues that did appear were from more than 3 years ago. For the three identified purchases, eMARS classified each one as a small purchase. However, the contract documents uploaded to eMARS cited a different procurement authority. These differences likely resulted from coding errors when the records were entered.

A Finance Cabinet HVAC testing-and-balancing contract for the Kentucky International Convention Center reached $332,920.[115] It was originally awarded for $323,710 and increased after two modifications: $1,570 for a "bakery fit-out" and $7,640 to balance HVAC for the "Overlook Suites." FAC noted that this was an isolated administrative oversight.[116]

Two related Department of Highways contracts for a Simpson County Rest Area sewage lift station each reached $120,000, likely representing the same underlying project split across two department codes because of what the modification record describes as a data-entry error in which the award was established under an incorrect department and unit code.[117] FAC's explanation was that this was an isolated administrative oversight.

Criteria. KRS 45A.100 sets the maximum small purchase authority the Finance Secretary may delegate at $100,000, applicable to FAC itself, state institutions of higher education, and

the legislative branch.[118] Other agencies' delegated limits range from $5,000 to $20,000, with most agencies with special approval limited to $10,000.[119]

Effect. Regardless of the underlying cause, all three awards are currently recorded in eMARS as small purchases exceeding the statutory ceiling, in noncompliance with KRS 45A.100. Because the awards are miscoded, it creates the appearance that agencies were allowed to violate small purchase requirements and could undermine the authority of the requirement.

Recommendation 3.2

The Finance and Administration Cabinet should implement a hard stop in eMARS that would prevent any award coded as a small purchase from being approved or modified above the agency's delegated small purchase authority or the $100,000 statutory maximum.

FAC officials stated that they would need to understand the cost of adding population fields to eMARS before implementing a coding change in the system.[120]

Recommendation 3.3

Recommendation 3.3

The Finance and Administration Cabinet should correct the classification of the Kentucky International Convention Center and Simpson County Rest Area awards in the system of record to reflect their actual procurement basis.

Splitting May Have Been Used To Exceed Small Purchase Limits

Staff identified at least four instances of small purchase awards potentially split to circumvent the spending threshold. The groups identified as the highest risk for artificial splitting matched award date, industry code, department, vendor, award end date, award amount, and unit code.

LOIC staff identified at least four groupings of small purchase awards with potential artificial splitting. The examples provided are not comprehensive, but represent the strongest cases for small purchase splitting where all variables matched. FAC stated that two of the five identified were in fact small purchase splits and that OPS had previously identified them and required further action to resolve them. FAC contests that the other three groups are not examples of small purchase splitting.[121]

These groups were identified through an analysis based on a multi-level matching methodology that used award date, industry code, department, vendor, award end date, award amount, and unit code. If the awards matched for every single variable, but were split

across multiple awards, there was a possibility that the award was artificially split, particularly if the amount for each was close to the relevant small purchase authority for the agency.

What is more common and riskier than exceeding the cost is false purchase splitting.[122] This occurs when an agency splits and submits separate requests for small purchases that should logically be one award. If the limit is $10,000 and an agency is requesting four items at $10,000 each, they would submit four separate small purchase requests for $10,000 each rather than putting them on the same request to evade the small purchase limit. Statute specifically prohibits this for all small purchases: "Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section."[123] The FAP also prohibits this for capital construction projects that are performed by a state agency utilizing material and labor provided by the agency: "A project shall not be separated into smaller projects in order to circumvent the statutory maximum dollar limit for a force account project or to facilitate split purchasing."[124]

These potential splits predate the current administration at OPS, and appear to be resolved. OPS indicated that it is the agency with primary responsibility for reviewing potential split purchasing.

> When split purchasing is suspected, OPS reviews the agency's small-purchase activity using eMARS data for the preceding 12 months. The review considers commodity codes, dates, descriptions, dollar amounts, and vendors, with transactions analyzed by commodity code and vendor to identify similar or substantially identical purchases that may indicate an attempt to circumvent applicable procurement requirements or statewide Master Agreements. Potential instances are documented and reported to the Executive Director for review. If appropriate, the Executive Director notifies the procuring agency and requests a corrective action plan.[125]

Although the 12-month review period matches FAC policy, the process has several limits. First, it begins only after a split is suspected, and OPS did not indicate what triggers a review. A split designed to avoid notice may therefore never be reviewed. Additionally, these groups only represent the most egregious examples of matching characteristics of awards. It is possible for splitting to occur by changing one of the matching variables, such as the date by a day, or the cost by a dollar, to evade detection. It is possible there are other potentially problematic groupings from the study period which LOIC was unable to identify.

Educational Janitorial Services

An example of the potentially artificially split awards is a group of five separate purchase orders (POs) from the Education and Workforce Development Cabinet to a single vendor for janitorial services at five separate facilities. Although the awards were for separate locations, the vendor did not submit five separate bids.

The Education and Workforce Development Cabinet (EWDC) issued five awards as purchase orders (POs) to a single vendor with an effective date of January 23, 2020.[126] The POs are for janitorial services at five separate state career centers and vocational rehabilitation offices located in Ashland, Glasgow, Morehead, Campbellsville, and Somerset.

Although the awards were for five locations, the vendor did not submit five separate bids. Instead, on January 23, 2020, the vendor submitted a single, consolidated bid proposal that quoted its monthly service rates for all five locations on one page. Additionally, small purchases typically require quotes rather than bids. Instead of processing the vendor's consolidated bid as a single, formal contract, the EWDC procurement office separated the award into five separate POs and artificially capped the initial value of each document at exactly $5,000. This might have been legitimate if the initial bidding documents had been split. Because the agency split the award after bidding, it legally obligated $25,000 to a single vendor, on a single day, for a single commodity type, while making the obligation appear as five minor transactions in the accounting system. Although the POs were for separate locations, four of the five listed the same shipping location.

Furthermore, because the $5,000 limit was arbitrary and did not align with the vendor's actual or estimated monthly expenditures, the agency exhausted money for the POs and could not pay its bills. By July 2020, procurement staff had to execute modifications that added thousands of dollars to the Ashland and Campbellsville POs to process outstanding invoices. These modifications raised the final contract amounts to $9,273.07 and $7,054.00, respectively. [127]

The modification documents explicitly state that the branch manager of EWDC Procurement Services instructed buyers to cap these POs at $5,000 or less.[128] The manager's rationale was that the Finance and Administration Cabinet was negotiating a statewide janitorial MA at the time. The manager assumed the new agreement would be active before these $5,000 bridge limits ended. When the COVID-19 pandemic delayed the new MA in March 2020, the arbitrary $5,000 limits were exhausted and the agency had to modify the POs to pay the vendor.

According to EWDC internal policy, as shown on the routing form documents for these awards, any purchase valued at $10,000 or

more required the direct approval and signature of the cabinet secretary. Purchases valued between $1,000 and $9,999 required only the approval of an executive director. By splitting the vendor's consolidated bid into five identical $5,000 segments, the procurement branch kept every document under the $10,000 threshold and bypassed the cabinet secretary's oversight. FAC noted these transactions "resulted in an RFB being issued to ensure competitive bidding" in 2020.[129]

N95 Masks For Thomson Hood Veterans Center

The Kentucky Department of Veterans Affairs issued two POs for N95 during COVID-19 at the Thomson-Hood Veterans Center. The agency purchased one case of masks on each PO for $12,900 for a combined total of $25,800 which exceeds the $20,000 threshold.

The Kentucky Department of Veterans Affairs issued two POs for N95 masks for COVID-19 response at the Thomson-Hood Veterans Center. The agency had a single requirement for two cases of masks, totaling $25,800.[130] The documents provide no technical or operational justification for splitting this order into two identical $12,900 transactions rather than processing it as a single $25,800 order. By processing two separate $12,900 orders, the agency kept both transactions below the typical thresholds that trigger higher levels of scrutiny or mandatory competitive bidding. The orders were issued on the same day, to the same vendor, for the same item.

The agency likely prioritized the immediate purchase of time-sensitive COVID-19 supplies. However, the Model Procurement Code expressly prohibits artificially dividing procurement requirements to keep the "small purchase" designation, despite any urgency.[131] The agency obtained identical quotes for the same item from the same vendor on the same day. This confirms that the total requirement was known and could have been combined into a single, compliant procurement. FAC stated, "The Veteran Affairs' purchase of N95 masks was a split purchase, and the agency has been required to submit a Corrective Action Plan to address future compliance."[132]

Abandoning Former Monitoring Wells

The Department for Environmental Protection awarded two POs to a vendor for environmental engineering services to assess, locate, and properly abandon former monitoring wells, each totaling $19,999.99, or one cent less than the $20,000 threshold. These totals are inconsistent with the itemized cost spreadsheets, which total $26,466.50 and $29,748.90.

The Department for Environmental Protection's Underground Storage Tank (UST) Branch issued two separate POs to a vendor for environmental engineering services to assess, locate, and properly abandon former monitoring wells.[133] One project was in Menifee County, and the other was in Hardin County. Both were processed under FAP 220-10-00, which covers construction small purchases.

Both POs were approved for $19,999.99, one cent less than the small purchase limit. It is highly improbable that pricing for multiple construction services would be estimated at one penny below the $20,000 threshold. The award documentation shows that the $19,999.99 figure is artificial. The Scope of Work Proposal documents include itemized cost spreadsheets that calculate the required funding based on the state's formulated task rates. For the Menifee County project, the line items for mobilization, drilling, and waste disposal total $26,466.40. For the Hardin County project, the line items total $29,748.90. At the bottom of both spreadsheets, however, the calculated totals are ignored, and a separate final total of $19,999.99 is typed in. The agency then used this final number to construct the official POs.

The department should have been required to conduct a formal, public competitive sealed bidding process because each environmental assessment was estimated to cost more than the department's $20,000 small purchase authority.[134] Instead, on October 29, 2018, it sent prefilled proposals to the vendor stating that if the vendor agreed to the $19,999.99 cost, the agency would issue a purchase order. The vendor agreed and signed the required affidavits three days later, on November 1, 2018.[135] FAC stated that this was not a small purchase split. “The Department of Environmental Protection transactions were separate scopes of work, as is indicated by the different original prices, but were both negotiated by the agency to amounts that made those purchases below the agency’s small purchase limit resulting in savings to the Commonwealth.”[136]

It might appear that the agency negotiated a $29,000 environmental cleanup down to $20,000, saving taxpayer money without going over budget. However, the agency's method effectively cut off competition, contrary to the principles of small purchases, and may have cost more than opening the work to competition. A formal public bid might have revealed other environmental firms willing to do the work for a lower price point. By capping the price at exactly the maximum of its small purchase authority, the agency guaranteed the vendor the highest payout possible without triggering a public bid. An actual negotiation would produce figures based on labor and materials.

Although the example described above may not have violated statutory requirements, there are risks associated with this method of procurement including: incentivizing the vendor to use cheaper

materials or dispose of waste improperly.[137] Even if the vendor does none of these things, the cost may increase later and require additional funds.

Electric Capacitor Installation

The Department of Military Affairs issued two POs to a vendor for the installation of capacitors on the electrical system at the Wendell H. Ford Reginal Training Center, at $17,875 each. An additional $500 fee was added to both POs for an electrical inspection, bringing the project total to $35,750, exceeding the $20,000 threshold.

The Department of Military Affairs (DMA) Facilities Division issued two POs to a power company for the installation of capacitors on the electrical system at the Wendell H. Ford Regional Training Center in Greenville, Kentucky.[138] One contract was routed for the base's Unit Training Equipment Site (UTES) facility, and the other was routed for the base's Central Heating Plant (CHP). Both were processed under FAP 220-10-00 for Construction Small Purchase, and both were initially approved for exactly $17,875.00.

On December 12, 2019, DMA executed simultaneous change orders on both POs to add a missed $500.00 electrical inspection fee to each, bringing each PO to a final total of $18,375.00. All of the documents for both POs were created and approved on the same day. The $500 change order requests for both awards carry an identical justification: “[The vendor] was unaware of the Electrical Inspection requirement and did not include the electrical inspection fee on their original quote.” They were entered on the same date of December 9, 2019, and approved on the same date of December 12, 2019. The justification appears to be flawed. The file contains two separate one-page letters from the vendor, dated August 26, 2019, each headed “Permitting Fees $500.” A clerical correction to the vendor name was also made on the same date for both awards.

Both awards were for the same campus. However, FAC stated, “The Department of Military Affairs electrical capacity services involved two installations and two different locations” and therefore this was not a small purchase split.[139] The department's aim was a campus-wide electrical efficiency upgrade at the Training Center, and the combined known cost of this requirement was at least $35,750.00. The terms and conditions in both POs explicitly state: “modifications will not result in the expenditures against this contract exceeding $20,000 or amount of sole source contract per fiscal year.” By dividing the base's electrical upgrade into two contracts based on individual building names, DMA processed nearly $37,000 worth of construction work without opening the contract for competition.

The contract's documentation contains mathematical anomalies that suggest the pricing was manipulated to fit under the threshold. The vendor submitted both quotes on the same day, August 26, 2019. Although the quotes are for two different buildings with different electrical loads, they are identical in cost. Both quote $14,300.00 for materials and $3,575.00 for labor. Most notably, both claim the upgrade will produce identical annual energy savings of $13,242.00, for an identical payback period of 16.2 months. Claiming that two differently sized facilities with different functions require exactly the same wiring and labor while producing exactly the same energy savings is suspect. This likely indicates a larger total amount was halved and the paperwork duplicated so that neither quote would exceed the state's $20,000 threshold.

Criteria. KRS 45A.100(2) provides that "procurement requirements shall not be artificially divided so as to constitute a small purchase" under the statute.[140] FAP 220-10-00 also prohibits this for construction projects.[141] Auditors of other states have identified this issue in their own audits, finding that agencies "appear to be circumventing the Procurement Code by awarding multiple small contracts to the same vendor."[142]

Effect. The four groupings of small purchase awards identified by LOIC to have a high risk of artificial splitting collectively removed at least $150,000 from competitive sealed bidding or formal contract requirements. As discussed in the environmental-assessment example, artificially suppressing price to fit under the threshold can also directly cost the state money.

Recommendation 3.4

Recommendation 3.4

Consistent with KRS 45A.100(2), the Finance and Administration Cabinet should operationalize a preapproval screening control to flag same-day, same-vendor, same-department, same-unit, and same-industry code clusters for additional review before an award is approved.

Three Awards Exceeded Approved Maximums

From a sample, staff identified three awards where the spending amount exceeded the approved award amount.

LOIC identified three awards where the spent amount recorded in eMARS exceeds the approved award amount, a condition that should not be possible without a corresponding modification of the approved amount.[143] FAC stated, "Because all 3 findings were relatively low amounts, FAC represents that the current system of

controls is effective. FAC is always reviewing internal controls for reasonably effective improvements."[144]

Lawn Care

The final version of a DO for a lawn care company hired to mow a rest area in Rowan County shows $15,504 spent against the contract, or twice as much as the original approved amount. FAC verified that the lawn care company only received the approved amount, but the award still displays an overpayment.

The initial award with the highest overspending amount was a delivery order (DO) for a lawn care company to mow a rest area in Rowan County.[145] Version 1 of the award lists the original authorized amount as $7,752 for 204 acres. Version 2 raised the actual amount to $8,398, to add 17 acres. However, the final version shows $15,504 spent against the contract, which is twice the original amount.

Modifications of the DO likely created the appearance of a relatively large overage. All payments against the first version of the DO equal the amount shown on the document. The second version of the DO shows a higher amount, despite only $7,106 of payments referencing the DO. FAC confirmed that additional payments were not made against the DO, stating, "Payments were made equaling the amount authorized by the Delivery Order. There are no further payments to be made. We have verified that eMARS only allowed payments for the $8,398 authorized by the Delivery Order."[146]

Virtual Meeting Licenses

The Education and Labor Cabinet purchased remote meeting software licenses to support accessible virtual meetings. The modification of the procurement appears to display a negative open amount, as if the agency spent over the limit. Supporting documentation references a missed invoice, so it is not clear if the overage is an eMARS error or a payment beyond the limit.

The Education and Labor Cabinet purchased software licenses to support accessible virtual meetings.[147] The purchases were for two offices. The Office of Technology Services renewed 55 licenses for the cabinet, as well as a phone line and two Webinar 500 add-ons. The Office of Vocational Rehabilitation separately added 15 licenses, bringing the purchase order (PO) to 70 licenses in total.

The agency started with a quote for $6,567.25. It then received a second invoice for $3,898.50 for annual licenses and additions. The agency executed version 2 of the PO to "add money to the commodity line for an invoice that was missed," raising the ceiling to $10,479.28. However, eMARS displays the PO with an open amount of negative $1,452.92, as if the agency spent that much over the limit. The DO modification indicates it added money "to the commodity line for an invoice that was missed" so the additional amount could have come from a payment or it could have been caused by an error in eMARS.[148]

Janitorial Supplies

The Department of Corrections was allowed to issue a DO exceeding the approved amount against a MA by leaving out fees like shipping, delivery, and surcharges.

The smallest overspend was a DO issued against a MA for the Department of Corrections to buy janitorial supplies.[149] The overspend here is almost certainly due to tolerance. The original DO used only the unit price of the goods and left out fees such as shipping, delivery, or surcharges. This is not unusual or problematic, but training agencies to add contingencies to these types of awards could help prevent it.[150]

Criteria. A closed or expended amount should not exceed an award's approved header amount without first receiving a formal, approved modification.

Effect. In the lawn-care example, the ability to exceed maximums created the appearance that the agency allowed lawn care costs to exceed its authorized amount. This misrepresents the amount of money spent against the contract and creates a negative impression of the agency. In the case of the virtual meeting licenses and janitorial supplies, the lack of a compensating control appears to have allowed actual expenses to exceed limits.

FAC officials said they patched a defect affecting delivery and purchase orders on December 27, 2024.

FAC officials said that they had identified a defect affecting delivery orders and purchase orders, reported it to CGI (eMARS vendor), and deployed a patch to production on December 27, 2024.[151] Both the lawn care and virtual meeting licenses payments were processed before the patch was deployed. The dollar amounts are small, but the lawn care payment was nearly double the approved amount. The defect FAC identified indicates that the control was not working when these payments were made. LOIC staff did not verify whether the patch prevents eMARS from processing payments that exceed an award’s approved amount.

Recommendation 3.5

Recommendation 3.5

The Finance and Administration Cabinet should consult with CGI to determine the feasibility of configuring eMARS so that a closed or expended amount cannot exceed the approved header amount without a formal, approved modification.

The Finance And Administration Cabinet's Audit Process Generally Does Not Review Procurement

The Office of Policy and Audit (OPA) within the Finance and Administration Cabinet has the authority to audit the cabinet's operations generally, however, LOIC staff did not identify evidence that OPA has audited FAC's own procurement operations. OPA is currently conducting an audit on agency use of ProCards.

Within FAC, the Office of Policy and Audit (OPA) conducts internal audits, investigations, and management reviews. It also provides guidance when enacting or amending internal policies and procedures.[152] OPA advised LOIC staff that it is conducting ProCard and procurement audits of outside agencies, which were in draft form as of April 17, 2026.[153] These audits reflect use of the audit mechanism described in 200 KAR 5:302, sec. 2(7), which addresses agencies holding delegated small purchase authority. Separately, the Finance Administrative Policies authorize OPA to conduct compliance and operational audits of Finance and Administration Cabinet operations generally, with the approval of the FAC secretary.[154] OPA's authority in this context is not limited to outside agencies and may extend to FAC's own procurement operations, including those of the Office of Procurement Services.[155] LOIC staff did not identify evidence that this broader authority has been used to audit FAC's own procurement operations.[156] Regular use of this existing authority in that area could provide FAC leadership with an additional, independent, recurring check on procurement compliance within FAC itself, complementing OPA's current audit work directed at outside agencies.

Recommendation 3.6

Recommendation 3.6

The Finance and Administration Cabinet should evaluate opportunities for the Office of Policy and Audit to review procurement activities to ensure policies are appropriately followed.

Some Contracts Were Modified Repeatedly And Extended Beyond Their Original Terms

At least 15 MAs exceed 20 years in duration, with the longest being active for 32 years. There is no requirement for contracts to be reviewed for appropriateness at a later date. While it would not be productive to require a new procurement, it may be beneficial for agencies to consider whether long running contracts are the most effective method.

Several MAs have remained active and been modified significantly beyond the dataset average of less than 4 years and fewer than five modifications. There is no requirement for long running contracts to evaluate if the contract is still the most efficient means of providing the good or service. Requiring a new contract after a specific number of years would be restrictive, but agencies may benefit from at least reviewing the need for contracts on a regular basis. The most extreme example is a MA with an inception in 1995, 32 years active, for sole-source ArcGIS software.[157] FAC said that ArcGIS software is used by most cabinets and that it

supports hundreds of business processes. In their view, issuing a request for proposals would require staff time and resources without producing a benefit.[158]

Several other MAs exceed 20 years in duration. These are generally for IT or telecommunications awards, such as GIS software, a library database application, and a student information system.[159] All were competitively bid or exempt from competitive bidding requirements. However, given the amount of time since the creation of the original contracts, it is possible that the market landscape has changed significantly since their inception. This could present inefficiencies if alternative vendors or methods have not been considered since the original bids.

It is common for state governments to utilize long-term MAs with specific IT vendors to avoid switching the entire system over, however, this risks systems being out of date.

Being locked in with specific IT vendors is not uncommon among state governments Many states still depend on aging IT systems. In a 2022 NASCIO survey, 48 percent of state chief information officers said most of their applications needed modernization, and 31 percent had no documented modernization strategy.[160] The Government Accountability Office found that in eight states it reviewed, legacy unemployment insurance systems were 7 to approximately 50 years old, and the states relied extensively on contractors to develop and support them.[161] Changing vendors, especially for software systems, can involve significant cost and risk, and may introduce flaws and fail to carry some information over. It would require training employees on the new systems, and this training would need to be extensive if it is a system used by all state agencies. Whether to switch requires an assessment of how to balance competitiveness and modernization with efficiency and cost. After many years with the same vendor, an evaluation is likely warranted, even if that evaluation may conclude that no change is needed.[162]

Criteria. MAs are competitively bid at the time of inception, but they are intentionally broader than other traditional procurement mechanisms. The statutory requirement for open, periodic competition outlined in KRS Chapter 45A may be satisfied, so long as the original bidding and negotiation of that MA was done competitively.

Effect. The value of an initial competitive bid or sole-source justification decays as market conditions, technology, and the pool of qualified vendors change. A MA active for 32 years may produce goods or services that are very different from what a current competing vendor could now bid on. For example, an award for internet services in 1990 would look very different from

the same award in 2020, because the amount and quality of competition has shifted.

Recommendation 3.7

Recommendation 3.7

The Finance and Administration Cabinet should set mandatory rejustification intervals for long-running noncompetitive master agreements and sole-source contracts after which the award is either competitively rebid or formally reapproved on the current record.

Some Emergency Awards Are Allowed To Continue Indefinitely And May Limit Competition

Staff identified some emergency awards exceeding 2 years. While many emergency contracts last well beyond the actual emergency, extended emergency awards without reassessment expose Kentucky to potential overpaying.

Of 1,602 final emergency award lines in the dataset, 651 (40.6 percent) exceed 2 years in duration. After excluding awards that appear to be federal grants, 435 emergency awards still exceed 2 years, with the longest running over 8 years. Three of the longest-running are underground storage tank petroleum-release environmental awards. One is still open after more than 8 years.[163] Two others ran approximately 5 years before expiring.[164] Of the 25 emergency awards with the largest gap between approved and spent funds, only 3 were less than a year old, and 19 of the 25 belong to the Department of Military Affairs, with the other 6 belonging to the Department of Highways.[165]

Emergency awards are not inherently a problem. They serve to assist the commonwealth when there is an immediate and serious need that cannot be met through normal procurement methods.[166] When an emergency contract remains in place for an extended period without reassessment, the state may pay more than it would if the work were reevaluated and, where appropriate, competitively bid.

FAC officials stated that continuing to use a properly procured emergency contract to complete work resulting from an emergency does not make it an open-ended funding vehicle.[167]

Criteria. FAC policy instructs an agency not to use emergency awards for items that fall under its small-purchase authority.[168] While FAC must generally approve an emergency purchase in advance, the head of a using agency may make the purchase without prior consultation when the emergency makes prior consultation impractical.[169] KRS 45A.145 prohibits contracts and

agreements from extending beyond the state's 2-year budget biennium unless otherwise provided in the appropriating statute.

Effect. A contract that remains classified and active as an "emergency" for many years after the precipitating event is difficult to distinguish in eMARS from a properly time-limited emergency response, which limits the state's ability to monitor whether emergency authority is being used as intended versus as a vehicle for long-term, noncompetitive program administration.

Recommendation 3.8

Recommendation 3.8

The Finance and Administration Cabinet should require periodic rejustification of emergency awards that remain open beyond a defined duration such as 2 years, and document the specific statutory basis whenever a biennium exemption under KRS 45A.145 is granted.

KYTC 2022 Debris-Removal Award

An emergency award to for debris removal in 2022 was reviewed as an example of how current oversight of emergency awards could be improved.

LOIC's review of the Transportation Cabinet's 2022 debris-removal award with identified other inefficiencies related to emergency awards. Emergency procurements are inherently difficult situations, so these inefficiencies are not a criticism of the procurement but serve as examples of how current oversight of emergency awards can create further problems.

The original contract was awarded in under 24 hours. When the contract was expanded, it was classified as an emergency. Continued scope expansions were done through modifications.

Scope And Cost Grew Without Recompetition. The initial award to as justified by the Transportation Cabinet, stating in a press release that "[a] national company… through competitive bidding, was awarded a contract by the Kentucky Transportation Cabinet."[170] The original award was the product of a solicitation, but a compressed one. KYTC issued its formal request on August 2, 2022, with bids due in under 24 hours, and winning bid edged out its nearest competitor by 33 cents.[171] The Kentucky Model Procurement Code states that competitive bidding and competitive negotiation both require not less than 7 days' public notice.[172]

When KYTC moved to expand the engagement, the SPR1for the expansion classifies the action as "Non-IT No Bid Requests - Sub Category: EMERGENCY PURCHASE REQUEST," with a "NO BID Justification" block invoking KRS 45A.095.[173] That expansion, which added private-property, commercial, waterway removal, and demolition work, received no competition.[174] This modification raised the authorized limit to $200 million. Through further modifications to the MA and its delivery orders, the

authorized ceiling grew to $328.6 million. One delivery order for Letcher County grew 15.5 times its original amount.
Rather than issuing a new emergency procurement, these scope expansions were made through contract modifications. Modifying the scope of an existing contract may create the risk of limiting competition in the procurement process. There are concerns with adding items outside of the original scope and increasing the authorized spending amounts of the original award, rather than issuing a new award. The federal government has addressed the issue of significant contract modifications by implementing the cardinal change doctrine. When the federal government modifies a contract, the modification cannot exceed the scope of the original procurement.[175] Such a modification is called a cardinal change. This doctrine asks whether a modification changed the contract enough to circumvent the statutory requirement for competition. Further, the doctrine encourages continued competition in the procurement process, and it prevents the government from breaching contracts that were previously competitively negotiated. FAC stated:

> KYTC clarified that the initial contract was for KYTC Rights of Way, but that additional work items may be included in the scope. Shortly after beginning work, Kentucky Emergency Management shared a need to urgently clear waterways due to the significant amounts of debris clogging the region. The waterway debris removal was an emergency due to the high potential for additional flooding and structure damage associated with moderate rain events. Due to this emergent need, KYTC used [a different vendor's] debris management expertise to evaluate the modification for reasonableness.[176]

KYTC also stated, "Since the contractor had active debris managements sites, it was impractical to solicit a separate contractor due to limited debris management sites in the area."[177]

A May 2023 modification listed 1,185,257 ton-miles of "additional mileage for hauling over 30 miles" at $30.00 per ton-mile, a rate 10 times greater than the originally negotiated rate. A single line totaled $35.6 million. However, newly added lines for the identical service in the same order were listed at the MA's actual contracted rate of $3.00 per ton-mile. LOIC staff confirmed that this was an error in eMARS and that actual payments against the line used the $3.00 rate. FAC also confirmed that the line item was paid at the $3.00 per ton-mile rate.[178] Although a dramatic overspend did not occur, this example demonstrates a potential risk.[179]

The contract allowed the vendor to bill for haul out tonnage greater than the amount of debris incinerated.

The same order recorded mathematically implausible reduction and haul-out tonnage. It billed for hauling roughly ten times the mulch tonnage that was recorded as ground, and for hauling over 33 times the ash tonnage recorded as incinerated.[180] Ash and mulch should weigh less than the debris they were incinerated and ground from, so this possibly represents a lack of oversight over the vendor. FAC stated, "during debris collection it was clear that accurate classification was impossible due to the significant amount of mixed debris collected from the disaster areas."[181] FAC also stated, "Collection costs were the same for all debris types; therefore, additional scrutiny was applied during haul out."[182] However, Army Corps advisors reported finding Kentucky's monitors from a consulting service, whose presence is required to make work reimbursable from FEMA, "resting in their cars or positioned where they could not see the work."[183] It is unclear what additional scrutiny was used during haul out.

Load data shows debris removal was coded to improbably locations.

Load data from the contractor compounds the concern: of approximately 25,185 tickets, 62 were geocoded to physically impossible places (Turkey, China, the middle of the Atlantic).[184] KYTC was also measuring the cleanup by weight in tons, but FEMA pays for cleanup based on volume in cubic yards. To convert between these there must be a particular formula because different materials weigh different amounts even if they are the same size. However, KYTC has admitted it had no verified disaster-specific factor to convert tons to the cubic yards FEMA estimates in.[185]

A modification to the MA allowed for a price increase without proof of an industry-wide change, a requirement present in the MA itself.

A procurement officer in the Transportation Cabinet approved a January 2024 request for a 3.4 percent CPI-based price increase despite stating that they were "not familiar with calculating escalation," without proof of an industry-wide price change that the MA itself requires. This is despite two contemporaneous performance evaluations documenting unresolved billing disputes.[186] FAC stated, "The CPI-based increase was accepted, recognizing that the contract would not be used for any future events."[187] However, this is not indicated in eMARS itself, and the performance evaluations for the contractor's work recommended working with them again in the future.

Recommendation 3.9

Recommendation 3.9

The Finance and Administration Cabinet should require a documented determination of whether the expanded scope remains within the genuine emergency period or requires competitive reprocurement for any future disaster-response contract expansion.

Recommendation 3.10

Recommendation 3.10

The Finance and Administration Cabinet should require an independent load-ticket verification as a condition of per-unit payment on future debris-removal contracts.

Recommendation 3.11

Recommendation 3.11

The Finance and Administration Cabinet should require a documented price analysis, consistent with 2 CFR 200.324, before approving any price escalation request on an active emergency or disaster-response contract.

Noncompetitive Awards Had Minimal Justification

There were 9,233 not-practicable-or-feasible-to bid-awards from 2016 to 2026, totaling $2.47 billion. "Other Goods and Services" accounted for 52 percent of these awards. Many of the reviewed justifications only stated they were in the best interest of the commonwealth, without additional explanation.

There were 9,233 "not practicable or feasible to bid" awards in eMARS during the period reviewed, collectively worth approximately $2.47 billion. Of the dollar value of awards in this category, 87 percent carry the cited-authority sub-code FAP-111-09-00-12 ("Other Goods and Services"), and that sub-code accounts for approximately 52 percent of the awards in the category. This category is difficult to analyze in the aggregate because the underlying goods or services cannot be identified without opening individual award documents. Many of the reviewed determinations and findings that are meant to serve as the required written justification for bypassing competitive bidding state only that the award "has been determined to be in the best interest of the Commonwealth," without further explanation.[188]

FAC officials stated:

> All Not Practical to Bid (NPTB) procurements are individually reviewed and approved by the Executive Director of the Office of Procurement Services, as well as any agency-level approvals within their authority. This includes reviewing all items attached to the eMARS document that includes justification for a NPTB. Often, the

eMARS descriptive fields have limited character spaces requiring justification to be attached.[189]

Although the executive director of OPS reviews all not practicable or feasible to bid procurements, the criteria and methodology applied to the decision-making are not clear. Further, conducting a review of these documents in eMARS to assess the rigor of the justification is not possible in any systematic way. As FAC officials noted, eMARS provides limited character spaces and often the actual justification is provided as an attachment. It is not possible to download attachments in eMARS in batches, leaving reviewers the task of opening each document individually.

Criteria. FAPs 111-09-00 and FAP 220-06-00are the cited authorities governing "not practicable to bid" awards. Unlike sole source justifications, which require identifying that only a single vendor can perform the work, a not-practicable-or-feasible-to-bid determination requires only that competitive sealed bidding would not benefit the state, and requires a written determination to that effect where the award exceeds the agency's small purchase authority.

Effect. Because 87 percent of the dollar value in this category is coded to a single, non-descriptive sub-code, and because the written justifications reviewed frequently contain no award-specific reasoning, LOIC could not, without individually opening the more than 9,000 award documents in this category, determine whether the noncompetitive designation was appropriate for the large majority of these awards. This significantly limits the population's usefulness for compliance monitoring and creates a broad category in which misuse, even if unintentional, would be difficult to detect through normal data review.

Recommendation 3.12

Recommendation 3.12

The Finance and Administration Cabinet should require more specific cited-authority sub-coding for "not practicable to bid" awards so that the underlying goods or services can be identified without individual document review and should establish more stringent content requirements for the written determination and finding to prevent boilerplate justification language.

Negatively Reviewed Vendors Continue To Receive Awards

Of the 23,202 performance evaluations in eMARS from 2016 to 2026, approximately one-eighth do not indicate whether they recommend working with the vendor again. 50 percent of all evaluations have a notes field without usable information.

Of 23,202 Performance Evaluations (PEs) in eMARS, covering 8,211 unique awards, nearly one-eighth leave blank the question of whether to work with the vendor again. Of the total, 11,640 (50 percent) have a notes field containing only "NA," "N/A," "No comments," or "No historical notes found," and a further 230 PEs without any award-specific narrative.[190] Importantly, many PEs include this documentation in an uploaded PDF; however, the information is not carried over into the formal system where it is intended to be maintained. In some cases, it appears that procurement staff copy and paste the full rating spectrum, a practice that can misleadingly resemble an "Unacceptable" rating because that is the first line that appears in the dropdown list. However, opening the individual PE will show the full evaluation rating or no rating.

Of the 2,656 vendors with at least one negative recommendation, 723 vendors received additional work. Of those, 443 vendors had multiple consecutive negative recommendations.

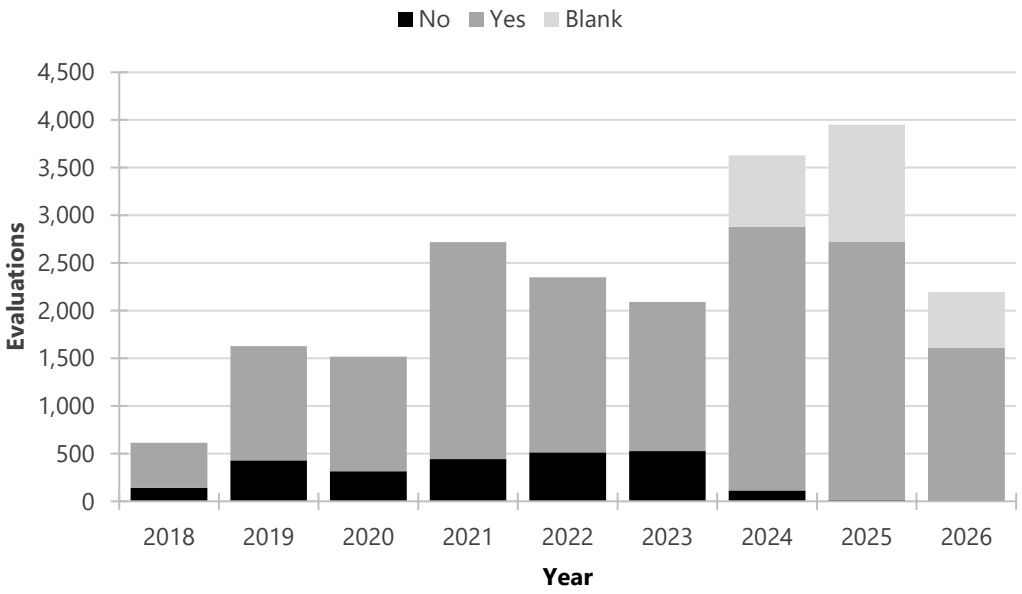
Of 2,656 vendors with at least one negative recommendation on record, 723 were subsequently awarded further work despite that recommendation and 443 vendors received multiple consecutive negative recommendations, of which 84 percent had no explanatory comments on at least some of the negative PEs and 64 percent had no comments on any of them. One vendor accumulated 47 consecutive negative recommendations, while continuously gaining new work offers despite the negative history with the state.[191]Another vendor experienced 20 consecutive negative responses.[192] Further, the vendor responsible for the 2022 debris removal has two PEs on record in eMARS, both recommending further work, with no notes in the database itself. One attached PDF document identifies the vendor's only noted issue as "the unprofessional tone set by the owner."[193]

FAC stated:

> It is at an agency's discretion if they want to move forward with the best evaluated bidder based upon information shared from the PEs or if they wish to award to the next best evaluated bidder. Negative PEs should not automatically prohibit a bidder from awarding a future contract but should be considered in the evaluation of the contract. The fact that a bidder with a negative PE is awarded a subsequent contract or a new Delivery Order from an existing contract does not mean that PE was not considered. It may mean that the issue was remedied in some way that was acceptable to the using agency or it could mean there are limited options for procuring the goods or services from other vendors.[194]

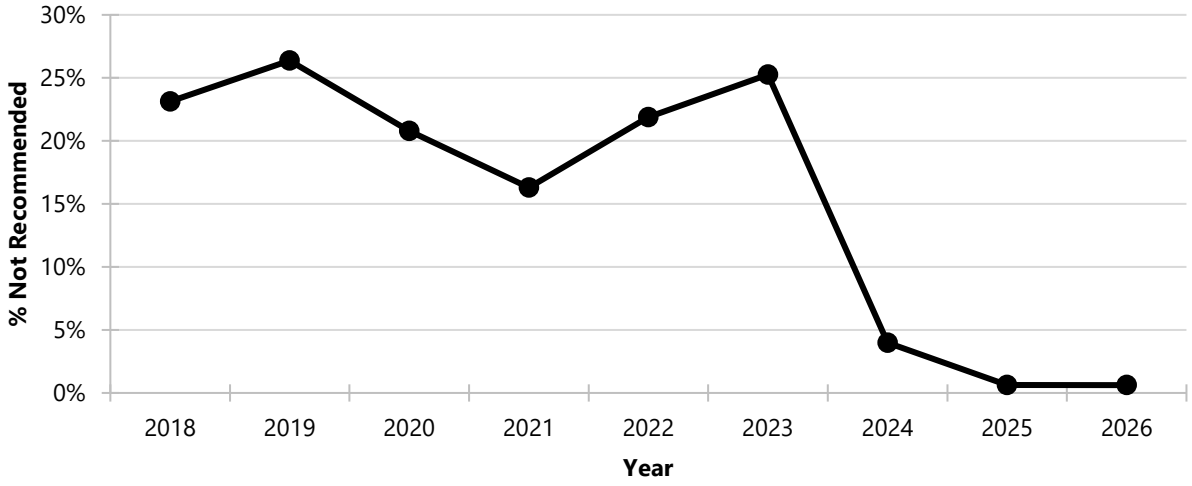
Beginning in 2023, the number of recommendations not to work with a vendor again significantly decreases, and the number of blank entries increases. Figure 3.A shows the total number of performance evaluations per year, showing that the number of blank recommendations appears in 2024 and remains through 2026. Figure 3.B shows that, after adjusting for the number of evaluations, the number not recommending vendors drop to nearly zero percent in 2025. It is unclear why agencies stopped recommending against vendors as frequently beginning in this time period.

Figure 3.A
Performance Evaluations Completed
By Year And Whether Vendor Was Recommended
2018 To 2026



Source: Staff analysis of all submitted performance evaluation documents in eMARS, 2018 to 2026.

Figure 3.B
Percent Of Evaluations That Do Not Recommend The Vendor
2018 To 2026



Source: Staff analysis of all submitted performance evaluation documents in eMARS, 2018 to 2026.

Criteria. Finance Cabinet policy requires agencies to complete the PE document in eMARS's eProcurement module at the completion or renewal of every contract, and to file a PE immediately if a vendor problem occurs that the vendor fails to resolve. [195]

Effect. Where PEs are blank, boilerplate, or unexplained, they do not adequately inform future award decisions. An agency unfamiliar with a vendor's history could not determine from the PE record alone the issues documented in the debris clearing emergency procurement, creating risk that the state could reengage a poorly performing vendor without the institutional knowledge needed to evaluate that decision.

Recommendation 3.13

Recommendation 3.13

The Finance and Administration Cabinet should require a narrative justification and supervisory sign-off whenever an agency awards further work to a vendor with an outstanding "do not recommend" evaluation on file.

Matter For Legislative Consideration 3.A

Matter For Legislative Consideration 3.A

The General Assembly may wish to consider requiring annual Performance Evaluations for all ongoing awards.

Endnotes

[1] Staff analysis of Kentucky Procurement data, 2018 to 2026.
[2] Staff analysis of Kentucky Procurement data, 2018 to 2026, sum of eMARS records for document types DO, PO, PON2, MA, DO4, CT, DO3, CTRP1, CBDL, and PON3.
[3] Staff analysis of Kentucky Procurement data, 2018 to 2026.
[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] KRS 45A.045(2); Kentucky. Office of Procurement Services, Finance and Administration Cabinet. *The Commonwealth Of Kentucky Procurement Manual*, 2024, p. 30. Web.
[9] Staff analysis of Kentucky Procurement data, 2018 to 2026.
[10] Ibid.
[11] KRS 45A.100; Staff analysis of Kentucky Procurement data, 2018 to 2026.
[12] Staff analysis of Kentucky Procurement data, 2018 to 2026.
[13] Ibid.
[14] KRS 45A.030.
[15] KRS 45A.045; Kentucky. Program Review and Investigations Committee, Legislative Research Commission. *Personal Service Contracting In Kentucky*, Research Report No. 442, Nov. 14, 2013, p. 1. Web.
[16] KRS 45A.050.
[17] KRS 45A.040.
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[20] KRS 45A.010(2)(a), (d), (f), (g).
[21] KRS 45A. 080(1); KRS 45A. 080(2); KRS 45A.085(1); KRS 45A.085(6).
[22] KRS 45A.095.
[23] KRS 45A.045(1)(a); Kentucky. Division of Contract Management, Office of Procurement Services, Finance and Administration Cabinet. *Contract Management Guide*, n.d., pp. 7, 12. Web.
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[26] Ibid, pp. 13, 17-18.
[27] Ibid, pp. 16-17, 67-68.
[28] Kentucky. Office of Procurement Services, Finance and Administration Cabinet. *The Commonwealth Of Kentucky Procurement Manual*, 2024, p. 6. Web.
[29] Ibid, pp. 20-30.
[30] KRS 45A.080.
[31] KRS 45A.080; 200 KAR 5:306; Kentucky. Division of Contract Management, Office of Procurement Services, Finance and Administration Cabinet. *Contract Management Guide*, n.d., pp. 18, 20, 42-43. Web.
[32] KRS 45A.085.
[33] KRS 45A.085; 200 KAR 5:307; Kentucky. Division of Contract Management, Office of Procurement Services, Finance and Administration Cabinet. *Contract Management Guide*, n.d., pp. 19-20, 42-51.
[34] KRS 45A.690(1)(h); Kentucky. Finance and Administration Cabinet. *Manual Of Policies And Procedures*, July 2025, FAP 111-43-00. Web.
[35] Kentucky. Finance and Administration Cabinet. *Manual Of Policies And Procedures*, July 2025, FAP 111-43-00. Web.
[36] Kentucky. Program Review and Investigations Committee, Legislative Research Commission. *Personal Service Contracting In Kentucky*, Research Report No. 442, Nov. 14, 2013, pp. 15-16.

[37] Kentucky. Program Review and Investigations Committee, Legislative Research Commission. *State Procurement: Requests For Proposals, Competitive Exemptions, And Leaseback Agreements,* Research Report No. 418, Oct. 8, 2015, p. 11.
[38] Kentucky. Finance and Administration Cabinet. *Manual Of Policies And Procedures*, July 2025, FAP 111-57-00. Web.
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[40] KRS 45A.100.
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[48] Ibid, FAP 111-55-00(7).
[49] Ibid, FAP 111-55-00 (1)(f).
[50] Ibid, FAP 111-43-00(3); FAP 111-39-00(2)(d).
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[55] Kentucky. Finance and Administration Cabinet. *Manual Of Policies And Procedures*, July 2025, FAP 220-11-00. Web; KRS 45A.095.
[56] KRS 45A.095(1).
[57] KRS 45A.095; Kentucky. Finance and Administration Cabinet. *Manual Of Policies And Procedures*, July 2025, FAP 111-35-00. Web.
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