

45A.095 Definitions -- Noncompetitive negotiation.

- (1) For purposes of this section:
 - (a) "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 personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of government, the preservation or protection of property, or the health or safety of any person; and
 - (b) "Sole source" means a situation in which there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, the supplier, or market conditions.
- (2) A contract may be made by noncompetitive negotiation only:
 - (a) For sole source purchases;
 - (b) When competition is not feasible, as determined by the purchasing officer in writing prior to award, under administrative regulations promulgated by the secretary of the Finance and Administration Cabinet or the governing boards of universities operating under KRS Chapter 164A;
 - (c) When emergency conditions exist; or
 - (d) For sponsorships, naming rights, or other advertising or similar considerations for which competition is not feasible.
- (3) Insofar as it is practical, no fewer than three (3) suppliers shall be solicited to submit written or oral quotations whenever it is determined that competitive sealed bidding is not feasible. Award shall be made to the supplier offering the best value. The names of the suppliers submitting quotations and the date and amount of each quotation shall be placed in the procurement file and maintained as a public record.
- (4) Competitive bids may not be required:
 - (a) For contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;
 - (b) Where rates are fixed by law or ordinance;
 - (c) For library books;
 - (d) For commercial items that are purchased for resale;
 - (e) For interests in real property;
 - (f) For visiting speakers, professors, expert witnesses, and performing artists;
 - (g) For personal service contracts executed pursuant to KRS 45A.690 to 45A.725;
 - (h) For agricultural products in accordance with KRS 45A.645; and
 - (i) For contracts entered into by the president of the Kentucky Horse Park for emergency purchases pursuant to KRS 148.320(5).

- (5) The chief procurement officer, the head of a using agency, or a person authorized in writing as the designee of either officer may make or authorize others to make emergency procurements when an emergency condition exists.
- (6) The Finance and Administration Cabinet may negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency shall be fully explained, in writing, by the head of the agency for which the purchase is to be made. The explanation shall be approved by the secretary of the Finance and Administration Cabinet and shall include the name of the vendor receiving the contract along with any other price quotations and a written determination for selection of the vendor receiving the contract. This information shall be filed with the record of all such purchases and made available to the public. Where practical, standard specifications shall be followed in making emergency purchases. In any event, every effort should be made to effect a competitively established price for purchases made by the state.
- (7) Subsection (6) of this section shall not apply to emergency purchases made pursuant to KRS 148.320(5).

Effective: June 29, 2023

History: Amended 2023 Ky. Acts ch. 125, sec. 8, effective June 29, 2023. -- Amended 2017 Ky. Acts ch. 175, sec. 6, effective June 29, 2017. -- Amended 2002 Ky. Acts ch. 344, sec. 9, effective July 15, 2002. -- Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 30, effective May 30, 1997. -- Amended 1990 Ky. Acts ch. 496, sec. 4, effective July 13, 1990. -- Created 1978 Ky. Acts ch. 110, sec. 20, effective January 1, 1979.