

Kentucky Model Procurement Code and Kentucky Administration Regulations as it relates to facility emergency declarations.

45A.380 Noncompetitive negotiation.

A local public agency may contract or purchase through noncompetitive negotiation only when a written determination is made that competition is not feasible and it is further determined in writing by a designee of the local public agency that:

- (1) An emergency exists which will cause public harm as a result of the delay in competitive procedures; or
- (2) There is a single source within a reasonable geographical area of the product or service to be procured; or
- (3) The contract is for the services of a licensed professional, such as attorney, physician, psychiatrist, psychologist, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; or an artist such as a sculptor, aesthetic painter, or musician, provided, however, that this provision shall not apply to architects or engineers providing construction management services rather than professional architect or engineer services; or
- (4) The contract is for the purchase of perishable items purchased on a weekly or more frequent basis, such as fresh fruits, vegetables, fish or meat;
- (5) The contract is for replacement parts where the need cannot be reasonably anticipated and stockpiling is not feasible;
- (6) The contract is for proprietary items for resale;
- (7) In school districts the contract relates to an enterprise in which the buying or selling by students is a part of the educational experience;
- (8) The contract or purchase is for expenditures made on authorized trips outside of the boundaries of the local public agency;
- (9) The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids;
- (10) The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, and unemployment insurance; or
- (11) The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the local public agency.

Effective: April 9, 1980

History: Amended 1980 Ky. Acts ch. 250, sec. 12, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 77, effective January 1, 1980.

45A.355 Determinations -- Finality.

- (1) Every determination required by this code shall be in writing and based upon written findings of the public official making the determination. These determinations and written findings shall be retained in the official contract file.
- (2) The determinations required by KRS 45A.345 to 45A.460 shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

Effective: January 1, 1980

History: Created 1978 Ky. Acts ch. 110, sec. 72, effective January 1, 1980.

702 KAR 4:160. Capital construction process.

RELATES TO: KRS Chapter 45A, 156.074, 156.076, 156.496, 156.670, 157.420(4), 157.450, 157.455, 157.620, 160.160, 160.476, 162.070, 322.010, 322.360, 323.010, 323.033, 323A.010, 371.405(7), 371.410, 424.260

STATUTORY AUTHORITY: KRS 156.070, 156.160, 162.060, 162.065, 322.360, 323.033

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky Board of Education to have management and control of the common schools and their programs. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards that school districts shall meet in operational performance, including construction of public school buildings and the use of uniform forms. KRS 162.060 requires that the chief state school officer shall examine or cause to be examined all plans and specifications for public school buildings in accordance with administrative regulations promulgated by the Kentucky Board of Education. KRS 162.065 requires the Kentucky Board of Education to prescribe administrative regulations governing construction managers. KRS 322.360 and 323.033 require a school district, when engaged in the construction of any public work involving architecture or engineering, to utilize an architect or engineer to directly supervise the preparation of plans and specifications, estimates, and the execution of construction. This administrative regulation establishes the procedures and criteria for the construction of public school buildings.

Section 1. Definitions. (1) "AIA" means the American Institute of Architects.

(2) "Board" means the local board of education.

(3) "Change event" means a contiguous or similar action regarding a change order.

(4) "Construction documents" means the written and graphic documents prepared or assembled for communicating the project design for construction and for administering the construction contract, consisting of bidding requirements, contract forms, contract conditions, contract modifications, addenda, specifications, and drawings.

(5) "Construction manager" or "CM" means a qualified and experienced contracting organization which provides the services of construction management and possesses a general trades workforce, staff and equipment, financial base, insurance coverage, bonding capability, a minimum of three (3) years of construction management experience on projects of \$2,000,000 or more, and the ability to provide the services required.

(6) "Contractor" means an individual, corporation, estate, trust, partnership, limited liability company, association, joint venture, or any other legal entity performing construction and having a contract with a board.

(7) "Design professional" means a person licensed in the Commonwealth of Kentucky under KRS Chapter 322, 323, or 323A, which includes architects, engineers, and landscape architects providing services within their respective practice areas.

(8) "Emergency" means a situation which creates a threat or impending threat to public health, welfare, or safety that may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, theft, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar unforeseen events, and which results in the loss of use of the physical facilities.

(9) "Fixed equipment" means furnishings or equipment that are secured to the wall, floor, or ceiling to operate or function in the manner intended by the product manufacturer, such as bleachers, student lockers, casework with sinks, or plumbing fixtures.

(10) "Guaranteed energy savings contract" or "GESCC" is defined by KRS 45A.345(28).

(11) "KBE" means the Kentucky Board of Education.

(12) "Major renovation" means a project at a permanent center including three (3) or more building systems and an estimated cost of twenty (20) percent of the current replacement cost of the building, or portion thereof, and the building or building systems shall be a minimum of thirty (30) years old or thirty (30) years shall have passed since its last major renovation with the exception of:

(a) The restructuring of an open space school for conventional classrooms; or

(b) The replacement of one (1) of the following single building systems that is within fifteen (15) years of its original installation, or if required by a change in regulation or code:

1. Heating, ventilation, and air conditioning systems and controls;

2. Systems to provide full use of a facility by the physically handicapped and to bring a facility into compliance with state and federal law;

3. Life safety and security systems; or

4. Roofing systems, flashings, and accessories.

(13) "Minor project" means a project for expansion of a permanent center to include a maximum of four (4) classrooms, campus enlargement, renovation of buildings and building systems with a budget of less than \$25,000, or construction of support space at permanent centers, or renovation not defined as major renovation.

(14) "Owner" means the local board of education or financing corporation established for the purpose of financing school construction.

(15) "Qualified provider" is defined by KRS 45A.345(29).

(16) "Record documents" means a set of reproducible drawings or electronic digital files revised to indicate significant changes in the work during construction, including addenda, change orders, and construction change directives.

(17) "Superintendent" means the superintendent of the local school district or an authorized designee of the superintendent selected to represent the board regarding construction issues.

Section 2. Construction Project Application. (1) The board shall submit an application on the BG-1 Project Application Form (BG-1 Form), to the department for approval of a proposed construction project.

(2) An application shall be submitted for each project that is:

(a) Funded by Support Education Excellence in Kentucky (SEEK) capital outlay funds, Facility Support Program of Kentucky (FSPK) funds as provided by KRS 157.620, School Facilities Construction Commission (SFCC) funds, or building funds as provided by KRS 160.476;

(b) Proposing construction of a new building, addition, or alteration of an existing building that requires design by a design professional for a building or building system;

(c) Proposing a guaranteed energy savings contract;

(d) Proposing a minor project; or

(e) Proposing a major renovation.

(3)(a) If SFCC funds are included in the financing plan, projects shall be selected in prioritized order from the District Facility Plan created pursuant to 702 KAR 4:180.

(b) If restricted funds other than SFCC are included in the financing plan, the board may select any project in any priority used to determine district need.

(c) Projects not used to determine district need shall only be funded as defined by the General Assembly.

(4) The BG-1 Form shall be approved by the board.

(5) The department shall take action on the BG-1 Form within thirty (30) calendar days of receipt.

(6) If an emergency occurs, impacting an activity for which a BG-1 Form is required:

(a) The superintendent shall:

1. Proceed with corrective actions, as needed;

2. Notify the department of the emergency and request approval to continue with the plans and corrective action;

3. Advise the board to declare an emergency in accordance with the district's officially adopted procurement method under KRS 424.260 or 45A.380; and

4. Submit to the department:

a. BG-1 Form; and

b. The board order declaring the emergency; and

(b) The department shall process the emergency BG-1 Form request within seven (7) calendar days of receipt.