

Chapter 20. Emergencies

Summary

This chapter identifies one of the situations when compliance with the competitive sealed bidding and competitive negotiation procedures is excused. The situation considered in this chapter exists when there is an emergency requiring the prompt procurement of the goods or services.

Essential Information in this Chapter	
<ul style="list-style-type: none">• An emergency may include, but is not limited to, natural disasters and situations when the goods or services are needed immediately to protect the public health safety or welfare and to prevent further damage to public property, machinery, or equipment. If a local or state emergency is declared, the emergency procurement procedures under the Act do not necessarily apply.• An emergency may exist even if the emergency is self-created because of poor planning, overlooked requirements, inaccurate usage history, inadequate forecasting, or other similar reason, but the use of this procedure in these cases is discouraged.• The competitive sealed bidding and competitive negotiation procedures are excused when it is determined that an emergency exists that necessitates the need for the procurement. Emergency procurements shall be made as competitively as practicable under the circumstances.• The determination of whether goods or services may be procured using the emergency procedure provided herein shall be made by the purchasing agent.	
Key References to the Code of Virginia Applicable to this Chapter	
Section 2.2-4303(F): Procurement in an emergency	

20-1 General

The competitive sealed bidding and competitive negotiation procedures are excused when it is determined that an emergency exists that necessitates the need for the procurement of the goods or services using the procedure provided herein. Emergency procedures may be used to purchase only what is necessary to cover the requirements of the emergency. Subsequent procurement needs shall be obtained using normal purchasing procedures as described herein. Other situations when these procedures are excused are discussed in Chapters 19 and 21.

20-2 Determination of an Emergency

If the County's director of emergency management declares a local emergency or the governor declares a state of emergency, pursuant to Virginia Code § 44-146.21, the formalities of the Virginia Public Procurement Act do not necessarily apply.

Absent a formal declaration of an emergency, and if a using department desires to procure goods or services under circumstances it believes to be an emergency, it shall state in a writing provided to the purchasing agent: (1) a description of the goods or services in the form of the proposed specifications or work statement; (2) the reasons why it believes that an emergency exists necessitating the goods or services; (3) an explanation of the basis of the emergency; and (4) identification of at least three vendors who may provide the goods or services. If fewer than three vendors are practicably available, it shall identify only those vendors and state why it believes other vendors are not practicably available.

The determination of whether goods or services may be procured using the emergency procedure shall be made by the purchasing agent. In making this determination, the purchasing agent shall determine whether an emergency exists, considering the following:

- Immediate need because of natural disaster: An emergency may include, but is not limited to, natural disasters and situations when goods or services are needed immediately.
- Immediate need to protect public health: An emergency exists if it is demonstrated that the procurement of the goods or services is necessary to protect the public health of citizens.
- Immediate repair necessary: An emergency exists when it is demonstrated that immediate repair is necessary to prevent further damage to public property, machinery, or equipment.
- Provision of essential services: An emergency exists when it is demonstrated that a breakdown in an essential service is imminent or has occurred.
- Immediate need for supplies used in work: An emergency exists when it is demonstrated that supplies are needed for immediate use in work that may vitally affect the public health, safety, or welfare.
- Self-created emergency: An emergency may exist even if the emergency is self-created because of poor planning, overlooked requirements, inaccurate usage history, inadequate forecasting, or other similar reason. A self-created emergency should be carefully evaluated to ensure that the emergency circumstances are legitimate and are not an attempt to circumvent the formal competitive procedures. The use of the emergency procedure for a self-created emergency should be discouraged except when the emergency affects the public health, safety, or welfare. The potential loss of funds or funding source at the end of a fiscal year is not considered an emergency.

An emergency should not be found to exist if the need for the goods or services is not immediate. However, if the constraints of need and procurement (e.g., time required to manufacture, fabricate, produce, or deliver) are such that the need would be timely met only by immediate action to procure, an emergency may exist. Prior to making his determination, the purchasing agent may conduct his own investigation, request additional information from the using department, and consult with the county attorney.

20-3 Procedure if it is Determined That an Emergency Exists

If the purchasing agent determines that an emergency exists, the following procedure shall apply prior to the actual procurement:

- Selection of vendor/procurement: From the list of known vendors provided by the using department or from vendors identified by the purchasing agent upon his own investigation, the purchasing agent shall select the vendor. The selection of the vendor shall be made as competitively as practicable under the circumstances. The selection process may consist of, but is not limited to, any procedure provided in Chapter 22 (small purchases), or be based on any procedure, modified for the circumstances, provided in Parts 2 (competitive sealed bidding) or 3 (competitive negotiation). The procurement shall be made using a purchase order.
- Receipt of vendor information: Within 24 hours of the procurement approval, the using department or purchasing agent shall request and receive from the vendor proof of authorization to transact business in the Commonwealth pursuant to *Virginia Code* § 2.2-4311.2; a Certificate of Insurance; and a certification of nondebarment.
- Written determination: The purchasing agent shall make a written determination that an emergency exists, state the basis for the determination, and state the basis for selecting a particular vendor. This written determination shall be placed in the contract file.
- Public notice of determination: The purchasing agent shall post in a designated public area or on the Purchasing Office's webpage a written notice that: (1) states that a contract has been or will be awarded on an emergency basis; (2) identifies the goods or services that have been or will be procured; (3) identifies the vendor selected; and (4) states the date on which the contract has been or will be awarded.
- Notice period: The public notice of determination shall be posted on the day the County awards the contract or announces its decision to award, whichever occurs first. If the notice is not possible because of the nature of the emergency, then the public notice shall be posted as soon thereafter as practicable. The public notice of determination shall be posted for at least ten (10) days.

20-4 Procedure if an Emergency Exists Outside of Normal Business Hours

If the using department determines that an emergency exists at any time other than the normal business hours of the County (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays), the following procedure shall apply if the using department cannot comply with the procedure set forth in Section 20-3:

- Determination of an emergency: The determination of whether the goods or services may be procured using the emergency procedure shall be made by the using department representative, who shall state in a writing provided to the head of the using department: (1) a description of the goods or services, in the form of the proposed specifications or work statement; (2) the reasons why the using department believes that an emergency exists necessitating the goods or services; (3) an explanation of the basis of the emergency; and (4) identification of at least three vendors who may provide the goods or services. If fewer than three vendors are practicably available, it shall identify only those vendors and state why it is believed other vendors are not practicably available. The determination of whether an emergency exists shall be based on the factors identified in Section 20.3.
- Selection of vendor/procurement: The using department representative shall select a vendor from the list of those he identified. The selection of the vendor shall be made as competitively as practicable under the circumstances. The selection process may consist of, but is not limited to, any procedure provided in Chapter 22 (small purchases), or be based upon any procedure, modified for the circumstances, provided in Parts 2 (competitive sealed bidding) or 3 (competitive negotiation).
- Notification to purchasing agent: At the earliest time possible on the first County business day following the emergency, the using department representative shall notify the purchasing agent of the procurement and provide to the purchasing agent his written determination of emergency and the purchase order. The purchasing agent shall confirm the appropriateness of the determination that an emergency existed and confirm the purchase order.
- Purchase order: The purchasing agent shall issue a purchase order on the first business day following the emergency, subject to Section 20-6 below.
- Written determination: Upon receipt of the written determination that an emergency exists and the purchase order from the using department representative, the purchasing agent shall place the written determination in the contract file.

- Public notice of determination: Upon receipt of the written determination that an emergency exists and the purchase order from the using department representative, the purchasing agent shall post in a designated public area or on the Purchasing Office's webpage a written notice that: (1) states that a contract has been or will be awarded on an emergency basis; (2) identifies the goods or services that have been or will be procured; (3) identifies the vendor selected; and (4) states the date on which the contract has been or will be awarded.
- Notice period: The public notice of determination shall be posted on the day the County awards the contract or announces its decision to award, whichever occurs first. If the notice is not possible because of the nature of the emergency, then the public notice shall be posted as soon thereafter as practicable. The public notice of determination shall be posted for at least ten (10) days.

20-5 Contract Award

The contract shall be awarded simultaneous with or after the notice of determination that an emergency exists has been posted, as circumstances permit. The procedure to award a contract shall be as follows:

- Contract award: The purchasing agent shall award the contract to the vendor selected.
- Notice of award: The purchasing agent shall post in a public place or on the Purchasing Office's webpage a written announcement of the award, which may be identified as a notice of award. The notice of award shall also include a statement that the public records pertaining to the procurement have been and are available for inspection by potential vendors. The purchasing agent is not required to provide individual notice of the award to any potential vendors.

20-6 Procedure if Purchasing Agent Determines that an Emergency does not Exist

If the purchasing agent determines that an emergency does not exist, he shall notify the using department of his determination and cancel the procurement under the emergency procedure. If the using department determines the need for the goods or services are still necessary, it will coordinate with the purchasing agent to proceed with the proper method of procurement as outlined in this manual.