



London N. Breed
Mayor

Sailaja Kurella
Acting Director and Purchaser

Date: August 20, 2020
To: Department Heads
From: Sailaja Kurella, Acting Director and Purchaser *SK*
Subject: FEMA Purchasing and Contracting Requirements when Responding to a Declared Emergency is Deemed a Non-Emergency or Non-Exigency

The Federal Emergency Management Agency (“FEMA”) requires local agencies to institute certain procurement procedures and contract clauses to qualify for FEMA reimbursement (See 2 C.F.R. 200.318 to 326). On April 22, 2020, this Office issued a memorandum entitled “Guidance for Departments on Procurement and Reimbursement from the Federal Emergency Management Agency. The memorandum outlined a narrow set of requirements for contracts that may be noncompetitively procured due to “exigent” or “emergency” circumstances. The purpose of this August 20, 2021 memorandum is to outline the additional procurement requirements for circumstances where the *response* to a declared emergency (such as the one pertaining to the COVID pandemic) no longer qualifies as an emergency or exigency.

I. Definition of Emergency and Exigency

A federal declaration of emergency allows FEMA to provide funding in response to a crisis. However, not all contracts in relation to the emergency necessarily qualify as emergency or exigency contracts. *As we enter month 6 of the COVID pandemic, we should assume we may soon enter the recovery phase of this emergency.*

Emergency	<ul style="list-style-type: none"> • A threat to life, public health or safety, or improved property requires immediate action to alleviate the threat. • Competitive Bidding: Preferred but not required.
Exigency	<ul style="list-style-type: none"> • There is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise. • Competitive Bidding: Preferred but not required.
Non-Emergency & Non-Exigency	<ul style="list-style-type: none"> • AKA “Recovery Phase”, generally starting about 6 months after a declared emergency, but may vary depending on event. • Competitive Bidding: Required



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II. FEMA Purchasing and Contracting Requirements when Responding to a Declared Emergency is Deemed a Non-Emergency or Non-Exigency

Below is a high level summary of FEMA's purchasing and contracting requirements when responding to a Declared Emergency that is deemed a Non-Emergency or Non-Exigency.

<p>1. Follow Chapter 6 & 21 Solicitation/Contractor Selection Requirements</p>	<ul style="list-style-type: none"> • Departments to conduct solicitations and selection of contractors pursuant to City's Chapter 6 and Chapter 21 solicitation and contracting requirements, but subject to removal of geographic preferences defined below.
<p>2. Remove Geographic Preferences</p>	<ul style="list-style-type: none"> • LBE Participation Goals; • LBE discounts and bonuses; • Ch. 12X prohibition on contractors headquartered certain states; and • Local Hire requirements, including the First Source Hiring Program.
<p>3. Encourage (not require) MBE/WBE participation</p>	<ul style="list-style-type: none"> • City does not have an MBE/WBE program. However, good faith outreach to LBEs should suffice because they include certified MBE-LBEs and WBE-LBEs. • Departments to ensure Prime conducts good faith outreach to LBE subs. • Department to establish delivery schedules that encourage LBE participation.
<p>4. Attach applicable FEMA Appendices to Contract or PO</p>	<ul style="list-style-type: none"> • FEMA Non-Emergency Appendix - Ch. 6: New Chapter 6 contracts and amendments • FEMA Non-Emergency Appendix - Contracts (Ch.21 & Grants): New Chapter 21 contracts and amendments • FEMA Non-Emergency Appendix - Purchase Orders: Purchase Orders and Purchase Orders using Contracts without existing FEMA Appendices.
<p>5. Follow OCA Processes for Submitting Requisitions & Contracts</p>	<ul style="list-style-type: none"> • Use applicable checklists for requisitions and contracts. • Follow standard procedures for submission of requisitions to OCA. • Follow standard procedures for submission of contracts to OCA.

III. FEMA Non-Emergency Appendices

The three versions of the FEMA Non-Emergency Appendices are included with this memorandum and can also be found at <https://sfgov.org/oca/resources>. They are as follows:

- **FEMA Non-Emergency Purchase Order Appendix:** This appendix should be attached to all non-negotiable purchase orders not associated with any contract or purchase orders issued against existing contracts that do not contain the stated FEMA requirements.
- **FEMA Non-Emergency Ch. 21 and Grants Contract Appendix:** This appendix should be attached all newly negotiated contracts and grants or as amendments to existing contracts.
- **FEMA Non-Emergency Chapter 6 Contract and Purchase Order Appendix:** This appendix should be attached to all contracts and purchase orders for construction or construction services.

The appendices can be modified to a certain extent but must include the essential FEMA terms unless already



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fully covered in the contract. Please consult with your Deputy City Attorney before agreeing to any modifications. The contractor/vendor should sign the anti-lobbying certification at the end of each appendix.

IV. Questions

Please direct any questions and comments regarding this memo to one of the following individuals:

- **Tyson Arbuthnot, Deputy City Attorney** (Tyson.Arbuthnot@sfcityvatty.org)
- **Sailaja Kurella, Acting Director, OCA** (sailaja.kurella@sfgov.org)
- **Taraneh Moayed, Assistant Director, OCA** (Taraneh.Moayed@sfgov.org)