

State System of Higher Education Facilities Manual

Volume VII-D Emergency Projects

The procedures for processing emergency contracts for facilities are different from normal contracting and project procedures. Emergency procurements are permissible if the public health, safety, and welfare are at risk or circumstances outside the control of the agency create an urgency of need which necessitates the suspension of normal bidding and review requirements. Under no circumstances should poor planning constitute an emergency.

Planning to avoid emergency situations should be accomplished to the extent practicable. For instance, standing open-end unit-price steam line repair contracts awarded before the heating season should be considered when the steam distribution is aging. Moreover, general use of standing open-end unit-price contracts for various types of work can provide the resources necessary to facilitate emergency repairs. On the larger scale, keeping up with critical deferred maintenance can help alleviate unforeseen breakdowns and requirements to make emergency repairs. Lastly, having lists of possible vendors and contractors and their contact information ahead of time can facilitate quicker response times when emergencies do arise.

Legal Requirements and Guidance

Section 516 of the Commonwealth Procurement Code (62 P.S.) provides general guidance for emergency procurements.

§ 516. Emergency procurement.

The head of a purchasing agency may make or authorize others to make an emergency procurement when there exists a threat to public health, welfare or safety or circumstances outside the control of the agency create an urgency of need which does not permit the delay involved in using more formal competitive methods. Whenever practical, in the case of a procurement of a supply, at least two bids shall be solicited. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

The System's Office of Chief Counsel's Contracts Manual provides more detailed guidance about System procedures. Section II.G. covers Emergency Contracts, and Appendix T provides the form for Emergency Contract Certification. The Manual can be found at:

<http://www.passhe.edu/executive/counsel/areas/procurement/procurement/Pages/Manual.aspx>

Procedures

The primary difference in an emergency procurement is that the contract is submitted after the procurement is completed and the work is ongoing, and in some cases even after the work is complete. Additionally, there must be a certification justifying the emergency procurement.

While not mandatory, it is helpful if the university starts by preparing a simple written scope of work for what they need done. This simple written scope ensures that the university thinks through what they want and need done, assists in obtaining accurate and comparable quotes, and can be used as a basis of a contract.

When possible, the university should secure at least two (2) bids for an emergency procurement. While the Commonwealth Procurement Code specifically addresses the two-bid practice in relation to the procurement of a supply, this is a good practice for all emergency procurements in general, when possible and practical. There is no requirement that bids be in writing under these circumstances, and no public notice or advertisement is necessary due to the exigent circumstances.

A written determination of the emergency and for the selection of the contractor must be included in the contract file and sent in the form of a certification when the contract is submitted for legal review. The Office of Chief Counsel's certification form to be submitted with emergency contracts has been provided at Appendix VII-D-1.

If university legal counsel does not agree with the substantiation of the emergency procurement, or should the certification of emergency procurement not be forwarded with the contract, the contract will be rejected. Additionally, contracts will still require the signature of the Office of Attorney General, and, if required, the Office of General Counsel, who both reserve the right to reject the contract for failure to meet the emergency classification.

It is recommended that the emergency certification and draft contract be faxed to university legal counsel for preliminary review prior to commencing work, to maximize the likelihood that the contract will be approved. At a minimum, telephoning counsel to discuss the matter would be prudent and highly recommended.

Additionally, while the Facilities Management Office does not approve emergency certifications, discussing the situation and the anticipated procurement with them can help to ensure the emergency procurement resolves the emergency condition and the resulting contract and certification get approved.

Considerations in determining the nature or degree of the emergency could include such things as:

- **Operational Impact:** What deficiencies will be created in the absence of corrective action? How many students will be affected or how many programs will be interrupted until corrective action is taken, i.e., will a building need to be closed?
- **Health/Safety:** Is the health or safety of students, staff, faculty, or visitors in jeopardy?
- **Property Loss:** If left uncorrected, will increased property loss occur?
- **Alternative Action:** Is there an alternative course of action available without approval of a waiver?
- **Advance Planning:** Could this emergency have been avoided with proper planning?

Commonwealth statutory requirements, such as performance and payment bonds, prevailing wages, etc., still apply to emergency contracts, if applicable, for the type and amount of the contract.