



OFFICE OF THE CONTROLLER
CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield
Controller
Todd Rydstrom
Deputy Controller

MEMORANDUM

TO: All Departments

FROM: Todd Rydstrom, Deputy Controller

DATE: April 6, 2021

SUBJECT: COVID-19-Related Contracts and Non-COVID-19 Contracts
Policy & Controller's Concurrence Form

I. Background

City departments and their suppliers continue to play a critical role in the response to the COVID-19 public health emergency. Due to continued operational needs arising from department and supplier response to the emergency, new solicitations and traditional contracting processes may cause delays that would interrupt the continuity of essential emergency response services.

On May 11, 2020, the Mayor signed a Thirteenth Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency dated February 25, 2020 ("Order"). Section 1 of the Thirteenth Supplement allows City departments to utilize the streamlined procedures to enter into contracts of one year or less for procurements related to the emergency response ("COVID-19-Related Contracts"). Section 2 of the Thirteenth Supplement authorized the Controller to adopt a policy allowing City departments to modify non-COVID-19 agreements in place on May 11, 2020 (agreements un-related to the response to the emergency or "Existing Contracts") without complying with competitive solicitation and procurement procedures that would otherwise be required.

On February 19th, 2021, the Mayor signed the 35th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency which provides for an extension of these rules by the Controller's Office.

The Controller's Office establishes the following policies regarding COVID-19-Related Contract and Existing Contract amendments pursuant to the Mayor's Order ("Policy"), which supersedes prior policies issued per the 13th Supplement and the 35th Supplement.

II. Policy

A. COVID-19-RELATED CONTRACTS

CONTROLLER'S CONCURRENCE REQUIRED FOR EXCEPTIONS TO STANDARD CONTRACTING

PROCEDURES PURSUANT TO THE THIRTEENTH AND THIRTY-FIFTH SUPPLEMENTS, DATED MAY 11, 2020 AND FEBRUARY 19, 2021, RESPECTIVELY, TO MAYORAL PROCLAMATION DECLARING THE EXISTENCE OF A LOCAL EMERGENCY DATED FEBRUARY 25, 2020 ("Order").

Section 1 of the 13th Supplement and Section 1 of the 35th Supplement together cover the following agreements:

- All new COVID-19-Related Supplier Contracts and Purchase Orders entered into after May 11, 2020, where related to the categories outlined in the Table below.
- Amendments to COVID-19-Related Supplier Contracts and Purchase Orders and executed on or before February 1, 2021, where related to the categories outlined in the Table below.

The 13th Supplement to the Order, issued May 11, 2020, states that departments shall comply with all procedural and substantive requirements in City laws and policies, except for COVID-19-Related Contracts in which those procedural and substantive requirements (such as local preference) would impede the City's ability to respond adequately to the emergency or obtain cost recovery from FEMA or the California Office of Emergency Services.

The 35th Supplement to the Order, issued February 19, 2021, authorizes amendments of **up to 12 months** to COVID-19-Related Contracts executed before February 1, 2021.

Because the City is still in a state of Emergency, and the City is within the Response Period as defined by FEMA, departments may continue to enter COVID-19-Related Contracts with a term of one year or less and may continue to handle such procurements on an emergency/exigency basis.

However, the 13th Supplement emphasizes the expectation that departments begin to transition to standard contracting procedures. This acknowledges both the long-term nature of this emergency as well as the necessity to obtain the best value for the City. This is imperative to ensuring maximum cost recovery from FEMA for City expenditures and an ensuring fair and transparent procurement.

New COVID-19-Related Contracts

Absent an RFP/Q process, all City Departments shall still be attempting to obtain at least three quotes from three different suppliers prior to entering into any **new** COVID-19-Related Contract. Please see the following guidance from OCA regarding solicitations:

[Emergency COVID-19 Purchases Logistics and EOC-OCA Roles \(6-10-20\).docx](#). If the Department determines that it is not feasible to obtain multiple quotes prior to executing the COVID-19-Related Emergency Contract, the Department Head **must continue to request Controller's Concurrence** that the exception is necessary to support the City during this crisis.

Amendments to COVID-19-Related Contracts

Amendments adding **up to 12 months** to COVID-19-Related Contracts and Purchase Orders in place as of February 19, 2021 are authorized per the 35th Supplement. Further review by the Controller's Office ***is not required*** for amendments to COVID-19-Related Contracts that were previously approved by the Controller under the Controller's Concurrence Process outlined below.

However, amendments to COVID-19-Related Contracts and Purchase Orders that **did not receive prior Controller's Concurrence must now be submitted for review and approval through this process**, provided the original contract or purchase order was subject to one of the procurement exceptions outlined in the table below.

Also, if departments are changing or adding scope to these previously established emergency contracts, they must seek Controller's Concurrence that an exception is needed or create a new contract using standard procurement practices.

Table: 13th Supplement Procurement Exceptions

| Section | Topic | Exception Made/Concurrence Required |
|---------|---|--|
| 1 A | Solicitation and Procurement | Competitive solicitation was not feasible. Exigent circumstances prohibited the department from obtaining even 3 informal quotes/bids. |
| 1 C i | Contract Terms | Department must <u>include</u> Contract Terms that may impede FEMA Cost Recovery (e.g. Local Preference). |
| 1 C ii | Contract Terms | Department must <u>omit</u> Contract Terms that are not feasible to meet due to exigency measures required. |
| 1D | Personal Protective and Medical Equipment | It is not feasible to procure PPE pursuant to the City Administrator's March 10, 2020 memorandum and any subsequent city administrator's memorandum as well as any modifications to that memorandum authorized under Item 7 of the First Supplement to the Proclamation. (This exception requires an email from EOC-Logistics and approval from the Office of Contract Administration stating the Department may proceed.) |

B. MODIFICATIONS TO NON-COVID-19 CONTRACTS

Per the 35th Supplement, the Controller's policy shall not allow any modifications to non-COVID-19 Contracts that (a) extend the term of an agreement past June 30, 2022, or (b) increase the cost to the City, except that modifications to a general services, professional services, commodity, lease, or grant agreement may increase the not-to-exceed amount to the extent permitted by the policy and as necessary given the extension duration noted above. Contract modifications to non-COVID-19 Contracts authorized by the policy shall not be subject to approval by the Civil Service Commission. The Order does not waive or modify the approval requirements of Charter Section 9.118.

Per this Policy, no new solicitation is necessary and the Controller's Office has established the approval process outlined below to extend applicable agreements.

Qualifying Agreements

This Policy applies to agreements that are not related to the COVID-19 response, in place as of **February 19, 2021** and expiring on or before **June 30, 2021**, including but not limited to services contracts, grant agreements, construction contracts, and leases.

Allowable Extensions

Qualifying agreements may be extended **in intervals of up to six months**, or for a shorter duration at the discretion of the department. In no event shall contract modification granted via this Policy extend the term of an agreement past June 30, 2022.

Qualifying agreements may be extended for six months by following the procedures outlined below (III. Procedures) and without additional approvals.

Qualifying agreements that departments wish to extend for more than six months (through a required termination date of June 30, 2022) will require additional approval by the Controller's Office and the Office of Contract Administration.

Contract Budget

Extensions shall include a budget based on the Fiscal Year 2020-2021 or 2021-2022 (FY21-FY22) budget amount, prorated for the duration of the extension. Departments should review contract budgets to ensure all costs are appropriate to be included in the prorated increase prior to finalizing the budget for the extension. If an agreement included budget increases to accommodate COVID-19 response, departments may adopt this increased annual budget as the basis of the prorated extension, pending a review and approval of the applicability of costs. An increase to the agreement's not-to-exceed (NTE) amount is allowable through this Policy.

Commission, Board, and Departmental Approvals

Departments and their commissions (as appropriate) are delegated all signature and approval authority with limited exceptions.

Existing Contract Modifications authorized by the policy shall not be subject to approval by the Civil Service Commission.

This Policy does not supersede the rules of the Board of Supervisors, and as such, any extension that requires approval by the Board of Supervisors must still be processed accordingly. Additionally, Departments shall file disclosures under Campaign and Governmental Conduct Code section 1.126

4 | Controller's Emergency Contract Exceptions Guidance, Thirty-fifth Supplement to Emergency Declaration
where required.

Lease amendments that fall under Real Estate Division purview will continue to require Real Estate Division approval.

Departments are not required to expedite contract amendments using this Policy. Departments may choose to follow standard procurement policies and procedures as necessary based on internal business decisions. In particular, if a department determines it must amend an existing agreement for longer than one year, for more than the allowable prorated amount of the prior year budget, or with amended terms or scope of services, standard procurement processes must be followed.

III. Procedures

A. PROCESS FOR OBTAINING CONTROLLER'S CONCURRENCE FOR COVID-19 RELATED CONTRACT EXCEPTIONS

- 1) Departments should complete the form titled "**Request for Controller's Concurrence**", have it signed by the Department Head or the CFO as designee and attach to the relevant Purchase Order or Contract in SF Procurement (PeopleSoft) as it is submitted for approval.
- 2) Please add Julie Ansell, SF Procurement Director, as Ad Hoc Approver to your Purchase Order or Supplier Contract Workflow. Julie Ansell will convene the necessary reviewers for discussion of the exception and if all parties agree, will then approve the Contract or Purchase Order in PeopleSoft. Approval by Julie Ansell in the SF Procurement PeopleSoft system will serve as confirmation of the Controller's concurrence.
- 3) Departments should use the SF Procurement PeopleSoft workflows, including DocuSign, if/when applicable, and do not need to email Julie directly since she will see your request when you add her as Ad Hoc Approver.
- 4) In order to automate required reporting, COVID-19-Related Contracts and Purchase Orders should continue to be designated as such by choosing the Purchasing Authority "21.15 EMERGENCY PROCUREMENT."
- 5) Please allow 3-4 days for this process.
- 6) The supplement requires departments to provide a list of all COVID-19-Related Contracts to the Mayor's Office and Board of Supervisors. The Controller's Office will automate and simplify the Department's new responsibility to provide a list of these contracts by automating that report in SF Reports & Analytics, as a new COVID-19 Dashboard, and transmit the same to policymakers. However, all Departments are responsible for reviewing this dashboard and ensuring completeness for your department.

B. PROCESS FOR AMENDING NON-COVID-19 CONTRACTS PER THE 35TH SUPPLEMENT

- 1) **Contract Budget:** Departments must review prior year and proposed budget and terms and ensure the prorated budget is appropriate and the terms and scope of service remain the same for the extension period. Departments may request an exception to this policy by submitting extension requests for review per item 3) below.

2) **Amendment Template:** The Controller's Office, in conjunction with the City Attorney, has established a streamlined amendment template to append to existing agreements documenting the amendment number, new expiration date, new NTE value, and that the amendment was entered into via this Policy authority. Amendments must be signed by Department Heads or their designee, the supplier, the Department's assigned Deputy City Attorney, and for Chapter 21 contracts, by OCA, certifying that the original contract terms shall apply to the amendment, and only the duration and budget have been amended per the Policy.

3) **Review and Approval of Extension Requests:**

Extensions up to Six Months

Extensions of up to six months may be submitted in PeopleSoft for approval without additional review by the Controller's Office and the Office of Contract Administration.

Extensions beyond Six Months

Extensions of more than six months (through a required termination date of no later than June 30, 2022) must first be approved via the **Request for Controller's Concurrence** process outlined below.

4) **PeopleSoft Approval:** For Chapter 21 contracts, OCA shall continue approve Existing Contract Modifications in PeopleSoft. Departments shall submit Existing Contract Modifications for review to OCA via the standard ServiceNow submission and [checklist](#) process.

5) **Contract Execution:** Departments should use DocuSign within PeopleSoft, where applicable, to obtain signatures on the amendment. In the event departments circulate an amendment for wet-signature via an internal contract management system, the fully-signed amendments should be timely uploaded into PeopleSoft to complete the process and ensure future sightline and contract documentation completeness.

6) **Purchase Orders:** Amendments should be tracked in PeopleSoft using a new change code and purchase order (PO). Departments should not change order the existing PO and no new PO encumbrance is required for extensions where only the duration is changed, and not the budget. Departments should not create new Purchase Orders for FY 2021FY21-22 until after July 4, 2021. As a reminder, the PeopleSoft System will not be available for entry of new Purchase Orders from July 1 to July 3, 2021.

7) **Reporting:** Departments must maintain a report of all agreements amended via this Policy. As these agreements have bypassed certain standard approvals, by **August 15, 2021**, departments must submit this report to all departments with an approval role in procurement, including OCA, Civil Service Commission, Office of Labor Standards Enforcement, Contract Monitoring Division, and the Controller's Office.

Updates, Attachments, and Additional Guidance

- This Policy may be amended as the situation progresses. View the full text of the Mayor's Executive Orders:

13th Supplement: https://sfmayor.org/sites/default/files/Emergency_Declaration_13th_051120.pdf

35th Supplement: https://sfmayor.org/sites/default/files/021921_35thSupplement.pdf

- Nonprofit suppliers should contact assigned program managers at funding departments with questions about this Policy or other issues or concerns related to contracts and grants.
- Please refer to the SF Knowledge Center job aid on "How to Add an Ad Hoc Approver" for more information.
- Please contact Julie Ansell (Julie.Ansell@sfgov.org) with any questions regarding this memorandum prior to submission of any Requests for Controller's Concurrence and Ad Hoc approval.
- As necessary, City departments may send questions about contracts or budget leads to Jeffrey Pomrenke (Jeffrey.Pomrenke@sfgov.org). Questions are welcomed and. Questions may be compiled for a shared City response, as well as help with any future guidance and Policy updates.



OFFICE OF THE CONTROLLER

CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield
Controller
Todd Rydstrom
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Request for Controller's Concurrence

Pursuant to the 13th Supplement to the Mayor's Emergency Declaration, and FEMA Regulations, Departments are encouraged to return to best procurement practices, including competitive bidding. Even as the City remains in a state of emergency due to the COVID Pandemic, departments should begin their transition back to competitive bidding and following the Administrative Code's contract regulations.

If the department cannot follow procurement procedures due to exigent circumstances prior to entering the COVID-19-Related Contract, this form should be completed and submitted to the Controller's Office via PeopleSoft (see instructions below).

Please note: You must obtain the Controller's concurrence for amendments to existing COVID-19-Related Contracts and Purchase Orders if concurrence was required per the 13th Supplement but not obtained prior to issuance of the Contract or Purchase Order.

Please also use this form to obtain Controller's review and concurrence for amendments for **greater than 6 months** to Non-COVID-19 Contracts, pursuant to the 35th Supplement.

Department:

Contract Title:

Contract Amount:

Contract Term:

Supplier:

Reason for Contract:

Type of agreement (choose one):

- Grant
- Professional Services
- Commodities
- General Services
- Construction Services

| We are seeking the Controller's (or designee's) concurrence that the following exception(s) is/are required pursuant to the 13 th Supplement: | | | |
|--|--|---|--|
| Check Here | Section | TOPIC | Exception Requested |
| <input type="checkbox"/> | 1 A | Solicitation and Procurement | Competitive solicitation was not feasible. Exigent circumstances prohibited the department from obtaining even 3 informal bids. |
| <input type="checkbox"/> | 1 C i | Contract Terms | Department must include Contract Terms that may impede FEMA Cost Recovery (e.g. Local Preference) |
| <input type="checkbox"/> | 1 C ii | Contract Terms | Department must omit Contract Terms that are not feasible to meet due to exigency measures required. |
| <input type="checkbox"/> | 1D | Personal Protective and Medical Equipment | It is not feasible to procure PPE pursuant to the City Administrator's March 10, 2020 memorandum and any modifications to that memorandum authorized under Item 7 of the First Supplement to the Proclamation. (This exception requires an email from EOC-Logistics and approval from the Office of Contract Administration stating the Department may proceed. <u>This exception DOES NOT apply to any PPE CCC Logistics has indicated is no longer scarce and that departments may procure on their own.</u>) |
| | | | |
| <input type="checkbox"/> | We are seeking the Controller's (or designee's) concurrence to amend a Non-COVID-19 Contract for greater than 6 months pursuant to the 35 th Supplement. | | |

Please explain the specific exigent circumstances that are causing you to request this exception.

The Department Head acknowledges that not adhering to proper procurement procedures for COVID-19-Related Contracts could result in the City & County (and so the department) forfeiting FEMA Cost Recovery funding.

Signature of Department Head: _____

Date: _____

The Controller's Designee will demonstrate concurrence through his or her approval in PeopleSoft.

Please use the Purchasing Authority "21.15 EMERGENCY PROCUREMENT" and add Julie Ansell as an Ad Hoc Approver to the Supplier Contract or Purchase Order being submitted for approval.