**Guidance on the 13th, 35th and 47th Supplements to the Mayor’s Emergency Declaration**

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4. **Extension of Non-COVID and COVID Contracts and Grant Agreements**
5. **Extension of Agreements that have expired as of February 11, 2022**

As of the 47th Supplement, departments lack any authority by which to extend existing COVID and non-COVID contracts and grant agreements that expired before February 11, 2022. For COVID-related contracts only, departments may consider entering into *new* emergency contracts pursuant to one of the options provided in Section III below.

1. **Extension of Agreements that have not expired as of February 11, 2022**

The[47th Supplement](https://sfmayor.org/sites/default/files/47th_COVID_Suppplement_Contracts_041222.pdf) authorizes departments to extend through June 30, 2023 any non-COVID or COVID Chapter 21 Commodities and Services Agreement, Chapter 21G Grant Agreement, or Chapter 6 Construction Contract that otherwise lacks a valid purchasing authority by which to be further extended, *so long as the contract or grant agreement has not expired as of February 11, 2022 (60 days prior to the 47th Supplement Order date) and will be expiring on or before August 31, 2022*. The[47th Supplement](https://sfmayor.org/sites/default/files/47th_COVID_Suppplement_Contracts_041222.pdf) also supersedes the [13th Supplement](https://sfmayor.org/sites/default/files/Emergency_Declaration_13th_051120.pdf) and [35th Supplement](https://sfmayor.org/sites/default/files/021921_35thSupplement.pdf) with respect to *extensions* of COVID and non-COVID contracts.

**47th Supplement Approval and Reporting Process:**

* **Contract Template:** Departments shall use standard contract amendment templates. However, the amendment must reference the use of the 47th Supplement in its Whereas Clauses.
* **PeopleSoft (PS):** Departments shall upload to PS standard supporting documents but will also be required select the “Mayor’s ER Declaration 47th Supplement” checkbox.
* **Approvals and Waivers:** Departments must obtain all standard/applicable approvals prior to execution of the amendment.[[1]](#footnote-1) The Controller’s concurrence memo and approval, which were required for the 13th and 35th Supplements, are no longer required.
* **Retroactive Approvals and Waivers:**To the extent departments have bypassed prior approvals and waivers because the contract was executed or amended pursuant to procedures authorized by the 13th or 35th Supplements, the department must now obtain those approvals and waivers, retroactively, pursuant to each program’s emergency wavier exception.
  + Ensure the approvals and waivers are for an amount and duration equal to the contract amount and duration.
  + Inform the approving agency that the request is for an amendment being executed pursuant to the 47th Supplement.

* **Non-Applicability of Certain Contracting Provisions:**
  + **Federal Funds:** Where federal funding is involved, local preferences pertaining to the 12X, 14B and First Sourcing/Local Hiring program are automatically deemed not applicable and waivers are not required.
  + **Non-Applicability of Chapter 14B to Emergency Contracts: “**Emergency Contracts” are definitionally exempt from Chapter 14B and, as such, waivers are not required with respect to removing LBE bid discounts/rating bonuses and/or subcontracting goals.

1. **Extension of Prequalified Pools**

The[47th Supplement](https://sfmayor.org/sites/default/files/47th_COVID_Suppplement_Contracts_041222.pdf) authorizes departments to extend through June 30, 2023 any pre-qualified pools established under Section 21.4 of the Administrative Code so long as the pre-qualified pool list was in place as of April 12, 2022 (the date of the 47th Supplement) and will be expiring on or before August 31, 2022.

1. **Issuing New COVID-Response Contracts and Grants**
2. **Using the 13th Supplement for the Emergency Procurement of COVID-response Commodities and Services**

The 13th Supplement authorizes departments to enter into 1 year COVID-response contracts or grants for Chapter 21, Chapter 21G and Chapter 6 goods and services. *As of the date of this memo, new contracts executed pursuant to the 13th Supplement must be limited to one year and CANNOT be extended for any additional time unless a future Ordinance authorizes their extension.* To utilize the 13th Supplement for this purpose, please refer to the CL-COVID-A Checklist (4-22) which can be found [here](https://sfgov.org/oca/multi-year-direct-contracting-checklists-templates).

1. **Using SF Admin Code Section 21.15 for the Emergency Procurement of Commodities and Services (Not applicable to Grants or Chapter 6 Construction Contracts)**
2. **21.15 Summary**

Pursuant to 21.15(a), an emergency exists when: (1) One or more of the following extraordinary conditions exist: war, epidemic, weather, fire, flood, earthquake, other catastrophe or the breakdown of any plant equipment, structure, street or public work; **and** (2) There is a need to immediately procure Commodities or Services to:

* Make repairs,
* Safeguard the life or property or
* Maintain public health or welfare.

When the above conditions are met, departments can purchase the Commodities or Services in the most expeditious manner. (See 21.15(c)). *Unlike emergency contracts issued pursuant to the 13th Supplement above, emergency contracts (including COVID-response contracts) executed pursuant to 21.15 need not be limited to a duration of one year so long as they comply with the requirements set forth below.*

1. **21.15 Solicitation Requirements**

Whenever possible, the departments *shall attempt to obtain at least three quotes* (See 21.15(d)), particularly where FEMA reimbursement is sought.

1. **21.15 Approvals and Waivers**

Departments must obtain standard approvals and waivers prior to contract execution. If the emergency does not permit, the below approvals may obtained as soon after contract execution as possible. (See 21.15(c)). Departments should use [OCA’s standard checklists](https://sfgov.org/oca/multi-year-direct-contracting-checklists-templates) when submitting the contract to OCA for execution.

* ***Department Commission*:** If the emergency permits, the department head shall first secure the written approval of the department’s commission. (See 21.15(c)).
* ***Board of Supervisors:*** In all cases, the approval of the Board of Supervisors must be obtained for any contract in excess of $100,000. (See 21.15(c)).
* ***Non Applicability of Certain Contracting Provisions:***
  + **Federal Funds:** Where federal funding is involved, local preferences pertaining to the 12X, 14B and First Sourcing/Local Hiring program are automatically deemed not applicable and waivers are not required.
  + **Chapter 14B: “**Emergency Contracts” are definitionally exempt from Chapter 14B and, as such, waivers are not required with respect to removing LBE bid discounts/rating bonuses and/or subcontracting goals.

1. **Using SF Admin Code Section 6.60 for Emergency Chapter 6 Agreements (Not Applicable to Chapters 21 or 21G Agreements)**

Section 6.60 of the Administrative Code provides the basis and requirements for entering into emergency public works contracts. Departments should refer to Chapter 6, Section 6.60 and consult with their City Attorney for further guidance.

1. **Using SF Admin Code Chapter 21G for Emergency Grant Agreements**

Administrative Code Section 21G.9 allows for grants to be awarded without a competitive solicitation when:

* A competitive process is infeasible or impracticable
* A Public Purpose may reasonably be accomplished by one particular Grantee

A competitive process may be deemed infeasible or impracticable when a grant is required to respond to a public emergency or other exigent circumstances. To award a grant agreement when such a circumstance exists, departments must obtain a waiver of the competitive solicitation requirements specified in Administrative Code Chapter 21G. Departments shall complete the [Grant Solicitation Waiver Form (P-21G.8)](https://sfgov.org/oca/sites/default/files/P-21G.8%20Grant%20Solicitation%20Waiver%20Form%2001-2022_0.docx) to request approval of the emergency grant agreement by the department’s commission or board, if applicable, or by the Grant Consensus Committee. Once approved, departments will follow the standard processes by which to have the grant approved and issued.

1. For Chapter 21 contracts, departments should use [OCA’s standard checklists](https://sfgov.org/oca/multi-year-direct-contracting-checklists-templates). *Departments may no longer use the CL-COVID-A checklist to amend COVID contracts.* [↑](#footnote-ref-1)