

Sample Purchasing Ordinance for Use During a Proclaimed Emergency or Disaster (PUR-7)

(This paper outlines issues that should be addressed in a governmental agency's disaster purchasing ordinance to maximize the response capability of the agency; give it the necessary flexibility to make disaster related purchases; and properly track and account for its expenses in any level of emergency or disaster, local, state or Federal. These proper policies and procedures will also maximize the agency's ability to be reimbursed by FEMA for those disaster related purchases when necessary.) The quantity "x," as found below is to be determined and set by each local agency in accordance with its policies. *(Delete this entire paragraph in final version)*

Disaster purchasing has a number of facets. First there are the limits of emergency spending authorized by the elected governing board, (City Council, Board of Supervisors, Town Council, etc.) without the need to obtain their prior approval. This is an internal control exercised by the elected governing board as part of its fiduciary responsibility to the taxpayers. There can be individual limits and aggregate limits which give emergency managers the necessary authority to act quickly under emergency circumstances.

The second facet deals with the process of soliciting bids for emergency work. "Emergency" work is a broad term that actually covers two separate concepts. The first concept regards purchases made under "crisis" conditions, where there is an "immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage to improved public and private property through cost-effective measures." When this condition (an immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage to improved public and private property through cost-effective measures) exists, the agency has wider latitude to do what is necessary to save lives and prevent further damage to improved property. Once the "immediate threat" phase has passed, this wide latitude is greatly narrowed in regard to using "sole source" or "no-bid" procurement. When the "immediate threat" phase has passed, then the "sole source or "no-bid" option is essential no longer available. However, serious emergency conditions may still exist for which there is a need for "expedited" purchasing procedures. This is the purpose for alternative advertising methods, alternative locations for posting requests for proposals,

the minimum number of bids required and shortened periods of time for submission of bids. The “normal” procurement process essentially continues, but with slightly lesser requirements than for the “normal” procurement process. Under both the “crisis” and “expedited” procurement provisions, the delegation of purchasing authority may still be applied to expedite the process.

A third facet of disaster purchasing is the identification and separation of “disaster purchases” from routine day-to-day purchases for the purpose of tracking disaster costs. This process will normally involve some sort of special purchase order forms used only for “disaster purchases.” Special accounting codes for these purchases is also important as part of the cost identification and tracking process.

It is extremely important to have a “Disaster Purchasing Policy.” It is not sufficient to merely waive the existing purchasing policy. FEMA requires agencies to follow their own policies. Having “no policy,” as when requirements have been waived, is to have no policy in place which can be followed. The purpose of a “Disaster Purchasing Policy” is to reduce the normal policy requirements, while giving the organization the flexibility to respond effectively to exigent circumstances.

In the following table, the first column contains the policy language; and the second column provides the rationale for including the policy language in a disaster purchasing policy. Only the language in the first column should be included in a disaster purchasing policy.

Policy Language	Rationale
<p>§ 1 Purpose.</p> <p>This Policy modifies the Agency’s normal purchasing practices to assure that, in both emergency and exigent circumstances caused by a proclaimed disaster or emergency, the Agency is able to acquire the goods and services required to address an <u>immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage to improved public and private property through cost-effective measures</u> while still</p>	<p>The underlined text is the precise language used by FEMA to justify certain emergency actions and exigent circumstances.</p>

Policy Language	Rationale
<p>maintaining an effective purchasing process and complying with applicable local and state purchasing laws. Where the Agency is included in a major disaster or emergency declared by the President of the United States, this Policy also assures that Agency procurements comply with Federal regulations applicable to FEMA disaster grant reimbursement as defined in Title 2 of the Code of Federal Regulations, Part 200. (2CFR Part 200)</p>	
<p>§ 2 Definitions. For purposes of this Policy,</p> <ul style="list-style-type: none"> (a) a proclaimed disaster or emergency exists if <ul style="list-style-type: none"> (i) the Governor has declared a state of emergency for an area which includes the geographic territory of the Agency; or (ii) the Chief Executive Officer of the Agency has declared an emergency in the Agency; (b) “Exigent Circumstances” are situations in which <ul style="list-style-type: none"> (i) a disaster or emergency has been proclaimed, and (ii) the public exigency for goods and services required to address an immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage to improved public and private property through cost-effective measures will not permit competitive solicitation. 	<p>Note: this definition of “proclaimed disaster or emergency does not require a federal declaration. A federal declaration cannot exist without a state declaration. The definition of exigent circumstances tracks the definition in FEMA’s regulations allowing expedited procurement. (2CFR Part 200)</p>
<p>§ 3 Delegations of Purchasing Authority In Exigent Circumstances. (a) if Agency Manager determines that goods and services must be procured before the Elected governing board is able to assemble and approve purchases, the Agency Manager has authority, subject to the limitations set forth in</p>	<p>Management must have the authority to take action in an emergency, and there must be policy to provide that</p>

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<p>sub-paragraphs (a)(I) and (a)(ii), to approve the immediate rental or purchase of any equipment, supplies, services or other items necessary to respond to an immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage to improved public and private property through cost-effective measures</p>	<p>authority.</p>
<p><i>(I) Limits of Single Purchase Authority.</i> The Agency Manager, shall have the authority to make individual purchases up to \$xxx,xxx on his or her signature alone. The Agency Manager shall have the authority to make purchases in excess of \$xxx,xxx up to a maximum of \$x,xxx,xxx when countersigned by the Mayor or in the Mayor's absence countersigned by another council member.</p>	<p>Purchases made without proper authorization, may be disallowed by FEMA as out-of-policy. FEMA specifies that the local agency must follow its own policies.</p>
<p><i>(ii) Limits of Aggregate Purchase Authority.</i> The Agency Manager shall have the authority to make aggregate purchases up to \$x,xxx,xxx on his or her signature alone. The Agency Manager shall have the authority to make purchases in excess of \$xxx,xxx up to a maximum of \$x,xxx,xxx when countersigned by the Mayor or in the Mayor's absence countersigned by another council member.</p>	<p>Absent an "emergency or disaster policy" the local agency must follow its own regular policy, which may be too inflexible for a disaster response.</p>
<p><i>(b) Sub-delegation to EOC Director.</i> The EOC Director shall be a designee of the Agency Manager at any time that the Agency Manager is not available to approve purchases as allowed in this section.</p>	

Policy Language	Rationale
<p><i>(c) Sub-delegation of Purchasing Authority to Department Heads.</i></p> <p>If neither the Agency Manager nor the EOC Director is available, the police department watch commander, duty fire battalion chief, and/or duty public works department manager have authority to rent or purchase from the nearest available source any equipment, supplies, services, or other items necessary for his or her department to respond to an immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage to improved public and private property through cost-effective measures, up to a maximum of \$xxx,xxx.</p>	<p>Purchases made without proper authorization, may be disallowed by FEMA as out-of-policy. FEMA specifies that the local agency must follow its own policies.</p>
<p><i>(d) Administrative Procedures: Reporting Requirements.</i></p> <p>(1) As soon as possible after purchases are made under this section 3, the Agency Manager, EOC Director, or department head shall submit to the Purchasing Officer a requisition and a notation that the commodity has been ordered on an emergency basis from the vendor designated.</p> <p>(2) The Purchasing Officer will inform the Agency Manager and the Elected governing board of any individual purchase under this section with a contract amount greater than \$xxx,xxx, and also whenever the aggregate of purchases under this section is greater than \$xxx,xxx thousand dollars.</p> <p>(3) the Purchasing Officer will obtain the Agency Manager's (or EOC Director as the Agency Manager's designee) approval prior to any purchase by a department head if the amount is \$xxx,xxx thousand dollars or more.</p> <p>(4) If the Agency Manager/EOC Director is unavailable, and the delay in getting his/her signature</p>	<p>Absent an "emergency or disaster policy" the local agency must follow its own regular policy, which may be too inflexible for a disaster response.</p>

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<p>would imperil life, safety or improved property, the police department watch commander, duty fire battalion chief, and/or duty public works department manager or his/her designee may approve the emergency purchase of \$xxx,xxx thousand dollars or more.</p> <p>(5)The Purchasing Officer shall have the authority to approve all disaster related purchases under \$xxx,xxxx thousand dollars.</p> <p>(6) The Purchasing Officer will expedite the verification of funds available and complete the preparation of the purchase order</p>	
<p>§ 4 <i>Procurement Procedures in Exigent Circumstances.</i> Upon receipt of requisitions under Section 3, the Purchasing Officer shall prepare purchase orders for the emergency equipment, supplies, services or other items in accordance with the requirements of this section.</p>	
<p>(a) <i>Exempt Purchases.</i> Purchases below \$xxx,xxx shall not be required to be formally bid. Purchases greater than \$xxx,xxx may be made following the procedures specified in this section. The signature(s) of the Agency Manager, Purchasing Officer and or Department Head are still required as provided in Section 3.</p>	<p>Absent an “emergency or disaster policy” the local agency must follow its own regular policy, which may be too inflexible for a disaster response.</p>
<p>(b) Justification of Sole Source or No-bid Contracts. Where exigent circumstances require immediate procurement from the nearest available source, (i) the Procurement Officer shall use the "Justification Form For Emergency Sole Source or No-Bid Purchase."</p>	<p>Using this or a similar process may ease potential problems during an audit.</p>

Policy Language	Rationale
<p>(ii) procurement should be limited to that portion of the work that must be performed immediately, allowing subsequent procurement by competitive proposals of the remainder of the work.</p> <p>(iii) “sole source” or “no-bid” acquisitions shall be necessary for one of the following reasons: placement of emergency protective measures, procurement of a scarce commodities, goods, or services or acquisition or rental of emergency equipment , emergency consulting services, emergency road clearance or other emergency requirements.</p>	
<p>(c) <i>Provision for Alternate Bid Solicitation Procedures.</i></p> <p>The Agency's normal requirements for sealed bids shall not apply to acquisitions under Section 3. However, the Procurement Officer shall conduct telephonic or other electronic bid solicitation from potential vendors or suppliers, in lieu of written and/or sealed bids, in an effort to obtain multiple competitive proposals when and if time allows in light of the exigent circumstances.</p>	<p>Absent an “emergency or disaster policy” the local agency must follow its own regular policy, which may be too inflexible for a disaster response.</p>
<p>(d) <i>Locations of Postings for Requests for Proposals or Solicitation of Bids.</i></p> <p>The Procurement Officer may waive normal requirements for public posting of requests for proposals or solicitation of bids. Notices soliciting bids or requests for proposals shall be posted at the Emergency Operations Center or Alternate Emergency Operations Center, if the Primary Emergency Operations Center is not being used.</p>	<p>In the event that City Hall and/or other normal posting places are damaged or otherwise not functional, the posting of notices will be unaffected during a disaster.</p>
<p>(e) <i>Length of Time for Posting Requests for Proposals or Solicitation of Bids.</i></p>	<p>Absent an “emergency or</p>

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<p>The Procurement Officer may shorten the normal bid period from xx days to expedite the award of contracts for emergency equipment, goods, or services. The Procurement Officer should seek to assure that the shortened bid period allows multiple suppliers to submit bids.</p>	<p>disaster policy” the local agency must follow its own regular policy, which may be too inflexible for a disaster response.</p>
<p>(f) <i>Number of Bids Required.</i> Solicited bids that are non-responsive shall count towards the minimum numbers of bids required when there is a declared emergency or disaster in the Jurisdiction.” All such no-bids must be documented as to time, date and person or company contacted, with a reason for the no-bid, if possible.</p>	<p>This will help, when you simply can't get bids or at least enough bids to meet requirements.</p>
<p>§ 5 Notification and Ratification</p>	
<p>(a) <i>Posting of Contract Awards.</i> Under this section, all contracts awarded, that exceed \$xxx,xxx shall be presented to the Elected governing board for ratification and thereafter, shall publicly posted within sixty (60) days of the award.</p>	<p>Absent an “emergency or disaster policy” the local agency must follow its own regular policy, which may be too inflexible for a disaster response.</p>
<p>(b) <i>Authority to Cancel Emergency Procurements.</i> As a provision of this ordinance, the agency has the absolute authority to rescind a contract for non-performance within 24 hours when a contractor or vendor, once awarded a contract, is unable to perform under the terms of the contract and the resulting delay or non-performance presents an immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage to improved public and private property through cost-effective measures.</p>	<p>This gives the agency much greater flexibility in dealing with disaster situations.</p>

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<p>(c) <i>Notification Requirement for Emergency Purchases.</i> For any purchase in excess of \$xxx,xxx, the Agency Manager shall report all such purchases to the Elected governing board within thirty (xx) days of the onset of the disaster.</p>	<p>This is more of an internal control policy rather than a FEMA requirement.</p>
<p>(d) <i>Requirement for Separate Invoicing.</i> All purchases or rentals made during proclaimed emergency or disaster conditions shall require separate invoicing from routine (non-disaster related) purchases. All invoices shall state the goods, services or equipment provided and shall specify where the goods or services were delivered. All invoices shall specify the locations where the goods or services were used if at all possible.</p>	<p>Disaster purchases must be separated from day to day purchases to be reimbursible.</p>
<p>(e) <i>Auditing of Invoices for Debris Clearance Prior to Payment.</i> All invoices for debris clearance and removal shall be audited by the agency prior to payment to the vendor. Vendors shall be notified of this requirement prior to the awarding of any contract for debris clearance and/or removal. Audits shall be in accordance with procedures for debris removal monitoring specified in FEMA's Publication 325, Debris Management Guide.</p>	<p>This provides protection for the agency against incorrect or fraudulent invoices from debris removal contractors.</p>
<p>(f) <i>Limitations of Disaster Purchasing Policy.</i> For the purposes of this section, an emergency or disaster shall be deemed to exist when a condition exists that presents an immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage to improved public and private property through cost-effective measures and a local emergency or disaster has been proclaimed. Any purchases that do not meet the standard of being necessary for responding to an immediate threat to life, public health, or safety, or to eliminate/reduce</p>	<p>There are very tight limits when "sole source" or "no-bid" purchases may be made. All other purchases must follow agency policy.</p>

Policy Language	Rationale
an immediate threat of significant damage to improved public and private property through cost-effective measures shall follow the Agency's regular purchasing provisions.	
Notwithstanding the terms of this policy, nothing contained herein shall conflict with Federal procurement regulations as currently defined in 2 CFR Part 200.	Federal regulations prevail over both state and local regulations.

This “Sample Purchasing Ordinance for Use During a Proclaimed Emergency or Disaster (PUR-7)” was developed jointly by Michael Martinet, MS, CEM and Ernest Abbott, J.D.

The use of this form does not guarantee compliance with Federal purchasing regulations found in 2 CFR Part 200, nor any state regulations. Its sole purpose is to provide guidance for “sub-recipient” agencies for disaster purchasing under exigent circumstances following a disaster.

Local agencies need to be hyper-aware of and closely follow Federal purchasing regulations anytime Federal funds are used at the local level. Failure to strictly adhere to the Federal regulations can result in the substantial loss of these grant funds.