



Date: January 5, 2016

To: Patrick H. West, City Manager *T.M.*

From: John Gross, Director of Financial Management *JG*

For: Mayor and Members of the City Council

Subject: **Summary of Emergency Purchasing Ordinance for January 5, 2016**

On December 22, 2015, the City Council directed the City Attorney to prepare an ordinance addressing procurement during proclaimed emergencies. This memo provides some administrative background as to the purpose of the ordinance and its general content.

Background and Summary

The proposed ordinance will modify City Code and strengthen the City's procurement procedures to add better controls and definition to purchasing processes in an emergency and to better coordinate our procedures with Federal regulations. The improved coordination will, among other things, help ensure reimbursement of costs by FEMA Public Assistance. This ordinance is particularly timely in light of potential El Niño events anticipated in the coming months. The City is among several forward thinking communities in examining its procedures based on the latest update to federal regulations. Emergency procurement is an increasingly common topic at trainings and conferences for public agencies. Eventually, most cities are likely to conform their purchasing procedures to the updated regulations, but we are starting this process now to best prepare for El Niño. The proposed ordinance: 1) clarifies that emergency procedures are in place in an emergency, and 2) provides much more clarity as to what the emergency procedures are and what can and cannot be done in emergency purchases.

Emergency Procedures in Effect Only in A Declared Emergency

The purchasing procedures established by the proposed ordinance will only be available for use while a proclaimed emergency is in effect. An emergency can be declared Federally, by the State, or by the City Council. If the City Council is not available, the current Chapter 2.69 of the City's Municipal Code allows the City Manager to declare an emergency, but a City Manager declaration must be ratified by the City Council within seven days in order to remain in effect. A City Council declared emergency must be reviewed and renewed every two weeks under the existing Code. The proposed ordinance doesn't change this, but rather puts emergency purchasing procedures into effect when an emergency is declared.

Emergency Purchasing Limits

The proposed ordinance establishes alternate purchasing authority dollar thresholds for use during a proclaimed emergency to ensure the City Administration can take immediate purchasing action when necessary in an emergency. In a number of jurisdictions, including the City of San Francisco, the City of Oakland, the County of Sacramento, and the County of Los Angeles, emergency purchasing procedures allow the administration to obtain urgently needed goods and services during an emergency with no dollar limit, without prior approval from governing bodies. While the City's proposed ordinance includes emergency purchasing limits different from those in effect during normal operations, it does establish limits in addition to providing improved coordination with the updated federal guidelines. During normal operations, the City Administration has authority to approve purchases up to \$200,000, or up to \$500,000 for purchases that will be reimbursed by state or federal grant funds relating to homeland security. The City Administration also has general emergency powers to obtain vital goods and services needed for the protection of life and property during a proclaimed emergency. The proposed ordinance would provide further definition to those powers by giving the City Administration authority to make purchases related to that emergency up to \$1,000,000. The proposed ordinance also delegates authority to the Purchasing Agent for purchases up to \$500,000, and to select Departments for purchases up to the Federal Simplified Acquisition Threshold (currently \$150,000). In a major emergency, there will be scarce resources available to the region, and cities that are nimble in their purchasing will stand in the best position to secure needed equipment, goods and services that will be in tremendous demand and only available for a very short time. The proposed limits and delegations were selected to provide additional definition to procedures while minimizing emergency procurement delays. These thresholds will apply only to purchases related to the emergency. To ensure transparency and review by the City Council, all contracts awarded under the ordinance that would be presented to the City Council under the normal award process will be presented to the City Council at the next practicable opportunity for receive and file.

Emergency Purchasing Bid/RFP Requirements

The proposed ordinance allows for expedited procurement procedures in an emergency. During an emergency, it may not be practical or even possible to follow the City's standard bidding or RFP requirements. The ordinance authorizes shortened timeframes and modified requirements related to public announcement, outreach, and bid acceptance for competitive procurements. Generally, competitive procurement will still be required for purchases made under this ordinance. In most cases, Departments will still be required to obtain three or more quotes to ensure competitive pricing, or sealed bids above the Federal Simplified Acquisition Threshold (currently \$150,000). Non-competitive procurement will typically be limited to the portion of work needed to address an immediate threat to public safety or property.

Procedures Would Support the Ordinance

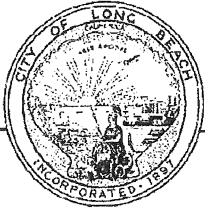
Following approval of the ordinance, the City Administration will revise internal policies and procedures to further articulate these requirements and ensure that clear and appropriate guidance and controls are in place for procurement during an emergency.

If you have any questions regarding this matter, please contact John Gross, Director of Financial Management, at (562) 570-6427, or Lea Eriksen, Assistant Finance Director, at (562) 570-6533.

JG:EH:SP
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ATTACHMENT

CC: CHARLES PARKIN, CITY ATTORNEY
LAURA L. DOUD, CITY AUDITOR
TOM MODICA, ASSISTANT CITY MANAGER
ARTURO SANCHEZ, DEPUTY CITY MANAGER
REBECCA JIMENEZ, ASSISTANT TO THE CITY MANAGER
ALL CITY MANAGER DEPARTMENT HEADS



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

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December 22, 2015

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Request the City Attorney to draft an Ordinance amending the Long Beach Municipal Code to add emergency procurement regulations, allowing for effective purchase, rental, or lease of goods or services required to address immediate threats to health, safety or improved property, and to restore normalcy to the community as quickly as possible during a proclaimed emergency or disaster.
(Citywide)

DISCUSSION

Under the City's standard procurement procedures as established in the City Charter, Long Beach Municipal Code (LBMC) and written policy, procurement is subject to numerous requirements related to noticing, formal and informal bids, and awards, among others. Applicable requirements dictate the length of time necessary to complete a procurement for goods or services. During normal operations, procurement needs are typically non-urgent and known in advance, and the standard procurement process is appropriate to meet such needs.

In the event of an emergency or disaster, the unpredictability and urgency of procurement needs will greatly increase over normal operations. In emergency conditions, the City will likely face immediate threats to health, safety or improved property. Additionally, after immediate threats are mitigated, serious conditions may still exist and may require swift resolution in order to restore normalcy to the community. Responding in a timely manner to these needs will be critical to saving lives, addressing public health and safety concerns, and preventing further property damage. The City needs effective alternate procurement procedures to respond to these needs in an expedient manner.

The Federal Emergency Management Administration (FEMA) requires that any procurement made by the City during an emergency or disaster be conducted in accordance with the most stringent requirements of those found in federal, state, and local procurement procedures. In many cases, this would require the City to strictly adhere to its own procurement procedures, which do not appear to be well suited for dealing with emergency situations. It is important that procedures specific to emergencies be added, particularly in light of anticipated winter storms resulting from strong El Niño conditions, which are predicted to begin as early as January.

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Staff recommends that the City Attorney be requested to prepare an Ordinance that amends the LBMC to add emergency procurement regulations in order to better ensure effective purchase, rental or lease of goods or services during an emergency or disaster. The Department of Financial Management is reviewing external regulations and best practices, and will work with the City Attorney to establish, in accordance with that guidance, emergency procurement regulations that encompass topics such as: definitions for emergency procurement status; effective period for emergency purchasing regulations; delegations and limits of emergency purchasing authority; qualification for non-competitive procurements due to exigent circumstances; expedited procedures for competitive procurements (e.g., posting locations and duration, bonding and insurance requirements, etc.); and post award requirements.

This matter was reviewed by Deputy City Attorney Amy R. Webber and by Assistant Finance Director Lea Eriksen on December 9, 2015.

TIMING CONSIDERATIONS

City Council action is requested on December 22, 2015, in order to allow for implementation of the amended purchasing procedures in time for anticipated winter storms resulting from strong El Niño conditions.

FISCAL IMPACT

There is no fiscal impact or job impact associated with this recommended action.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT

JG:EH:SP
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APPROVED:



PATRICK H. WEST
CITY MANAGER