

**NO. 17****EMERGENCY PURCHASES****17-1.0 References.**

- (a) Sections 44-146.16, 44-146.19.C, and 44-146.21(c1) of the Code of Virginia (1950), as amended
- (b) Chapter 74 of the Code of the City of Richmond (2004), as amended
- (c) Purchasing Policies and Procedures Manual dated 09-01-02
- (d) Procurement Services Agency Desktop Toolkit 2006
- (e) Standard Operating Procedure No. 2007-01, Notice of "Intent to Award"

**17-2.0 Definitions.** For purposes of this regulation, the terms defined in this section have the meanings ascribed to them in this section unless the context clearly indicates that another meaning is intended.

**17-2.1** "*Declaration*" means a declaration or similar act by an authorized official, in accordance with applicable law, that a disaster or emergency exists. The President of the United States of America may declare that a major disaster exists. The Governor of Virginia may declare a state of emergency. The Mayor may declare a local emergency subject to the consent or ratification of the City Council.

**17-2.2** "*Disaster*" means a "*Major disaster,*" "*man-made disaster,*" or "*natural disaster*" as those terms have the meanings ascribed to them respectively in Va. Code § 44-146.16.

**17-2.3** "*Emergency*" means either (i) a situation determined by the Director of Procurement Services in accordance with this regulation to meet the requirements of City Code § 74-43 or (ii) an occurrence, or threat thereof, whether natural or man-made, that is the subject of a declaration.

**17-2.4** "*Emergency purchase*" means a purchase of goods or services made without recourse to the competitive procurement process required for that type of purchase or without recourse to any competitive procurement process due to the presence of an emergency.

**17-2.5** "*Force majeure event*" means an event or effect other than a disaster that causes or threatens to cause injury to persons or damage to property and that cannot be reasonably anticipated or controlled.

**17-3.0 Background.**

**17-3.1** City Code § 74-43 authorizes emergency purchases without competitive sealed bidding or competitive negotiation, as typically required by law, when the Director of Procurement Services determines that an emergency, as defined in that ordinance, exists.

- 17-3.2** Va. Code § 44-146.19.C. and 44-146.21(c1) authorize the City to enter into contracts and incur obligations without regard to time-consuming procedures and formalities prescribed by law, provided that unobligated funds are available, when the Governor of Virginia has declared a state of emergency or the Mayor, with the consent or ratification of the City Council, has declared a local emergency pursuant to the Commonwealth of Virginia Emergency Services and Disaster Law of 2000.
- 17-3.3** 40 U.S.C. § 502 authorizes the Administrator, U.S. General Services Administration (GSA), to provide for the use by state and local governments of GSA Federal Supply Schedules (FSS) for goods and services that are to be used to facilitate recovery from a major disaster declared by the President under the Stafford Act (42 U.S.C. § 5121 et seq.) or to facilitate recovery from terrorism, nuclear, biological, or chemical attack. Purchasing from FSS under this authority is known as Disaster Recovery Purchasing.
- 17-4.0 Policy.**
- 17-4.1** It is the intent of this regulation that the Director of Procurement Services will determine that an emergency exists only:
- (a) When--
- (1) One of the conditions set forth in City Code § 74-43 is present, AND
- (2) That condition is the result of a man-made disaster, a natural disaster, or a force majeure event.
- OR
- (b) When, a declaration of either (1) a state of emergency or (2) a local emergency is in effect.
- 17-4.2** After the Director of Procurement Services determines that an emergency exists and authorizes an emergency purchase, the department or other agency requesting the emergency purchase, under the guidance and with the assistance of the Department of Procurement Services, may make the purchase without recourse to the normally required method of competitive procurement, subject to the following:
- (a) The procurement shall be made with as much competition as is practicable under the circumstances;
- (b) The use of Federal Supply Schedules, where permitted, shall be encouraged; and
- (c) The procedures for such purchases, as set forth in this regulation, shall be followed.
- 17-4.3** The director or other head of a department or other agency that desires to make an emergency purchase shall be responsible for furnishing the Director of Procurement Services with the background information and documentation necessary to support a

determination that an emergency exists, as set forth in City Code § 74-43, and in accordance with this regulation. The Director of Procurement Services shall have no responsibility to make any further examination beyond the documentation submitted.

**17-4.4** The Director of Procurement Services may determine, based on the justification provided by the department or other agency requesting the emergency purchase and the requirements of section 17-4.1 of this regulation, that the request does not meet the criteria of an emergency. After consulting with the director or head of the department or agency requesting the purchase and after documenting the reasons, the Director of Procurement Services may treat the requested purchase as a “Fast Track” procurement (i.e., minimum ten-day “on-street” advertising time).

**17-5.0 Discussion.**

**17-5.1** An emergency is generally a situation that is beyond the control of an individual acting with normal attention to his or her duties. A generally accepted test for an emergency is whether the event is a force majeure or an act of God (i.e., an extraordinary interruption in the usual course of events by a natural cause that experience, prescience, or due care could not reasonably have foreseen or prevented). Examples of such events include natural disasters such as hurricanes, tornados, storms, floods, earthquakes, droughts, fires or other natural catastrophes and man-made disasters such as terrorist attacks, industrial or transportation accidents, explosions, conflagrations, power failures, or other conditions such as sabotage, oil spills and other injurious environmental contaminations.

**17-5.2** Under Disaster Recovery Purchasing, state and local government entities may purchase a variety of products and services from contracts awarded under GSA Federal Supply Schedules to facilitate recovery from a major disaster, terrorism, or nuclear, biological, chemical, or radiological attack. These Schedules are available on the Internet under GSA’s e-Library under “Disaster Relief” and “Homeland Security.”

**17-6.0 Procedures.**

**17-6.1** *Requisition.* The department or other agency requesting an emergency purchase shall submit an appropriate funded requisition (RX) within 48 hours of the emergency. On the RX, under “**TYPE:**” enter “1.” The department or other agency shall include with the requisition an appropriate written justification based upon which the Director of Procurement Services can make the necessary determination.

**17-6.2** *Justification.* The department or other agency shall prepare a written justification setting forth all facts and recommendations necessary for the Director of Procurement Services to make a determination that an emergency exists. At a minimum, the justification shall include the following:

(a) Either:

- (1) Both (i) a statement identifying the specific condition set forth in City Code § 74-43 that is the basis of the emergency and (ii) a statement identifying the specific man-made disaster or natural disaster that caused the condition that is the basis of the emergency;

OR

- (2) If the emergency is based on a declaration, a copy of the declaration.

- (b) A detailed description of the goods or services to be purchased.
- (c) Either a description of any competitive process recommended for the purchase or an explanation as to why no competitive process is recommended.
- (d) The recommended duration for the resulting contract based on section 17-6.6 of this regulation.

**17-6.3** *Submission.* The department or other agency shall furnish a copy of the requisition (RX) with the attached justification to the Coordinator of Emergency Management at the same time it submits the requisition to the Department of Procurement Services.

**17-6.4** *Processing of Requests.* The Department of Procurement Services shall process requests for emergency procurements within 24 hours of receipt. The Contract Specialist shall conduct a competitive procurement if practicable under the circumstances. If a competitive procurement is not practicable, the Contract Specialist shall proceed in accordance with the procedure for non-competitive award set forth in section 17-6.5 of this regulation.

**17-6.5** *Non-Competitive Award.* If the emergency procurement is to be awarded on a non-competitive basis, the Contract Specialist shall:

- (a) At a minimum, conduct and document an accurate and complete Fair Market Price Analysis which addresses the firm's:
  - (1) Unique capabilities, qualifications, and experience to satisfy the emergency need,
  - (2) Availability to satisfy the need in comparison to other firms (for example, regional presence, etc.), and
  - (3) Offered price in comparison to other firms with similar capabilities, qualifications, and experience as may be ascertained from various market resources such as the General Services Administration MOBIS contract or the pertinent GSA Disaster Recovery Schedule.
- (i) Any cost or price analysis conducted for an emergency purchase shall conform to the requirements set forth in 44 C.F.R. § 13.36 and costs or

prices shall be consistent with Federal Cost Principles as set forth in 44 C.F.R. § 13.22.

(ii) The purpose of the requirement set forth in 17-6.5(a) (3) (i) is to facilitate eligibility for grants or reimbursement by the Federal Emergency Management Agency or the Virginia Department of Emergency Management to the maximum extent possible.

(b) Negotiate the most favorable price and terms and conditions for the City and document the negotiations results in a memorandum for the procurement file.

**17-6.6** *Duration of Contract.* The proposed term of the emergency contract shall be consistent with the nature of the emergency being addressed.

**17-6.7** **Notice of Award.**

**17-6.7.1** *Form of Notice.* Upon the award of a contract procured as an emergency purchase, the Contract Specialist shall prepare a "Notice of Emergency Award" in the form of the attached sample notice.

**17-6.7.2** *Posting of Notice.* The Contract Specialist shall post the "Notice of Emergency Award" pursuant to the same procedure set forth for a "Notice of Intent to Award" in the Department of Procurement Services' Standard Operating Procedure No. 2007-01 "Notice of Intent to Award."

**17-6.7.3** *Other Delivery of Notice.* The Director of Procurement Services or a designee thereof shall furnish a copy of the "Notice of Emergency Award" to the Mayor's designee for the provision of such notice to the Mayor, the Chief Administrative Officer, and the members of the City Council at the same time that the notice is posted on the Department of Procurement Services' public board and website.

**17-6.8** **Record-Keeping and Reporting.**

**17-6.8.1** The Department of Procurement Services shall record the emergency procurement in a separate database for record-keeping purposes. As a minimum, pertinent data fields shall include the following:

- (a) Contractor name,
- (b) Contractor address,
- (c) Contract number,
- (d) Dollar value,
- (e) Date of award,
- (f) Brief description of service or item,
- (g) Contract term, and
- (h) Using Agency/Department.

**17-6.8.2** All records related to the emergency procurement shall be maintained and available for public inspection in accordance with City Code § 74-5.

- 17-6.8.3** The Department of Procurement Services shall submit an annual report (including negative report) of emergency purchases to the Mayor's designee for provision to the Mayor, the Chief Administrative Officer, and the City Council.
- 17-7.0** **Protests.** Protests of an award or decision to award a contract on an emergency basis shall be in accordance with City Code § 74-189. In accordance with City Code § 74-191, if the Director of Procurement Services receives a protest prior to award of a contract for an emergency purchase, no further action to award the contract will be taken unless the Director of Procurement Services issues a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire. Such written determination shall only be made after consultation with the Office of the City Attorney.
- 17-8.0** **Responsibilities.**
- 17.8.1** The Director of Procurement Services shall ensure compliance with this regulation and in particular, sections:
- 17-4.1, (Policy)
  - 17-4.4, ("Fast-Track" procurement)
  - 17-6.4, *Processing of Requests*
  - 17-6.7.3, *Other Delivery of Notice*
  - 17-6.8, **Record-Keeping and Reporting**
  - 17-7.0, **Protests**
- 17.8.3** Agency and department heads shall comply with this regulation and in particular, sections:
- 17-4.2, (Policy)
  - 17-4.3, (Policy)
  - 17-6.1, *Requisition*
  - 17-6.2, *Justification*
  - 17-6.3, *Submission*
  - 17-6.6, *Duration of Contract*
- 17.8.2** Procurement personnel shall comply with this regulation and in particular, sections:
- 17-6.4, *Processing of Requests*
  - 17-6.5, *Non-Competitive Award*
  - 17-6.6, *Duration of Contract*
  - 17-6.7.1, *Form of Notice*
  - 17-6.7.2, *Posting of Notice*
  - 17-7.0, **Protests**