

CITY OF NEW ORLEANS  
CHIEF ADMINISTRATIVE OFFICE

POLICY MEMORANDUM NO. 42(R)

February 22, 1999

TO: All Departments, Boards, Agencies, and Commissions

FROM: Marlin N. Gusman, Chief Administrative Officer

SUBJECT: **EMERGENCY BIDS**

1. PURPOSE.

This memorandum is revised to clarify the procedure for obtaining Councilmanic action declaring an emergency. The policy is in agreement with the Home Rule Charter and the City Code of 1995.

2. STATE LAW.

A. Louisiana Revised Statutes 38:2212, regarding public contracts, requires all public work and purchases exceeding specified amounts to be publicly advertised and let to the lowest responsible bidder. The requirement of public advertisement may be waived in cases of extreme public emergency if such emergency is certified to by the City Council and a notice of the emergency is published within ten (10) days in the City's official journal.

B. An emergency is defined in R.S. 38:2211(6)

as an unforeseen mischance bringing with it destruction or injury of life or property or the imminent threat of such destruction or injury of life or property or as the result of an order from any judicial body to take immediate action which requires construction or repairs absent compliance with the formalities of this Part, where the mischance of court order will not admit of the delay incident to advertising as provided in this Part.

C. Note that declaration of an emergency by councilmanic action only waives the requirement for advertising. Bids still must be requested and the purchase still must be awarded to the lowest responsible bidder.

3. CITY CODE.

A. Sections 70-428 and 70-429 of the Code of the City of New Orleans provide requirements for handling emergency situations. **These City code requirements apply to all departments, boards, agencies and**

**commissions of city government, unless other provisions are made in state law.**

1. **Memorandum of Explanation.** The department handling the emergency shall prepare a memorandum explaining the emergency, listing all contractors who have been or will be asked to bid, the source of funds, the estimated cost and the expected completion date of the emergency work or delivery date of goods to be purchased. The memorandum of explanation shall be routed to the Chief Administrative Officer, the City Attorney and the Director of Finance.
2. **Motion Declaring an Emergency.** If it is agreed that an emergency situation exists, the department handling the emergency shall prepare a motion for the City Council giving the exact nature of the emergency, listing contractors contacted or to be contacted, the source of funds, the estimated cost and the expected completion date of the work or delivery date of the emergency purchase. A sample motion is attached to this memorandum. Comments in the margin are for information only and should not be made part of the motion. If the estimated cost is above \$25,000, the Chief Administrative Officer will attempt to notify each council member verbally immediately.
3. **Check Sheet for Motions Declaring an Emergency.** A check sheet for routing emergency motions is attached to this memorandum. Departments shall prepare their own copies of the check sheet. A check sheet, proposed motion, and the memorandum of explanation shall be routed to the Director of Finance, the City Attorney, Chief Administrative Officer and the Executive Assistant for Intergovernmental Relations before being submitted to the Council for consideration at the next Council meeting. See Policy Memorandum No. 3 for additional information on motions for the Council.
4. **Reports.** Section 70-429 of the City Code, enacted by Ordinance No. 15926 M.C.S., requires the department which has requested an emergency motion to file a written report with the Council within **21 days** of the adoption of the motion authorizing the emergency purchase. The report shall indicate whether the purchase has been delivered or the work completed, the names of all vendors contacted, the name and address of the vendor or contractor selected, and **the exact cost of the contract awarded to that vendor or contractor.**
5. **Deviation.** The Director of Finance must report any deviation from the procedure specified in the City Code and the official responsible for the deviation must appear before the Council and provide an explanation.

6. **Payment.** No payment for any purchase made by emergency bid will be processed until a motion declaring an emergency has been passed by the City Council. Documents for payment, that is receiving reports or partials, must have a copy of the Council motion attached when sent in for processing. Normally, the Bureau of purchasing will not distribute the purchase order documents until the Council motion has been received. It is the responsibility of the department wishing to make an emergency purchase to ensure that Purchasing receives a copy.

B. Purchases of under \$10,000.00 do not require Councilmanic action to be purchased on an emergency basis as advertising is not required. Purchases costing \$5,000.01 or more and not subject to the provisions of state law are subject to the following requirements.

1. The Bureau of Purchasing must secure at least three written bids.
2. A public notice of an invitation to bid must be advertised by posting a written notice at the office of the Bureau of Purchasing for not less than eight (8) days before the opening of bids. Saturdays, Sundays, and legal holidays are excluded.
3. If it is necessary to issue an addendum to the bid invitation within 72 hours of the announced time for opening of bids, the bid opening must be delayed for exactly five (5) days, excluding Saturdays, Sundays, and legal holidays.
4. All purchases must be awarded to the lowest responsible bidder.
5. All purchases shall be only by written contract.
6. The provisions of the ordinance shall not apply to the purchase of unique and non-competitive items or of professional services.
7. The provisions of the ordinance shall not apply to emergency purchases authorized by the City Council.

4. **GENERAL RESPONSIBILTY.**

- A. The Director of Finance and the City Purchasing Agent are custodians of the public bid laws and all purchases of goods and services to be made under these laws must be made with their advice and assistance. **Departments shall contact the Bureau of Purchasing for guidance as soon as a situation which may require an emergency purchase is noticed.**
- B. Declaration of an emergency only waives the requirement for formal, public advertisement. Informal bids and awarding of bids to the lowest responsible bidder are not waived.

C. Department and agency heads shall scrupulously adhere to the requirements of law. Requests to declare emergencies should be made only in the gravest circumstances and shall not be attempted for convenience. City officials who request the declaration of an emergency shall be fully prepared to justify the request in writing and before Council.

**5. ATTACHMENTS.**

For reference, the following documents are attached to this memorandum.

Check sheet for routing emergency motions Sample motion for declaring an emergency ordinance No. 15926 M.C.S. City Code, Sections 70-428 and 70-429.

**6. INQUIRIES.**

Questions concerning this memorandum should be addressed to the Budget Office, Chief Administrative Office or the Bureau of Purchasing, Department of Finance.

MNG/LRF/dms

Attachments