

CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511

MEMORANDUM

TO: Common Council

FROM: Lara Mainella, Assistant City Attorney

DATE: April 6, 2020

RE: Order No. 17: Establishing procedures to negotiate and execute emergency leases, contracts and contract amendments during the emergency situation.

(Legistar File # 60116)

The Mayor's Emergency Order dated March 26, 2020, item 17, is as follows:

17. Establishing procedures as outlined in the attached Resolution to expedite emergency contracts and contract amendments necessitated by the COVID-19 emergency.

The emergency contract procedures are laid out in Resolution # 60116.

BACKGROUND

The City has an ordinance for emergency service contracts in MGO 4.26(4)(c), and has certain authority for emergency public works by state law, but this does not cover real estate transactions, leases, or amendments to existing contracts that were initially authorized by the Common Council. Existing policy also requires numerous signatures on most contracts.

WHY THIS ORDER IS NEEDED

This order streamlines some approval and signature procedures for contracts necessitated by the emergency:

- Allowing department heads, rather than the mayor, to approve certain contracts and purchases, and sign a contract if needed.
- Removing the step for Council approval for **emergency leases** and **space use agreements** for buildings or land needed for the emergency
- Removing the step for Council approval to **amend** a contract previously approved by the Council, if the amendment is for the emergency. Examples: extending deadlines, changing scopes of work, changing payment terms.
- Eliminating the signature of the City Clerk and Risk Manager
- Allowing the City Attorney to approve the contract form via email.

These procedures, laid out in greater detail in Resolution No. 60116, were identified by the Office of the City Attorney in consultation with the Finance Director and Risk Manager. These changes will streamline the City's ability to react quickly to emergency situations.

The resolution requires City Attorney, Finance Director, and Risk review in some cases and requires Finance Director signature when mandated by state law (new expenditures.)

HOW THE RESOLUTION WILL BE IMPLEMENTED

These emergency contract procedures are available to every department. The Mayor's March 26 order was shared with all Department and Division Heads. Those regularly involved in purchasing should be aware of the Order. Procedures are being implemented on an as-needed basis. Assistant City Attorneys and Finance (Purchasing) staff have been advising departments when and how to use the emergency procedures, when asked. To maximize the benefits of this order will require very good communication across agencies.

Finance has requested written guidance on how to implement these procedures. The City Attorney's office can work on this. As of now, we are reacting to specific situations as they come up, as is the nature of most emergency work.

ACTIONS TAKEN THUS FAR PURSUANT TO THIS ORDER

The Finance Department is tracking all emergency purchases. Some contracts that have been made under this order:

Private security for hotels, other sites
Online learning options for employees teleworking
MMSD Election Day polling MOA
Laundry service for linen/bedding at the Warner Park shelter
Other emergency contracts are being handled under Order 22.

Contract Amendments: As of the date of this memo, I am not aware of any contract amendments made under this Order, but believe they will be needed as we learn of situations where contracts cannot be performed, deadlines need to be extended, etc.

One agency that specifically requested contract amendment authority is CDD. It is anticipated CDD will amend some of their purchase of service contracts to revise the scope of work in response to emergency conditions, or move money around within a contract. To date, the CDD Division Director reports that his division has not yet amended any purchase of service contracts. CDD proactively reached out to agencies about two weeks ago for information to help determine where contract changes might be appropriate. Staff are in the process of following up with each agency, which will take time. CDD has notified agencies that it has postponed the first quarter service reporting deadlines. CDD does not plan to pull back money from agencies, rather, may need to modify scopes of services, authorize different service delivery models to comply with

social distancing and the Safer at Home order, etc., in addition to waiving or extending reporting deadlines found in existing contracts.

NOT included in this resolution: emergency purchase of goods and supplies. These purchases would not require any emergency authority, but are being tracked by the Finance Department.

NOT included in this resolution: contracts for emergency *services* already authorized by MGO 4.26(4)(c). That ordinance already authorizes department heads and the Finance Director to purchase services in any dollar amount, without competitive selection and without Common Council approval, in an emergency. It authorizes the Finance Director to sign such contracts (if a signed contract is deemed necessary.) The ordinance requires the Finance Director to report any such emergency contracts of \$50,000 or more to the Council.

NOT included in this resolution: any change of rules for public works contracts, as those procedures are dictated by state law. State law includes a narrow exception for emergencies in Wis. Stat. 62.15(1b). Considering the urgent nature of responding to this emergency, the City does not expect to have to commence emergency works of public construction as a result of the pandemic. Updates will be provided if this changes.

FISCAL IMPACT

From the fiscal note: This change does not have immediate impact; however, it may result in expenditures not currently assumed in the 2020 budget. These costs will be monitored by the Finance Director and reported to the Common Council with an budget amendment resolution for approval.