



Policies and Procedures

Emergency Procurements

BACKGROUND

Maryland State Finance and Procurement Code Annotated (SFP) §13-108 sets forth the definition of an emergency procurement, under what conditions the Emergency Procurement method may be used, the requirements of the Emergency Procurement method, and approval and reporting requirements for emergency procurements. This policy is a guide to assist with a procurement that needs to be processed under the Emergency Procurement method. Make sure to adhere to all relevant statutes and regulations when making a procurement under the Emergency Procurement method.

DEFINITION OF EMERGENCY

SFP §13-108 defines “emergency” as an occurrence or condition that creates an immediate and serious need for services, materials, or supplies that: (1) cannot be met through normal procurement methods; and (2) are required to avoid or mitigate serious damage to public health, safety, or welfare.

PROCEDURE

1. The Procurement Officer must submit a request to use the Emergency Procurement method along with a ***justification for the Emergency and the Agency Head approval*** via email to DGS.OSP-EmergencyRequest@maryland.gov for the Chief Procurement Officer (CPO) or designee to approve or deny within 48 hours. If a response is not provided within 48 hours after receipt, the request is automatically approved. Include this “Agency Emergency Request Email” and CPO or designee approval or denial in the procurement file.
2. The justification for the Emergency included in the Agency Emergency Request Email would become part of the Procurement Officer’s Determination (POD) as to why the procurement meets the criteria of an Emergency ([COMAR 21.05.06.02.D](#)). This official POD signed by the Procurement Officer and the Agency Head must be included in the procurement file.
3. If the Procurement Officer determines that the use of the Emergency Procurement method is immediately necessary and cannot wait 48 hours to obtain the CPO’s approval, the POD must include an explanation of why a 48 hour delay would cause imminent harm. A copy of the POD should be sent to DGS.OSP-EmergencyRequest@maryland.gov within 48 hours of the determining the Emergency.
4. The procurement officer is to obtain as much competition as possible under the circumstances, including by making reasonable efforts to solicit at least three (3) oral quotes.
5. The Procurement Officer should limit the emergency procurement to only those items, both in type and quantity necessary to avoid or to mitigate serious damage to public health, safety, or welfare. For real property leases, the term shall be for the minimum period of time practicable.
6. Before awarding an emergency procurement contract to a prospective contractor, evaluate the contractor’s ability to perform the requirements of the contract based on:
 - a. The length of time the contractor has been in business;
 - b. The contractor’s level of experience providing the types and amounts of supplies, services, maintenance, commodities, construction, or construction–related services required under the contract; and,

- c. The contractor’s history of successful procurement contracts with the State and other jurisdictions.
- 7. Execute a written contract with the successful contractor which includes the terms of the emergency procurement.
- 8. Notice of award shall be published in *eMaryland Marketplace Advantage* (eMMA) by the procurement agency on the day of execution and approval of the contract, or as soon as practicable thereafter, but not more than 30 days after the execution and approval of the contract.
- 9. Using the documents/templates provided in [BPW Advisory 2009-2](#), within 15 days after awarding an emergency contract or an emergency contract modification, the Agency shall submit to the Board of Public Works (BPW) and copy the appropriate Control Agency, Department of General Services Office of State Procurement (DGS OSP), at DGS.OSP-BPW@maryland.gov, and manny.welsh@maryland.gov in the Governor’s Office, a report that includes:
 - a. The basis and justification for the Emergency Procurement, including the date the emergency first became known;
 - b. A listing of supplies, services, maintenance, commodities, construction, or construction–related services procured;
 - c. The names of all persons solicited and a justification if the solicitation was limited to one person;
 - d. The prices and times of performance proposed by the persons responding to the solicitation;
 - e. The name of and basis for the selection of a Particular contractor;
 - f. The amount and type of the contract or contract modification;
 - g. A listing of any prior or related emergency contracts, including all contract modifications, executed for the purposes of avoiding or mitigating the emergency, including the aggregate costs; and,
 - h. The identification number, if any, of the contract file.
- 10. Not later than seven (7) days after awarding an emergency procurement contract with a value of \$1,000,000 or more, the Agency shall submit a copy of the contract to the BPW.
- 11. In advance of or concurrent with the execution of an emergency procurement contract, an Agency may not pay an amount that exceeds \$2,000,000, plus 30% of the contract value in excess of \$2,000,000. Unless authorized by the BPW, the Agency may not make any additional payment under the contract until at least 30 days after the execution of the contract.
- 12. If supplies or commodities procured under an emergency procurement contract are not delivered and used within one (1) month after the date the contract is awarded, the Agency shall:
 - a. Prepare a report describing the delivery and use status of supplies and commodities procured under the contract at least once per month until all supplies and commodities have been delivered and used;
 - b. Submit the reports prepared under this paragraph to the BPW and the appropriate Control Agency, DGS OSP at DGS.OSP-BPW@maryland.gov; and,
 - c. If applicable, in accordance with §2–1257 of the state government article, also submit the reports to the Senate Budget and Taxation Committee, the Senate Education, Health, and Environmental Affairs Committee, the House Appropriations Committee, the House Health and Government Operations Committee, and the Joint Audit and Evaluation Committee.

Version Number	Date	Reason for Change
3	March 15, 2023	Clarification of Process and link to BPW Advisory 2009-2 with templates