

EMERGENCY PURCHASING

When is it an emergency and when can the purchase wait? What qualifies as an emergency purchase?

WHAT QUALIFIES AS AN EMERGENCY?

- A valid emergency purchase is caused by the need to satisfy a requirement that cannot be satisfied through normal procurement channels.
 - According to the 2000 ABA Model Procurement Code, emergency purchases are appropriate “when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations...”
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What is practicable?

- It is important to note that the same reference also says “provided that such emergency purchases shall be made with such competition as is ***practicable*** under the circumstances.” For example, a water tank cracks and life and property are being threatened. You don’t have time to solicit quotes to do a permanent repair; but at the same time, can workers safely make a temporary repair allowing time to obtain quotes from several Contractors?
 - The exercise of good judgment is definitely required in such cases.
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INTERPRETATION

- ❑ Regulations, unfortunately, can open the door to broad interpretation and, in many cases, abuse.
 - ❑ The ABA 2002 Model Regulation goes into more detail, noting that such a procurement is appropriate where such an emergency situation causes a condition where the lack of needed products and services would “...seriously threaten:
 - a. the functioning of government;
 - b. the preservation or protection of property; or
 - c. the health or safety of any person
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ABUSE

- In reality, it is all too common for an agency to ignore the references to the above except for the one that states “threat to the functioning of government.”
 - In the eyes of many agencies, the lack of some needed product or service that would prevent them from doing their job, or their failure to plan a timely procurement leading them up to the same result, constitutes an emergency situation where they feel “the functioning of government” is imminently threatened.
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RESPONSIBILITY

- ❑ As their logic goes, they then feel they can invoke the emergency clause and bypass the normal procurement process.
 - ❑ Unfortunately, many of the finance departments that are in a position to challenge such procurements simply pay the bills without question.
 - ❑ In some jurisdictions, (such as the Federal Government) the use (or abuse) of emergency purchases has become almost epidemic!
 - ❑ Procurement officials are encouraged to address each situation on its own merits and seek the means to provide full competition, if at all possible, or at least the maximum competition practical given the particular circumstance.
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PLANNING

- ❑ The failure of a user to properly plan ahead should *not* provide the basis for an emergency purchase.
 - ❑ Truly unforeseeable circumstances that absolutely demand an immediate response *do*.
 - ❑ Preplanning for emergency situations can negate much of the need for *emergency* purchases.
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EXAMPLES OF REAL EMERGENCIES

- ❑ When there is a threat to the public such as a breach in a water tank, or contamination of a potable water supply
 - ❑ When there is a threat to public health or safety, such as a chemical spill, extreme weather conditions, flooding, earthquake or other natural disaster or acts or terrorism
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EXAMPLES OF NON-EMERGENCIES

- ❑ When a vehicle breaks down and needs a part ordered that is not under contract
 - ❑ Having a generator go down when there are back-up generators available for short term use
 - ❑ Replacing uniforms that have become obsolete and no longer meet requirements
 - ❑ Because the funds were budgeted for the item for the budget year ending in 30 days
 - ❑ Because you are about to lose grant funds
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SUPERVISOR RESPONSIBILITIES

- ❑ Supervisors should monitor the use of emergency procurements very carefully, especially looking for trends amongst users.
 - ❑ Unfortunately, the rampant use and approval of emergency procurements to cover the lack of planning has lead to a situation where this is almost an accepted norm in some agencies.
 - ❑ In those situations, some users and buyers both seem to feel that “if we can’t get it done in time, we can always just declare it an emergency.”
 - ❑ In their minds, this supposed “safety valve” absolves them of the need to apply proper planning and resources to get the proper procurement done in a timely manner.
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WHEN YOU HAVE AN EMERGENCY

- ❑ The most important thing to do first is inform purchasing of the situation at the earliest possible moment.
 - ❑ There are often cooperative contracts available for use that will both satisfy the need for a competitive award and the need to respond quickly to a situation.
 - ❑ The earlier you bring purchasing into the mix, the less chance there will be of a serious infraction of the law being incurred.
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DOCUMENTATION

- ❑ If you must act quickly without first talking to purchasing, such as on a weekend, be sure to document the emergency very precisely. Create a timeline and go into great detail on what the emergency was, how it happened, how it was dealt with, and especially how it was a threat to life or property. List the names of everyone involved.
 - ❑ These notes will be placed into the permanent file which is reviewed by the State of Arizona auditors who come in every year to review the bids and financial statements of the City.
 - ❑ It is also important that we correctly code the purchase as an emergency when the bid # is assigned in order to create the Purchase Order.
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