

EMERGENCY NON-IT SERVICE CONTRACTS

PRESENTERS:

PATRICK DOUST,
ATTORNEY

DEBBIE MALLARI,
ATTORNEY

DGS-OLS

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Background References

STATE CONTRACTING MANUAL

- SCM, Vol.1 §3.10
- SCM, Vol.1 §4.07
- SCM, Vol.1 §4.08

PUBLIC CONTRACT CODE

- Pub. Cont. Code §1102
- Pub. Cont. Code §10335(a)
- Pub. Cont. Code §10340(b)(1)

What constitutes an emergency?

A sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. (Pub. Cont. Code §1102.)





A contract must meet all elements
to qualify as an emergency.

Let's go over each element...

A sudden, unexpected occurrence



That poses a clear and imminent danger



Requiring immediate action



To prevent or
mitigate the loss
or impairment
of:

Life

Health

Property

Essential Public Services



Emergency contracts are statutorily exempt from advertising and competitive bidding.

Pub. Cont. Code § 10340(b)(1)



There is no exception from contract approval.

Pub. Cont. Code § 10335



An agency may defer DGS/OLS contract approval in an emergency circumstance so long as agency head approval is obtained. DGS approval is still required and should be obtained as soon as possible.

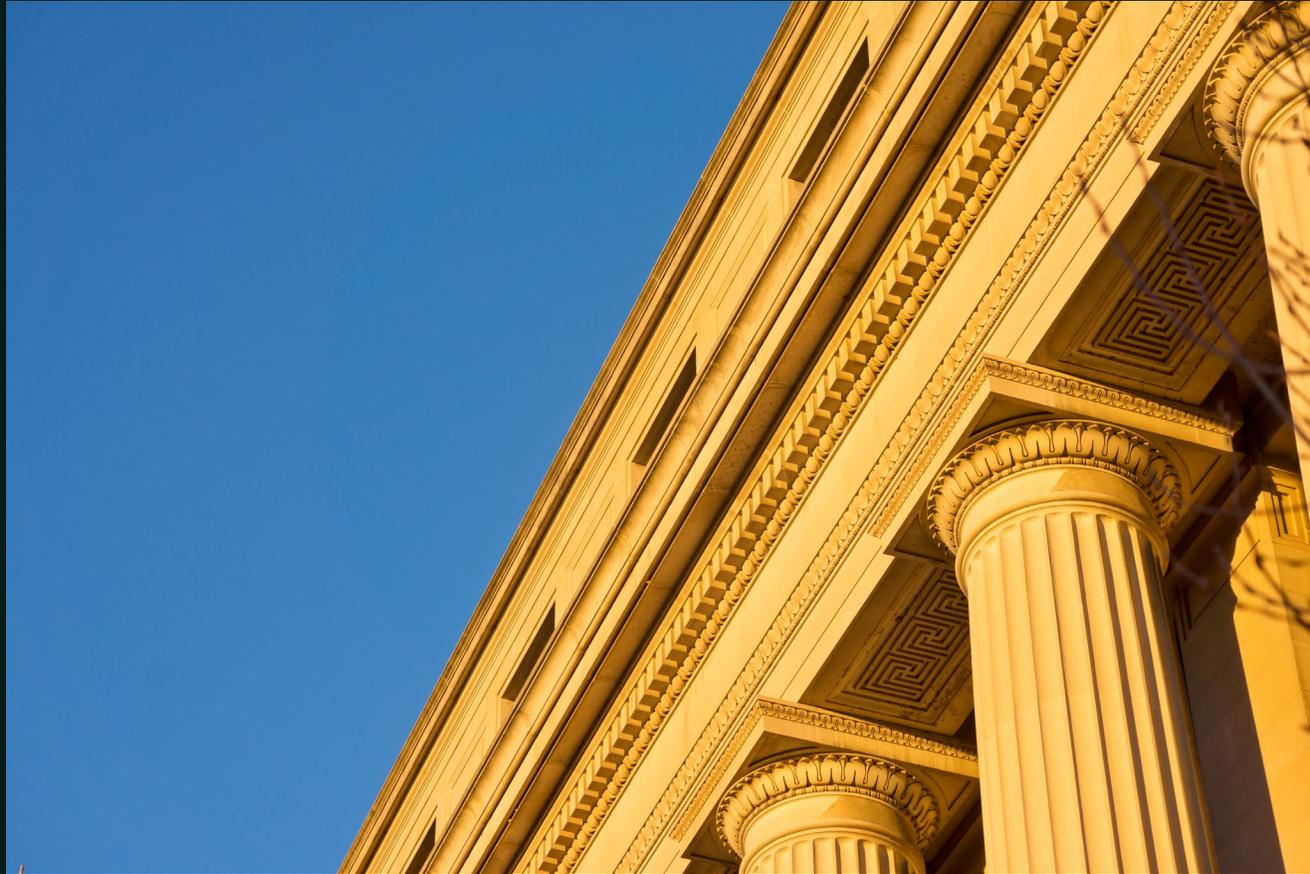
SCM, Vol.1, §3.10, §4.07



Submit your contract to OLS as soon as possible!



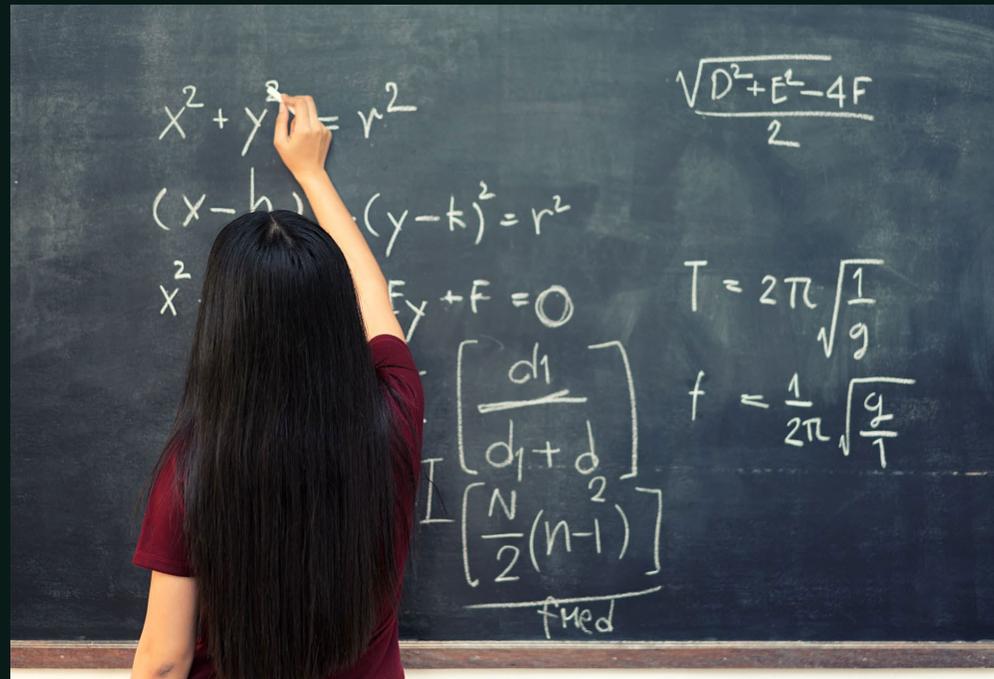
Curious what case law has to say about emergency contracting?



CalFire found exempt from competitive bidding when it entered emergency contracts to rent additional fire equipment. (*Fairview Valley Fire, Inc. v. California Department of Forestry* (2015) 233 Cal.App.4th 1262, 1265.)



A school district's decision to terminate a construction contract and subsequently award the contract to another company without competitive bidding was not a true emergency; it was not a sudden, unexpected occurrence posing a danger that required immediate action. (*Marshall v. Pasadena Unified School District* (2004) 119 Cal.App.4th 1241, 1258.)



Consider this...

- "Emergency is not synonymous with expediency, convenience, or best interests, and it imports 'more...than merely a general public need...' Emergency comprehends a situation of 'grave character and serious moment'." (*Sonoma County Organization etc. Employees v. County of Sonoma* (1991) 1 Cal.App.4th 267, 277.)

State of Emergencies are different than PCC 1102 emergencies

- You must read the emergency proclamation to know what you are empowered to do.
- On Saturday, March 1, 2025, Governor Newsom proclaimed a state of emergency to address forest management projects: "[S]tate agencies shall enter into contracts . . . to quickly assist with the response to this emergency Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of this emergency."

Now for some practice scenarios...



One morning a hospital kitchen pipe bursts during breakfast preparations. On site maintenance quickly shuts off the water main. Now there is no potable water available, and the team is not equipped to make the needed repairs. The kitchen feeds 200 patients each day; many with specific dietary needs.



Does this situation meet the required elements of an emergency contract ?

REQUIRED ELEMENTS

- Sudden and unexpected?
- Clear and imminent danger?
- Requires immediate action?
- Necessary to prevent or mitigate loss of life, health, property, or essential services?

ANSWER

- Yes. A broken pipe suddenly preventing access to clean water at a hospital that cares for critically ill patients is an emergency repair necessary to prevent loss of life, health, and essential services.

Employees that occupy the top floor of an office building have recently complained that the air conditioner is blowing warm air; maintenance is concerned that the system is malfunctioning but unable to perform the repairs. Next weeks forecast predicts an extreme heatwave of triple digit temps. The agency submits a contract for emergency temporary chillers.



Does this situation meet the required elements of an emergency contract?

REQUIRED ELEMENTS

- Sudden and unexpected?
- Clear and imminent danger?
- Requires immediate action?
- Necessary to prevent or mitigate loss of life, health, property, or essential services?

ANSWER

- Maybe. Obtaining temporary chillers to ensure working conditions are tolerable is likely appropriate while the agency works on a longer-term solution of inspecting, repairing, and/or replacing the HVAC system through the competitive bidding process.

Practical Tips – Good Contracting Practices

- Good contracting practices are even more important when moving quickly.
- Be clear about exactly what you need, when you need it, what form the deliverable should be in.
- Make sure the written agreement accurately reflects the contract.



Practical Tips - Contract Management

- Tracking what was delivered
- Who is onsite to verify?
- Keep records
- Document changes to service levels
- Invoice verification process
- Staffing levels



Practical Tips – Additional Requirements

- Agencies that may be eligible for Federal Emergency Management Agency (FEMA) funding and/or reimbursements should consult the Governor's Office of Emergency Services (Cal OES) on contract provisions required by Title 2 of the Code of Federal Regulations, Part 200.
- SCM Vol. 1, §3.11(D)



Practical Tips – Additional Requirements

- Emergency contracts are likely to also involve hazardous activities, which could trigger additional contract requirements and ORIM involvement. See SCM, Vol.1 §3.12



Practical Tips – Be Careful of Moving Forward Without Approval

- Just because you can, doesn't mean you should.
- What happens if you execute a contract lacking legally required terms and then submit it to OLS and we don't approve it?
- OLS can help to catch issues before the contract is executed.



Practical Tips – Expecting the Unexpected

- Perhaps the specifics of an emergency can't be expected, but we certainly can forecast the need for general services to respond to those types of emergencies.
- So, plan now. Contract now.
- Consider other quick contracting methods like the small business / DVBE option. SCM Vol. 1, §5.80(A)(9).



Questions?

