

CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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TO: Board of Supervisors
FROM: Budget and Legislative Analyst 
SUBJECT: May 19, 2020 Full Board of Supervisors Meeting

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Department:
N/A

EXECUTIVE SUMMARY

Legislative Objectives

The proposed motion would concur in actions taken by the Mayor in the Thirteenth Supplement to the Proclamation of Emergency, released on May 11, 2020, to meet the ongoing local emergency related to COVID-19.

Key Points

For contracts related to the COVID-19 response with terms up to one year, the Thirteenth Supplement to the Proclamation waives (a) competitive solicitation and commission approval requirements if deemed necessary by the department head, and (b) standard contract language requirements if deemed necessary by the department head in consultation with the Controller and City Attorney. The Thirteenth Supplement also authorizes the Controller to adopt a policy allowing City departments to modify agreements, including those unrelated to the emergency, without complying with competitive solicitation and procurement procedures, as long as the modifications do not (a) extend an agreement by more than six months, (b) extend the term of an agreement past June 30, 2021, or (c) increase the cost to the City.

Fiscal Impact

The City has spent an estimated \$52 million on COVID-19-related goods and services. The waiving or suspending of certain City contracting requirements could incur additional costs to the City if a more favorable contract or set of contract terms could have been obtained under the contracting requirements that would normally be in place.

Policy Consideration

Under the San Francisco Charter, actions taken by the Mayor to meet a declared emergency are subject to concurrence by the Board of Supervisors. An order issued by the Mayor remains in effect until the Board of Supervisors acts, by motion, to either concur or reject.

Recommendations

- The Board of Supervisors should request the Controller to (1) provide information to the Board on which City departments have existing non-emergency contracts that could be extended up to six months without competitive solicitation, and which non-emergency contracts could be extended, and (2) set an end date, but no later than July 11, 2020, for which this provision would be in effect.
- The Board of Supervisors should consider adopting legislation to require that all Mayoral Supplements to the February 25, 2020 Proclamation of Emergency and other Mayoral orders related to COVID-19 be heard at the next scheduled meeting of the full Board of Supervisors for which the agenda has not been finalized.
- Approval of the proposed motion is a policy decision for the Board of Supervisors.

MANDATE STATEMENT

California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14), and Chapter 7 of the San Francisco Administrative Code empower the Mayor to proclaim the existence of a local emergency, subject to concurrence by the Board of Supervisors as provided in the Charter, in the case of an emergency threatening the lives, property, or welfare of the City and County or its citizens. During a declared emergency, San Francisco Charter Section 3.100(14) vests the Mayor with the power to direct the personnel and resources of any department, command the aid of other persons, and do whatever else the Mayor may deem necessary to meet the emergency, subject to concurrence by the Board of Supervisors.

BACKGROUND

On February 25, 2020, the Mayor issued a Proclamation declaring a local emergency to exist in connection with the imminent spread of a novel coronavirus, COVID-19, within San Francisco. On March 3, 2020, the Board of Supervisors concurred in the Mayor's Proclamation and in the actions taken by the Mayor to meet the emergency. On March 4, 2020, the Governor of California proclaimed a state of emergency to exist within California due to the threat posed by COVID-19. On March 6, 2020, the San Francisco Local Health Officer declared a local health emergency under Section 101080 of the California Health and Safety Code. The Board of Supervisors concurred in the local health emergency declaration on March 10, 2020. Since the Mayor's initial Proclamation declaring a local emergency on February 25, 2020, the Mayor has issued thirteen Supplements to the Proclamation containing additional orders and actions.

Under San Francisco Charter Section 3.100(14), the actions taken by the Mayor to meet the declared emergency are subject to concurrence by the Board of Supervisors. The Charter requires that the Mayor seek the concurrence of the Board of Supervisors "as soon as reasonably possible," but according to a March 24, 2020 memorandum from the City Attorney's Office ("Process for Board of Supervisors Action on Emergency Orders"), neither state nor local law establishes a deadline by which the Board of Supervisors must act. An order issued by the Mayor under a declaration of emergency remains in effect until the Board of Supervisors acts, by motion, to either concur or reject.

The March 24, 2020 memorandum from the City Attorney's Office specifies that when considering a mayoral order where the Mayor has included more than one action, the Board may concur in or reject each of the actions taken. If the Board concurs in some of the actions and rejects others, the Board's action changes the substance of the order, similar to an amendment of the whole order. However, the Charter does not authorize the Board to revise the order to modify the actions or include different or additional actions. Therefore, if the Board wishes to change an action ordered by the Mayor, it must reject the action in its entirety. The Mayor may then decide to submit a new order with changes that are acceptable to the Board. Alternatively, the Board may pursue its policy goal through an emergency ordinance using its legislative power.

DETAILS OF PROPOSED MOTION

The proposed motion would concur in actions taken by the Mayor in the Thirteenth Supplement to the Proclamation of Emergency, which was released on May 11, 2020, to meet the ongoing local emergency related to COVID-19. The Mayor's actions taken in the Thirteenth Supplement to the Proclamation of Emergency are outlined below.

Emergency Contracting Procedures

- (1) The Thirteenth Supplement to the Proclamation of Emergency waives or suspends, under certain conditions, certain City procedural and substantive contracting requirements for agreements related to the City's response to the emergency (COVID-19-Related Contracts), including contracts for the procurement of commodities or services, contracts for public works, and grant agreements.

If a department enters into a COVID-19-Related Contract after May 11, 2020 under exceptions (a), (b), or (d) below, the Department Head or designee must submit a copy of the contract to the Mayor and the Clerk of the Board of Supervisors by no later than the 15th day of the month following the month in which the contract was executed. Departments must submit to the Mayor and the Clerk of the Board of Supervisors by May 31, 2020 a copy of any COVID-19-Related Contract entered between January 1, 2020 and May 11, 2020 that did not comply with competitive solicitation and procurement procedures in the Administrative Code, did not receive required approval from an oversight commission of the Civil Service Commission, or did not include terms otherwise required by the Administrative and Environment Codes.

Departments may enter into COVID-19-Related Contracts with a term of one year or less if they comply with the following exceptions:

- a. Solicitation and procurement: Departments will not be required to follow competitive solicitation and procurement procedures outlined in the Administrative Code, provided that:
 - i. the department attempts to obtain at least three quotes before entering into a COVID-19-Related Contract; or
 - ii. the Department Head or designee determines in writing, and the Controller or designee concurs, that it is not feasible to obtain multiple quotes prior to executing the COVID-19-Related Contract.
- b. Commission approvals: Departments will not be required to obtain approval for a COVID-19-Related Contract from the commission overseeing the department, provided that:
 - i. the Department Head or designee determines in writing that the commission is unable to meet in a timely manner to approve the COVID-19-Related Contract within the time needed to address the emergency;

- ii. the Department Head or designee informs the chairperson and commission secretary in advance that the department is entering into the COVID-19-Related Contract; and
 - iii. the Department Head or designee submits a copy of the contract to the commission by the 15th day of the month following the month in which the contract was executed.
- c. Contract terms: COVID-19-Related Contracts will not be required to include contract terms that the Department Head or designee, in consultation with the City Attorney and Controller, determines may impede the City's ability to obtain reimbursement from the Federal Emergency Management Agency or the California Governor's Office of Emergency Services. All other contract terms required in the Administrative and Environment Codes must be included in COVID-19-Related Contracts unless:
 - i. the Department Head or designee determines in writing that strict compliance is not feasible due to emergencies; and
 - ii. the Department Head or designee provides the written designation determination to the Controller or designee, and the Controller or designee concurs.
- d. Personal protective and medical equipment: Departments may enter into COVID-19-Related Contracts for the procurement or delivery of personal protective equipment or medical equipment needed to address the COVID-19 emergency and shall not be required to (a) comply with competitive solicitation and procurement procedures in the Administrative Code, (b) obtain commission approval, or (c) include substantive terms otherwise required by the Administrative or Environment Codes, provided that either:
 - i. the department complies with the City Administrator's March 10, 2020 memorandum ("New Purchasing Restrictions and Procedures for COVID-19-Related Goods and Services"); or
 - ii. the department receives written permission from the City Administrator or Controller if compliance with the March 10 memorandum is infeasible.
- e. Civil service commission approvals: Departments may enter into COVID-19-Related Contracts that require approval from the Civil Service Commission as authorized in Section 3, described below.

Waiver of Other Contracting Procedures

- (2) The Thirteenth Supplement to the Proclamation of Emergency authorizes the Controller to adopt a policy allowing all City departments to modify agreements in place on May 11, 2020, including agreements that are not related to the response to the emergency, without complying with competitive solicitation and procurement procedures in the Administrative Code. However, the policy shall not allow any modifications that (i) extend an agreement by more than six months, (ii) extend the term of an agreement past June 30, 2021, or (iii) increase the cost to the City, except that modifications to a general services, professional services, commodity, lease, or grant agreement may increase the not-to-exceed amount to the extent permitted by the policy and as necessary given the extension duration. These modifications shall not be subject to approval by the Civil Service Commission.
- (3) The Thirteenth Supplement to the Proclamation of Emergency allows the Civil Service Commission Acting Executive Officer, in her discretion, to approve a personal services contract after consultation with the Civil Service Commission Chairperson and/or Vice Chairperson if:
- a. a Department Head or designee determines in writing that a personal services contract that requires Civil Service Commission approval must be finally approved by a specific date to address an exigency or emergency; and
 - b. the Civil Service Commission Acting Executive Officer determines that the Civil Service Commission is unable to meet to approve the personal services contract by that date.

The Department Head or designee must provide the Acting Executive Officer a written explanation of the exigency or emergency that requires immediate action on the contract. If the Acting Executive Officer approves the contract, then the Department Head or designee shall submit the executed contract to the Civil Service Commission by no later than the 15th day of the month following the month in which the contract was executed.

Water and Utilities

- (4) The Thirteenth Supplement to the Proclamation of Emergency extends Section 2 of the Second Supplement to the Emergency Proclamation, dated March 13, 2020, for an additional 60 days through July 11, 2020. Section 2 of the Second Supplement to the Emergency Proclamation authorizes the San Francisco Public Utilities Commission to suspend for 60 days (a) the discontinuation or shut off of water service for residents and businesses in the City for non-payment of water and sewer bills, (b) the imposition of late payment penalties or fees for delinquent water and/or sewer bills, (c) the discontinuation or shut off of power service for Hetch Hetchy Power customers in San Francisco for non-payment of power bills, (d) the imposition of late payment penalties or fees for delinquent Hetch Hetchy Power customer accounts, and (e) the return of delinquent CleanPowerSF customers to PG&E generation service for failure to pay CleanPowerSF charges.

FISCAL IMPACT

According to City budget documents, the City has spent an estimated \$52 million on COVID-19-related goods and services.

Approval of the proposed motion would waive or suspend, under certain conditions, certain City procedural and substantive contracting requirements for agreements related to the City's response to the COVID-19 emergency. The waiving or suspending of these requirements, including competitive bid requirements, commission approval requirements, and contract term requirements, could incur additional costs to the City if a more favorable contract or set of contract terms could have been obtained under the contracting requirements that would normally be in place.

POLICY CONSIDERATION**Emergency and Other Contracting**

For contracts for services and goods necessary to the City's response to COVID-19 and with terms up to one year, the Thirteenth Supplement to the Proclamation waives (a) competitive solicitation and commission approval requirements if deemed necessary by the department head, and (b) standard contract language requirements if deemed necessary by the department head in consultation with the Controller and City Attorney.

City contracting procedures in response to the COVID-19 emergency were previously defined in the First Supplement to the Proclamation, issued on March 11, 2020, which directed City departments to comply with orders issued by the City Administrator regarding the purchase of commodities and services required to address the emergency. On March 10, 2020, the Office of the City Administrator issued a memorandum to all department heads and purchasing officers outlining purchasing procedures for the procurement of any emergency-related commodity or service ("New Purchasing Restrictions and Procedures for COVID-19-Related Goods and Services").

The City Administrator's purchasing procedures as specified in the March 10, 2020 memorandum require that departments' requests for specific emergency-related goods or services be submitted to the Emergency Operations Center (EOC) for review and prioritization, which in coordination with the Office of Contract Administration (OCA) determines whether the department may make the purchase directly or whether the purchase should go through OCA.

Waiver of Competitive Solicitation and Obtaining Quotes

According to the City Administrator's purchasing procedures as specified in the March 10, 2020 memorandum, City departments and OCA should attempt when feasible to solicit three quotes so that the City is able to request reimbursement from the Federal Emergency Management Agency. The Thirteenth Supplement states that departments will not be required to follow competitive solicitation and procurement procedures outlined in the Administrative Code, provided that (i) the department attempts to obtain at least three quotes before entering into a

COVID-19-Related Contract; or (ii) the Department Head or designee determines in writing, and the Controller or designee concurs, that it is not feasible to obtain multiple quotes prior to executing the COVID-19-Related Contract.

Waiver of Standard Contract Language

According to the City Administrator's purchasing procedures as specified in the March 10, 2020 memorandum, during a declared emergency, the supplier does not need to be compliant with the 12B Equal Benefits Program, which requires firms to administer benefits equally to employees with domestic partners and employees with spouses, or other social policy provisions of the City. The Mayor's Thirteenth Supplement further waives standard contracting language for emergency contracts for COVID-19-related goods or services if (i) the Department Head determines, in consultation with the City Attorney and Controller, that standard contract language may impede the City's ability to obtain reimbursement from the Federal Emergency Management Agency or the California Governor's Office of Emergency Services; or (ii) the Department Head determines, and the Controller concurs, that strict compliance is not feasible due to emergencies.

Other Non-Emergency Contracting Provisions

The Thirteenth Supplement also authorizes the Controller to develop policies to extend existing contracts up to six months without competitive solicitation even if the contract is not specific to the COVID-19 response. This provision would be in place for the duration of the emergency. The Board of Supervisors should request the Controller to (1) provide information to the Board of Supervisors on which departments and which contracts would be affected by this provision, and (2) set an end date, but no later than July 11, 2020, for which this provision would be in effect.

Mayor's Reporting to Board of Supervisors

Under San Francisco Charter Section 3.100(14), actions taken by the Mayor to address a declared emergency are subject to concurrence by the Board of Supervisors. The Charter requires that the Mayor seek the concurrence of the Board of Supervisors "as soon as reasonably possible," but according to the City Attorney's Office, neither state nor local law establish a deadline by which the Board of Supervisors must act. An order issued by the Mayor under a declaration of emergency remains in effect until the Board of Supervisors acts, by motion, to either concur or reject. Given that the Board of Supervisors continues to hold regularly-scheduled meetings during the COVID-19 emergency, the Board of Supervisors should consider adopting legislation to require that all Mayoral Supplements to the February 25, 2020 Proclamation of Emergency and other Mayoral orders related to COVID-19 be heard at the next scheduled meeting of the full Board of Supervisors for which the agenda has not been finalized.

RECOMMENDATIONS

1. The Board of Supervisors should request the Controller to (1) provide information to the Board on which City departments have existing non-emergency contracts that could be extended up to six months without competitive solicitation, and which non-emergency

contracts could be extended, and (2) set an end date, but no later than July 11, 2020, for which this provision would be in effect.

2. The Board of Supervisors should consider adopting legislation to require that all Mayoral Supplements to the February 25, 2020 Proclamation of Emergency and other Mayoral orders related to COVID-19 be heard at the next scheduled meeting of the full Board of Supervisors for which the agenda has not been finalized.
3. Approval of the proposed motion is a policy decision for the Board of Supervisors.