



February 16, 2021

TO: Business Administrators
Los Angeles County School and Community College Districts
and Other Local Educational Agencies

FROM: Gabriel Leung, Assistant Director
Accounting and Financial Services
Division of School Financial Services

SUBJECT: County Approval Process of Emergency Resolution Requests

The purpose of this bulletin is to provide information regarding the County approval process of Emergency Resolution Requests.

Legal Provision

In emergency situations, the Public Contract Code (PCC) contains a provision for public agencies to enter into contracts for public work projects without competitive bidding when the total cost exceeds \$15,000. Public Contract Code Sections 20113 (school districts) and 20654 (community college districts) read as follows:

- (a) In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of public schools/the college to permit the continuance of existing school/college classes, or to avoid danger to life or property, the board may, by unanimous vote, with the approval of the county superintendent of schools, do either of the following:
 - (1) Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.
 - (2) Notwithstanding PCC Section 20114 / 20655, authorize the use of day labor or force account for the purpose.
- (b) Nothing in this section shall eliminate the need for any bonds or security otherwise required by law.

Definition of Emergency

Public Contract Code Section 1102 describes emergencies as follows:

“Emergency,” as used in this code, means 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.

The following are the requirements to permit our office to approve payments under emergency conditions:

1. An Emergency Resolution unanimously approved by the governing board (Attachment 1) must be forwarded to our office with a cover letter (Attachment 2) requesting approval of the county superintendent of schools to waive the competitive bidding requirement under PCC Section 20113 (school districts) and Section 20654 (community college districts). In all situations, the definition of emergency as defined by PCC Section 1102 must be met. The request should describe facts showing the need for repairs and justifying an emergency exists, e.g., *"The boiler at Anywhere Elementary School exploded on December 31, 2020, during the winter break and must be replaced. Classes will resume in 4 days. The superintendent reports that existing classes will not be able to continue without an immediate repair of the boiler."* The request should also include the district's best estimate of the total expenditures needed to correct the emergency and, when known, the name(s) of the vendor(s) contracted with for the repairs/alterations.
2. When the nature of the emergency is such that corrective action is required **before** the regular scheduled governing board meeting, and the estimated cost exceeds the competitive bidding limit, you may secure the county office's conditional approval to proceed by submitting information relevant to the emergency to our office in letter form (Attachment 3) by e-mail to Leung_Gabriel@lacoed.edu. The district's governing board members must approve the emergency repairs. We will review the information and respond to you quickly. Once approved, an electronic copy is sent to the district. A copy of the formal resolution adopted by the governing board must still be sent to our office.
3. Once LACOE approves an emergency waiver, a copy of the approved resolution will be sent to the district as confirmation. The resolution number should be referred to or a copy of the approved emergency resolution should be submitted as supporting documentation for all payment requests related to the emergency resolution.

COVID-19 Emergency Declaration

On March 4, 2020, Governor Gavin Newsome declared a State of Emergency for California stemming from the COVID-19 outbreak, per Government Code 8625. Districts may follow the same Emergency Resolutions Request process above to procure public works projects without competitive bidding. This would be for projects either necessary to the health and safety of school staff and students, or to permit the continuance of classes (e.g. supporting virtual learning).

CUPCCAA Districts do not have to submit an Emergency Resolution Request to LACOE

Districts who have elected to be subject to the California Uniform Public Construction Cost Accounting Act (Pub. Contract Code Section 22000, et seq., "CUPCCAA"), do not have to submit an Emergency Resolution Request to LACOE for approval. Emergency work of \$200,000 or more and as defined in PCC 22035 must be done pursuant to the terms of PCC Section 22050(a).

- (1) In the case of an emergency, a public agency, pursuant to a four-fifths vote of its governing body, may repair or replace a public facility, take any directly related and immediate action require by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.*

- (2) *Before a governing body takes any action pursuant to paragraph (1), it shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the action is necessary to respond to the emergency.*

An emergency waiver does not eliminate the need for any bonds or security otherwise required by law.

A retention of not less than 5 percent is required for progress payments on public works projects exceeding \$5,000 per PCC Section 9203(a) *“Payment on any **contract** with a local agency for the creation, construction, alteration, repair, or improvement of any public structure, building, road, or other improvement, of any kind which will exceed in cost a total of five thousand dollars (\$5,000), shall be made as the legislative body prescribes upon estimates approved by the legislative body, but progress payments shall not be made in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, the local agency, and unused. The local agency shall withhold not less than 5 percent of the **contract** price until final completion and acceptance of the project. However, at any time after 50 percent of the work has been completed, if the legislative body finds that satisfactory progress is being made, it may make any of the remaining progress payments in full for actual work completed.”*

A payment bond per Civil Code Section 9550 will be required if the contract amount for public works exceeds \$25,000 before performance of the work.

Please be advised that Emergency Resolution may not be considered for major construction and/or modernization projects unless they meet the criteria of the PCC Sections 1102, 20113 and 20654.

This bulletin and its attachments are posted on the Los Angeles County Office of Education (LACOE) website at www.lacoe.edu/bulletins.

Should you have any questions regarding the bulletin, please contact Edgar Estrada at (562) 922-6633 or via email at Estrada_Edgar@lacoe.edu.

Approved:
Nkeiruka Benson, Director
Division of School Financial Services

GL:lt
Attachments
SFS-A33-2020-2021



GOVERNING BOARD RESOLUTION FOR EMERGENCY RESOLUTION - PUBLIC PROJECT

_____ District Resolution # _____

On Motion of Member _____, seconded by Member _____,

the following resolution is adopted by the Governing Board of the _____ District:

WHEREAS, _____; and

WHEREAS, _____; and

WHEREAS, _____; AND

WHEREAS, Public Contract Code Section 20113 (school districts) or 20654 (community college districts) provides that public agencies may, with the unanimous approval of the governing board and approval of the county superintendent of schools, contract for the performance of labor and purchase of materials without advertising for or inviting bids in an emergency when such work is necessary to permit the continuance of existing school classes or to avoid danger to life and property;

THEREFORE, BE IT HEREBY RESOLVED, That the Governing Board of the _____ District has determined that these circumstances constitute an emergency condition and request approval from the county superintendent of schools to enter into contracts for:

without advertising or inviting bids pursuant to Public Contract Code Section 20113 (school districts) or 20654 (community college districts.)

PASSED AND ADOPTED by unanimous vote of the members of the Governing Board of the

DISTRICT	MONTH/DAY/YEAR	NUMBER OF VOTES	ESTIMATED COST*
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With the approval of the County Superintendent of Schools, the Board will

<input type="checkbox"/> Make a contract for the performance of labor and furnishing of materials or supplies, or		
<input type="checkbox"/> Authorize the use of day labor or force account.**		
AYES:	NOES:	ABSENT:

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } SS

I, _____ Clerk/Secretary of the Governing Board of the _____ District, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the said Board at a regularly called and conducted meeting held on said date.

Clerk/Secretary of the Governing Board

*Civil Code Section 9550 (Public works projects of \$25,000 or more would require a payment bond.)

**Community College Districts subject to limitations of PCC 20655; K-12 School Districts subject to limitations of PCC 20114; CUPCCA Districts subject to PCC 22050



_____ District

EMERGENCY RESOLUTION REQUEST

In accordance with Public Contract Code Section 20113 for school districts or 20654 for community college districts, your district meet the requirements pursuant to the Public Contract Code, unanimously resolved by vote of all members present, and constituting a quorum, that an emergency exists wherein certain repairs, alterations, works or improvements are necessary to permit the continuance of existing school classes, or to avoid danger to life and property as described in

Resolution No. _____ dated _____.

Approved by the County Superintendent of Schools

BY (DEPUTY)

DATE SIGNED

Place on District Letterhead

SAMPLE LETTER

(After governing board approval)

Date:

Gabriel Leung, Assistant Director
Accounting and Financial Services
Division of School Financial Services
Los Angeles County Office of Education
9300 Imperial Highway
Downey, CA 90242-2890

Emergency Resolution Request – Governing Board Approval

In accordance with Public Contract Code Sections 1102, 20113 (school districts) / 20654 (community college districts), our district is seeking the approval of the County Office of Education to waive the requirement for competitive bids as a result of the following emergency condition(s):

[Description of emergency, including scope of work, cost estimate, and statement to indicate the effect of the emergency with regard to “permitting the continuance of existing school classes or to avoid danger to life or property.”]

Our Governing Board met on (date of governing board meeting) and unanimously adopted the attached emergency waiver resolution.

A payment bond will be furnished before allowing the performance of any public project work costing more than \$25,000.

Please contact (name and title of district representative) at (phone number), or (e-mail address) if additional information is needed.

Sincerely,

Chief Business Official
Attachment (Approved Emergency Resolution)

Place on District Letterhead

SAMPLE LETTER
(Before governing board approval)

Date:

Gabriel Leung, Assistant Director
Accounting and Financial Services
Division of School Financial Services
Los Angeles County Office of Education
9300 Imperial Highway
Downey, CA 90242-2890

Emergency Resolution Request – Preliminary Approval

Our governing board has approved an emergency related to:

[Description of emergency, including scope of work, cost estimate, and statement to indicate the effect of the emergency with regard to “permitting the continuance of existing school classes or to avoid danger to life or property.” As provided for under Public Contract Code Sections 1102 and 20113 (school districts) or 20654 (community college districts).]

Your concurrence is needed for the district to proceed. A payment bond will be furnished before allowing the performance of any public work costing more than \$25,000.

A formal resolution will be acted upon by our governing board on (date of governing board meeting) and a copy will be sent to you so that the formal approval from the County Superintendent of Schools may be considered and granted.

Please contact (Name and title of district representative) at (Phone number), or (e-mail address) if additional information is needed.

Sincerely,

Chief Business Official
Attachment