

APPROVED
By the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
EXECUTIVE SECRETARY

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December 21, 1994

To: Board of Directors (Engineering & Operations--Action)
(Organization & Personnel--Action)
(Executive Committee--Action)

From: General Manager

Subject: Delegation of Authority to the General Manager For Urgent
Necessity Contracts and Amendment of Administrative Code
Section 8115(b)

Report

Assembly Bill 3348 (AB 3348) sponsored by Assembly Member, Mike Gotch, alters local public agencies' emergency contracting procedures. AB 3348 was signed by Governor Wilson on September 25, 1994, to be effective January 1, 1995. Public Contract Code sections 1102, 21567 and 22050, the provisions of the bill specifically affecting Metropolitan, are attached as Attachment A.

When circumstances allow the governing body to meet prior to taking emergency action, AB 3348 permits a public agency to repair or replace a public facility, take any related and immediate action required by that emergency and procure the necessary equipment, services and supplies for those purposes without giving notice for competitive bids, subject to a 4/5 vote of the governing body and making a finding based on substantial evidence set forth in the minutes of its meeting that the emergency will not permit delay and that the action is necessary to respond to the emergency. At every regularly scheduled meeting following the initial authorization of the emergency action, the governing body must review the need to continue or terminate the action.

Because there are situations where the governing body cannot be convened to authorize the emergency action, AB 3348 permits the governing body, by 4/5 vote to delegate emergency contracting authority to a nonelected or elected agency officer. That person shall report to the governing body within 7 days of the emergency or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action, the details of the emergency and reasons justifying the actions taken.

At every regularly scheduled meeting following the exercise of the delegated emergency action, the governing body shall determine by 4/5 vote the need to continue the emergency action.

In the absence of emergency situations, Public Contract procedures require that contracts over \$25,000 must be formally advertised and bid. In order to provide for prompt and effective contract services in emergency situations, your Board is requested, by 4/5 vote, to delegate to the General Manager the authority to waive the competitive bid requirements for contracts over \$25,000 and execute emergency contracts subject to the requirements of AB 3348 as chaptered.

The passage of AB 3348 necessitates amendment to Section 8115(b) of Metropolitan's Administrative Code to reflect and implement the requirements of the legislation. Attachment B sets forth the proposed change in Section 8115(b) for your Board's approval. Attachment C reflects the proposed change in Section 8115(b) by strikeover and underlining.

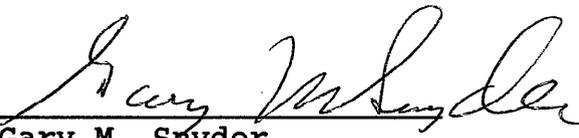
This action is exempt from the California Environmental Quality Act (CEQA) since it does not constitute a "project" for purposes of CEQA (CEQA Guidelines §§ 15061(b)(1) and 15378(b)(3)); since it cannot have an effect on the environment without future additional action by the General Manager; and since such future additional action is necessary to mitigate an emergency (CEQA Guidelines § 21080(b)(4), CEQA Guidelines § 15269(c)).

Recommendation

That the Board delegate by a 4/5 vote, to the General Manager authority to execute urgent necessity contracts subject to the requirements of Public Contract Code sections 1102, 21567 and 22050 and that Section 8115(b) of the Administrative Code be amended to read as set forth on Attachment B, to become effective upon adoption.

John R. Wodraska
General Manager

Submitted by:



Gary M. Snyder
Chief Engineer

Concur:



John R. Wodraska
General Manager

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Attachments

ATTACHMENT A

PUBLIC CONTRACT CODE

§ 1102. "Emergency"

"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.

§ 21567. Urgent necessity contracts without bids; Response to emergency in accordance with provisions relating to minority and women business enterprises

(a) Notwithstanding the requirements of Section 21566, contracts, in writing or otherwise, may be let without advertising for, or inviting bids, when any repairs, alterations, or other work, or the purchase of materials, supplies, equipment, or other property is deemed by the board to be for an emergency.

(b) In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

§ 22050. Emergency contracts for repair or replacement of public facility; Review

(a)(1) In the case of an emergency, a public agency, pursuant to a four-fifths vote of the governing body, may repair or replace a public facility, take any directly related and immediate action required 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.

(b)(1) The governing body, by a four-fifths vote, may delegate, by resolution or ordinance, to the appropriate county administrative officer, city manager, chief engineer, or other nonelected agency officer the authority to order any action pursuant to paragraph (1) of subdivision (a).

(2) If the public agency has no county administrative officer, city manager, chief engineer, or other nonelected agency officer, the governing body, by a four-fifths vote, may delegate to an elected officer the authority to order any action specified in paragraph (1) of subdivision (a).

(3) If a person with authority delegated pursuant to paragraph (1) or (2) of this section orders any action specified in paragraph (1) of subdivision (a), that person shall report to the governing body, at its next meeting required pursuant to this section, the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency.

(c)(1) If the governing body orders any action specified in subdivision (a), the governing body shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action. If the governing body meets weekly, it may review the emergency action in accordance with this paragraph every 14 days.

(2) If a person with authority delegated pursuant to subdivision (b) orders any action specified in paragraph (1) of subdivision (a), the governing body shall initially review the emergency action not later than seven days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action, and at least at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action, unless a person with authority delegated pursuant to subdivision (b) has terminated that action prior to the governing body reviewing the emergency action and making a determination pursuant to this subdivision. If the governing body meets weekly, it may, after the initial review, review the emergency action in accordance with this paragraph every 14 days.

(3) When the governing body reviews the emergency action pursuant to paragraph (1) or (2), it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts.

(d) As used in this section, "public agency" has the same meaning as defined in Section 22002.

(e) A three-member governing body may take actions pursuant to subdivision (a), (b), or (c) by a two-thirds vote.

(f) This section applies only to emergency action taken pursuant to Sections 20133, 20168, 20193, 20205.1, 20134, 20168, 20205.1, 20213, 20223, 20233, 20253, 20273, 20283, 20293, 20313, 20331, 20567, 20586, 20604, 20635, 20645, 20685, 20736, 20751.1, 20806, 20812, 20914, 20918, 20926, 20931, 20941, 20961, 20991, 21020.2, 21024, 21031, 21043, 21061, 21072, 21081, 21091, 21101, 21111, 21121, 21131, 21141, 21151, 21161, 21171, 21181, 21191, 21196, 21203, 21212, 21221, 21231, 21241, 21251, 21261, 21271, 21290, 21311, 21321, 21331, 21341, 21351, 21361, 21371, 21381, 21391, 21401, 21411, 21421, 21431, 21441, 21451, 21461, 21472, 21482, 21491, 21501, 21511, 21521, 21531, 21541, 21552, 21567, 21572, 21581, 21591, 21601, 21618, 21624, 21631, 21641, and 22035.

ATTACHMENT B

METROPOLITAN WATER DISTRICT ADMINISTRATIVE CODE

§ 8115. Negotiated Contracts.

All contracts not required to be let by competitive bidding shall be entered into as follows:

(a) Contracts Over \$250,000. - Except as provided in Section 8115(b), if the amount payable or expected to be paid under the terms of the contract is \$250,000 or more, the contract shall be executed only upon prior approval of the Board, provided that the Board may designate an officer of the District to negotiate and execute classes of contracts without prior approval of the Board.

(b) Urgent Necessity Contracts.

The General Manager is delegated the authority to waive competitive bid requirements and execute contracts over the amount of \$25,000 for the construction of works or structures, for the purchase of equipment, materials or supplies, or performance of labor or services and take any directly related and immediate action required by that emergency when such construction, purchase of equipment, materials or supplies is determined by the General Manager to be of urgent necessity, subject to the following requirements:

- (1) General Manager shall report to the Board not later than 7 days after the emergency action or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action, the details of the emergency and reasons justifying the actions taken.
- (2) At each regularly scheduled meeting following the emergency action, the Board shall determine by four-fifths vote whether there is a need to continue the action or terminate action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed through competitive bid procedures.
- (3) Such contracts shall not be binding on the District in an amount exceeding \$250,000 unless the General Manager obtains ratification of such contract by a four-fifths vote of the Board.

(c) Contracts Under \$250,000. - If the amount payable or expected to be paid under the terms of a contract is less than \$250,000 the contract may be executed by the General Manager unless otherwise directed by the Board.

(d) Change Orders. - Except for capital construction contracts, if the amount payable under a change order is less than \$250,000, the General Manager is authorized to execute the change order even if the change order will bring the total amount payable under the contract to \$250,000 or more. Notwithstanding the foregoing, the General Manager shall not, without prior Board approval, issue change orders totalling more than \$250,000 to a contract involving an original total amount payable under \$250,000, or a change order that would cause the amount payable under a contract for professional and consulting services to exceed the limit established by Section 8117. Change orders for capital construction projects may be executed by the General Manager without prior Board approval for an amount of \$250,000 per contract or an aggregate amount not to exceed 5 percent of the initial amount of the contract.

ATTACHMENT C

METROPOLITAN WATER DISTRICT ADMINISTRATIVE CODE

§ 8115. Negotiated Contracts.

All contracts not required to be let by competitive bidding shall be entered into as follows:

(a) Contracts Over \$250,000. - Except as provided in Section 8115(b), if the amount payable or expected to be paid under the terms of the contract is \$250,000 or more, the contract shall be executed only upon prior approval of the Board, provided that the Board may designate an officer of the District to negotiate and execute classes of contracts without prior approval of the Board.

(b) Urgent Necessity Contracts. ~~When the cost for the construction of works or structures, for the purchase of equipment, materials or supplies, or for the performance of labor or services is \$250,000 or more, and such construction, purchase, or performance is determined by the General Manager to be of urgent necessity, the General Manager may execute a contract therefor, provided that such contract shall not be binding on the District in an amount exceeding \$250,000 unless the General Manager obtains ratification of such contract by a two-thirds vote of the Board.~~

The General Manager is delegated the authority to waive competitive bid requirements and execute contracts over the amount of \$25,000 for the construction of works or structures, for the purchase of equipment, materials or supplies, or performance of labor or services and take any directly related and immediate action required by that emergency when such construction, purchase of equipment, materials or supplies is determined by the General Manager to be of urgent necessity, subject to the following requirements:

- (1) General Manager shall report to the Board not later than 7 days after the emergency action or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action, the details of the emergency and reasons justifying the actions taken.
- (2) At each regularly scheduled meeting following the emergency action, the Board shall determine by four-fifths vote whether there is a need to continue the action or terminate action at the earliest possible date that conditions warrant so that the remainder

of the emergency action may be completed through competitive bid procedures.

(3) Such contracts shall not be binding on the District in an amount exceeding \$250,000 unless the General Manager obtains ratification of such contract by a four-fifths vote of the Board.

(c) Contracts Under \$250,000. - If the amount payable or expected to be paid under the terms of a contract is less than \$250,000 the contract may be executed by the General Manager unless otherwise directed by the Board.

(d) Change Orders. - Except for capital construction contracts, if the amount payable under a change order is less than \$250,000, the General Manager is authorized to execute the change order even if the change order will bring the total amount payable under the contract to \$250,000 or more. Notwithstanding the foregoing, the General Manager shall not, without prior Board approval, issue change orders totalling more than \$250,000 to a contract involving an original total amount payable under \$250,000, or a change order that would cause the amount payable under a contract for professional and consulting services to exceed the limit established by Section 8117. Change orders for capital construction projects may be executed by the General Manager without prior Board approval for an amount of \$250,000 per contract or an aggregate amount not to exceed 5 percent of the initial amount of the contract.