



**Milwaukee County COVID-19 Public Health Emergency
Contracting Procedures during COVID-19 Public Health Emergency
Administrative Order 20-11v1**

20-11v1 Issued and Effective as of 12:00 a.m. on Friday, April 10, 2020

During the pandemic, the County needs to ensure that financial resources are preserved for public health and mission critical functions, ensure that vendors working on behalf of the County are following current pandemic-related risk management practices, and to prepare for re-opening of all government services once the pandemic is over.

Consequently, this Order on Contracting Procedures during COVID-19 Public Health Emergency (20-11v1) outlines:

- I) Procedures for analyzing contracts in force by entering data into a tracking template to organize and inform decisions about mission critical contracts.
- II) Guidance on pandemic-related language to amend or add to new contacts, and the process for requesting approval from DAS-PSB.
- III) Procedures for executing emergency contracts during the pandemic.

This order is also issued in conjunction with Milwaukee County's Office of Emergency Management regarding delegation of emergency contracting authority to the Department of Administrative Services – Performance, Strategy, and Budget, as well as the procedure for departments to request approval.

If you have questions about this, or any other Administrative Order or policy, please email: COVID-19@milwaukeecountywi.gov

I. MISSION-CRITICAL CONTRACTS IN FORCE

This section pertains to existing contracts with Milwaukee County and outlines procedures and guidance for departments to identify and track “mission critical” contracts (see section I(A)(1)(ii)), communicate with contractors, amend mission critical contracts (as needed), and steps for potential termination of contracts for non-compliant contractors.

A. Identify and Track Mission Critical Contracts

Departments should immediately identify, list, and analyze “mission critical” contracts (see section I(A)(1)(ii)) for service or commodities. Contract managers should review all contracts with appropriate departmental leadership to determine which contracts are mission critical and what provisions in each are relevant to the COVID-19 pandemic by completing the [Mission Critical Contract Tracking Template](#).



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1. Complete the Mission Critical Contract Tracking Template

- i. List all departmental contracts that are currently in force, the contact person, contract type and description of subject matter, whether it is a DBE/TBE contractor, term expiration date, and contract value.
- ii. Identify which contracts are mission critical. “Mission critical” means the department relies on the service or commodities from the contracting party in order to carry out operations that are critical to public health or safety.¹ Special consideration should be given to services or commodities that cannot reasonably be provided by departmental staff.
- iii. Review all contracts deemed mission critical for any clause that might apply during the COVID-19 pandemic, such as “force majeure,”² termination, or contractor obligations or responsibilities (e.g., safety related or whether contractor is responsible for complying with statutes or regulations). Assess all clauses to determine how it may apply during the pandemic and, if it does, copy and paste the clause(s) into the Tracking Template.

2. Store Mission Critical Contracts on SharePoint

- i. The [Mission Critical Contract Tracking Template](#) must be completed and placed in SharePoint by **April 17, 2020**. Search SharePoint for “COVID-19 Contract Considerations,” then select “COVID-19 Contracts” on the menu.³ Save the spreadsheet in the appropriate department or division (if applicable) folder.
- ii. Create a subfolder within the “COVID-19 Contracts” departmental folder for **each contract** deemed mission critical and place all documents associated with the contract in the subfolder.

¹ Departments should consider all applicable federal, state and local orders, including all County Administrative Orders, such as Safer at Home Order issued by the State of Wisconsin Department of Health Services on March 24, 2020 that defines “Essential Government Functions” and the County’s Fiscal Action Administrative Order 20-9, issued March 30, 2020, regarding contract and contract amendments.

² A “force majeure” clause excuses a contractor’s performance in the event of war, strikes, Acts of God and other occurrences outside the contractor’s control.

³ Full URL to Sharepoint Site: <https://milwaukeecountywi.sharepoint.com/sites/COVID-19ContractAmendments/COVID19%20Contracts/Forms/AllItems.aspx>



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B. Communication with Contracting Third Party

Once mission critical contracts are identified, contract managers or departmental leadership should immediately contact the contractors and vendors to discuss the impact of COVID-19 pandemic on the particular service or commodity to avoid and mitigate any disruption to departmental essential operations.⁴ Conversations with contractors should, at minimum, cover the following:

1. Impact of COVID-19 on Service or Commodities

- i. Consider how the COVID-19 pandemic may impact the service or commodities being contracted for. Discuss the steps the contractor has already taken to avoid disruption to County essential operations.
- ii. If applicable to services provided under the contract, request a copy of the contractor's COVID-19 Preparedness Plan to verify that the contractor is following all CDC guidelines in order to prevent the spread of the virus and has a plan for operations in case of an outbreak within their workforce.
- iii. Compare the contractor's Pandemic Preparedness Plan to the minimum requirements in Milwaukee County [COVID-19 Response Plan Checklist](#).
 - a. If the Plan does not comply with the minimum requirements, the department should follow up with the contractor regarding how they will become compliant. If the non-compliance continues, the department must weigh the risk of non-compliance and consider whether to negotiate or terminate the contract (see section I(C)(1-3)).

2. Amend Missional Critical Contracts

Contract managers and departmental leadership should consider amending mission critical contracts to include a clause requiring the contractor's compliance with any of the pandemic preparedness actions and plans discussed above (see section I(B)(1)).

i. Amendment Template for Pandemic Preparedness

- a. Once the contractor's Preparedness Plan is received, verify it meets all applicable minimum requirements on the [COVID-19 Response Plan Checklist](#).

⁴ Departments that have contractors or vendors continuing to work on County grounds or in County facilities during the pandemic, but are not deemed mission critical, should also consider following the procedure outlined in section I(B).



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- b. Use the [Amendment Template](#) to add recommended language in a clause titled “Pandemic Preparedness.”

ii. Process for Requesting Amendment Approval

Refer to Fiscal Actions Administrative Order 20-9, section IV(A) and (B). The department may request approval of amendments by completing the [Fiscal Actions Exemption Form](#). Select the **Srvcs/Commodities (Contracts)** box within the form.⁵ Note that an amendment to include the “Pandemic Preparedness” clause does not qualify as an “emergency” directly related to the COVID-19 pandemic’s threat to public health or safety. (See Section III. COVID-19 EMERGENCY CONTRACTING).

C. Negotiation or Termination of Contract for Non-Compliant Contractors

If a contractor does not comply with the terms of the amendment or does not send a requested Pandemic Preparedness Plan, the contract manager and departmental leadership must assess the risk of non-compliance by the contractor on the department’s essential operations or services. Based on the assessment, the department should consider the following solution strategies:

1. Noncompliance Solution Strategies

- i. Attempt to negotiate a resolution with each mission critical contractor who declines to sign the amendment “as is” to see if the language can be modified.
- ii. If the contractor does not sign the amendment, balance the risk of noncompliance with the Pandemic Preparedness clause against the harm that would result from terminating the service, and decide whether to exempt the contractor.
- iii. If the department decides not to exempt the contractor, the department should analyze the termination provisions of the contract to determine whether termination is allowed and what is required (e.g., 30 days written notice).

⁵ Full URL to form: <https://countyconnect.milwaukeecountywi.gov/New---County-Intranet-Files/COVID19/AdminOrderExemptionRequestForm.xlsx>



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II. CONTRACTS IN NEGOTIATION

The second section of this order pertains to all contracts in negotiation, not yet signed. It provides procedures and guidance on contract language to cover risks to the county and the contractor during the COVID-19 public health emergency.

A. Inclusion of COVID-19 Pandemic Preparedness Clause

Effective at the enactment of this Order, all contracts in negotiation must include a clause requiring the contractor to comply with COVID-19 pandemic related laws, orders, and guidance.

1. COVID-19 Pandemic Preparedness Clause Language

Copy and paste clause titled “Pandemic Preparedness” as described on the [Amendment Template](#).

2. Completion Date

Beginning on **April 17, 2020**, DAS Risk Management will review for this language and will not provide signature authority unless this clause is added to the draft contract.

III. COVID-19 EMERGENCY CONTRACTING

This section provides the procedure for departments to request authority to enter emergency contracts related to the COVID-19 pandemic prior to Milwaukee County Board of Supervisor review or approval.

A. Procedure for Emergency Contracting

If department leadership determines there is an imminent need for services or commodities due directly to the COVID-19 pandemic’s threat to public health or safety, Wisconsin State Statute § 323.15(4) allows the Office of Emergency Management Director to contract on a cost basis without County Board review or approval.

1. Delegation of Authority

By this Order, the Director of Office of Emergency Management hereby delegates authority to approve COVID-19 Emergency Contracts under Wis. Stat. § 323.15(4) to the Director of Performance, Strategy, and Budget, and/or his or her designee(s)).



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2. Process for Requesting Approval of COVID-19 Emergency Contracts

Department may request approval of contract or contract amendment by completing the [Fiscal Actions Exemption Form](#).

- i. For contracts which are directly to address the COVID-19 pandemic's threat to public health or safety, select the box titled **Srvcs/Commodities (COVID-19 EMERGENCY-Contracts)** within the form
- ii. DAS will either approve, deny, or forward the request to the EOC with a recommendation.

IV. ALL OTHER CONTRACTS, AMENDMENTS, OR EXTENSIONS

Please see the most-recent version of the Fiscal Action Administrative Order (20-9)⁶ for contracting, amendment, and extension procedures.

⁶ <https://county.milwaukee.gov/EN/COVID-19>