

CMOLA

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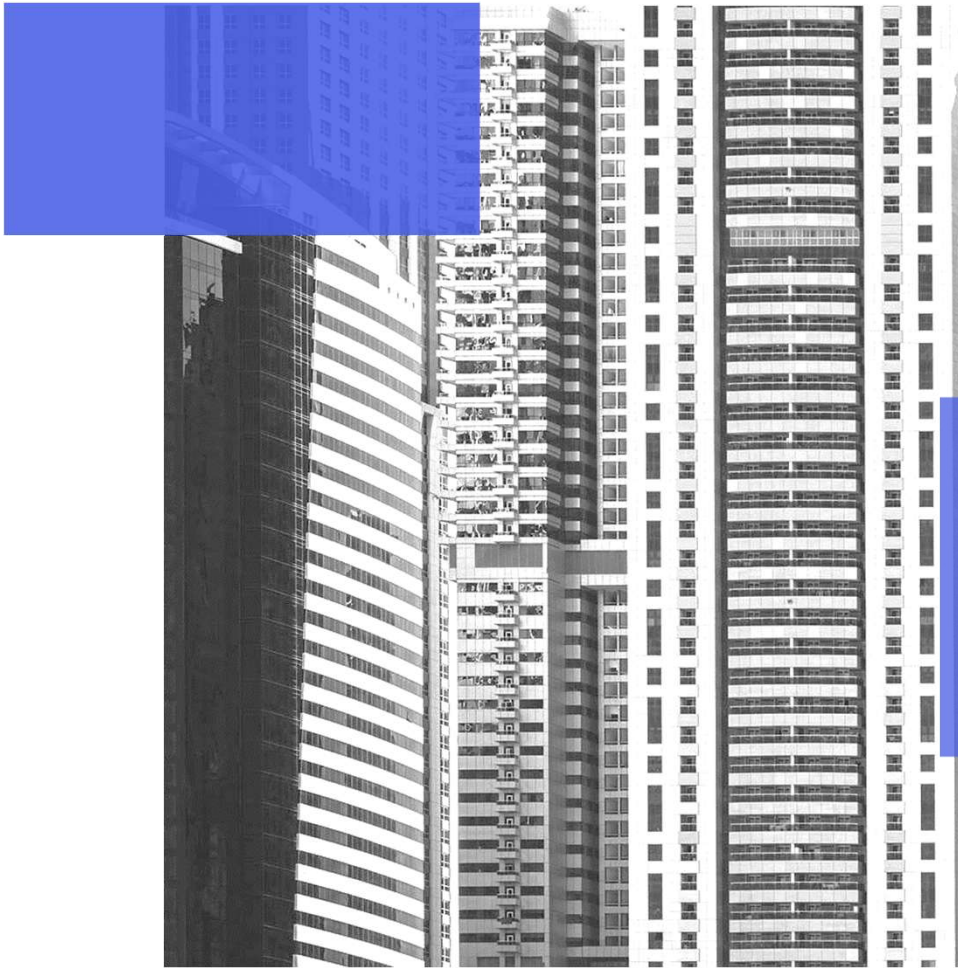
CASH-CMOLA

JUNE 27, 2026

**EMERGENCY
PROCUREMENT
EXCEPTION
TO HARD
BIDDING**

**FOR
K-14 UNDER CUPCAA**





AGENDA

DEFINITION OF "EMERGENCY" IN CODE

WHAT ABOUT CUPCCAA?

PLANNING AS A STRATEGY

START WITH THE CODE DEFINITION...

"PCC 1103. "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.



Public
Contract
Code
Definitions -
All public
agencies

ADD IN THE COURTS...

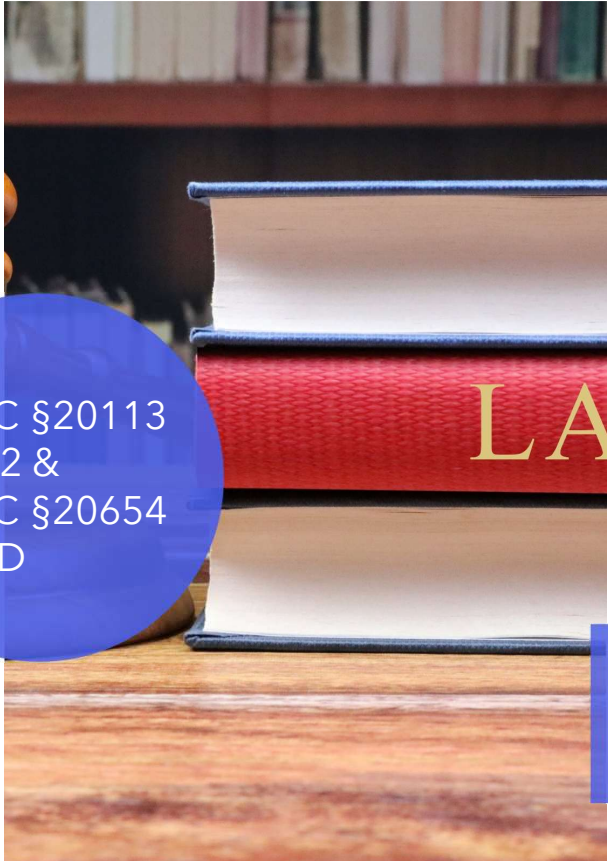
+
PCC §1102

A 2004 decision issued by the Court of Appeal of the State of California, Second Appellate District, imposes a more restrictive definition of what constitutes an "emergency." Specifically, it requires that the definition of Section 1102 of the Public Contract Code be read into Sections 20113 and 20654 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."

THEN GO TO THE SCHOOLS CODE...

"20113. (a) In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of public schools **to permit the continuance of existing school 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: "



PCC §20113
K-12 &
PCC §20654
CCD

“(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 Section 20114, authorize the use of day labor or force account for the purpose.”



PCC §20113
PCC §20654

“(b) Nothing in this section shall eliminate the need for any bonds or security otherwise required by law.”

{Plus, don't forget other codes such as prevailing wage, need for DSA, etc.!}



PCC §20113
PCC §20654

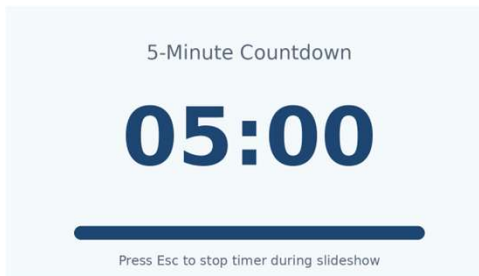
EMERGENCY? IT DEPENDS...

Scenario 1

This morning, you find 2 portable CR's roofs damaged by wind & you can see through a part or 2.

Scenario 2

A boulder rolled into the gas main overnight. It is leaking!



EMERGENCY? IT DEPENDS...

Scenario 1

This morning you find 2 portable CR's roofs damaged by wind & you can see through a part or 2.

- Do you have somewhere for the students to learn temporarily?
- Yes - Can you tarp it?

Yes - Not an emergency.

Scenario 2

A boulder rolled into the gas main overnight. It is leaking!

- Can it be safed off and can you live without it for a few weeks? If yes, not an emergency.
- No, it is too damaged & there is a fire risk, or no, it's cold outside and we have gas heating so school can't open - It's an emergency!

NOT AN EMERGENCY

- Potential loss of funding due to a deadline
- Lack of planning to bid
- Slow known failure of building or system followed by “sudden” failure
- Ugly, irritating, but not a threat
- Sudden but not meeting the code minimums
- Items meeting code rules that can be worked out otherwise and allow time for bidding
- Because someone in power demands it
- Because someone wants to give the contract to a specific firm, etc. etc...





WHAT CUPCAA CHANGES

CUPCCAA CODE & RULES:

PCC sec. 22035 (“Emergencies”) under CUPCCAA states that a public entity must comply with PCC sec. 22050 under CUPCCAA if the public entity is under CUPCCAA and is not noticing bids for emergency work.

PCC sec. 22050 states that a 4/5 vote of the Board is all that is needed to approve that emergency contract, to provide evidence of the emergency, to delegate authority, etc. Subsections (a) &(b)

There is no requirement in sec. 22050 for a unanimous vote or for County Superintendent approval.

PCC sec. 22050(f) references back to PCC sec. 22035, by stating: “This section applies only to emergency action taken pursuant to Sections...22035”

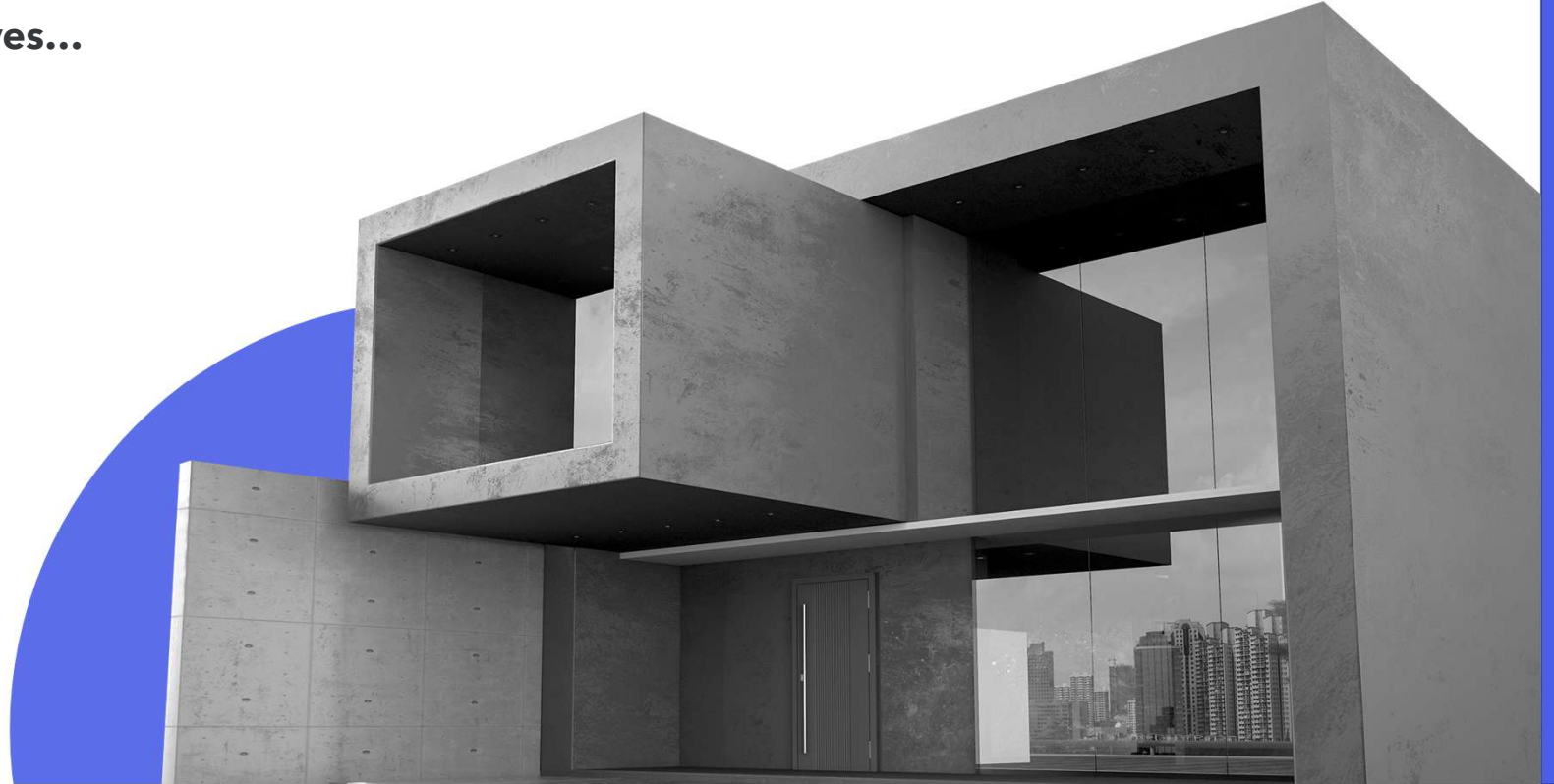


MORE CUPCAA

- In cases of emergency when repair or replacements are necessary, the governing board may proceed at once to replace or repair any public facility **without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts.** The work may be done by day labor under the direction of the governing board, by contractor, or by a combination of the two.
- By a **4/5 vote** of the governing board, 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.
- By a 4/5 vote of the governing board, **the authority to enter emergency contracts may be delegated** as long as the designee takes the action to the governing board within 7 days or at its next regularly scheduled meeting which shall be no more than 14 days after the action was taken. The designee **must report at each following meeting until the action is terminated** (contract completed).
 - ❖ Notes: a.)The code is in conflict with boards that meet on a monthly basis. A special meeting may be needed.
 - b.) Consider an annual delegation of authority to no less than two (2) management titles - Supt./CBO or similar.

CAN WE PLAN FOR EMERGENCIES?

To a degree, yes...



READINESS STRATEGIES

Maintenance	Advance Contracting	Procedure Ready	Decision Team Ready	Co. Ofc. Ready
<p>Clean & Good Repair i.e. if the roof & storm drains are clean & inspected/ repaired there is less likelihood of failure</p>	<p>Have Contracts in Place Include longer terms and both standard & emergency response timing in things you already do Every year bid single trade "maintenance"</p>	<p>District's Emergency Procedure Current? Do-able? Templates for Reso & non-bid construction contract in hand? Anything else?</p>	<p>Who? Do the folks who need to decide know who they are and what to do? The day of the emergency is too late. Do you have the right legal counsel?</p>	<p>Communicate Make sure they know you are CUPCCA if you are. If not, understand their audit requirements before you need to respond to an emergency!</p>

Contracts flowing or in place all the time: Planned maintenance projects ,BMPs, Equipment rental, porta potties, drinking water, etc.

GET AHEAD OF THINGS...

Planning!

Planned Contracting:

- Consider quarterly proposals or bids: Gather your list of repairs/replacements, non-DS work. Consider multi-site by trade or B. If you know about it, consider not doing that on your task order contract - do it as its own proposal or bid.
 - Choose a cut off date for adding more work, package it up, 30 days later it's bid and signed, the work starts and planning for the next package is already underway. Include an allowance to fit in things if needed.
- Templatize and reuse specifications and details just changing list of sites & quantities.
 - Have a small architect firm on contract to help, especially while developing your initial district standard specifications & details. Over about 3 years you will have most of what you need to re-use.
- Do bidding on a planned annual basis so you can rely on it. If you keep the package under \$220k, no expensive ad and no public opening!
- Pre-Summer/Winter/Spring planned work: Similar to & in addition to the Quarterly procurements, but these may be larger or more invasive to space use or teaching & learning

If your procurement folks can plan ahead to support you,
you will be more successful getting what you need in a timely manner!

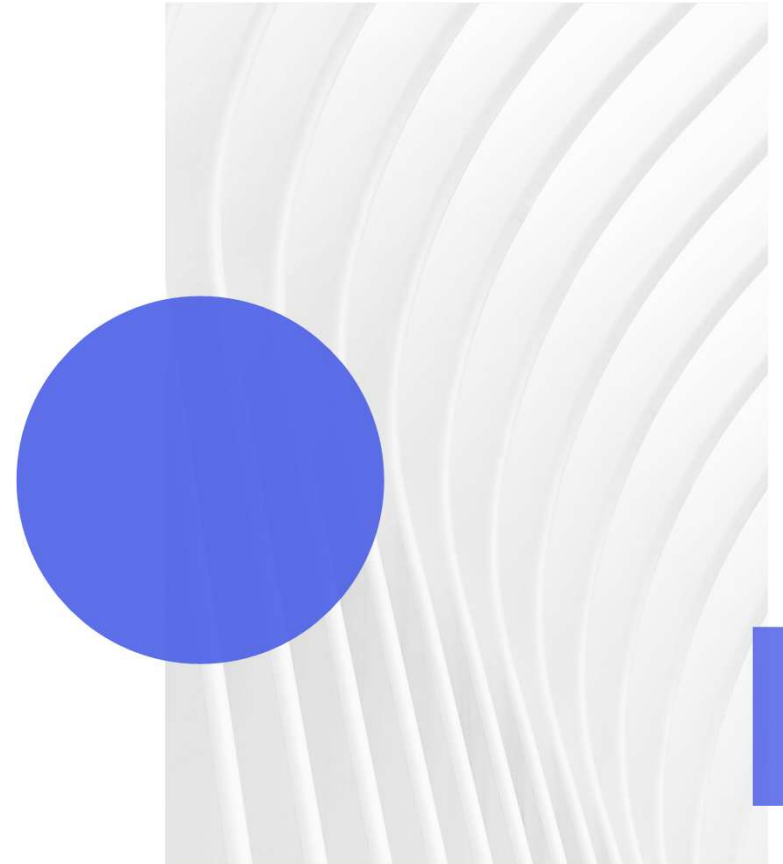
GET AHEAD OF THE NEEDS...

- **Services**: Carpet cleaning, drain clearing, fire alarm testing/programming, elevator inspections, etc. The list is long!
 - If they *cleanly* exclude Public Work, they can be in place for 3 years
 - If they do NOT cleanly exclude Public Work, (like fire alarm, elevator repairs, drain clearing etc. which often slide into Public Works) make the services contract for 3 years and **consider an accompanying annual under \$75k T&M contract with task orders each year to work in conjunction with the 3-year services contract**
- **Emergency Response**: POs every year with response requirements: Drinking water, trailered generators, porta-potties/hand washes, packaged food, portable HVAC units, etc.
The agencies with existing authorization in place get the goods first!
- **Post-fire/water damage response teams** - that's public works & you can get ahead of it. Enter a task order under \$75k contract for the needed trades with short response times just for emergency response and have it in place.
Limit immediate response to solely mitigate emergency conditions.
Put out a prequal for future emergency bids and keep an active list ready to go - talk to your lawyer.
- **What else?**

Planning
!

LAST TIDBITS...

- Know the law & make a reasonable determination.
- Be consistent across time.
- Your County Office has opinions, but they won't be in court with you.
- Lawyers can usually make "anything" go, but should you? They will be in court with you \$!
- Know who's watching and why. (unions, newspapers, public, others...)
- Don't become a case study at CASH / CASBO!





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