

# 33 Prenegotiate Emergency Recovery Agreements

## I. Summary

**Issue:**

Finding service providers and negotiating agreements can delay recovery for damaged buildings.

**Recommendation:**

As part of emergency planning, building owners and managers should identify service providers and prenegotiate emergency recovery agreements, reducing the economic and human impact of an emergency.

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## II. Proposed Legislation, Rule, or Study

The intent is to develop a pre-negotiated Master Agreement that is put into effect in advance of an emergency event to allow both the city as well as private owners and managers to engage contractors on an emergency basis.

As a best practice, the Master Agreement for each contractor or service should include:

1. Indemnification for all types of third-party claims.
2. Mutual limitations of liability.
3. Proper insurance coverage for builder's risk and hazardous materials.
4. Definition of payment terms.
5. The establishment of different delivery methods typically associated with emergency work, such as cost plus fee, unit pricing, etc.
6. Redefinition of procurement requirements to allow for sole source procurement, non-Wicks Law contracting, and the elimination of MWLBE requirements. In the types of extreme events where this type of an agreement would be put into effect, time is of the essence; therefore, circumstances may not permit a traditional bid/award process, because prequalified contractors may have to be engaged immediately to have their work force on-site in a matter of hours.
7. Deletion of damages clauses and notification of damages for delay.
8. Introduction of a mutual waiver of subrogation.
9. Defined reimbursable expenses, markups, and defined non-reimbursable costs.

As time is of the essence after severe weather events, any draft standard agreement must build in as much flexibility as possible to allow the fastest and most direct response, preferably within a day or two.

### **III. Supporting Information**

#### **Expanded Issue and Benefits:**

After a severe weather event, there is an urgent need for repair and remediation services to limit damage to buildings and to begin recovery. Electrical, mechanical, structural, and other elements of the building may need service, and mold and toxic materials may require cleanup before the building can be reoccupied. Despite the urgent need for these and other services, providers often cannot begin work until an agreement is negotiated due to indemnification, liability, insurance, and other issues. If these issues are resolved in advance of an emergency, work can be performed immediately on an “on-call” basis when needed. By using this standard draft agreement, buildings can prequalify vendors to perform work after an event (in terms of their specialties, capacity, business history, and other relevant factors) and then negotiate an agreement.

#### **Implementation:**

There are no anticipated difficulties in implementing this proposal.

#### **Cost:**

There is no additional cost to negotiating agreements before, instead of after, an extreme weather event. No cost estimation was performed for this proposal.