Chapter 600  Emergency Consultant Contracts

600.01 Introduction

The purpose of this chapter is to cover the basis for bypassing the competitive negotiations process when contracting with a consultant in an emergency situation. Emergency procurements are authorized under 39.26.130 and 39.80.060. Procedures for emergency contracting are outlined in DES Policy DES-130-00, which are summarized below.

Nothing in this chapter is intended to interfere with, or inhibit, the decisions that may need to be made when an emergency occurs.

In an emergency situation, the potential exists for injury or loss of life if immediate action is not taken. There also may be an immediate threat to property or essential state functions. When an emergency occurs, action often needs to be taken before the determination is made about which contract to use: Professional Services or architectural and engineering (A&E). This chapter covers what to do first, regardless of which type of contract is chosen. That determination will be made before the contract is written, but the conditions could be such that a notice to proceed must be given prior to the contract being completed.

Based on the processes covered herein, the determination regarding the type of contract to use will typically be made by the HQ Consultant Services Office (CSO). In other circumstances, the determination may be made by the area consultant liaison (ACL). If there is a question about whether the subsequent contract is Professional Services or A&E, the definition for “Architectural and Engineering Services” in Chapter 140 should be helpful. If the required services are not covered in the definition for A&E, then it will most likely be Professional Services as defined in Chapter 200.

All emergency procurements must be reported using the Department of Enterprise Services Sole Source Contract Database (SSDC) within three (3) business days of initiating the emergency procurement. Direct Buy procurements (contracts $10,000 or under, or $13,000 or under if prime is qualified DBE or Small Business) are not included in the DES reporting requirements. The following information is required as part of the reporting:

- An overview of the nature of the emergency including relevant circumstances.
- A description of the threat to the health or safety of individuals, property, or essential state functions if immediate action is not taken. Include an estimate of the potential material loss or damage.
- An account of how the contractor alleviated or eliminated the emergency. Include a description of what the consequences would have been if the emergency action had not been taken and the risks associated with inaction.
- A summary of the contractor’s qualifications, experience and background to provide the emergency service and the basis on which this contractor was selected over other qualified firms.
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Specify the costs, fees, or rates for the purchase.

An uploaded copy of an Emergency Memo that has been signed by the agency head.

Additional Requirements: Agencies are expected to utilize existing qualified DES master contracts except when the contract cannot justifiably satisfy agency needs. The agency needs includes the ability to provide a timely response to an emergency.

The duration of the emergency contract must not extend beyond the time needed to resolve the immediate threat.

Emergency procurements are only to be conducted for legitimate and qualified emergencies. Emergency procurements are not a substitute to avoid competition or mitigate for the time needed to competitively procure the services.

Note: Caution needs to be taken to ensure the required services are not a “purchased service” as covered under 39.26. In an emergency, purchased services would most likely be such things as traffic control, roadway cleanup, or temporary roadway realignment or stabilization. Purchased services are not covered by the CSO and are not addressed in this manual. Region construction and maintenance engineers maintain approved lists of contractors appropriate for purchased services in an emergency.

600.02 Emergency Contract Process

Emergency contracts are awarded to resolve an emergency situation. As stated above, an “emergency” is defined as a set of unforeseen circumstances beyond the control of the department that either presents a real, immediate threat to the proper performance of essential state functions or that may result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. Lack of prior planning does not constitute an emergency.

Examples of emergency contracts include post-earthquake assessments and evaluations, fire damage consultation, and personnel investigations when they are extremely critical and time sensitive.

If the following steps cannot be taken prior to giving a consultant a notice to proceed, then the authorizing WSDOT employee needs to initiate these steps as soon as possible after giving the consultant authorization to perform the work. The authorization must be made to help alleviate the immediate risks covered in 500.02.

600.02.01 Request Memo for Emergency Consultant Services

If an emergency exists requiring the services of a consultant, the requester is to contact the area consultant liaison (ACL) to discuss the situation and determine the first steps. Based on information provided to the ACL by the requester, the ACL will prepare a request memo for emergency consultant services to submit to the CSO requesting approval to select a consultant under emergency procedures.

The following information needs to be provided in the request memo:

- Nature of the emergency: Explain the nature of the emergency and the relevant circumstances associated with the emergency.
• Health or safety threat: Describe the threat to the health or safety of individuals, property, or essential state functions if immediate action is not taken. Provide an estimate of the potential material loss or damage.

• Consultant’s qualifications: Describe the consultant’s experience, background, and qualifications to provide the emergency service and the basis on which this consultant was selected over other qualified firms.

• Reasonableness of costs: Explain how the agency concluded that the costs negotiated are fair and reasonable (since a competitive process was not followed).

Upon receipt of the request memo, the CSO will review it to ensure it is complete and appropriate to the situation. The CSO will then submit the request to the WSDOT Assistant Secretary Engineering & Regional Operations Chief Engineer for approval.

After the request is approved, the CSO will inform the ACL by telephone or e-mail, depending on the conditions. A copy of the signed, approved request memo will be sent by the CSO.

If the request is not approved, the CSO will either explain in writing the reasons for the denial or identify additional information needed for further consideration of the request. The nature of the emergency will dictate the manner of communication between Headquarters and the requesting office.

600.02.02 Letter Authorization to Start Work

If approval is given, and the circumstances warrant starting the work immediately, the ACL needs to request that the CSO send a letter authorization to the consultant by fax to initiate the start of work. The letter needs to specify the nature of the emergency, the services to be provided, the limits of the current authorization, and the anticipated time when development of a full statement of work (SOW) and cost proposal negotiation will occur.

The ACL, the CSO, and the assigned project manager will collaboratively complete the contract documentation and submit the completed contract to the CSO for execution by the state. No part of this section shall be used to circumvent the competitive process. The contract will be filed with the DES within three (3) business days as noted above.

600.03 Emergency Contract Supplements

All emergency contracts and their supplements must be filed with the Department of Enterprise Services for review within three (3) business days following the date of the contract execution or start of work, whichever occurs first.

Supplements to emergency contracts are rare. If the emergent contract conditions still exist, then a supplement to an emergency contract is appropriate. If the conditions have been alleviated and are not severe, the supplement filing should be designated as a sole source supplement to an emergency filing.
600.03.01 Request Memo to Supplement Emergency Services

If a supplement to an emergency contract is necessary, then a memo requesting a supplement is required. The ACL will prepare a request memo to supplement emergency services and submit it to the CSO for review and approval.

The following information needs to be provided in the request memo:

- **Rationale for supplement**: Explain the rationale for executing a supplement rather than competitively procuring the services and awarding a new contract. Include how executing the supplement can most effectively achieve the department’s purpose.
- **Previously not included**: Explain why the services under the proposed supplement were not included in the terms of the original contract.
- **Changed conditions**: Describe any changed conditions since the contract award and provide other applicable information that clearly justifies the decision to supplement the contract.
- **Within the SOW**: Explain whether the new services are within the SOW of the original contract.
- **Rates the same**: Clarify whether the rates are the same as those negotiated under the original contract and explain any increases.

600.03.02 Additional Elements

For all emergency contracts, the same information provided to DES for the original emergency contract will need to be provided for any supplement to the emergency contract. See sections above.

Agencies are also encouraged to keep a detailed emergency contract file that may include photographs and pictures, video, receipts and other related information that may be useful in securing emergency financial aid, filing insurance claims or complying with Federal Emergency Management Agency (FEMA) requirements.