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. It also provides the procedures for WSDOT to use in the execution of an emergency consultant contract and the follow-up steps necessary to meet the extra requirements of contracts that would ordinarily fall under personal services regulations.

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: personal 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 personal 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 personal services as defined in Chapter 200.

Note: Caution needs to be taken to ensure the required services are not a “purchased service” as covered under the Office of Financial Management (OFM) definition in the State Administrative & Accounting Manual, Section 15.10.15. 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 postearthquake 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 (for personal services agreements): 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 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.

600.03 Emergency Contract Supplements

Personal services emergency contracts and their supplements in the amount of $5,000 or more must be filed with the Office of Financial Management for review within three working 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. Personal services supplements are subject to the ten working day filing period.

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 (for personal services): Clarify whether the rates are the same as those negotiated under the original contract and explain any increases.

600.03.02 Additional Justification Elements

For personal services contracts, if a supplement is awarded to an emergency contract that was not filed because it was less than $5,000, but the supplement is subject to filing, additional justification elements are required, as follows:

• Nature of 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 potential material loss or damage. Explain how the services of the consultant will alleviate or eliminate the emergency. Describe what the probable consequences would be if the emergency action is not taken and discuss the risks associated with inaction.

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

Request memos are available on the CSO’s intranet website (wwwi.wsdot.wa.gov/consulting).