

Purpose and Scope

To provide guidance in the initial contracting procedures of the emergency/temporary work in accordance with the applicable statutory laws and in the administration of the resulting contract. The guidance provided herein primarily focuses on force account, 30-day or less contracts.

Rules

If a contractor is to perform work during a declared emergency, the rules set forth below apply regardless of whether the work is considered a maintenance activity, construction activity, or a combination of both.

1. Regardless of the estimated dollar amount of the contract, the contractor must be pre-qualified. If the estimate to perform the work is \$100,000 or less, [DOT Form 272-063 EF](#) may be used to expedite the qualification process of the contractor.
2. Under statute, the department may contract without bids for emergency/temporary work for a period not to exceed 30 working days. The price of the work may be negotiated but shall not exceed the cost of doing the work by force account. The 30-day time frame cannot be extended. Contract specifications (always required) and contract plans (when necessary) shall be provided to the contractor within 48 hours of execution of the contract. If contract specifications are not provided within this time frame, the emergency work may not be eligible for federal reimbursement.

At the onset of the initial emergency/temporary work, utilization of the emergency work contract is required (see [Appendix 6](#)). The emergency work contract must be prepared and signed prior to any work being performed.

At the end of the 30-day period, if the department finds that reconstruction, repair, or other work is still needed to preserve or restore the highway for public travel, the department may have the remaining work done by obtaining at least three written bids and awarding the contract work to the lowest responsible bidder. [RCW 47.28.170](#) allows this alternative contracting method regardless of the size of the contract.

3. If the emergency contract work will not exceed \$100,000, the department need not require a bid deposit or a performance bond. However if a performance bond is not required, progress payments to the contractor may, at the discretion of the Regional Administrator, be conditioned on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, material suppliers, mechanics, and subcontractors from the previous partial payment. If the contract will exceed \$100,000, a performance bond is required.

4. [RCW 60.28.011](#) requires that 5 percent of the moneys earned by the contractor be withheld by the public agency or be covered as a part of the contract bond in the case of contracts involving federal funds. In the case of contracts where the region will be seeking federal reimbursement, you shall rely solely upon the contract bond for protection and payment afforded to those covered under statute and no retainage will be held. Federal reimbursement will not be granted if the contracting agency has withheld 5 percent retainage. This withholding or bond is to be used as a trust fund for the protection and payment of (a) the claims of any person arising under the contract and (b) state taxes which may be due from the contractor. This requirement applies to all public improvements or work other than for professional services. If the department does not properly withhold the money or if the money is refunded to the contractor without the appropriate clearances from claimants, the department will be obligated to pay legitimate claims and/or taxes.
5. Since the work is being contracted out, the department must follow all rules regarding the payment of prevailing wages. In addition if federal reimbursement will be sought for the project, it will be necessary to include the required federal aid contract provisions (contact the region Project Development Office for help with federal aid contract provisions).
6. Regardless of the dollar amount of the work, the department shall prepare a written contract setting forth the terms, conditions, and responsibilities of the contractor, including reference to the applicable [Standard Specifications](#) M 41-10 (see number 2 above and [Appendix 6](#), Emergency Work Contract).

Contracting Procedures

Once the decision is made to enter into a contract with an outside entity:

1. **Contractor Prequalification** (required in all cases)
 - a. Under \$100,000 – Use abbreviated process, [DOT Form 272-063 EF](#), only if the contractor is not prequalified.
 - b. Over \$100,000 – Use a firm already prequalified or call Contract Ad and Award.
 - c. Subletting the work must be done in accordance with [Standard Specifications](#) Section 1-08.1.
2. **Wages**
 - a. No federal dollars involved:

State wage laws apply. Include state prevailing wages in the contract documents.

Statement of Intent and Affidavit of Wages Paid are required.

- b. Federal dollars involved?

[Davis-Bacon Act](#) applies.

Required federal aid provisions are to be included in the contract ([FHWA 1273](#) and amendments to the [FHWA 1273](#)).

Certified payrolls and employee interviews are required.

Statement of Intent and Affidavit of Wages Paid are required.

Include state and federal prevailing wages in the contract documents.

3. **Bond**

- a. No federal dollars involved.

Under \$100,000 – Not required (consider invoice verification).

Over \$100,000? – Performance bond is required.

- b. Federal dollars involved.

Contract bond is required.

4. **Insurance**

The contractor shall obtain and keep in force policies of insurance in accordance with [Standard Specifications](#) Section 1-07.18.

5. **Retainage**

- a. State funds only – retainage is always required – may be covered by a contract bond or moneys earned by the contractor are withheld.

- b. Federal dollars involved – is a part of the contract bond – no moneys are to be withheld.

- c. Taxes and claims must be cleared before release of retainage or contract bond.

- d. WSDOT is obligated to cover the rights under [RCW 60.28](#) if moneys are not retained or covered by the bond.

6. **Written Contract**

A written contract is always required (see [Appendix 6](#)).

7. **Types of Contract**

- a. Negotiated, single contractor, no bids.

(1) Cannot exceed 30 working days.

(2) Work may be negotiated but cannot exceed force account amounts.

Generally emergency work contracts are under a force account basis.

- (3) If getting close to the end of the 30-working days and work will not be completed, start one of the appropriate processes defined in 2 or 3 below. It is recommended to confer with the region Project Development Office if this is necessary:
- b. Solicited bids.
 - (1) A minimum of three required.
 - (2) Needs bid documents—description of work, specifications, quantities, and plan sheets (if needed).
- c. Conventional published call for bids.
 - (1) Plan preparation.
 - (2) Review process.
 - (3) Policy inclusions such as federal training, Disadvantaged Business Enterprises, Apprentice Utilization, etc.

Contract Administration Procedures

1. **Layout** – The responsibility for layout (defining the work on the ground—surveying, staking, etc.) of the work is the state's, unless the contract provisions say otherwise.
2. **Materials** – If standard items are used, they must meet the *Standard Specifications* M 41-10 requirements and they must be sampled and tested as required by the *Construction Manual* M 41-01. Regions may insert special provisions that call out other specs. These should be approved by Headquarters Construction (after-the-fact approvals are possible, but there is a risk). Materials will need to be certified in accordance with the *Construction Manual* Section 9-1.5.
3. **Inspection** – A state employee must be present when paying by force account to verify hours worked, etc, or if paid for by lump sum, must be able to see the work done since the last visit.
4. **Payment** – Estimates are prepared using Contract Administration and Payment System (CAPS). If CAPS is not used, payments may be made by voucher. If the work is being funded under the construction programs, CAPS and Construction Contract Information System (CCIS) must be used. The use of CAPS leads to the assignment of a “00” contract number. CCIS entries are needed and are made by the region.
5. **Subcontracting** – Subcontracting must be done in compliance with *Standard Specifications* Section 1-08.1. Subcontractors can do up to 70 percent of the work. Subcontractors must be approved by the project engineer and must follow all of the same contractual requirements as the prime contractor.

6. **Retainage** – For projects containing no federal funds using CAPS, the retainage is done automatically and all reviews, clearances, and claims are automatically tracked by CAPS. If the work is being paid by voucher, the originating office will need to withhold five percent unless a bond is provided. At the end of the job, the originating office verifies that taxes and claims have been satisfied before releasing the funds or bond. If you are seeking federal reimbursement, you must not withhold retainage. If you are using CAPS, you must notify the Accounting and Financial Service Office, Contract Payments, that you are intending to seek federal participation. CAPS will automatically withhold retainage if you do not inform the Contract Payments unit.
7. **Wages** – On all jobs, the prime and all subcontractors must submit a Statement of Intent to Pay Prevailing Wages, obtained from Labor and Industries, and provide an Affidavit of Wages Paid at completion. On federal funded jobs, the state must collect certified payrolls from the prime and all subcontractors. The state must also conduct field interviews of employees to confirm the amounts shown on the payrolls.
8. **Changes** – Any changes to the work must be in writing and must be approved by the region representative, the region construction engineer, or the Headquarters Construction Office, depending on the nature of the change (see the [Construction Manual](#) Section 1-2.4C for guidance).
9. **Closure** – The region is responsible for determining the final payment amount, preparing final records, and as-built plans.

