

Chapter 600 *Emergency Consultant Contracts*

600.01 **Introduction**

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

For both Professional Services and A&E services, in an emergency the competitive negotiations process can be bypassed, both under the federal regulations (23 CFR 172.7(a)(3)(iii)(B)) and the state regulations ([39.26.130 RCW](#) and [39.80.060 RCW](#)). This chapter covers the basis for bypassing the competitive negotiations process when contracting with a consultant in an emergency, regardless of the type of service required. The Washington State Department of Enterprise Services has outlined procedures under [39.26.130 RCW](#) and DES Policy DES-130-00 for state agencies, which WSDOT uses for emergencies, and is in accord with the requirements under 23 CFR 172.

23 CFR 172 allows for the State to use their own procedures and policies if they are not in conflict with State law. In this chapter, the process outlined in [Section 600.02](#) covers the requirements the state has in providing emergency consultant services and developing the contracts needed.

600.01.01 **Definition of “Emergency”**

In the DES Policy DES-130-00, which is based on [39.26.130 RCW](#) and is in accord with 23 CFR 172.7(a)(3)(iii)(B), to qualify for an emergency procurement, the event must represent a set of unforeseen circumstances beyond the control of the agency that either:

- a) Presents a real, immediate, and extreme threat to the proper performance of essential functions; or
- b) May reasonably be expected to result in material loss or damage to the property, bodily injury, or loss of life, if immediate action is not taken.

Examples of the types of situations that could constitute an emergency include flood damages, earthquake damages, gas line explosions, fire damage consultation, and personnel investigations when they are extremely critical and time sensitive.

600.01.02 **General Considerations for Emergency Contracts**

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](#) is 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](#).

It may be necessary to give Notice to Proceed prior to finalizing a contract for consultant services in an emergency. In this case, it may be that the type of service, Professional Services or A&E services, will not be clear. The steps to obtain services prior to determining contract type are in [Section 600.02](#).

When appropriate, WSDOT can review and utilize the 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.

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, which is specifically defined above. Lack of prior planning does not constitute an emergency.

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 [Section 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. Regardless of the timing of the need for consultant services related to an emergency and 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 request memo is encouraged to be emailed on a priority basis to the CSO to solicit a fast response to the emergency.

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: Since a consultant will already be identified as the provider for the emergency services, the memo will 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 Multimodal Development & Delivery for approval.

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

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 in [Section 600.04](#).

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 of 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 of 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 is encouraged to participate in the development of the Letter of Authorization needed to start the consultant services in an emergency.

600.03 Emergency Contract Supplements

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.

All emergency contract supplements, like original emergency contracts, 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. See [Section 600.04](#) below.

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 supplement 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.
- **Services 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

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.

600.04 Reporting Requirements for Emergency Contracts

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 \$30,000 or under, or \$40,000 or under if prime is qualified 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.

Specify the costs, fees, or rates for the purchase.

A copy of an Emergency Memo that has been signed by the agency head must be uploaded as part of the supporting documentation for the emergency contract.

600.05 Legal References for Emergency Contracts

Following are the federal and state laws and regulations upon which legal references for emergency contracts are based.

600.05.01 Federal Regulations

23 CFR 172.7(a)(3) states that noncompetitive negotiation may be used to procure engineering and design-related services on federal-aid participating contracts when it is not feasible to award the contract using competitive negotiation, equivalent state qualifications-based procedures, or small purchase procedures. Contracting agencies shall submit justification and receive approval from the FHWA before using this form of contracting.

2 CFR 200.320 pertains to situations where:

- An unusual and compelling urgency precludes full and open competition, and
- Delay in award of a contract would result in serious injury, financial or other, to the government.

Contracts awarded using this authority shall be supported by written justifications and approvals. This statutory authority requires that agencies request offers from as many potential sources as is practicable under the circumstances.

600.05.02 Washington State Law

[RCW 39.26.130](#) defines "emergency" as a set of unforeseen circumstances beyond the control of the agency that either:

- Present a real, immediate threat to the proper performance of essential functions; or
- May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

[RCW 39.26.130](#) states that all emergency contracts shall be filed with DES and made available for public inspection within three (3) working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to DES when the contract is filed.

[RCW 39.80.060](#) pertains to procurement of architectural and engineering services, with an exception for emergency work. It states that:

- This RCW need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.
- Nothing in this chapter shall relieve the contracting authority from complying with applicable law limiting emergency expenditures.

