Section 5 Emergency Contract Administration

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5-501 General

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An emergency contract is authorized by a director's order. A director's order is a document that approves the use of special authority, delegated by state law, to set aside normal contracting procedures so that Caltrans can quickly initiate and complete emergency work sooner than can be done under normal processes. The district maintenance unit has the responsibility to obtain a director's order for emergency work. Director's orders may also be obtained to prevent the imminent threat of catastrophic damage.

The Public Contract Code, Section 1102, defines an emergency as "a sudden unexpected occurrence that poses clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services."

Currently, a district director can approve emergency contracts costing up to $131,000. For emergency work exceeding this threshold amount, the director or delegated deputy director has approval authority.

For guidelines on director's orders, go to the Caltrans Division of Maintenance Intranet site at the following address:

http://onramp.dot.ca.gov/hq/maint/orway/ha23/index.htm

Deputy Directive 26, "Use of Director's Orders," also covers director's orders.

A number of different types of emergency contracts exist. District construction division is usually involved in emergency force account contracts and emergency informal bid contracts. Emergency informal bid contracts occur once the initial disaster response is accomplished. The district design unit will prepare plans and specifications for this type of contract. For contract administration, follow the normal procedures outlined in the *Construction Manual* (manual).

This section provides guidelines to assist resident engineers in administering emergency force account contracts.

5-502 Emergency Force Account Contracts

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When time is of the essence to reopen a roadway or facility, or the need to prevent imminent failure exists, a "no-bid" (sole-source) emergency contract is allowed when covered by a director's order. The Office of Procurement and Contracts of the Division of Administrative Services typically prepares and executes these service contracts. The resident engineer becomes the contract manager on a force account contract once work begins.

Form ADM-0366, "Confirmation of Verbal Agreement Other than for Equipment Rental," is the document that allows the contractor to begin work with verbal approval, and the form obligates the contractor to enter into a service contract with Caltrans.

When using the form, which is limited to the highest level of emergency, the work should begin within a day. For written prior approval, the emergency work should begin within a few days of written approval. Do not permit the contractor to begin work until the proper approvals have been obtained.

5-503 Specifications

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In the description portion of Form ADM-0366, "Confirmation of Verbal Agreement Other Than for Equipment Rental," add the following:

- A brief description of the work and estimated total cost.
- The location and limits of the work.
- The business enterprise participation goals, if required.
- The statement: "All work will be paid for in accordance with Section 9-1.03, "Force Account Payment," of the Caltrans *Standard Specifications* dated (year) as amended by the attached provisions."

For the current provisions for force account emergency contracts, see the end of this section.

5-504 Selection of Resident Engineer and Support Staff

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The construction engineer must establish adequate staffing levels to ensure control of work, testing, and documentation and to ensure current contract files and fund expenditures. To put an individual in responsible charge at the site, the construction engineer must also expeditiously assign a resident engineer.

When structure work is necessary, use personnel from the Office of Structure Construction.

5-505 Contractor Selection and Notification

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District construction should appoint a construction engineer as "contractor selection coordinator." The district maintenance unit, contractor selection coordinator, and the construction engineer should coordinate their efforts to select a contractor for an emergency contract. The unit that selects, contacts, and notifies the contractor varies in each district. Generally, Caltrans prefers that district construction handle these duties because these divisions are most aware of local contractors' varying capabilities. The Division of Maintenance maintains a registry of contractors available for emergency contracts.

When selecting a contractor for an emergency contract, consider factors such as the following:

- Availability of resources
- Mobilization response time
- Proven management abilities
- Current contractor's license
- Corporate cooperation

Some local contractors can be as responsive and effective as a larger firm, so for quick emergency response, if the smaller firm is available and selecting that firm would prevent delaying other ongoing Caltrans work, consider the smaller firm.

When resource conflicts occur between ongoing and emergency work, and the selected contractor is the best for the emergency contract, district construction must determine the best course of action.

To avoid work conflicts, generally keep to a minimum the number of contractors; however, on large emergency contracts, multiple contractors may be necessary.

A representative from the Caltrans unit coordinating contractor selection will meet with a representative from the selected contractor to sign Form ADM-0366, "Confirmation of Verbal Agreement Other Than for Equipment Rental." A senior-level engineer or higher must also sign Form ADM-0366 when district construction coordinates the selection of the contractor.

5-506 Initial Stages of the Project

A director's order may take several days to obtain. However, in severe emergencies it is possible for the district maintenance unit to obtain verbal approvals by telephone in less than a day from the director or delegated deputy director.

While the director's order is being obtained, representatives from the appropriate district units and divisions, such as district construction, maintenance unit, design unit, and environmental unit, should meet to discuss repair alternatives, cost estimates, and anticipated work duration.

The estimated cost and duration should be realistic. To cover unexpected situations, it is appropriate to place adequate cost and contingency time in the estimates.

During the initial meeting with the contractor, the resident engineer should discuss the scope of work, the proposed types of equipment and personnel, and expectations for performance.

Specifically document all discussions regarding safety. The discussions should include the nature of the operations, interaction with traveling public, worker fatigue, code of safe practices, and designation of the contractor's safety officer. Top priorities are the safe passage of public traffic through or around the work and the safety of workers.

Develop a traffic management plan for the project.

5-507 Tracking Costs

The director's order allows you to proceed with the emergency contract work. It describes the work's scope and limits of the work, funding allocation, and duration. You are legally allowed to authorize fund expenditures up to the director's order amount.

On emergency force account contracts, daily costs can be significant. Assistant resident engineers must include complete records of labor, equipment, and materials in the daily report. At the end of each shift, reach agreement with the contractor on this work. Make a daily estimate of costs based on the daily report. Encourage the contractor to submit a weekly bill itemizing labor, equipment, and material used on the contract.

For additional information on force account billing and record keeping, see Section 3-9, "Measurement and Payment," of this manual.

5-508 Prosecution of the Work

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The resident engineer must define the work to be done but only provide general direction for accomplishing the work. Generally, the contractor must select the means and methods to be used.

The following bullets list items either that the resident engineer must perform or of which the resident engineer must be aware:

- As the work progresses, work plans will probably need adjusting. If you believe the emergency work is not progressing as quickly as it should, seek management advice, and discuss with the contractor ways to increase production. Be innovative by using the following:
  1. Concurrent operations
  2. Multiple shifts
  3. Local material sites
  4. Detours to limit the effects on traffic
  5. Matches of the desired equipment and resources with the changing circumstances of the work to be performed
- Although cost effectiveness is always desirable, in some emergency situations production must predominate, sometimes requiring excess equipment to sit idle to gain overall production.
- Ensure that the means and methods the contractor proposes are safe and appropriate.
- To ensure that environmental mitigation, compliance requirements, and commitments are adhered to, always coordinate with your contractor selection coordinator, environmental - construction liaison, district or regional environmental office and project manager.
- Continuously try to prevent improper storm water runoff. Some operations may have unavoidable sediment runoff. To ensure the timely involvement of regulatory agencies, have prior discussions with them, both during the emergency and in the future.
- The governor's emergency proclamation for a disaster may temporarily waive the regulations of the Surface Mining and Reclamation Act of 1975 (SMARA). This waiver is intended to allow Caltrans to use non-SMARA certified locations if no other option is available to reopen a closed facility during the height of an emergency. (Mining operations determined to be in compliance are listed on the AB 3098 SMARA Eligible List. You can obtain this list from the Division of Construction or the Department of Conservation's web site at the following address: http://www.consrv.ca.gov/OMR/ab_3098_list/index.htm

5-509 Functional Unit Support

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District management must assign a project manager to emergency contracts. The project manager will assist the resident engineer in coordinating support from other Caltrans units, other government agencies, the community, and legislators. To allow you more time to properly administer the contract, fully use the project manager and other appropriate units.

5-510 Public Relations and Communication

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Caltrans management and the public needs accurate project information. To provide this information, follow the guidelines and procedures in Section 1-2, "Public Relations," of this manual. When estimating completion dates, be realistically conservative.

5-511 Sample Provisions for Emergency Force Account Contracts

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Standard Specification modifications are required for emergency force account contracts. Use the following provisions as an attachment to Form ADM-0366, "Confirmation of Verbal Agreement Other Than for Equipment Rental":

The first paragraph of Section 8-1.01, "Subcontracting," of the *Standard Specifications,* is amended to read as follows:

The contractor shall give personal attention to the fulfillment of the contract and shall keep the work under the contractor's control. For all purposes of this contract, a subcontractor is defined as another contractor performing work for the contractor.

Section 9-1.03, "Force Account Payment," of the *Standard Specifications,* is amended to read as follows:

When work is to be paid for on a force account basis, the labor, materials, and equipment used in the performance of the work must be approved by the engineer, and compensation will be determined as follows:

The fourth paragraph of Section 9-1.03A, "Work Performed by Contractor," of the *Standard Specifications,* is amended to read as follows:

If approved by the engineer, work performed for the contractor by a subcontractor and paid for on a force account basis will receive an additional markup of 5 percent, which will be added to the total cost of that work, including all markups specified in Section 9-1.03A. The additional 5 percent markup shall reimburse the contractor for additional administrative costs, and Caltrans will not make any other additional payment by reason of performance of the work.

Section 9-1.03A(1), "Labor," of the *Standard Specifications,* is amended to add the following:

Section 9-1.03A (1d), "Payment of Contractor's Management Personnel". Payment of contractor's management personnel working at the project site and directly on emergency contract work will be made on a "value received" basis, or based on tentatively "agreed upon hourly rates" to include actual base salary costs before the emergency, current employee fringe benefit costs, employer payroll taxes, and related insurance.

"Value received" payment will be made for owners or supervisory personnel at the proper rate for the actual work performed (that is, personnel acting as foremen would be paid at the normal rate for such foremen) and be subject to markups in accordance with Section 9-1.03A(1).

"Agreed upon hourly rates" must not exceed $50 per hour ($104,000 per year). The contractor must calculate such tentatively agreed upon hourly rates and bill them on a provisional basis. Such rates are subject to adjustment at any time as agreeable to both parties, or before final payment, and based on an audit by Caltrans representatives. Such adjustment to the tentatively agreed upon hourly

rates can also be made after final payment, up to three years after acceptance of contract work, and based on an audit by Caltrans representatives. A 15 percent markup will be added to the agreed upon hourly rates to cover general and administrative expenses (overhead) and profit.

The first paragraph of Section 9-1.03A(3), "Equipment Rental," of the *Standard Specifications,* is amended to read as follows:

The Contractor will be paid for the use of equipment at the rental rates listed for that equipment in the Caltrans publication entitled *Labor Surcharge and Equipment Rental Rates (Cost of Equipment Ownership)*. The rates used will be those that are in effect on the date upon which the work is accomplished. The rates are also a part of the contract, regardless of ownership and any rental or other agreement, if such agreements may exist, for the use of that equipment entered into by the contractor, except that the overtime and multiple shift differentials shown in the publication *Labor Surcharge and Equipment Rental Rates (Cost of Equipment Ownership)* shall not apply. All equipment will be paid for at the straight time rate for all hours worked. For those pieces of equipment that have a rental rate of $10 per hour or less, as listed in the *Labor Surcharge and Equipment Rental Rates (Cost of Equipment Ownership)* publication and that are rented from a local equipment agency, other than contractor owned, the contractor will be paid at the hourly rate shown on the rental agency invoice or agreement for the time used on force account work as provided in Section 9-1.03A(3a), "Equipment on the Work," *Standard Specifications*. If the local equipment rental agency requires a minimum equipment rental amount, the actual amount charged will be paid to the contractor.

The first paragraph of Section 9-1.03A(3b), "Equipment not on the Work," of the *Standard Specifications*, is amended to read as follows:

For the use of equipment moved in on the work and used exclusively for work paid on a force account basis, the contractor will be paid the rental rates listed in the Caltrans publication entitled *Labor Surcharge and Equipment Rental Rates (Cost of Equipment Ownership)*. The rates used will be those that are in effect on the date upon which the work is accomplished. The rates are also a part of the contract, or determined as provided in Section 9-1.03A(3), except that the overtime and multiple shift differentials shown in the publication *Labor Surcharge and Equipment Rental Rates* must not apply. All equipment will be paid for at the straight time rate for all hours worked. The contractor will be paid the cost of transporting the equipment to the location of the work and returning the equipment to its original location, all in accordance with the following provisions:

Section 9-1.03A(3c), "Owner-Operated Equipment," of the *Standard Specifications,* is amended to read as follows:

Renting owner-operated equipment must conform to the provisions of Sections 9-1.03A(3), "Equipment Rental," 9-1.03A(3a), "Equipment on the Work," and 9-1.03A(3b), "Equipment not on the Work," of the *Standard Specifications*, except as follows:

Fully maintained and operated rental owner-operated equipment used in the performance of work paid for on a force account basis will be paid for at the same hourly rate paid by the contractor. The engineer will establish an hourly rental rate to be paid. The contractor shall provide the engineer with complete information on the hourly rental rates available for rental of fully maintained and operated rental owner-operated equipment.

The provisions in Section 9-1.03A(1), "Labor," of the *Standard Specifications,* shall not apply to operators of rental owner-operated equipment.

To the total of the rental costs for fully maintained and operated rental owner-operated equipment, including labor, Caltrans will add a markup of 15 percent. An additional markup of 5 percent will be added by reason of the performance of the work by a subcontractor. No separate markup will be made for labor.

Section 9-1.03B, "Work Performed by Special Forces or Other Special Services," of the *Standard Specifications,* is amended to read as follows:

A specialist may perform work when the engineer and the contractor, by agreement, determine that the contractor's forces or any of the subcontractors' forces cannot perform some of the work, or when the engineer requests the contractor to solicit bids. Invoices for the work based on the current market price before the emergency, verifiable by audit by Caltrans representatives, or based on lowest bid price, if bids are solicited, may be accepted without complete itemization of labor, material, and equipment rental costs when the following condition is met: When it is impracticable and not in accordance with the established practice of the special service industry to provide a complete itemization.

In those instances where a contractor must have work performed in a fabrication or machine shop facility away from the job site, the charges for that portion of the work performed in the facility may, by agreement, be accepted as a specialist billing.

To the specialist invoice price, less a credit to the state for any cash or trade discount offered or available, whether or not the discount may have been taken, will be added 15 percent in lieu of the percentages provided in Section 9-1.03A, "Work Performed by Contractor," of the *Standard Specifications.*