

## **Chapter 5**

## **Contract Administration**

### **Section 5 Emergency Contract Administration**

- 5-501 General**
- 5-502 Emergency Force Account Contracts**
- 5-503 Specifications**
- 5-504 Selection of Resident Engineer and Support Staff**
- 5-505 Contractor Selection and Notification**
- 5-506 Initial Stages of the Project**
- 5-507 Tracking Costs**
- 5-508 Prosecution of the Work**
- 5-509 Functional Unit Support**
- 5-510 Public Relations and Communication**



### Section 5 Emergency Contract Administration

#### 5-501 General

An emergency contract is a G-11 resolution that 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 the current Minor B contract limit. For emergency work exceeding this threshold amount, the director or delegated deputy director has approval authority.

For guidelines on director's orders, supplemental director's orders, and supplemental funds, refer to the Caltrans Division of Maintenance intranet site at:

<https://maintenance.onramp.dot.ca.gov/>

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

A number 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 procedures outlined in this manual.

This section provides guidelines to assist resident engineers in administering emergency force account (EFA) and emergency limited bid (ELB) contracts. The *EFA & ELB Desk Guide* is available to aid construction staff and is on the Division of Construction, Contract Administration intranet site:

<http://construction.onramp.dot.ca.gov/contract-administration/emergency-contracting>

#### 5-502 Emergency Force Account Contracts

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 Division of Procurement and Contracts (DPAC) typically prepares and executes these service contracts. The resident engineer becomes the contract manager on a force account contract once work begins.

Form ADM-4043EFA, “Emergency Force Account Agreement (EFA),” is the document that allows the contractor to begin work with verbal approval. The form is available at:

<https://dpac.onramp.dot.ca.gov/emergency-force-account-agreements-efaelb-new-process>

When using the form, which is limited to the highest level of emergency, the work should begin without delay.

### **5-503 Specifications**

The contract manager prior to the beginning of work will select the appropriate form depending on the federal funding status and if the project is an EFA or ELB. In the description portion of Form ADM-0366, 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 9-1.04, “Force Account,” of the Caltrans *Standard Specifications* dated [year] as amended by the attached provisions.”

Contact the Division of Procurement and Contracts for boilerplate contracts and sample provisions on emergency force account and emergency limited bid contracts.

### **5-504 Selection of Resident Engineer and Support Staff**

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. The construction engineer must also expeditiously assign a resident engineer to be responsible for the site.

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

### **5-505 Contractor Selection and Notification**

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. If district construction staff are not reachable prior to selection and notification, and public safety demands an immediate response, Maintenance may act immediately without district construction’s input. 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. 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

Form MTC-0130, “Director’s Order Request Funds Request” allows the emergency contract work to proceed and funds the project. It describes the work’s scope and limits of the work, funding allocation, and duration. The resident engineer is legally allowed to authorize fund expenditures up to the director’s order amount.

On emergency force account contracts, daily costs can be significant. Resident engineers or other project staff 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.

During administration of an emergency force account or emergency limited bid contract, the resident engineer must ensure that the cost of work performed by the prime contractor and all subcontractors does not exceed available funding. For further details on cost tracking, refer to the *EFA & ELB Desk Guide* on the Division of Construction’s intranet website:

<http://construction.onramp.dot.ca.gov/contract-administration/emergency-contracting>

The resident engineer authorizes only work within the general scope of the damage assessment form (USDOT/FHWA DAF) and forecasts expenditure of available funds to ensure work performed does not exceed funding of the director’s order and any approved supplemental director’s orders. Refer to Section 5-2, “Funds,” of this manual for the G-11 additional funds process.

Use the extra work billing system to facilitate cost tracking. The project can be set up in Contract Administration System (CAS) after the approval of the confirmation of verbal agreement and prior to the contract approval, but progress pay estimates cannot be requested until the contract is approved in the Advantage financial system. EFA and ELB projects in CAS use the district and expenditure authorization rather than the DPAC contract number. Payment for all emergency contracts estimated at greater than the Minor B contract limit in construction cost go through CAS. Receiving records may be used to compensate emergency force account and emergency limited bid contract work for Minor B contracts. The existing procedure for use of receiving records (Form FA-1226A, “Receiver”) remains the same.

The Division of Construction’s intranet website includes links to emergency contracting information and to DPAC’s and the Division of Maintenance’s intranet websites:

<http://construction.onramp.dot.ca.gov/contract-administration/emergency-contracting>

The DPAC intranet website includes a progress tracking document named “EFA Status.” The report shows progress of all EFA and ELB contracts, and includes the requisition number (RQS), EA, and DPAC contract numbers, as well as the name of the contract’s analyst. The website also contains updated Form ADM-0366, emergency contract processing guidelines, and RQS number training:

<https://dpac.onramp.dot.ca.gov/weekly-status-reports>

The Maintenance intranet website contains updated information about director's orders, supplemental director's orders, supplemental funds requests, damage assessment forms, and boilerplate state and federal emergency force account and emergency limited bid contracts:

<https://maintenance.onramp.dot.ca.gov/>

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

### **5-508 Prosecution of the Work**

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 list contains items 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 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. Equipment and resources most appropriate for 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. Obtain this list from the Department of Conservation website:

<https://www.conservation.ca.gov/Pages/Index.aspx>

#### **5-509 Functional Unit Support**

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 more time to properly administer the contract, fully use the project manager and other appropriate units.

#### **5-510 Public Relations and Communication**

Caltrans management and the public need 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.