

SECTION 10

CDOT EMERGENCY CONTRACTING PROCEDURE

Emergency Procurement – Non-Construction

Definition of Emergency Conditions

Fiscal Rule 2-2 of the State of Colorado Fiscal Rules defines an emergency as follows:

An emergency is a situation that creates an immediate threat to public health, welfare, or safety, the functioning of state government, or preservation or protection of property. There is insufficient time to obtain a written waiver of the requirements for issuance of a commitment voucher pursuant to this fiscal rule before requiring goods or services to respond to the emergency.

If a situation does not pose an immediate threat to the public health, welfare, or safety, the functioning of state government, or preservation or protection of property, it is not an emergency and these procedures cannot be used.

Scope of Emergency Procedures

Fiscal Rule 2-2 of the State of Colorado Fiscal Rules requires specific actions in an emergency as follows:

In an emergency, the head of an agency or institution, or his/her designee, may acquire goods and services necessary to respond to an emergency without execution of a state contract or purchase order, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. Disbursement may be made upon receipt of invoices, receipts, or other statements describing goods or services being purchased and the amount to be paid. Commitment vouchers shall be executed as soon as possible to define future performance obligations where required by the fiscal rules. As soon as practicable, and in no event later than the end of the next business day, a written report of the circumstances and the nature and value of the commitments shall be made to the chief financial officer of the agency and institution and to the State Controller

In an emergency^{only} those goods and/or services that are necessary to respond to the emergency may be acquired without the execution of a state contract. Emergency procurements shall be made with such competition as is practicable under the circumstances. Once the emergency has ended, conventional contracting techniques must be used for any remaining work.

By declaring an emergency it is recognized by the State Controller, CDOT Controller, and CDOT upper management that time is of the essence. Because time is critical, the most cost effective procedure from a budget perspective may not be the most prudent course of action. The project manager must first focus on alleviating the immediate threat to the public health, welfare or safety, the functioning of state government, or the preservation or protection of property. The project manager must also wisely use the state's resources.

- During an official Emergency event the Emergency Process Form replaces the need for a Personal Service Agreement Waiver

Procedure for Emergencies

Fiscal Rule 2-2 grants the Executive Director the authority to obtain goods and services in an emergency without execution of a state contract. The Executive Director has delegated that authority to the Deputy Executive Director, Chief Engineer, Region Transportation Directors (RTD) and Maintenance Superintendents. Only the Executive Director or one of the delegates may declare an emergency pursuant to Fiscal Rule 2-2.

When an emergency occurs, the Region Authority (RTD or Maintenance Superintendent) should be notified of the nature of the emergency.

The Region Authority will:

1. Determine whether the emergency meets the requirements of Fiscal Rule 2-2.
2. Verbally approve procurement of a contractor and commencement of work prior to execution of a contract.
3. Designate a Project Manager who is the CDOT employee authorized to acquire the resources necessary to prudently respond to the emergency. The Project Manager is also responsible for oversight of the contractor's activities.
4. No later than the end of the next business day after the emergency occurs, issue a written approval to procure a contractor and commence work prior to execution of a contract

The Project Manager will:

1. Procure a contractor to deal with the emergency utilizing a process for the procurement that is as competitive as is practical.
2. Contact the Region Authority periodically to provide progress updates.
3. No later than the end of the next business day after the emergency occurs, submit a written request for emergency contracting to the RTD.
4. No later than the end of the next business day after the emergency occurs, submit a written report to the Controller
5. Submit contracting information to the Agreements Unit or the Procurement Office as soon as practical.

The RTD will:

Forward the written request for emergency contracting to the Chief Engineer for approval signature. Together they will determine the limits of the emergency work and the contracting method to be used for any work subsequent to the emergency. If the Chief Engineer is not available, the request will go to the Executive Director or Deputy Executive Director.

Contractor Selection for Emergency Work

Commensurate with the circumstances of the emergency, the most competitive process possible should be utilized to select a contractor. The following procedures will be used:

1. Preliminary Investigation:

The Project Manager will perform the preliminary investigation and determine the best course of action. This involves determining what work needs to be done, how much needs to be done, and how it will be paid. For many emergency responses, the rapid response required and the unknown details of the work will dictate that the work be done on a force account basis. The cost of the work can be estimated using

pay items and quantities, force account analysis, or a combination of both. The following items must be determined:

- The scope and nature of the emergency work
- Start date and time frame for completion
- Pay items and estimated quantities (where appropriate)
- Estimated cost
- Method of measurement and basis of payment

2. Solicitation

As circumstances allow, bids should be solicited by phone or fax from at least three qualified contractors that can respond quickly. It is acceptable to solicit a bid from a contractor already working in the area. If the circumstances of the emergency, such as time constraints, limited interest, or lack of qualification makes it impractical to solicit three bids, the reason must be documented.

- It is not proper to merely issue a CMO to a contractor nearby. If the work was not contemplated by the original solicitation for that contractor, then it is beyond the scope and the price agreed to in that contract. Issuing a CMO in such a situation may violate CDOT procedures and State Statutes applicable to government contract bidding. In such a situation, the work must be done under a separate contract. A nearby contractor may do the work, but a new contract would be needed for the new work.

3. Force Account Work

If a force account is necessary, the work should be paid for in accordance with subsection 109.04 of the *Standard Specifications*. If doing so is not reasonable, then documentation must be provided explaining the rationale for exceeding labor and equipment rental rates. For example, the emergency may justify non-stop work activity for a short duration, which generally warrants higher rates. Contact the Engineering Estimates and Market Analysis Unit of the Contract and Market Analysis Branch, as needed, for assistance in justifying rates.

4. Work Authorization

A written authorization on CDOT Form 105 – Speed Memo, must be given to the Contractor performing the emergency work **prior to** the commencement of work. The Contractor must sign and return the authorization before proceeding. The written authorization must include the following:

- Scope of work and project limits
- The required time to start work
- Expected duration of the work
- Estimated quantities
- Method of measurement
- Basis of payment, and
- Estimated total cost of the work.

If payment will be by force account, include either the agreed rates for labor and equipment or the provisions of subsection 109.04, whichever is applicable.

The Form 105 must include the following statement at the end of the memo, “By signature below, the Contractor agrees to perform the work and be compensated as detailed above.”

Project Manager Responsibilities

By the End of the Next Business Day after the Emergency Occurs

1. Written Request

The Project Manager must submit a written request for emergency contracting to the Region Authority. The written request must include the items listed below.

- A justification that an emergency exists in accordance with Fiscal Rule 2-2 (The explanation must be complete enough to describe the problem and how it qualifies as an emergency.)
- An explanation of why the normal procurement procedures will not permit procurement of a contractor quickly enough to address the emergency. (The request should state the time that will be required to obtain a contractor using the normal procurement process and why the emergency requires a quicker response)
- The scope of the emergency work, the limits of the project and the estimated cost.

2. Report to Controller

The Project Manager must make a written report of the circumstances and the nature and value of the commitments to the CDOT Controller and to the State Controller.

Contracting Information

As soon as practical, the Project Manager must submit the following information to the Agreements Unit of the Contracts and Market Analysis Branch or to the Procurement Office, whichever is appropriate, for the preparation and execution of the emergency contract:

- A copy of the request for emergency contracting approved by the Chief Engineer
 - All required procurement documentation and a description of the method used to select the Contractor, including an explanation if less than three contractors were solicited, and any reasons for deviating from Department policy
 - The basis of payment for the contract
- (1) When the work is to be paid on an agreed unit price or lump sum basis, submit the agreed prices, units, and estimated quantities, including justification for using the agreed unit price or lump sum basis.
 - (2) When force account is used, submit justification for payment in accordance with subsection 109.04 of the *Standard Specifications*. If the hourly rates to be paid for labor and equipment exceed those that would be paid in accordance with subsection 109.04, submit the agreed to rates and the justification for using the higher rates.

Contract

1. Payment Prior to Contract Signing

Disbursement may be made upon receipt of invoices, receipts or other statements describing the goods or services utilized and the amount to be paid. However, a Contract must be executed as soon as possible to define future performance obligations.

2. Preparation and Execution of Contract.

The Agreements Unit or the Procurement Office will prepare and execute the appropriate contract document as soon as practical after the emergency occurrence.

3. Administration of the Emergency Contract

The appropriate CDOT region will administer the Contract for the emergency work in accordance with CDOT policies and procedures.

Immediate Response

This procedure is to be used for immediate response to the emergency situation. Once the situation no longer constitutes an immediate threat to public health, welfare, or safety, the functioning of state government, or preservation or protection of property, it is no longer an emergency. Continuing work after dealing with the emergency requires evaluation of the situation and a decision of what contracting method to use for work subsequent to the emergency.

**See Contract and Market Analysis Procedures for Emergency Procedures for Construction
Emergency Procurement Documentation:**

Office making Emergency Procurement: _____

CDOT Employee in charge Emergency: _____

Approval Obtained by Procurement Manager Prior to commitments being made? _____

Procurement Manager or designee notified (who) _____ (when) _____

Source Selection Methods

Procedure used to select vendor(s) for required supplies, services or construction items:

Called one vendor: (explain) _____

Called more than one vendor – attached recap of vendor price quotes:

Received written quotes _____ attach * During an official Emergency event this document replaces the need for a Personal Services Agreement Waiver*

Written Determination:

Basis for an emergency procurement:

Basis for selection of the particular vendor or contractor:

Purchase Requisition #: _____ **\$ value of PR** _____

Appointing Authority Approval _____

Date to CDOT Controller _____