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Department of Transportation

EMERGENCY PROCUREMENT DURING GOVERNOR DECLARED EMERGENCIES

AUTHORITY:

Sections 20.23(3)(a) and Section 334.048(3), F.S., Florida Statutes (F.S.)

REFERENCES:

Section 252.36(2), F.S.

Section 255.0525, F.S.

Chapter 287, F.S.

Section 337.02(2), F.S.

Section 337.11(6)(a), F.S.

STATEMENT OF POLICY:

The purpose of this procedure is to provide uniform processes for the emergency procurement of transportation facilities repair and restoration, professional and contractual services, and commodities for Governor Declared Emergencies.

For convenience, references (links) are provided to applicable purchasing procedures for emergencies declared by the Secretary of the Department of Transportation (Department).

SCOPE:

This procedure applies to all Department personnel and Local Agencies (as defined in ***Topic No. 525-010-300, Local Agency Program Manual***) involved in emergency procurement and contracting for transportation facilities repair and restoration,

professional and contractual services, and commodities for Governor Declared Emergencies.

1. EMERGENCY PURCHASES IN ACCORDANCE WITH AN EXECUTIVE ORDER OF THE GOVERNOR PURSUANT TO SECTION 252.36(2), F.S.

1.1 SUSPENSION OF REGULAR PROCUREMENT PROCEDURES

1.1.1 A state of emergency is declared by an **Executive Order** or a **Proclamation of the Governor**, hereinafter referred to as **Executive Order**, in this procedure.

1.1.2 The Department will obtain a copy of the **Executive Order**. Once received, the Secretary of the Department will execute an **Emergency Order** suspending procurement procedures. Notification will be sent by the Department's Emergency Management (EM) to the Districts and the Central Office. See Office of Comptroller (OOC) – **Natural Disaster Emergency Handbook – Chapter 1 – Suspension Process** for details.

<http://cosharepoint.dot.state.fl.us/sites/OOC/default.aspx>

1.1.3 The procurement processes defined in this Section will be followed only if the **Executive Order** specifically suspends the law prescribing the procedures applicable to procurement activities, or the Governor delegates emergency responsibilities, and the delegate suspends the law prescribing the procedures applicable to procurement activities.

Consultants, contractors, and vendors may be contacted prior to the suspension of the law prescribing the procedures applicable to procurement activities to identify availability, interest, capabilities, business/non-business contact numbers, and to notify firms that the Department may require bids/proposals with very short notice in the event the Department receives an **Executive Order**. Bids (pricing) for a potential emergency purchase shall not be requested by the Department prior to the suspension of procurement procedures.

1.1.4 Upon receipt of the above **Executive Order/Suspension of Statutes/Rule**, the Department may conduct procurement activities and may contract for transportation facilities repair and restoration, professional and contractual services, and commodities as necessary to cope with the emergency. Competitive quotes/proposals should be acquired, whenever practical, but in no way should it prevent, hinder, or delay necessary action in coping with the emergency. If Federal Highway Administration (FHWA) or Federal Emergency Management Agency (FEMA) reimbursement will be requested, at least three (3) quotes/proposals should be considered, but in no way should it prevent, hinder, or delay necessary action in coping with the emergency. All permanent restoration must be pre-approved by FHWA in advance.

During emergencies, many of the formal procurement requirements may be waived in order to expedite the execution of contractual agreements and the delivery of goods and/or services; however, the normal requirements for receiving goods/services, invoicing, and approvals must be followed in the submittal and audit of payment requests (reference: ***Disbursement Handbook for Employees and Managers and OOC Natural Disaster Handbook***).

1.1.5 The suspension shall continue until the Governor or the Governor's delegate terminates the suspension or the ***Emergency Order*** expires, whichever occurs first.

1.2 EMERGENCY CONTRACT

1.2.1 ***Emergency Contract, Form 375-040-61*** (typically referred to as the ***H-Contract***), may be used to facilitate the contracting process for Governor Declared Emergencies during the suspension of procurement activities. The form is available from the Department's Forms Library and includes detailed instructions for preparation and execution.

Emergency (H-Contracts):

- A. May be used to contract for services and/or commodities of any amount.
- B. Shall only be executed during the active time frame of the ***Executive Order/Suspension of Statutes/Rule***.
- C. May have end dates which extend beyond the end date of the ***Executive Order/Suspension of Statutes/Rule*** when necessary to complete repairs or services and receipt of necessary commodities.
- D. May be amended to add "new" (additional, different) service(s) or commodity requirements during the active term of the ***Executive Order/Suspension of Statutes/Rule***.
- E. May be amended to modify service(s) or commodities necessary for the successful completion of the ***H-Contract*** as originally intended, during the active term of the ***H-Contract***.
- F. Services may be authorized during the term of the ***H-Contract*** and shall be completed during the term of the ***H-Contract***. The term of the ***H-Contract*** may be extended during the active term of the ***Executive Order/Suspension of Statutes/Rule***.
- G. An active ***H-Contract*** may be extended, after the ***Executive Order/Suspension of Statutes/Rule*** has expired, only to complete services authorized or to receive commodities ordered during the term of the ***H-Contract***.
- H. The terms of the ***H-Contract*** must be in compliance with the law once the ***Executive Order/Suspension of Statutes/Rule*** ends (e.g., travel laws).

- I. **H-Contract** numbers shall be obtained from the Financial Services Office or the designated office in each District.
- J. Financial project numbers should be obtained from the Central Office or District Work Program Office, as applicable.

Note: Do not use the **H-Contract** to contract with a local government for reimbursable FHWA funding. For emergency work performed by a Local Government, use **Form No. 350-000-15, Emergency Local Government Emergency Relief Reimbursement Agreement**. In order to be eligible for federal-aid reimbursement, Local Agency emergency contracts for debris monitoring should be consistent with the FHWA approved boilerplate **Debris Monitoring Scope of Services**. Consistent means the contract includes all necessary federal-aid contract requirements and contains all the same basic criteria as provided in the FHWA approved boilerplate **Debris Monitoring Scope of Services**. Local Agency contracts strictly for debris monitoring services may be procured in accordance with **Section 287.057, F.S.**, as contractual services, and the procurement method must be consistent with **Title 49, Part 18, Code of Federal Regulations (C.F.R.)**. Basic federal-aid provisions should be incorporated in the contract. Debris monitoring contracts are defined as service contracts that provide qualified staff to perform monitoring and management for debris removal, and do not involve any construction engineering inspection, or sampling and testing.

For permanent work performed by a local government, the local government must be Local Agency Program Certified (see **Topic No. 525-010-300, Local Agency Program Manual**) and the **Local Agency Program Agreement, Form No. 525-010-40** must be used.

1.2.1.1 The Comptroller's policy is to obtain funds approval prior to commitment. During the **Executive Order/Suspension of Statutes/Rule**, funds approval may be obtained by the next business day following authorization of the work to be performed or by the business day following execution of the contract, whichever occurs first. If extenuating circumstances prevent receiving next business day funds approval, the Comptroller's Office will work with the requester on a case-by-case basis. Under no circumstances should the encumbrance process hold up executing an emergency agreement.

1.2.1.2 The Department's normal contract documents should be utilized to contract for emergency purchases of repairs, professional, and contractual services or commodities if time permits or circumstances necessitate.

1.2.2 Attachments to the H-Contract:

- A. **Detailed Scope of Services or Specifications – Exhibit A** – It is the responsibility of the Project Manager, or designated person(s), to prepare the detailed scope of services and specifications for the services and materials required. If the contract is reimbursable by FHWA or FEMA,

include the Method of Compensation language provided in the Scope of Services/Specification on **Form 375-040-61, Emergency Contract**, and include applicable documentation requirements for invoicing and payment. Include any necessary information on fees/unit rates and the method of compensation.

- B. **Form 1273 – Required Contract Provisions Federal-Aid Construction Contracts** – This form should be physically attached to the **H-Contract** for construction related services where there is, or there is potential for, federal reimbursement. Please refer to the following link for more detailed information:

<http://www.fhwa.dot.gov/programadmin/contracts/index.cfm>

- C. Wage Rate Tables – The appropriate wage rate table should be physically attached if the services being provided are subject to the U.S. Department of Labor, **Davis-Bacon Act**. The **Davis-Bacon Act** as amended, requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. As it relates to Emergency Relief (ER) funding, **Davis-Bacon Act** provisions would not apply to professional services consultant activities, debris removal services (if there are no construction activities), or activities located beyond the highway Right of Way. Please refer to the following web links for more detailed information.

<http://www.dot.state.fl.us/construction/wage.shtml>

<http://www.access.gpo.gov/davisbacon/>

- D. Do not attach the **Detailed Damage Inspection Report (DDIR)** to the contract document or reference the **DDIR** as part of the scope/specification or method of compensation.

1.2.3 Execution of H-Contract – Execution of the contract is the date of the last signature by the contractor (consultant, vendor) and the Department. Execution of the **H-Contract** should be accomplished prior to the rendering of services, whenever practicable, but in no way should it prevent, hinder, or delay necessary action in coping with the emergency.

1.2.4 Distribution of executed **H-Contract** – The original **H-Contract** (faxed signatures are acceptable) should be maintained by the originator of the contract. Copies should be provided to the contractor, the applicable Financial Services Office, Procurement Office, and Project Manager.

1.2.5 Amendments to the **H-Contract** – Amendments to the **H-Contract** may be made utilizing **Form 375-040-07, Standard Written Agreement Modification – Amendment – Other**, located in the Department’s Forms Library. Other similar forms or formats may also be utilized. Amendments must be in writing and executed by both parties.

1.3 EMERGENCY MFMP CONTRACT

1.3.1 Emergency MFMP Contracts (CR’s) may be used to facilitate the contracting process for Governor Declared Emergencies during the suspension of procurement activities.

Emergency MFMP Contracts:

- A. Should be titled using the following format: “DOT-Emergency Event Name-Commodity or Service Description
- B. “O2 Emergency per Executive Order” should be selected as Method of Procurement in MFMP
- C. May be used to contract for services and/or commodities of any amount.
- D. Shall only be executed during the active time frame of the **Executive Order/Suspension of Statutes/Rule**.
- E. May have end dates which extend beyond the end date of the **Executive Order/Suspension of Statutes/Rule** when necessary to complete repairs or services and receipt of necessary commodities.
- F. A change order may be completed to add "new" (i.e., additional, different) service(s) or commodity requirements during the active term of the **Executive Order/Suspension of Statutes/Rule**.
- G. A change order may be completed to modify service(s) or commodities necessary for the successful completion of the **Emergency MFMP Contract** as originally intended, during the active term of the **Emergency MFMP Contract**.
- H. Purchase Requisitions (Orders) against the Emergency MFMP Contract must be approved prior to the expiration of the Executive Order and shall be completed during the term of the Emergency MFMP Contract.
- I. The terms of the **Emergency MFMP Contract** must be in compliance with the law once the **Executive Order/Suspension of Statutes/Rule** ends (e.g., travel laws).

1.3.1.1 Statutes require a funds approval prior to commitment. During the **Executive Order/Suspension of Statutes/Rule**, funds approval may be obtained by the next business day following authorization of the work to be performed or by the next business day following execution of the contract, whichever occurs first. If extenuating circumstances prevent receiving next business day funds approval, the Comptroller's Office will work with the requester on a case-by-case basis. Under no circumstances should the encumbrance process hold up executing an emergency agreement.

1.3.2 Attachments to the *Emergency MFMP Contract*:

- A. **Detailed Scope of Services or Specifications – Exhibit A** – It is the responsibility of the Project Manager, or designated person(s), to prepare the detailed scope of services and specifications for the services and materials required. If the contract is reimbursable by FHWA or FEMA, include all applicable documentation requirements for invoicing and payment. Include any necessary information on fees/unit rates and the method of compensation.

- B. Do not attach the **Detailed Damage Inspection Report (DDIR)** to the contract document or reference the **DDIR** as part of the scope/specification or method of compensation.

1.4 PURCHASING CARD AS A METHOD OF PAYMENT FOR EMERGENCY PROCUREMENT

1.4.1 The Purchasing Card may not be used to pay for services or commodities contracted for under an **H-Contract** or **MFMP Contract**.

1.4.2 The Purchasing Card should be used in accordance with this procedure to procure and pay for commodities and contractual services when an **H-Contract** or **MFMP Contract** is not necessary.

1.4.3 The Purchasing Card may be used as a method of payment for travel expenses directly related to the emergency. Once a state of emergency is declared by **Executive Order**, the purchasing card restrictions will be removed. Travel related expenses under emergency circumstances include but are not limited to hotel, rental cars, food, etc. However, the Purchasing Card may not be used to pay for food without the suspension of travel statutes and rules or specific authorization by the Department of Financial Services and appropriately justified. See additional guidance in the **OOC Natural Disaster Emergency Handbook** and the **DOO Handbook for Employees and Managers**.

Questions regarding the appropriateness of a particular charge should be referred to the Disbursement Operations Office or District Financial Services Office. If these offices are unable to make a determination, then contact the Disbursement Operations Office, Quality Assurance Section.

1.4.4 When the charge is processed in the Purchasing Card module, please reference the name of the storm and provide a detailed description of the commodities and services acquired. Detailed justification, such as the applicable mission tracker request (available from the Department's Emergency Operation Center), must be attached to the **Monthly Paid Transaction Report**.

1.5 PRE-EVENT CONTRACTS

1.5.1 The Department may formally procure and execute term contracts for equipment and services that could be utilized before, during, and after an emergency event to support the Department in an emergency situation. These pre-event term contracts for transportation facilities repair and restoration, professional services, contractual services, and commodities must be acquired in accordance with normal law, rule, and procedure.

1.5.2 Professional consultant pre-event contracts, such as Construction Engineering and Inspection (CEI) services, must be procured in accordance with **Chapter 287.055, F.S.**, and will follow the process outlined in the **Acquisition of Professional Services, Procedure No. 375-030-002**. The FHWA approved boilerplate **CEI Pre-event Scope of Services** should be utilized for any CEI type contracts.

1.5.3 When contracting for debris monitoring services, the Districts will engage CEI consultants to perform debris monitoring type services. The FHWA approved boilerplate **CEI Pre-event Scope of Services** should be utilized when emergency debris monitoring services are required by the Districts.

1.5.4 Cut & Toss, and debris removal type services may be procured as pre-event contracts. In such instances, the FHWA approved boilerplate **Pre-event Scope of Services** should be utilized. **Pre-event Scope of Services** documents are available on the State Maintenance Office website:

1.5.5. The following three types of Signals and Generators contracts may be procured as pre-event contracts: a) Emergency Traffic Signal Repair and Generator Installation; b) Emergency Generator Installation; and c) Emergency Traffic Signal Repair. The FHWA approved boilerplate **Pre-event Scope of Services** should be utilized. **Pre-event Scope of Services** documents are available on the State Maintenance Office website:

1.5.6 The use of pre-event contracts for permanent lighting or signal repair has been approved by FHWA as a pilot project. Under this pilot project, the permanent lighting and signal repair contract documents are submitted to FHWA for review. An advance construction (AC) authorization is submitted prior to contract review and award. Work eligibility will be determined by FHWA based upon an eligible event occurring and FHWA providing an allocation of funds for that event, and the site-specific FHWA approved **DDIRs** written as a result of that event. If an eligible event does not occur, there will be no eligible federal-aid costs for these contracts.

1.5.7 The Construction/Maintenance Office will assign a "Z" contract number to pre-event contracts acquired under **Chapter 337, F.S.** The Contract Funds Management System will assign an "X" contract number to pre-event contracts acquired under **Chapter 287, F.S.** or other procurement methods, not acquired under **Chapter 337, F.S.** The "X" and "Z" contract prefix numbers are designed to facilitate tracking, reporting, records retention, and federal reimbursement requirements.

1.6 USE OF EXISTING CONTRACTS

1.6.1 Existing contracts may be used to provide for emergency services and the purchase of commodities if the emergency service or commodity required falls within the original intent of the contract, or the scope of services/specification specifically addressed providing for emergency situations.

An **H-Contract** must be used to authorize services and purchases of commodities from existing contracts if federal reimbursement is to be requested, to facilitate tracking, reporting, records retention, and federal reimbursement requirements. **OR**

An **EMERGENCY MFMP CONTRACT** must be used to authorize services and purchases of commodities from existing MFMP contracts or requisitions if federal reimbursement is to be requested, to facilitate tracking, reporting, records retention, and federal reimbursement requirements.

1.6.2 If federal reimbursement is to be requested for emergency or permanent restoration, an existing contract may be utilized if:

- a) The existing contract was procured by the normal federal-aid procedures and processes for federal-aid work.
- b) The existing contract was federalized, thus already performing federal-aid work, not only state funded work.

Prior to beginning the task for permanent work, the extra work must be authorized in Federal Management Information System (FMIS) by FHWA. Emergency work can proceed without prior FHWA authorization. The authorization request must specify that the task is being added for ER work and identify the **DDIR** number.

If the contract being tasked is an oversight project, then the actual task scope will have to be submitted to FHWA for approval prior to the authorization as with other oversight projects.

1.7 LOCAL AGENCY PRE-EVENT EMERGENCY CONTRACTS

1.7.1 Local Agency contracts strictly for debris monitoring services may be procured in accordance with **Section 287.057, F.S.**, as contractual services, and the procurement method must be consistent with **49 C.F.R. 18**. Local Agency contracts should be consistent with the FHWA approved boilerplate **Debris Monitoring Scope of Services**. Consistent means the contract includes all necessary federal-aid contract requirements and contains all the same basic criteria as provided in the FHWA approved boilerplate **Debris Monitoring Scope of Services**. Basic federal-aid provisions should be incorporated in the contract. Debris monitoring contracts are defined as service contracts that provide qualified staff to perform monitoring and management for debris removal, and do not involve any construction engineering inspection, or sampling and testing.

1.7.2 Local Agency professional consultant pre-event contracts, such as Construction Engineering and Inspection (CEI) services, must be procured in accordance with **Chapter 287.055, F.S.**, and **23 C.F.R. 172**. Basic federal-aid provisions should be incorporated in the contract. Local Agency contracts should be consistent with the FHWA approved boilerplate **CEI Pre-event Scope of Services**. Consistent means the contract includes all necessary federal-aid contract requirements and contains all the same basic criteria as provided in the FHWA approved boilerplate **CEI Pre-event Scope of Services**.

1.7.3 Other Local Agency pre-event emergency contracts, including contracts for debris removal or emergency road and bridge repairs, must be competitively bid and federal-aid requirements must be followed.

2. REFERENCES AND LINKS FOR EMERGENCY PURCHASES REQUIRED DUE TO AN EMERGENCY DECLARED BY THE SECRETARY OF THE DEPARTMENT

2.1 Transportation facilities repair and restoration – **Section 337.11(6)(a), F.S., Procedure No. 850-005-001, Reporting Incident and Management of Damage Repair**

2.2 Professional Services – **Section 287.055, F.S., Rule 14-75.004, Rules of Procedure, Florida Administrative Code (F.A.C.), Consultant Competitive Selection Process, and Procedure No. 375-030-002, Acquisition of Professional Services**

2.3 Contractual Services and Commodities – *Section 287.057(5)(a), F.S., Rule 60A1.046, F.A.C., Emergency Purchases of Commodities or Contractual Services, and Procedure No. 375-040-020, Procurement of Commodities and Contractual Services*

3. TRAINING

No training is required for this procedure.

4. FORMS

The following forms can be located in the Department's Forms Library:

- Form 375-040-07, Standard Written Agreement Modification
- Form 350-000-15, Emergency Local Government Emergency Relief Reimbursement Agreement
- Form 375-030-12, Standard Professional Services Agreement
- Form 375-040-61, Emergency Contract (H-Contract)
- Form 525-010-40, Local Agency Program Agreement

The following forms can be located at FHWA's Internet site:

- Form FHWA-1273 is available at:
<http://www.fhwa.dot.gov/programadmin/contracts/index.cfm>
- FHWA standard DDIR form FHWA-1547 is available at:
<http://www.fhwa.dot.gov/reports/erm/fhwa1547.pdf>