

Declaration of Emergency Process

There are many examples of events that can occur at a college that are easily classified as emergencies. On the level of facilities, the most readily identifiable consist of those related to disastrous circumstances such as fire, earthquake, or flood where an immediate response is necessary to preserve and protect life and property. The Nisqually earthquake of 2001 gave rise to the need for much emergency work, and it served as a strong warning to the state that response procedures need to be current and understood. Colleges must be responsible concerning declarations of emergency in the public works environment, and must have clear guidelines to follow so laws governing public works are satisfied.

Definition: Webster's On-Line Dictionary defines an emergency as an unforeseen combination of circumstances or the resulting condition that calls for immediate action. Policy 5.70 in the Policies and Procedures for Engineering and Architectural Services (E&AS) has defined 'emergency' using a more specific context.

**“Unforeseen circumstances beyond the control of the client agency that either:
(a) present a real, immediate threat to the proper performance of essential functions; or
(b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.” (RCW 39.04.280)**

Declaration: It is important to remember that only the college president is granted authority to declare an emergency, unless that authority has been delegated to others.

Recommendation: Every college should have two other appropriate individuals, with direct responsibility for facilities, pre-designated in writing by the president with the ability to declare an emergency.

Approval: All management of emergency projects is performed by E&AS. RCW 39.04.020 gives the Director of General Administration authority to implement emergency public works procedures, and this authority is often delegated to the assistant director at E&AS. Although E&AS typically implements emergency contracts, the Deputy Director of GA signs all emergency contracts.

An authorizing letter or verbal request to E&AS may be made. If this request is done verbally, a signed PWR or letter from the requesting agency must confirm it within three working days. This letter needs to include an explanation of why the emergency exists, as well as a clear rationale justifying the declaration on the economic or health and safety consequences. The E&AS assistant director must concur with the determination and recommend to the deputy director the authorization of emergency public works procedures.

Waivers: Competitive bidding and consultant selections may be waived upon declaration of emergency conditions and approval by GA. However, only the services and work necessary to resolve the emergency situation itself may be performed using this non-competitive method.

Where feasible, the use of 'on-call' consultants and the use of the E&AS small works roster should be considered when seeking competitive bidding without advertisement. Upon proper

approval of emergency work status, contractors or consultants may be given authorization to proceed with such work by the E&AS project manager.

Contractors: A competent contractor who can obtain a performance and payment bond for the project and is licensed in the state for the work can be contacted to prepare an estimate for the work. The college needs to be informed of the estimated cost of the project and must confirm sufficient funding is available for the work. A notice to proceed can then be issued. (Note: Sufficient funding can be obtained from SBCTC ERF funds [if available], unused and uncommitted portions of current appropriations, or local funds. The college needs to advise the SBCTC Capital Budget Director so OFM can be advised of any changes to appropriations or to prepare proper notification to the State Board for approval of local funds).

Contracts: The emergency contract is typically based on time and materials (T&M) because the full scope of the project is usually indeterminate at the outset. Firm bid contracts may also be used if the full scope can be ascertained. A T&M contract has an estimated limit expressed as a maximum not to exceed amount. Completed work may cost less than this amount. However, a threshold is set so that further college approval must be given before work can proceed beyond that level, because state law does not allow open-ended public works contracts. An increase to this limit would be based upon an evaluation of whether sufficient work had been completed to resolve the emergency and whether there was funding to proceed. For this reason, the college needs to understand clearly from the onset that the amount quoted for T&M work by the contractor is not necessarily a firm price. Copies of material invoices and payrolls must be submitted with all payment requests.

Notices: E&AS needs to publish in a legal newspaper a detailed cost estimate and a description of the work being performed within seven days of the start of the work. Upon completion of the project, another legal notice is prepared by E&AS staff that shows the final cost of the work performed.

Because the law in the State of Washington strictly limits the use of emergency authority to perform projects, the Department of General Administration, the Washington State Auditor, and organizations such as the Washington State Building Construction Trades Council regard it in a very serious manner. For this reason, colleges need to be aware that E&AS will be rigorous and judicious in the declaration of emergencies, especially for situations that could and should have been foreseen and accommodated. Poor planning cannot justify emergency status.