

South Carolina Department of Transportation

Engineering Directive

Directive Number: ED-35 **Effective:** October 9, 2026

Subject: Emergency Procurement of Construction and Consultant Services

References: S.C. Code of Laws, Section 57-5-1620
Title 23 United States Code, Section 106(c)
23 CFR Part 172
23 CFR Part 635
23 CFR Part 668

Primary Department: Deputy Secretary for Engineering

As set forth in S.C. Code of Laws, Section 57-5-1620, when an emergency exists, the Secretary of Transportation (Secretary) may approve contractors, consultants, and others to perform construction or repair work; furnish materials and supplies for such construction and repair work; provide consultant design services; provide consultant construction engineering and inspection services; or provide other services without the formalities of advertising.

While the Secretary's approval expedites the procurement of services, SCDOT staff must obtain all other necessary approvals and clearances that are applicable in carrying out the emergency services (i.e., environmental, permitting, rights of way, etc.).

Through the Secretary's Office, all emergency procurement awards shall be reported in detail and made public on the agency's website.

1. Procurement of Services for Non-FHWA Emergency Relief (ER) Program Events

The procedures outlined in Sections 1.1 thru 1.3 are to be used for emergency events or site locations when cost reimbursement will not be pursued through FHWA's ER Program. Repair work for these situations will typically be funded by state funds, normal Federal-aid formula funds, and/or Public Assistance Program funding (for both exigent and emergency situations), if found eligible by FEMA. Detailed procurement documentation must be retained in the project files and readily available to support Federal reimbursement from either FEMA or FHWA.

1.1. Emergency Procurement of Construction Services

The Departmental unit requesting the emergency procurement of services shall submit a letter in writing to the Secretary through appropriate channels, to include signature lines for recommendation by the Deputy Secretary for Engineering and approval by the Secretary. The letter shall provide sufficient detail describing the project, the type of construction/repair work needed to be performed, the estimated cost and recommended funding sources, recommended procurement method (as described below), and the

reason or reasons that preclude the use of the department's normal letting process (See Appendix, Example #1).

If the emergency procurement of construction services is approved by the Secretary, the Departmental unit managing the procurement will typically request bids from three pre-selected responsible contractors in an expedited schedule (three bid method). Award will be made to the lowest responsive and responsible bidder.

However, there may be circumstances that warrant either requesting a bid from or directly negotiating with a single contractor. If an event warrants the use of one of these methods, the letter must provide sufficient justification for the Secretary's approval.

In addition, if the use of state maintenance forces are deemed appropriate and federal-aid funding is used, the letter requesting the Secretary's approval must justify completing the work in this manner rather than through a contract awarded by competitive bidding.

At the discretion of the Departmental unit, a single letter may include multiple sites impacted by the event. However, each site must be sufficiently detailed including the recommended procurement method, should it differ from site to site.

Depending on the characteristics of the work and schedule needs, the Secretary may direct staff to procure an emergency contract using design-build or through another alternative contracting method.

When situations warrant the work to begin immediately, the emergency procurement approval process may be completed verbally if there is not sufficient time for written communication. However, the process must be documented shortly after verbal approval.

1.2. Emergency Procurement of Consultant Services

Emergency procurement of consultant services shall be limited to those necessary to address the emergency. In order to ensure consultant services are procured in time to adequately handle the emergency, the consulting firm will be selected from the appropriate on-call engineering services contract. Similar to emergency construction services, the Departmental unit shall submit a letter in writing to the Secretary through appropriate channels providing the detailed information noted in section 1.1. In addition, the justification for selecting the proposed consultant firm must be noted (See Appendix, Example #2). Negotiations with the consultant firm shall not commence without the Secretary's approval.

1.3. Normal Federal-aid Funding (formula apportioned) for Emergency Procured Services

If federal-aid funding (non-ER funding) is used to deliver emergency construction and/or consultant services, early coordination with the Federal Highway Administration (FHWA) is necessary to ensure eligibility and funding reimbursement are not jeopardized.

The SCDOT/FHWA Joint Stewardship and Oversight Agreement assigns approval action for using emergency procurement methods (non-competitive selection or use of state forces) to the Department. However, before the contractor or consultant is given the

notice to proceed with work, the Department must submit a request to FHWA for the preparation of a project agreement through FHWA's Fiscal Management Information System (FMIS). This request should include remarks stating that the work has been approved through emergency procurement by the Secretary and documentation is available upon request. It is the responsibility of the Departmental unit requesting the emergency procurement to ensure the Financial Planning Office has the necessary project information in order for them to submit the authorization request to FHWA. The Financial Planning Office is to notify the Departmental unit once FHWA approves the FMIS authorization. Upon this notification, the Departmental unit managing the procurement can inform the contractor or consultant to begin the work.

2. Procurement of Services for an FHWA ER Program Event

FHWA's Emergency Relief (ER) Program provides funding (outside of a state's normal appropriation) for the repair or reconstruction of Federal-aid highways which have suffered serious damage as a result of natural disasters or catastrophic failure from an external cause. If the Department pursues funding through this program, there are two categories of emergency relief work. The procurement procedures for each category of repairs are as follows:

2.1. Emergency Repairs

Emergency repairs are undertaken during and/or immediately after the disaster to restore essential traffic, minimize extent of damage, or protect the remaining facility. In most situations, this work will be temporary in nature and performed right away. However, depending on the nature of the event, damages to the facility, and transportation system needs, there may be scenarios where emergency repairs fully address the damage and no further repairs are necessary. In these unique situations, the Departmental unit responsible for the work should provide FHWA with appropriate justification and obtain concurrence that the work meets the intent of emergency repairs.

Emergency repairs will typically be accomplished using a single bid or three-bid method, by a negotiated contract, or by state maintenance forces. The use of these methods may begin immediately, without further approval by the Secretary, after the following actions:

1. The Governor issues an emergency or disaster proclamation, and
2. The Secretary notifies leadership that, based on the extent of damage, the Department is submitting a Letter of Intent to FHWA requesting ER funds.

Due to the nature of emergency repairs, executing a project agreement with FHWA, in FMIS, is not a prerequisite to starting this category of repair work. However, the Departmental unit responsible for delivering the emergency repair services (in consultation with the Financial Planning Office) must coordinate and agree on the timing with FHWA.

2.2. Permanent Repairs

Permanent repairs are undertaken after the occurrence of a disaster to restore the highway to its pre-disaster condition. While not always the case, these repairs may require some level of design and plan development. If consultant services are necessary, procurement shall follow the procedures outlined in section 1.2 above.

Federal regulations stipulate that permanent repair work is to be done by contract through open competitive bidding, unless the state can justify a more cost-effective method. As with emergency procurement determinations, the SCDOT/FHWA Joint Stewardship and Oversight Agreement assigns approval action for cost effective determinations to the department. In addition, for an ER disaster event, FHWA has recognized acceptable accelerated competitive contracting techniques that a state can use to deliver permanent repair work. Two of these techniques are single phase design-build and the use of a qualified contractor short list (aka three bid method).

It is acknowledged that some permanent repair work can be accomplished through a normal open competitive bidding process without having a significant adverse effect on the operation of the highway system. However, the Department's priority is to quickly restore the highway system in response to the disaster. Therefore, the use of the three-bid method (with award made to lowest responsive and responsible bidder) or emergency design build process (as outlined in the Department's Alternative Delivery Manual) should typically be used to procure permanent repair work. A separate letter requesting Secretary approval is not required for use of these two techniques for FHWA ER funded project sites.

If the Departmental unit responsible for the permanent repair work determines that an alternate procurement method is warranted (i.e., single bid, negotiated contract, or use of state maintenance forces), a letter as detailed in section 1.1 above must be submitted to the Secretary for approval. As this action is assumed by the Department, no further coordination with FHWA is necessary. (See Appendix Example #3)

For permanent repair work, before the work can begin, the Department must submit a request to FHWA for the preparation of a project agreement through FHWA's Fiscal Management Information System (FMIS). Failure to do so may jeopardize federal-aid eligibility. This request should include remarks stating that the procurement of the work is in accordance with the SCDOT/FHWA Joint Stewardship and Oversight Agreement and the Department's Engineering Directive 35. Also, indicate that documentation is available upon request. It is the responsibility of the Departmental unit requesting the emergency procurement to ensure the Financial Planning Office has the necessary project information in order for them to submit the authorization request to FHWA. The Financial Planning Office is to notify the Departmental unit once FHWA approves the FMIS authorization. Upon this notification, the Departmental unit managing the procurement can inform the contractor or consultant to begin the work.

Recommended by: Thaddeus Kitowicz
Director of Special Projects

Recommended by: John Boylston, P.E.
Chief Engineer for Project Delivery

Recommended by: Robbie Isgett, P.E.
Chief Engineer for Alternative Delivery and Construction

Approved by: Rob Perry, P.E.
Deputy Secretary for Engineering

History: Issued on October 8, 2007
First Revision on September 9, 2011
Second Revision on June 12, 2013
Third Revision on October 9, 2026

MEMORANDUM

TO: Justin P. Powell, Secretary of Transportation

FROM:

DATE: July 18, 2024

RE: Request for Emergency Construction Services
S-42-31 over Peters Creek - Closed Bridge Asset 04212
Spartanburg County

Following a critical finding on May 22, 2024, the State Bridge Management Office (BMO) closed the S-31 (Cannon Campground Road) bridge crossing Peters Creek in Spartanburg County. BMO is currently working on final design plans and specifications for repair of this bridge. BMO's preliminary estimate is \$XXXX and anticipates using state maintenance funds to complete the work.

The scope of repairs are beyond the capabilities of the Department's bridge maintenance forces, so it is requested that authorization be granted to proceed with an emergency procurement for construction services in accordance with Section 57-5-1620 of the South Carolina Code of Laws and Engineering Directive 35.

Upon approval to use emergency procurement procedures and completion of construction documents, BMO will coordinate with the DOC's Office in requesting bids from three qualified contractors with an award to the lowest responsive bidder.

Please indicate your concurrence to these recommendations below.

Recommended for Approval:

Approved By:

Rob E. Perry, P.E.
Deputy Secretary for Engineering

Justin P. Powell
Secretary of Transportation

XXX/xxx
File:
EC:



MEMORANDUM

TO: Justin P. Powell, Secretary of Transportation

FROM:

DATE: May 22, 2024

RE: Emergency Design Services Request
S-42-31 Crossing Peters Creek in Spartanburg County, Asset 04212
Contract No. 00407 — KCA, Emergency Repair Task 17

Following a critical finding on May 22, 2024, the State Bridge Management Office has closed the S-31 (Cannon Campground Road) bridge crossing Peters Creek in Spartanburg County. The design required for repair of this bridge is beyond the capability of the Department's forces. Therefore, it is recommended that an emergency procurement for design services be initiated in accordance with Engineering Directive 35 and Section 57-5-1620 of the South Carolina Code of Laws.

BMO's preliminary estimate for the design services is \$XXXX and proposes to directly negotiate a contract with ABC Consulting. This firm has previously performed design services similar to what is necessary for the S-31 bridge in a satisfactory and expeditious manner. ABC Consulting is listed on our Engineering Design Services On-Call Contract and has a certified indirect cost rate. The firm has stated that resources are available to meet our expedited schedule.

Upon approval to proceed with emergency procurement services, BMO would like to issue a Limited Notice To Proceed in the amount of \$XXXX, complete negotiations, and execute a contract with ABC Consulting.

Please indicate your concurrence to these recommendations below.

Recommended for Approval:

Approved By:

Rob E. Perry, P.E.
Deputy Secretary for Engineering

Justin P. Powell
Secretary of Transportation

XXX/xxx
File:
Ec:



MEMORANDUM

TO: Justin P. Powell, Secretary of Transportation

FROM: Clayton W. Richter, P.E., Interim Director of Construction

RE: US 276 MP 5.1 & MP 15.1 in Greenville County – Emergency Repairs

DATE: October 2, 2024

As a result of FHWA Disaster Number SC202403 and the Presidential Declaration DR-4829 associated with Hurricane Helene, it is recommended that an emergency procurement of services be initiated in accordance with Engineering Directive 35. The above referenced sections of US 276 have suffered extensive slope failures, roadway damage, and bridge approach damage. The necessary repairs are beyond the capability of the Department's maintenance forces. FHWA has concurred with our justification to designate these repairs as "emergency repairs" in accordance with the FHWA Emergency Relief (ER) Program. It has been determined that utilizing a sole source procurement would be in the best interest of the State to protect the health and safety of the public. It is our recommendation to request a bid from Reeves Construction Company. This contractor is pre-qualified and has the available resources to deliver the required work in an expedited manner. Reeves Construction Company has successfully completed numerous past SCDOT contracts in a quality manner. The Department has prepared an independent engineer's estimate which will be used to evaluate the contractor's bid, once received. Please let me know if you have any questions or would like to discuss further.

Please indicate your concurrence to these recommendations below.

Recommended for Approval:

Approved By:

Rob E. Perry, P.E.
Deputy Secretary for Engineering

Justin P. Powell
Secretary of Transportation

CWR/pkm
File: Const/Hurricane/2024 Helene/Greenville County US 276

ec: Robbie Isgett, P.E., Chief Engineer for Alternative Delivery and Construction
Andrew Leaphart, P.E., Chief Engineer for Operations
Jeff Terry, P.E., Director of Maintenance
Brandon Wilson, P.E., District 3 Engineering Administrator
Karl McCottry, Deputy Secretary for Finance
FHWA

