

## **M e m o r a n d u m**



**To:**

JAMES E. DAVIS  
Chief Deputy Director  
CALTRANS

**Date:** June 22, 2020

**File:** P3010-0651

**From:**

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**Subject: District Director's Orders Audit**

Attached is the Independent Office of Audits and Investigations' final audit report on the District Director's Orders Audit. Your response has been included as part of the final report. This report is intended for your information and for Department Management.

Please provide our office with status reports on the implementation of your audit finding dispositions 60, 180, and 360 days subsequent to the transmittal date of this memorandum.

Senate Bill 1 requires the Inspector General to report at least annually, or upon request, to the Governor, the Legislature, and the California Transportation Commission with a summary of audit findings and recommendations. The summary along with this report and the status reports will be posted on the Independent Office of Audits and Investigations' Internet Web site.

We thank you and your staff for their assistance provided during this audit. If you have any questions or need additional information, please contact Alice Lee, Audit Chief, at (916) 323-7953, or me at (916) 323-7863.

Attachment

c: Toks Omishakin, Director, Caltrans  
Mitch Weiss, Executive Director, California Transportation Commission  
Rodney Whitfield, Director of Financial Services, Federal Highway  
Administration  
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Alice Lee, Audit Chief, Project Delivery Office  
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Veronica Kaldani, Audit Lead

Rhonda L. Craft, Inspector General

## District Director's Orders Audit

### Background

The State Contract Act grants special authority to state agencies to set aside normal advertising, bidding, and awarding procedures for certain contracts when an emergency exists or when it is in the "best interest of the State." A Director's Order is a formal document used by the Director of the California Department of Transportation (Caltrans) to approve this authority within the department. Approval authority has been delegated to district directors for District Directors Orders (DDOs) for projects costing \$314,000 or less for the 2018 and 2019 calendar years. A DDO typically authorizes needed work to mitigate or repair damages on the highway system caused by a catastrophic event. Types of damaging events include storms, landslides, floods, fires, and earthquakes. DDOs can also be used to forestall an imminent threat of catastrophic damage. During the risk assessment process to develop the 2019-20 Audit Plan, Caltrans identified the DDO process as a high-risk area that should be audited as the absence of proper controls would leave state resources at risk.

### Key Findings

Caltrans has policies, procedures, and guidelines over the DDO process, and the guidelines are communicated to the districts; however, improvements are needed to provide clear and consistent guidance over the process and to ensure adequate monitoring. We also determined DDOs did not fully comply with the State Contract Act and Caltrans established timeframes for emergency work that require immediate action. Finally, we found Caltrans did consider small businesses for opportunities to participate in emergency work.

### Key Recommendations

- Consolidate and update guidelines.
- Develop a process to ensure DDO work for emergencies begin within the timeframe established by Caltrans guidelines and the timeframe is consistent with the state's definition of immediate action.
- Develop a standardized DDO request form for use by all districts to ensure consistent and complete emergency project justification, approval, and estimated work start dates are provided.
- Develop procedures to ensure DDOs for "best interest of the state" work have the required plans, specifications, and estimates.



# California Department of Transportation District Director's Orders

AUDIT REPORT

P3010-0651

JUNE, 2020



**PREPARED BY:**

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**AUDIT TEAM:**

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David Wong, Audit Manager

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P3010-0651

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### **Audit Response from the California Department of Transportation**

## Summary, Background, Scope, and Methodology

### Summary

The State Contract Act grants special authority to state agencies to set aside normal advertising, bidding, and awarding procedures for certain contracts when an emergency exists or when it is in the “best interest of the State.” A Director's Order is a formal document used by the Director of the California Department of Transportation (Caltrans) to approve this authority within the department. Additionally, Deputy Directive 26-R2, Use of Director's Orders, delegates approval authority to district directors for District Directors Orders (DDOs) up to the dollar value threshold established by the Department of Finance which is \$314,000 for the 2018 and 2019 calendar years.

During the risk assessment process to develop the 2019-20 Audit Plan, Caltrans identified the DDO process as a high-risk area that should be audited as the absence of proper controls would leave state resources at risk. The objectives of the audit were to determine whether:

There are adequate and consistent policies, procedures, and guidelines in place over the DDOs and they are clearly communicated to those who have responsibility in the process.

1. The use of DDOs complies with the State Contract Act.
2. DDOs are properly monitored and administered to ensure:
3. They are supported by proper justification and documentation.
4. The project cost and scope on DDOs agree with contract agreements, contractor invoices, and engineers support documentation.

Small businesses are considered for opportunities to participate in emergency work.

Based on audit procedures performed, we found Caltrans has policies, procedures, and guidelines over the DDO process; however, improvements are needed to provide consistent guidelines and to ensure adequate monitoring. We also determined DDOs did not fully comply with the State Contract Act and Caltrans' established timeframes for emergency work that require immediate action.

The report is a matter for public record and will be placed on the IOAI's website, which can be viewed at <https://ig.dot.ca.gov>.

## **Background**

The purpose of a DDO is to initiate emergency or “best interest of the State” contract work sooner than can be done under the normal contract approval process. A DDO typically authorizes needed work to mitigate or repair damages on the highway system caused by a catastrophic event. Types of damaging events include storms, landslides, floods, fires, and earthquakes. DDOs can also be used to forestall an imminent threat of catastrophic damage. For example, a slope may suddenly show signs of movement below a roadway after a storm, inducing tension cracks in the pavement. DDOs are also used to prevent loss of roadway or loss of service. Generally, district construction staff and maintenance staff work together in defining the scope, cost estimate, project schedule, and contractor selection. The resident engineer is typically the contract administrator and is responsible for tracking expenditures to ensure work is completed within the approved DDO scope and cost.

## **Scope**

The audit covered the period of July 1, 2017, through June 30, 2019. During this period, Caltrans issued 274 DDOs statewide totaling approximately \$60 million. We selected four districts for testing, Districts 3, 4, 8, and 11, based on the number of DDOs issued between July 1, 2017, and June 30, 2019. The total number of DDOs for the sampled districts was 138 with a total value of \$32.4 million. Of these 138 DDOs, we tested 24 with a total value \$7.2 million, representing over 22 percent of the total dollar amount for the districts selected.

We conducted our audit from September 18, 2019, through February 28, 2020. Changes after these dates were not tested, and accordingly, our conclusions do not pertain to changes arising after February 28, 2020.

## **Methodology**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In planning the audit, we gained an understanding of the DDO process and identified relevant criteria by reviewing the Public Contract Code (PCC) section



10122, otherwise known as the State Contract Act, PCC section 1102, and guidance established by Caltrans.

Detailed methodologies are addressed in the Results and Recommendations section of this report.

**Views of Responsible Officials**

We requested and received a written response from the Chief Deputy Director of Caltrans who concurred with the results and recommendations. Please see Attachment A for the response.

## Results and Recommendations

### Conclusion

The California Department of Transportation (Caltrans) has policies, procedures, and guidelines over the District Director's Orders process, and the guidelines are communicated to the districts; however, improvements are needed to provide clear and consistent guidance over the process and to ensure adequate monitoring. We also determined District Directors Orders did not fully comply with the State Contract Act and Caltrans established timeframes for emergency work that require immediate action. Finally, we found Caltrans did consider small businesses for opportunities to participate in emergency work.

**Objective 1 – To determine if Caltrans has policies, procedures, and guidelines over the DDO process and if the guidance is communicated to those who have responsibility in the process.**

Caltrans has established DDO policies, procedures, and guidelines and has communicated the guidance to the districts; however, improvements are necessary to ensure clarity, consistency, and compliance with the State Contract Act.

### Audit Methodology

We interviewed Caltrans staff to obtain clarification on the guidance. We also developed survey questions and solicited responses from Caltrans' districts to determine if they were aware of specific requirements. Specifically, the following Caltrans guidance was reviewed:

- Deputy Directive 26-R2, Use of Director's Orders
- Division Guidance
  - Division of Maintenance
  - Director's Order Guidelines
  - Director's Order Guidelines for District Directors
  - Emergency Limited Bid Bidding Procedures webpage
- Division of Construction
  - Construction Manual Section 5-5, Emergency Contract Administration
  - Emergency Force Account (EFA) & Emergency Limited Bid (ELB) Desk Guide
  - Construction Policy Bulletin 10-3

- Division of Procurement and Contracts
  - EFA & ELB Contracts webpage

## Results

Based on our review of Caltrans' DDO guidelines, we found inconsistencies between the various guidance. We highlighted some of the inconsistencies in Table 1 below:

- Defining when emergency work should begin after DDO approval.
- Requirements to exceed the Minor B threshold of \$314,000.
- Definition of scope change and the requirement for scope changes.

**Table 1: Inconsistent Guidance**

Specific Areas of Guidance	Director's Order (DO) Guidelines	Director's Order Guidelines for District Directors	Construction Manual, Section 5.5	EFA & ELB Desk Guide
<b>When Work Should Start for Emergency Contracts</b>	Within 24 hours of DO approval if possible for EFA contracts.	-	Within a few days of written approval for EFA contracts	-
<b>Requirements for Exceeding Minor B Threshold</b>	Threshold cannot be exceeded without Supplemental DO. However, also states Supplemental DOs are not required if contract exceeds threshold by 10% or less.	-	-	Supplemental fund requests processed by Division of Budgets.
<b>Requirement for Scope Change</b>	Supplemental DO shall be approved for significant scope change.	Supplemental DO required for major scope change.	-	Work should not be authorized outside scope of DO.

As examples of inconsistent guidance, Caltrans Division of Maintenance Director's Orders Guidelines state for Emergency Force Account (EFA) agreements (non-competitively bid contracts that pay the contractor for labor, materials, and equipment at direct cost plus markup), work should begin within 24 hours if possible but Caltrans' Emergency Construction Manual states work should begin within a few days. For Emergency Limited Bid Force Account contracts (ELB - a modified type of force account contract that includes some competitive bidding consisting of contractors bidding on the markup rates for labor, equipment and materials), guidance from the ELB Bidding Procedures webpage states work can begin about eight business days after the incident. However, this information is not contained in any of the other guidance such as the Director's Orders Guidelines section which discusses ELB agreements.

Additionally, to exceed the Minor B threshold the Director's Order Guidelines require districts not to exceed the current threshold of \$314,000 without a supplemental Director's Order approved by the Caltrans Director. However, in the same guidance, it states that a supplemental Director's Order is not required if the only reason is to exercise the delegated authority by the CTC. Although the Director delegates authority to district directors for Minor B projects, this delegation does not include the authority to exceed the \$314,000 limit by ten percent. A supplemental Director's Order is required.

For scope changes, the Director's Orders Guidelines and Director's Orders Guidelines for District Directors require a supplemental DDO for significant scope changes, but the EFA & ELB Desk Guide states that work outside of scope should not be authorized.

Inconsistencies where Caltrans is non-compliant with the State Contract Act could possibly lead to the risk of restrictions or suspension of Caltrans' authority to initiate emergency or best interest of the state work.

Deputy Directive 26-R2, Use of Director's Orders, in part, directs the Division of Maintenance, Division of Construction, and the Division of Procurement and Contracts to develop, publish, maintain, and oversee administration of guidelines.

The California Government Code, Sections 13400-13407, known as the State Leadership Accountability Act (SLAA), declares that state agency heads are responsible for establishing and maintaining a system or systems of internal control and effective and objective ongoing monitoring of the internal controls within the agency. This responsibility includes documenting the system (i.e., policies, procedures, processes, practices), communicating system requirements to employees, ensuring that the system is functioning as prescribed, and modifying the system, as appropriate, for changes in conditions. An element of

a satisfactory system of internal control includes a system of policies and procedures adequate to provide compliance with applicable laws, criteria, standards, and other requirements.

### **Recommendations**

A. Consolidate and update guidelines to:

- Clarify when emergency work should begin after DDO approval.
- Clarify when supplemental DDOs (scope change and need for additional funds within Minor B threshold) are required.
- Clearly define what constitutes a scope change and when they are allowable.
- Ensure all changes comply with the State Contract Act.

B. Provide training on guideline changes to districts and all individuals with responsibility in the process.

### **Caltrans' Response**

The Chief Deputy Director of Caltrans concurs with the results and recommendations. Please see Attachment A.

### **Objective 2 – To Determine if District Directors Orders comply with the State Contract Act.**

We determined District Directors Orders did not fully comply with the State Contract Act and Caltrans established timeframes for emergency work which require immediate action. Specifically, our tests of 23 emergency contracts showed the average time for work to begin was 72 calendar days and, in one case, over a year. In addition, two DDOs did not have the required plans, specifications, and estimates in place required when using the “best interest of the state” justification.

### **Emergency Work Guidance**

PCC section 1102 defines “emergency” as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

As previously mentioned, Caltrans guidelines state that EFA contracts should begin no later than a few days, and that ELB contracts should begin about eight days after an incident.

### Audit Methodology

We reviewed PCC section 1102 and PCC 10122 and the State Contract Act to determine the definition of emergency and the exceptions to the normal contract advertising, bidding, and awarding process. We reviewed 24 out of 138 DDOs from Districts 3, 4, 8, and 11 to determine approval dates, estimated work start dates, and actual work start dates. 14 orders were approved in a memorandum format which did not identify estimated work start dates. Caltrans has not developed a standard form for all districts to use when requesting and authorizing DDOs but instead has left it to the districts to develop their own forms. We reviewed engineers' daily reports (used to record daily project activity) to determine actual work start dates. We compared the number of days between DDO approval, estimated work start dates, and actual work start dates.

### Results

We found 23 of 24 DDOs tested were classified as emergencies. However, as noted in Table 2 below, work on the 23 orders did not begin on average until 72 days after approval by the district directors. Additionally, documentation for 10 of the 23 DDOs indicated estimated work start dates were to begin on average within two days of the DDO approval date. 13 of the 23 DDOs used memo formats for DDO approval which did not identify key information such as estimated work start dates.

**Table 2: Sampled DDOs**

Count	District	Contract	Contract Type	Classification	DDO Amount	Number of Days Between Approval and Estimated Work Start Date	Number of Days Between Approval and Actual Work Start Date
1	4	04A5679	EFA	Emergency	\$ 314,000	*	442
2	4	04A5645	EFA	Emergency	\$ 314,000	*	199
3	4	04A5666	EFA	Emergency	\$ 314,000	*	136
4	3	03A2805	EFA	Emergency	\$ 300,000	5	133
5	3	03A2804	EFA	Emergency	\$ 153,767	6	118
6	11	11A2977	EFA	Emergency	\$ 300,000	*	102
7	4	04A5676	EFA	Emergency	\$ 314,000	*	96
8	11	11A2975	ELB	Emergency	\$ 300,000	*	60
9	4	04A5748	EFA	Emergency	\$ 314,000	*	56

Count	District	Contract	Contract Type	Classification	DDO Amount	Number of Days Between Approval and Estimated Work Start Date	Number of Days Between Approval and Actual Work Start Date
10	8	08A2976	EFA	Emergency	\$ 300,000	4	45
11	3	03A2979	EFA	Emergency	\$ 314,000	5	43
12	11	11A2998	EFA	Emergency & Best Interest of the State	\$ 314,000	*	42
13	11	11A2915	EFA	Emergency	\$ 314,000	*	34
14	8	08A2977	EFA	Emergency	\$ 300,000	4	31
15	11	11A2981	EFA	Emergency	\$ 314,000	*	31
16	4	04A5577	EFA	Emergency	\$ 314,000	*	29
17	4	04A5664	EFA	Emergency	\$ 314,000	*	23
18	3	03A2975	EFA	Emergency	\$ 300,000	0	21
19	4	04A5780	EFA	Emergency	\$ 314,000	*	14
20	3	03A2974	EFA	Emergency	\$ 314,000	0	9
21	3	03A2977	EFA	Emergency	\$ 314,000	0	7
22	8	08A2974	EFA	Emergency	\$ 450,000	-4	-4
23	8	08A2975	EFA	Emergency	\$ 52,000	-5	-5
24	11	11A2916	ELB	Best Interest of the State	\$ 314,000	Not Applicable	Not Applicable
-	-	-	-	-	<b>Average</b>	<b>2</b>	<b>72</b>

\* These DDO used a memo format that did not identify an estimated work start date.

The Districts indicated the emergency work for the 23 DDOs tested was primarily for accelerated pavement and culvert failures that could result in an imminent threat of loss of mobility as the roadways were in immediate danger of closure. According to the Districts, the delays in projects were generally attributed to the shortage of contractors and supplies, unfavorable weather conditions, environmental concerns, and coordination with external stakeholders. Contract 04A5679 listed above, for instance, was for an EFA agreement to repair a tunnel ventilation system, drainage and pumping system, and electrical system. Fire codes required that a contractor with a C16, Fire Protection Contractor, license perform the inspection and repairs of fire-life safety systems; however, according to the district, the contractor had difficulty finding a subcontractor with this license.

**Best Interest of The State Guidance**

The State Contract Act (Public Contract Code section 10122(d)) states that work on all projects shall be done under a contract awarded to the lowest responsible bidder except that it may be done by contract upon informal bids at any time after the approval of plans, specifications and estimates of cost, if the director deems the advertising or award of a contract, the acceptance of any bids, or the acceptance of any further bids after the rejection of all submitted bids, is not in the best interest of the state.

**Audit Methodology**

Auditors requested plans, specifications, and estimates for projects using the "best interest of the state" criteria.

**Results**

Our sample of 24 contracts included two that used the "best interest of the state" authority. Both contracts did not have approved plans, specifications, and estimates in place as required by the State Contract Act. Caltrans guidance for DDOs using the best interest of the state authority require the orders to have only plans but not specifications or estimates.

**Recommendations**

- A. Develop a process to ensure DDO work for emergencies begin within the timeframe established by Caltrans guidelines and the timeframe is consistent with the state's definition of immediate action.
- B. Develop a standardized DDO request form for use by all districts to ensure consistent and complete emergency project justification, approval, and estimated work start dates are provided.
- C. Develop procedures to ensure DDOs for "best interest of the state" work have the required plans, specifications, and estimates.

**Caltrans' Response**

The Chief Deputy Director of Caltrans concurs with the results and recommendations. Please see Attachment A.



**Objective 3 – To determine whether DDOs are properly monitored and administered to ensure they are supported by proper justification and documentation and that project cost and scope on the DDOs agree with contract agreements, contractor invoices, and engineers' support documentation.**

Based on the results of Audit Objectives 1, 2, and 3, we recommended various improvements in the monitoring and administration of DDOs. However, as part of Objective 3, we specifically tested DDOs to determine if they were adequately supported and project costs and scopes agreed with contracts, invoices, and engineers' records. We found that in general DDOs were properly supported. However, we noted some weaknesses in the monitoring of requirements over 1) exceeding the Minor B contract threshold and 2) scope changes that are mainly attributable to unclear guidance discussed in the result section of Objective 1.

### **Exceeding the Minor B Threshold Guidance**

The California Transportation Commission (CTC) delegates authority to the Director of Caltrans to exceed the SHOPP Minor B project limit of \$314,000 for the 2018 and 2019 calendar years by ten percent when necessary. Caltrans Director's Order Guidelines tries to clarify this by requiring districts not to exceed the current threshold of \$314,000 without a supplemental Director's Order approved by the Caltrans Director. However, in the same guidance, it states that a supplemental Director's Order is not required if the only reason is to exercise the delegated authority by the CTC.

### **Audit Methodology**

For the sample of DDOs tested, we used Caltrans' accounting system, AMS Advantage, to select any contracts with total costs that exceeded the Minor B threshold of \$314,000 to determine if a supplemental Director's Order was approved. For contracts that did not exceed the Minor B threshold, we determined if total contract costs were within the approved contract amount.

### **Result**

In general, project costs were within the approved DDO amount and under \$314,000; however, two of 24 contracts tested exceeded the Minor B project cost limit without a supplemental Director's Order. The project costs for these contracts were \$323,500 and \$341,997, three percent and nine percent above the Minor B threshold respectively.

**Scope Change Guidance**

The Director's Orders Guidelines and Director's Orders Guidelines for District Directors require a supplemental Director's Order for significant scope changes but the EFA and ELB Desk Guide states that work outside of scope should not be authorized. Additionally, the Director's Orders Guidelines provides examples of significant scope changes that exclude location change or work on additional locations.

**Audit Methodology**

Auditors reviewed the scope of work on the 24 approved DDOs, agreements, invoices, and daily reports to determine if the DDOs were supported by proper justification and documentation, and work was performed within the approved scope.

**Results**

Based on our review, one of 24 contracts tested showed work was performed for three additional locations which were not identified and approved in the original order or in a supplemental DDO. The purpose for the DDO was to repair damage due to a culvert failure; however, the district stated that additional work was performed to repair damage identified in three nearby systems.

**Recommendation**

- A. Once Caltrans updates guidance on requirements for exceeding Minor B Thresholds and Scope Changes as recommended in Objective 1, Caltrans should ensure these requirements are properly monitored and administered for compliance in future DDO work.

**Caltrans' Response**

The Chief Deputy Director of Caltrans concurs with the results and recommendations. Please see Attachment A.

**Objective 4 – To determine whether small businesses were considered for opportunities to participate in emergency work.**

While districts are not required to utilize small businesses under the State Contract Act for emergency contracts, the Director's Orders Guidelines for District Directors encourages districts to actively use small businesses where possible on DDO projects. Based on our review, we found that small businesses are considered for opportunities to participate in emergency work. Specifically, 50 percent, 12 out of 24, of DDOs tested were awarded to small businesses. In comparison, Caltrans has pledged to meet or exceed a 25 percent small business goal on other non-emergency State funded contracts and procurement opportunities. For the 24 DDOs reviewed, this goal was exceeded by 25 percent.

## **ATTACHMENT A**

### **Audit Response from the California Department of Transportation**

State of California  
**Independent Office of Audits And Investigations**

**DEPARTMENT OF TRANSPORTATION**

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**California State Transportation Agency**

*Making Conservation a California  
Way of Life*

June 3, 2020

Ms. Rhonda L. Craft  
Inspector General  
California Department of Transportation  
Independent Office of Audits and Investigations  
P.O. Box 942874, MS 2  
Sacramento, CA 94274-0001

Dear Ms. Craft:

I am pleased to provide the California Department of Transportation's (Caltrans') response to the Independent Office of Audits and Investigations (IOAI) audit report titled, "California Department of Transportation District Director's Orders – May 2020."

Caltrans agrees with the audit report's results and recommendations but requests that the final audit report be revised to note that Caltrans requested the audit of the District Director's Order topic.

Once the final audit report has been issued, Caltrans will provide a response letter that provides a formal response to each of the audit report's results and recommendations, including associated deliverables and timeframes.

If you have any questions, please contact Chuck Suszko, chief of the Office of Contract Administration, Division of Construction, at (916) 798-6029.

Sincerely,

JAMES E. DAVIS  
Chief Deputy Director

"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"