

**SUBJECT:** Contracting and Procurement

**NUMBER:** 107-01-020

**DIVISION:** Operations Division

**EFFECTIVE DATE:** April 12, 2007

**APPROVED:**



**POLICY/  
PURPOSE:**

To communicate DAS internal delegation of procurement authority, process standards and responsibilities for all types of procurements.

**AUTHORITY:**

Oregon Revised Statutes (ORS) 184.305, 184.340, ORS Chapter 190, ORS 279A, 279B, 279C. Oregon Administrative Rule (OAR) Chapter 125, Divisions 22, 246, 247, 248, 249, and Department of Administrative Services (DAS) Policy 107-009-010.

**APPLICABILITY:**

This policy applies to all procurements (e.g. Purchase Orders, Public Contracts, Solicitations, Interagency Agreements, and Intergovernmental Agreements) of the Department of Administrative Services (DAS) Divisions and operations, unless otherwise specifically exempted by Oregon Revised Statute, Oregon Administrative Rule, DAS Director's written delegation, or sub-delegated in writing by the DAS Designated Procurement Officer – DAS Contract Services, Operations Division.

This policy applies to:

- All employees, divisions and operations of the Department of Administrative Services.
- **EXEMPT:**
  - The Public Employees' Benefit Board is exempt from this policy for benefit plan contracts under ORS 279A.025(2)(q); and for the services of consultants, brokers and other advisory personnel, when necessary, to perform the functions of the board under ORS 243.125. The Oregon Educators Benefit Board is also exempt.
  - The Facilities Division is exempt from this policy for real property leases.
  - Any other Division, Office or Board, specifically exempted from the procurement code by another provision of law.

**ATTACHMENTS:**

Although there are no items specifically attached to this policy, the following forms are periodically updated and are considered attachments to this policy by reference. These forms are available at the DAS Contract Services website: <http://egov.oregon.gov/DAS/OP/ContractsServices.shtml>. Additional forms or procedures may be added as needed.

**DEFINITIONS:** **“Agency IT Asset Inventory/Management (ITAM) Coordinator”** means, the Agency (DAS) staff member responsible for the collection, management and reporting of Information Technology Asset Inventory-related information, and Agency central point of contact/coordinator with DAS/OPS in matters relating to IT asset inventory and management. Within DAS this function exists within the Technology Support Center.

**“Architectural, Engineering and Land Surveying Services”** as used in this policy means professional services that are required to be performed by an architect, engineer or land surveyor, as well as services that are related to the planning, design, engineering or oversight of Public Improvement projects. (e.g. landscape architectural services, facilities planning services, environmental impact studies, hazardous substance or waste testing, project management services, etc...)

**“Contract”** means an agreement between two or more Persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement and mutuality of obligations. Written Contracts may take the form of agreements, purchase orders, or other documents which define the obligations of each party and include monetary or non-monetary consideration.

**“Contract Administrator”** is the Division/Section employee identified on a Contract as the responsible agent for the Contract Administration actions for the project/procurement.

**“Contract Amendment”** means a mutual modification to the Contract, which may include additions, deletions, corrections or other changes to Contract terms and conditions.

**“Contract Management”** means the management of all activities that occur in the contracting process, e.g. all activities that take place around such areas as issuance of an Invitation to Bid or Request for Proposal, tendering activities, contract award and subsequent amending activities.

**“Contractor”** means the Person with whom an Agency enters into a Contract and is interchangeable with "Consultant" and "Provider."

**“DAS Contract Services”**: DAS Contract Services, Operations Division supervises the preparation of all Contracts, agreements, and procurements for DAS and the Governor’s Office. It oversees the establishment of and adherence to uniform rules and policies relating to requests for proposals, Contractor selection, personal and professional service Contracts, trade service Contracts, as well as governmental, interagency and lease purchase agreements, and other procurement processes.

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### DEFINITIONS

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**“Designated Procurement Officer (DPO)”** means a senior public procurement official with the authority and responsibility for, and control of, public procurement activities on behalf of the Agency. The Designated Procurement Officer for DAS is the DAS Contracts Manager, Operations Division.

**“Division Contracts Coordinator”** means a person responsible for coordination of a division’s contracting activities through DAS Contract Services and for maintaining the division’s contract management file(s).

**“Facilities Maintenance Services and Supplies”** means any trade services and supplies that are not considered public improvements, but which are directly related to the maintenance of State facilities owned and operated by the Facilities Division of DAS. Examples include janitorial services and supplies, landscaping services, and painting services.

**“Goods Contract”** means a Contract for supplies, equipment, materials, or personal property, or any combination thereof.

**“Informal Solicitation”** for Public Improvements, means the estimated contract value for a Public Improvement contract does not exceed \$100,000, or \$50,000 in the case of contracts for highways, bridges and other transportation projects and for non-public improvement contracts, means an estimated contract value of \$150,000 when the Contract is completed in accordance with ORS 279B. The lower thresholds apply when following ORS 279C.

**“Interagency Agreement”** means any agreement solely between State Agencies or between an Agency and the Legislative Assembly or the courts, or their officers and committees of the state of Oregon.

**“Intergovernmental Agreement”** means any Agreement between an Agency and unit of local government of the State of Oregon, the United States, a United States governmental Agency, an American Indian tribe or an Agency of an American Indian tribe and includes Interstate Agreements and International Agreements. **International Agreement** means any agreement between an Agency and a nation or a public Agency in any nation other than the United States. **Interstate Agreement** means any Intergovernmental Agreement between an Agency and a unit of local government, or state Agency, of another state.

**“Intra-agency Agreement”** means an agreement between different divisions within the same Agency (i.e.: same Agency number).

**“Invitation to Bid” or “ITB”** means all documents, whether attached or incorporated by reference, and any Addenda thereto, used for soliciting bids in accordance with either ORS 279B.055 or 279C.335.

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**"IT Asset"** means, all present and future forms of computer hardware, software and related items used for business data processing and office automation, which have the ability to connect, either directly or through a Local Area Network (LAN), to the State of Oregon's Wide Area Network (WAN); except for devices with embedded technology.

**"IT Contract"** means a personal service, trade service, or goods Contract for an IT Asset or IT services, such as software license agreements, software maintenance agreements, equipment maintenance agreements, and consulting and software development Contracts.

**"IT Investment"** IT Investments include but are not limited to: information technology and telecommunications-related hardware and software; software license and hardware maintenance renewals; and related services (e.g. personal services and trade services). Prior to approval of a Contract Services Request or execution of an IT-related Purchase Order or Work Order or IT Contract, Division Contracts Coordinators are responsible for ensuring that the requirements outlined in the DAS IT Investment Review/Approval Policy are met.

**"OAR"** means Oregon Administrative Rule.

**"OPS"** means the DAS Operations Division (formerly the Office of Business Administration).

**"ORPIN"** means the on-line electronic Oregon Procurement Information Network administered by the State Procurement Office, as further defined in OAR 125-246-0500.

**"ORS"** means Oregon Revised Statutes.

**"Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

**"Personal/Professional Service Contract (PSK)"** means a Contract that calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a Personal/Professional Services Contractor, with the price for desired services being secondary.

**"Price Agreement"** means a SPO-issued agreement that an agency can use to purchase goods or services by issuing a Purchase Order, Work Order, task order or other ordering instrument specified in the agreement.

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**"Procurement"** means the act of purchasing, leasing, renting or otherwise acquiring: supplies and services; architectural, engineering, and land surveying services and related services; and public improvements. Procurement includes each function and procedure undertaken or required to be undertaken by an Authorized Agency to enter into a public Contract; administer a public Contract and obtain the performance of a public Contract under the Public Contracting Code and these Rules (includes sales per 125-246-0800).

**"Public Improvement"** means a project for construction, reconstruction or major renovation on real property by or for an Authorized Agency. "Public Improvement" does not include:

- (a) Projects for which no funds of an Authorized Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
- (b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

**"Purchase Order" or "Work Order"** means an Authorized Agency's document to formalize a purchase transaction with a Contractor. Acceptance of a Purchase Order constitutes a public Contract.

**"Purchase Request" or "(PR)":**

- **A TSC Purchase Request (TSC/PR)** is a document that the Technology Support Center receives, which includes the specifications of the IT item(s), hardware and/or software, to be purchased. The TSC will use the TSC/PR to check on the availability of an existing, compliant Contract. The TSC/PR requires authorized signatures from the responsible Section Manager.
- **A SPO Purchase Request (SPO/PR)** is the information entered into the ORPIN System by DAS Contract Services to have a SPO Analyst assigned to the solicitation procurement/contracting process when the dollar amount of the planned procurement exceeds the Agency's delegated authority.

**"Request for Legal Assistance" or "RLA"** is the document used to request assignment of counsel from the Department of Justice (DOJ) for a particular procurement project.

**"Request for Proposals" or "RFP"** means all documents, either attached or accordance with either ORS.279B.060 or 279C.405 and related rules.

**"Solicitation"** means an Invitation to Bid, a Request for Proposals, Request for Quote or similar documents.

**"SPO"** means the Department of Administrative Services, State Procurement Office.

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**“Technology Support Center (TSC) Provisioning”** means the group within the TSC that reviews and processes all IT-related purchases.

**“Trade Service Contract (TSK)”** means a Contract for all services except for Personal/Professional Services. Examples of trade service contracts include equipment repair and maintenance services, equipment rental and lease agreements, court reporting services, security services, non-customized conference services, and non-customized training services. Trade service contracts may also include temporary employment services, medical and laboratory services, and data and collection surveys, depending upon the need for customized services or professional judgment.

### **GUIDELINES:**

#### **I. GENERAL:**

The Director of the Department of Administrative Services (DAS) is authorized to procure goods and services for State Agencies per OAR 125-246-0140 (ORS 279A.050) and 125-246-0170 (ORS 279A.140). The Director has delegated purchasing authorities to SPO and the DAS Designated Procurement Officer (Contracts Manager, Operations Division) under OAR 125-246-0170. This delegation does not include emergency purchases/contracts unless indicated in this policy or otherwise delegated in writing. Included in this authority is the ability to purchase supplies, materials, equipment and services, otherwise specified in rule or statute.

Unless otherwise delegated, DAS Contract Services (CS), Operations Division, manages the internal procurement process for the DAS, the Governor's Office and certain Client Agencies. The establishment of and adherence to uniform rules and policies regarding procurement processes are managed by DAS Contract Services (e.g. Invitations to Bid, Requests for Proposals, Contractor selection, Personal/Professional Service contracts, Trade Service contracts, goods contracts, lease purchase agreements, Interagency and Intergovernmental agreements).

Responsibilities of the Section include setting policy for DAS contracting and purchasing, procurement oversight responsibilities, consideration of delegation of contracting authority to other offices and Sections within DAS and the contract and purchase of goods and services not specifically delegated in writing to other DAS Divisions and Sections.

DAS Contract Services is also the official liaison between DAS divisions and all contract development-related entities such as the DOJ and SPO.

#### **II. DELEGATED CONTRACT AUTHORITY:**

The following chart depicts delegated purchase/contract authority for different types of procurement processes. As applicable, signature authority is delegated to divisions and coordinated by contract coordinators or purchase contract specialists. The authorized signatory must also have signature authority for the value of the contract (including potential extensions). For a current signature authority list, visit the DAS Operations website.

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| <b>Type of Purchase or Contract</b>   | <b>\$5000* or under</b>          | <b>Over \$5000</b> | <b>Over \$25,000</b> | <b>Over \$75,000+</b>      | <b>Over \$100,000</b> | <b>Over \$150,000</b> |
|---|----------------------------------|--------------------|----------------------|----------------------------|-----------------------|-----------------------|
| Personal Services Contract (PSK)  | CS                               | →                  | Fiscal Review        | DOJ Review                 | →                     | SPO                   |
| Information Technology Goods or Services Contract (IT)*                               | Delegated to TSC and Data Center | CS                 | Fiscal Review        | DOJ Review<br>EISPD Review | →                     | SPO                   |
| Non-IT Goods Purchase or Trade Service Contract*                                      | Delegated                        | CS                 | Fiscal Review        | N/A                        | DOJ Review            | SPO                   |
| Public Improvement  | Delegated to Facilities Division | →                  | →                    | →                          | →                     | Delegated by SPO      |
| Architects and Engineers (A&E)  | Delegated to Facilities Division | →                  | →                    | →                          | →                     | →                     |
| Facilities Maintenance Services and Supplies  | Delegated to Facilities Division | →                  | →                    | →                          | →                     | SPO                   |
| Emergencies: Public Improvement, A&E and Facilities Maintenance Services and Supplies | Delegated to Facilities Division | →                  | →                    | →                          | →                     | →                     |
| Grants and Sub-grants   | Delegated                        | →                  | →                    | →                          | →                     | →                     |
| Interagency and Intra-agency agreements   | CS Review and signature          | →                  | Fiscal Review        | →                          | →                     | →                     |
| Intergovernmental Agreements  | CS Review and signature          | →                  | Fiscal Review        | DOJ Review                 | →                     | →                     |
| Interstate and International Agreements**   | CS and DOJ Review                | →                  | Fiscal Review        | →                          | →                     | →                     |

**KEY:**

- **CS** – Contract Services will process requests.
- **Fiscal Review** – Contract Services will forward requests for fiscal review and approval prior to processing. Fiscal review will confirm that the Section has Budgetary Authority for the Expenditure, the cost is built into the Section's budget for the current biennium, and the Section has sufficient revenue to cover the cost. NOTE: If the answer to any of the review questions is, "no", then the request must be reviewed for approval by DAS OPS Administration.
- **DOJ Review** – Contract Services will forward contract documents to DOJ for approval prior to signing.
- **EISPD Review** – For IT purchases, EISPD review is required over \$75,000 by the Statewide IT Investment Review and Approval Policy prior to forwarding of documents to Contract Services.
- **SPO** – Contract Services will review requests and work with SPO to further process.
- **Delegated** – Program Offices can complete the procurement process according to OAR 125.
- **TSC** – All IT-related assets that DAS purchases must be processed through the TSC Provisioning for IT compatibility review and asset management, with the exception of purchases for the State Data Center, which require the approval of the State Data Center Administrator or designee. Following TSC or SDC approval, as appropriate, contract service requests can then be forwarded directly to Contract Services for planned purchases valued at over \$5000. See the TSC website for further information.
- **CS Review and Signature** – Program Offices have overall responsibility for negotiating and drafting agreements according to OAR 125. DAS Contract Services will review and sign the agreements.

\*For IT and non-IT goods or trade services available under a State Price Agreement, the TSC and the State Data Center may complete orders valued at \$25,000 or less, unless otherwise delegated, without further processing through Contract Services. A purchase order may be placed directly with the Price Agreement vendor according to the requirements contained within the Price Agreement. Professional services and temporary staffing work orders shall be processed through Contract Services, unless otherwise approved by the DAS DPO in writing.

\*\*A document that may be titled a Letter of Agreement (LOA), Memorandum of Understanding (MOU), Service Level Agreement (SLA), Billing Agreement (BA), or any other Agreement title, between a Division of a State of Oregon Agency and another governmental agency is an Interagency, Intergovernmental (includes Interstate and International Agreements), or Intra-agency Agreement (See "Definitions").

+For sole source procurements exceeding \$75,000, SPO approval of the sole source justification is required.

Under special circumstances, delegated authority to conduct the procurement process may be requested from the DAS DPO (Contracts Manager). In reviewing requests for delegated authority, the DAS DPO will consider resources available, the level of the proposed delegate's training and experience, and whether the proposed delegate has the requisite skills and knowledge to carry out the sub-delegation per OAR 125-246-0170(2)(a). If granted, authority will be delegated in writing and will include conditions and any related limitations.



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The following specific delegations are provided through this policy:

- The State Procurement Office (SPO) of the State Services Division is delegated procurement authority for contracts awarded as a result of a SPO processed formal solicitation, sole source or special procurement. SPO is also delegated procurement authority for Intergovernmental and Interagency Agreements developed for the Oregon Cooperative Purchasing Program.
- The Facilities Division is delegated authority for Contracts awarded as a result of a Facilities processed Informal Solicitation. Formal public improvement related procurement processes delegated to DAS Contract Services by SPO are also delegated back to Facilities. Additionally, Facilities Division is delegated authority for Architectural, Engineering and Land Surveying Services purchases and Contracts, project-related Interagency Agreements and other agreements relative to real property.
- The Risk Management Section of the State Services Division is delegated authority for conflict counsel services when the Attorney General has permitted such a Contract in accordance with ORS 180.235 and Class Special Procurement No. 037-05.
- The Publishing and Distribution Section of the State Services Division is delegated authority for state printing purchases per ORS 282.020.
- Other delegations may occur during the period this policy is in effect; documentation of those delegations will be maintained in the Operations Division Contracts unit. This policy will be reviewed biennially and this section will be updated to reflect all current delegations at the time of the review and update.

#### **IV. SPECIAL PROCUREMENT PROCESSES:**

**Brand Name Justification Review and Approval:** Brand Name procurements must meet the requirements of ORS 279B.215 and OAR 125-247-0691. Justifications for brand name solicitations greater than \$5,000 (including any extensions) shall be submitted to DAS Contract Services. Subsequent review and approvals are required per delegated authority.

**Sole Source Procurements Justification Review and Approval:** Sole source procurements must meet the requirements of ORS 279B.075 and OAR 125-247-0275. Justifications for sole source solicitations greater than \$5,000 (including any extensions) must be submitted to DAS Contract Services. Subsequent review and approvals are required per delegated authority.

**Special Procurement Justification Review and Approval:** A special procurement process may be requested through DAS Contract Services and must meet ORS 279B.085 and OAR 125-247-0287. DAS Contract Services will work with the requesting Program and SPO to obtain approval.

**Exemption Procedure and Approval:** Public Improvement contract exemption requests by the Facilities Division may be requested and granted under ORS 279C.350 through SPO directly.

**Emergency Purchases/Contracts:** Within specific limiting requirements, DAS is authorized to procure materials and services and award contracts without resorting to the normal competitive sealed bidding or sealed proposal procurement processes when an emergency condition exists. The emergency must be properly documented. (Reference ORS 279B.080 and OAR 125-247-0280).

Generally, an emergency involves circumstances that create a substantial risk of loss, damage, interruption of services or threat to public health, welfare or safety that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the condition.

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Unless otherwise delegated, only the DAS Director, or the Director's delegate, has the authority to declare an emergency for the Agency. Each emergency declaration will specifically designate authorizations for proceeding outside of the normal competitive procurement processes.

A copy of each DAS Division Emergency Declaration, and the supportive documentation, shall be sent to DAS Contract Services within 30 days following issuance of a contract.

#### **V. CONTRACT ADMINISTRATION:**

**Monitoring Performance:** DAS Divisions and program offices are responsible for monitoring the progress of a Contract, ensuring that deliverable goods or services, including Personal/Professional Services, meet the Contract requirements, approving payment to the Contractor, maintaining the DAS Division working contract file, and submitting copies of required supplemental master Contract file information to DAS Contract Services. Contract Coordinators generally monitor expirations, track progress and monitor expenditures, as well as documenting files and coordinating approvals. Contract Administrators are responsible for monitoring and approving work of Contractors, determining when problems require additional assistance and providing the background documentation and requirements to facilitate the contracting process.

Upon receiving an invoice for contracted goods or services, including Personal/Professional Services, the DAS Divisions and program offices must submit the invoices for the contracted items/service, with the Encumbrance Number (if applicable), the Contract number and correct coding information to Operations Disbursements. Subsequent invoices submitted shall also include the Encumbrance Number in order to be processed accurately.

**Contract Amendments:** A Contract may be extended beyond the initial end date, amended for Contract cost adjustments, or otherwise modified according to the original scope of the underlying procurement. OAR 125-246-0560 permits the use of anticipated amendments to facilitate future flexibility in a Contract. An anticipated amendment must include the general circumstances that might require an amendment to be issued and a general description of certain or known changes to the requirements of the Contract that may be anticipated, but not necessarily quantified at the time of Contract execution. All other amendments are termed, "unanticipated amendments". Anticipating amendments is the best practice. All amendments shall be in alignment with the original solicitation and/or contract allowance and shall have approvals prior to the initial contract expiration date established in the contract.

**Contract Records:** Contract records shall be maintained according to applicable contracting rules and archiving policy by the Division delegated the final authority to conduct the procurement. For the purpose of this paragraph contract records shall mean the records of the solicitation and contract process, correspondence which occurs during the solicitation, contract formation and contract modification processes, and other documents required to be documented under OAR 125. Contract administration records which relate to the daily work conducted under a contract shall be maintained by the requesting Division.

#### **VI. UNACCEPTABLE PRACTICES:**

**Fragmented Purchases or Contracts:** Per OAR 125-246-0630, a procurement may not be artificially divided or fragmented so as to constitute a Small Procurement pursuant to ORS 279B.065 or an Intermediate Procurement, pursuant to ORS 279B.070. Generally, purchases may be considered as fragmented when multiple purchases or contracts are made for a single project, product, or purpose, which could be reasonably foreseen or planned, and the combined total dollar amount exceeds the delegated limitation or threshold.