

## REQUEST FOR 3<sup>rd</sup> AMENDMENT to SPECIAL PROCUREMENT #SP-228-08

Submit a Special Request through ORPIN to the Department of Administrative Services State Procurement Office. The Agency Head or designee (e.g., Designated Procurement Officer) must authorize this Special Request.

PART A. Requesting Agency must complete Items 1 through 13.

1. Requesting Agency Name: DAS Procurement Services
2. Date of Request: 11/18/13
3. Agency 5-digit Number: 10700
4. Agency Contact Name: Debbie Dennis
5. Phone: 503-378-2631
6. Type of Request:  Class Special Procurement  Contract-specific Special Procurement
7. Time Period Requested: From: November 18, 2013 To: December 21, 2018
8. Total Estimated Cost: \$ Over \$1 Million

9. Title: Supplies and/or Services to be Acquired:

(a) Short Title of the Procurement: Special Procurement for Disaster Response

(b) Description of Supplies and/or Services: All Supplies, ordinary construction, and construction emergency work needed in response to disasters (supplies and services). Supplies and services are defined in OAR 125-246-0110 (170).

10. Background and Proposed Contracting Procedure: Provide a description of what has been done in the past and the proposed procedure. The Agency may, but is not required to, also include the following types of documents: Notice/Advertising, Solicitation(s), Bid/Proposal Forms(s), Contract Form(s), and any other documents or forms to be used in the proposed contracting procedure. Attach additional sheets as needed.

### Purpose of Amendment 3 to Special Procurement # SP-228-08:

Purpose of Amendment 3 to Special Procurement # AP-228-08 is to change the program name from The State Procurement Office to DAS Procurement Services throughout the document, due to the program reorganization and to update the agency contact name from Marsey Stone to Debbie Dennis.

**A. Background and Justification.** The Governor's Office, the Department of Administrative Services (DAS), DAS Procurement Services and other state and local agencies are planning to respond to disasters, as described below. Planners have considered the lessons of Hurricane Katrina and past responses to disasters in Oregon. They have identified a need for fast, flexible procurement system that is fair and prevents fraud.

Procurement is essential for responding to the effects of a disaster and supporting several objectives, including:

- Saving life and limb
- Restoring life sustaining supplies (housing, food, water, medical)
- Responding to a significant risk to the public health
- Economic recovery (business continuity) and
- Re-establishing infrastructure (roads, bridges, ports, levies, buildings).

ORS 279B.080 permits buying supplies and services in an emergency. One type of emergency in a disaster.

The purpose of this Special Procurement method is to respond to disasters when the Governor or Governor's designee:

1. Declares a state of emergency under ORS 401.165 to 401.610; or
2. Issues a declaration under the Emergency Conflagration Act, ORS 476.510-476.610; or

3. Declares a public health emergency under ORS 433.441 to 452; or
4. Issues approval of one or more public health actions under ORS 431.264 (collectively, Disaster).

Use of this Special Procurement ends when:

- The Governor or Governor's designee terminates the state of Disaster or
- The state of Disaster expires in accordance with statute.

Use of this Special Procurement is limited to acquisitions in response to public needs in a Disaster (Contracts).

**B. Responders.** Responders means:

1. The Department of Administrative Services (DAS) Procurement Services,
2. All state agencies under DAS procurement authority that have statutory or rule authority to respond to Disasters,
3. All other state agencies that have independent statutory or rule authority to respond to Disasters and that require DAS to approve their Special Procurements; and
4. All other public bodies that have independent statutory or rule authority to respond to Disasters and, under their independent authority, have made findings and adopted this Special Procurement. (collectively, Responders).

**C. Authority to Use this Special Procurement**

1. Responders under DAS procurement authority are authorized to use this Special Procurement by OAR 125-246-0170(2).
2. All other Responders must be authorized to use this Special Procurement by their own statutes, rules, or policies.

**D. The Special Procurement Process.**

1. Dual Controls used for Procurement. Dual Controls are required for all purchases. "Dual Controls" means, prior to a purchase under any existing Contract or award of a new Contract:
  - a. State of Oregon Emergency Operations Plan Emergency Coordination Center (ECC) or Agency Operation Center. An authorized individual from an emergency control center, like the ECC or individual Agency Operations Centers under ORS 431.264 or 433.441 to 452 as specifically described for public health (AOC), oversees the purchase and may require documentation. The authorized individual from the ECC or AOC individual or designee.
  - b. Responder. An authorized individual from that Responder responds to the request (10.B.1) by purchasing the supplies and services in accordance with the Special Procurement process and communicating with the ECC or AOC individual or designee.
2. Documentation. The responder must document:
  - a. The nature of the emergency, and
  - b. A description of the method used for the selection of the particular contractor.

This documentation may occur in a reasonable time after the Disaster. The documentation must support order confirmation and invoice matching.

No documentation is required before the award and use of the Contracts, except as required by the ECC or AOC individual or designee (see 10.B.1).

### 3. Selection

- a. Direct Award. Supplies and services may be directly purchased without competition from any available resource identified by the authorized individual of the Responder, including but not limited to statewide price agreements, Agency specific contracts, and Agency specific price agreements. In a Disaster, agency specific contracts and price agreements become available under this process.
- b. Unlimited Amounts. Responders may directly award Contracts for unlimited amounts.
- c. Limited Terms. Awarded Contracts must be limited to the term of the Disaster (see 10.A).
- d. Competition. When practicable, create and use an informal competitive process of selection to award new Contracts for unlimited amounts, but limited to the term of the Disaster. An informal competitive process may be verbal or written and use quotes, informal bids, or informal proposals. When practicable, competition is encouraged.
- e. Schedule 84. The federal government has authorized states, including the Responders, to purchase through the Local Preparedness Acquisition Act, Schedule 84, "Total Solutions for Law Enforcement, Security, Facilities Management, Fire, Rescue, Clothing, Marine Craft and Emergency/Disaster Response" (Schedule 84) See:  
<http://www.gsaelibrary.gsa.gov/ElibMain/schedulesummary.do?scheduleNumber=84&flag=coop>

Schedule 84 is similar to 10 U.S.C. 381 or Section 211 of the Electronic Government act of 2002 (Schedule 70) in effectuating or promoting transfers of property to Responders. In the specific instance of Schedule 70, it provides for the procurement of data processing equipment, software and services. Section 211 (c) (1) provides in pertinent part:

"The Administrator may provide for the use by State or local governments of federal supply schedules of the General Services Administration for automated data processing equipment (including firmware), software, supplies, support equipment, and services as contained in Federal supply classification code group 70"

The language of ORS 279A.180, "other federal law...similar to section 211...in effectuating or promoting transfers of property to contracting agencies" means that if the DAS Director or delegate determines that a federal statute permits state agencies to procure goods or services from federal supply schedules, then procurements made from those federal schedules need not be made through competitive procurement processes.

The approval of this Special Procurement grants permission to use Schedule 84 under the conditions of this Special Procurement. This Special Procurement does not waive any requirement of use set forth by the federal government.

4. Authority. Responders with authority to use this Special Procurement may procure supplies and services in accordance with the process described in this subsection 10.B.

The Responder may designate and delegate authority to one or more individuals other than the Responder's previously authorized Designated Procurement Officer to respond to the Disaster Request.

5. FEMA. If the state intends to seek Federal Emergency Management Agency (FEMA) reimbursement for any purchase under this Special Procurement, the authorized individual must follow FEMA regulations and try to avoid making a purchase that would be disqualified for FEMA reimbursement.

See [www.fema.gov](http://www.fema.gov)

## E. Legal and Other Requirements of State Responders

1. This Special Procurement revises the emergency procurement procedures of OAR 125-247-0280. OAR 125-247-0280 does not apply to the provisions of this Special Procurement. Responders are advised to ask the Department of Justice to apply the Emergency Public Contract Exemption from legal sufficiency review under OAR 137-045-0070, regardless that OAR 125-247-0287 does not provide such an exemption for special procurement.

2. This Special Procurement does not waive or modify any legal, policy or procedural requirements of DAS Procurement Services or Responders.

11. **Justification for use of Special Procurement:** Describe the circumstances that justify the use of a Special Procurement. Attach relevant documentation.

The use of this Special Procurement is justified by the urgent need to purchase essential supplies and services in response to a Disaster. See Section 10.A. Background and Justification, above.

This Special Procurement will only be used:

- a. When the Governor makes a declaration in accordance with subsection 10.B and
- b. In limited circumstances in response to requests from the ECC or AOC in accordance with subsection 10.B.1.

12.

**Findings to Satisfy the Required Standards:** This proposed procurement:

(a) will be likely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts because:

Procurements related to Disasters will be conducted as a limited type of Emergency procurement, as defined in ORS 279B.080, and the procurement process will be according to the Special Procurement, not the process for an Emergency Procurement under OAR 125-247-0280. The nature of a Disaster limits the time available to procure supplies and services. Competition will not be harmed as the Responder will, when practicable, make efforts to use informal competitive processes or use existing contracts and price agreements that were solicited through a competitive process.

This Special Procurement places limits around when purchases may be made in response to a Disaster.

(Please provide specific information that demonstrates how the proposed Special Procurement meets this requirement.); and

(b)(i) will result in substantial cost savings to the contracting agency or to the public because:

(Please provide the total estimate cost savings to be gained and the rationale for determining the cost savings); or

(b)(i) will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements of ORS 279B.055, 279B.060, 279B.065, or 279B.070, or any rules adopted thereunder because:

This Special Procurement promotes the public interest by supporting disaster relief in a timely and expeditious manner.

(Please provide specific information that demonstrates how the proposed Special Procurement meets this requirement.)

13. **Optional Signature:** The signature of the Agency Head or designee (e.g., Designated Procurement Officer) is not required on the Request submitted through ORPIN. Agency may also elect to attach a signed Request as a pdf file through ORPIN or submit a signed hard-copy request.

\_\_\_\_\_  
Name  
Agency Head or designee (i.e., Designated Procurement Officer)

\_\_\_\_\_  
Date

PART B. The Procurement Policy Group of the Department of Administrative Services completes Part B.

**STATUTORY AND RULE AUTHORITY:**

ORS 279B.085(3) states the Director of the Department of Administrative Services may approve a special procurement if the Director finds that a written request submitted under ORS 279B.085(2) demonstrates that the use of a special procurement as described in the request, or an alternative procedure prescribed by the Director will:

- (a) Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
- (b)(A) Result in substantial cost savings to the contracting agency or to the public; or
- (B) Otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

OAR 125-246-0170 delegates the authority of the Director to approve special procurements to the Chief Procurement Officer of the Procurement Policy Group, Department of Administrative Services. OAR 125-247-0285 through 125-247-0288 implement ORS 279B.085.

**FINDINGS:**

**The findings are accepted, adopted, and incorporated by reference herein.**

**CONDITIONS OF APPROVAL:**

1. **Notice Period before Award.** Procurement Services shall post the notice.
2. The Special Procurement may not be used until after the completion of the seven (7) day notice period required pursuant to OAR 125-247-0287(4), and either:
  - a. No protests or objections were received by Procurement Services in response to this notice, or
  - b. If any protest or objection is received during the notice period, then not until:
    - i. A copy of it is delivered to the Procurement Policy Group Analyst for this Special Procurement, and
    - ii. The Chief Procurement Officer or delegate confirms in writing the first possible award date.
3. **SB 1518 (2012) Requirements.** Procurement Services shall comply with the requirements of SB 1518 (Chapter 53, 2012 Laws), regarding a report about this Special Procurement. Agency shall use a form and follow the instructions provided by the Chief Procurement Officer or delegate.

**APPROVED:**



Karen Hartley, Policy Analyst and Delegate for  
Dianne Lancaster, Chief Procurement Officer,  
DAS Chief Financial Office, Procurement Policy

12-23-13  
Date