

REQUEST FOR SPECIAL PROCUREMENT
No. REQ-10700-00056353, Amendment No. 5
(formerly SP-228-08)

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

1. **Requesting Agency Name:** Department of Administrative Services
2. **Date of Request:** December 5, 2023 3. **Agency Number:** 10700
4. **Agency Contact Name:** Kelly Mix 5. **Phone:** 971-719-1680
6. **Type of Request:** Class Special Procurement Contract-specific Special Procurement
7. **Amendment Time Period Requested:** From: December 21, 2023 To: December 31, 2028
8. **Total Estimated Cost for Amendment Time Period:** Over \$1 Million (impossible to anticipate)
- 9.a **Title:** Special Procurement for Disaster Response

9.b Supplies and/or Services to be acquired:

All supplies, ordinary construction, and construction emergency work needed in response to disasters (supplies and services). Supplies and Services are defined in Oregon Administrative Rule (“OAR”) 125-246-0110.

10. Amendment Request, Background, Current Need, and Proposed Contracting Procedure:

A. Amendment Request:

Oregon Department of Administrative Services (“DAS” or “Agency”) seeks approval of this Special Procurement (“SP”) #REQ-10700-00056353, Amendment #5 (formerly SP-228-08) to:

- Reinstatement the SP retroactive to December 21, 2023.
- Amend the SP Time Period 5-years, through December 31, 2028.

B. Background:

Poised procurement processes to support immediate disaster response Supplies and Services appropriations are, and will remain, a perpetual need. In the last few years, Oregon has experienced numerous disasters including:

- April 2019: An atmospheric river event caused extended and widespread flooding, flash flooding, mudslides, and landslides from the Willamette Valley to Eastern Oregon. The counties of Curry, Douglas, Grant, Linn, Umatilla and Wheeler were the most severely impacted.
- September 2020: The 2020 wildfire season was the most destructive in Oregon history. It burned more than 1 million acres and 4,000 homes. At least 40,000 people were evacuated and needed food, shelter, and other supports. This SP was leveraged to:
 - establish temporary shelter in the parking lot of the Clackamas Town Center (Happy Valley, Oregon), the Oregon State Fairgrounds (Salem, Oregon) for those needing livestock support, and many other locations.

- procure food, water, and hay for livestock.
- rent portable bathrooms.
- June 2021: The 2021 ‘Heat Dome’ registered temperatures in the Willamette Valley up to 117°F from late-June to mid-July. Also in 2021, the Oregon Bootleg Fire (near Bootleg Spring) burned 413,765 acres from July 6, 2021 – August 15, 2021, when it was contained. It is the third-largest fire in the history of Oregon since 1900.
- 2022: The U.S. had 18 different billion-dollar weather disasters in 2022. The two most expensive were hurricane Ian (\$113 billion in damage) and drought (\$22 billion in damage). By December of 2022, nearly all of Oregon was in some form of drought.

Planners have continued to learn from these and other emergency situations since the approval of SP Amendment #4, attached hereto as ‘SP_Attachment-1’.

For additional historical and background information, see ‘SP_Attachment-1’

C. Current Need:

SP Amendment #4 expired December 21, 2023. Soonest retroactive approval and reinstatement of this SP Amendment #5 is imperative to Oregon’s disaster management and recovery.

With the exception of SP Section 7, Time Period Requested, all other Sections of SP Amendment #4 (SP_Attachment-1) remain unchanged and still apply, including but not limited to:

- Declaration, Purpose, and Use of the SP: Section 10.B. last paragraph
- Responders: Section 10.C
- Authority to Use the SP: Section 10.D

D. Proposed Contracting Procedure:

As set out in SP Amendment #4 (SP_Attachment-1), Sections 10.E and 10.F.

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 SP is justified by the urgent need to purchase essential Supplies and Services in response to a disaster. The same justification facts set out in Section 11 of SP Amendment #4 (SP_Attachment-1), still apply.

12. Findings to Satisfy the Required Standards: This proposed special procurement:

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

The same supporting facts detailed in Section 12(a) of SP Amendment #4 (SP_Attachment-1) still apply.

and

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

or

X (b)(ii) 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:

The same findings of fact detailed in Section 12(b)(ii) of SP Amendment #4 (SP_Attachment-1), which promote the interests of the State and the public, still apply.

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

Signature: e.g. *Electronically in OregonBuys* _____

Name/Title:

Date: _____

PART B. The Department of Administrative Services completes Part B.

STATUTORY AND RULE AUTHORITY:

ORS 279B.085(2) 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(4) 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 of the Department of Administrative Services to approve special procurements to the State Chief Procurement Officer. OAR 125-247-0285 through 125-247-0288 implement ORS 279B.085.

OAR 125-247-0700(2) **Protests and Judicial Review of Special Procurements designates the State Chief Procurement Officer as the Contract Review Authority.**

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

CONDITIONS OF APPROVAL:

1. **Notice Period.** The Authorized Agency shall post the Public Notice on OregonBuys. 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 Written protests are received by the Contract Review Authority, State Chief Procurement Officer, from an Affected Person in response to the notice, or
 - b. If any protest is received during the notice period, then not until:
 - i. the State Chief Procurement Officer or delegate issues a written disposition of the protest in accordance with ORS 279B.400 and OAR 125-247-0700 and OAR 137-047-0700, and
 - ii. confirms in writing the first possible date of use of the Special Procurement.
2. **ORS 279A.165 Requirements.** Agency shall comply with the requirements of ORS 279A.165 and OAR 125-247-0287(12) regarding a report about this Special Procurement. Agency shall use a form and follow the instructions provided by the State Chief Procurement Officer or delegate.
3. Upon completion of the Notice (section 1) approval of this SP Amendment #5 applies retroactively to December 21, 2023.

APPROVED:


Jay Jackson, Procurement Policy Officer
Department of Administrative Services

12-22-2023
Date

**REQUEST FOR SPECIAL PROCUREMENT
SP-228-08, Amendment no. 4**

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

1. **Requesting Agency Name:** Department of Administrative Services
2. **Date of Request:** December 7, 2018 3. **Agency Number:** 10700
4. **Agency Contact Name:** Kelly Mix 5. **Phone:** 503-378-2998
6. **Type of Request:** Class Special Procurement Contract-specific Special Procurement
7. **Amendment Time Period Requested:** From: December 22, 2018 To: December 21, 2023
8. **Total Estimated Cost for Amendment Time Period:** 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 on OAR 125-246-110.
10. **Amendment Request, Background, and Proposed Contracting Procedure:**

A. Amendment Request:

The Agency is seeking approval to Amendment 4 of Special Procurement #SP-228-08 to change the agency contact from Debbie Dennis to Kelly Mix, restate the SP in order to update information and the contracting procedure, update rule references, and extend time.

B. Background:

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 lessons of Hurricane Katrina, Hurricane Maria, 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, and buildings)

ORS 125-247-0280 Emergency Procurements permits supplies and services in an emergency. One type of emergency is a disaster.

Declaration. The purpose of this Special Procurement 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 activities under ORS 431.147 (collectively, "Disaster")

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

C. Responders. Responder's 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)

D. Authority to Use this Special Procurement:

1. Responders under DAS procurement authority are authorized to use this Special Procurement by OAR 125-246-017(2).
2. All other Responders must be authorized to use this Special Procurement by their own statutes, rules, or policies.

E. Proposed Contracting Procedure:

DAS Procurement Services (DAS PS) will issue a public notice on the Oregon Procurement Information Network (ORPIN), as required by administrative rule regarding approval of this SP amendment. The public notice will include a process by which any affected person may protest the approval. If no protests are received and sustained, DAS PS and the Responders described herein will implement and follow the procedures below during a Disaster.

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. **Emergency control centers.** The State of Oregon, Emergency Operations Plan (Sections: 5.2 & 3.3.3) describes the state Emergency Coordination Center (ECC) and Agency Operations Center's (AOC). An authorized individual or designee from an emergency control center, like the ECC or an individual AOC (as specifically described for public health under ORS 431.133.e) initiates and oversees the request to purchase, lease or rent supplies or services and may require supporting documentation.

- b. Responder. An authorized individual or designee from that Responder responds to the request (10.C) by purchasing, leasing, or renting the supplies and services in accordance with Special Procurement process and communicating with the ECC or an 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 the initial request, order confirmation, delivery, demobilization, 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.E).

3. **Selection**

a. Conducting Purchases.

- i. **The Buy Decision**. Supplies and services should be obtained using the Buy Decision pursuant to OAR 125-247-0200 to the extent practicable during a Disaster. Using the buy decision can ensure the authorized individual of the Responder is conducting purchases to the highest level of fairness and competition.
 - ii. **Contracts and Agreements**. Supplies and services may be available through contracts or agreements. These include but are 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 for use under this process.
 - iii. **Donations of Supplies and Services**. Supplies and services may be donated to the Responder. In most donation cases, the vendor will initiate the donation; in doing so, the vendor may or may not ask for a concession in granting donations. i.e. having the governor mention the vendors name at a press conference (concession requests must be vetted with the corresponding entity before agreeing to the donation).
 - iv. **Direct Award**. Supplies and services may be directly purchased without competition from any available resource identified by the authorized individual of the Responder. When practicable, competition is encouraged, direct award may not meet FEMA reimbursement eligibility guidelines.
- b. 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 in formal competitive process may be verbal or written and use quotes, informal bids, or informal proposals. When practicable, competition is encouraged.
 - c. Unlimited Amounts. Responders may directly award Contracts for unlimited amounts.
 - d. Limited Terms. Awarded Contracts must be limited to the term of the Disaster (see 10.B Declaration)
 - e. Federal Purchasing Programs.

- i. **GSA Schedules.** The federal government has authorized state, including the Responders, to purchase through the GSA Disaster Purchasing Program for the purchase of supplies and services directly from all GSA Schedules <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-schedules> to facilitate disaster preparation, response, or major disaster recovery. Purchases made in support of recovery must be in response to a Stafford Act Presidential declaration.

The Federal Emergency Management Agency (FEMA) manages the list of declared disasters. <https://www.fema.gov/disasters>

State and local governments can purchase equipment and services to support natural or man-made disasters, including acts of terrorism, or nuclear, biological, chemical, or radiological attack.

- ii. **Department of Defense.** The federal government has authorized state, including the Responders, to purchase equipment suitable for emergency response activities through the Department of Defense (10 U.S.C 381).

GSA Disaster Purchasing Program and 10 U.S.C 381 are similar to Section 211 of the electronic Government act of 2002 (Schedule 70) in effecting 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 and 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 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 GSA’s Disaster Purchasing Program 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 subsection 10.E

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 purchases under this Special Procurement, the authorized individual must follow FEMA regulations and try to avoid making a purchase that would disqualify for FEMA reimbursement. See: <https://www.fema.gov/>

F. Legal and other Requirements for State Responders

1. This Special Procurement revises the emergency procurement procedures of OAR 125-247-0280. OAR 125-247-0280 does 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 of 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, above.

This Special Procurement will only be used:

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

12. Findings to Satisfy the Required Standards: This proposed special procurement:

X (a) will be unlikely 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 279B.080, and the procurement process will be according to this 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 the Buy Decision 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.
and

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

or

X (b)(ii) 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 manner and expeditious manner.

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

Signature: e.g. *Electronically in ORPIN*

Name/Title:

_____ Date

PART B.

STATUTORY AND RULE AUTHORITY:

ORS 279B.085(2) 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(4) 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 of the Department of Administrative Services to approve special procurements to the State Chief Procurement Officer. OAR 125-247-0285 through 125-247-0288 implement ORS 279B.085.

OAR 125-247-0700 (2) Protests and Judicial Review of Special Procurements designates the State Chief Procurement Officer as the Contract Review Authority.

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

CONDITIONS OF APPROVAL:

1. **Notice Period.** The Authorized Agency shall post the Public Notice on ORPIN. The Special Procurement as amended 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 Written protests are received by the Contract Review Authority, State Chief Procurement Officer, from an Affected Person in response to the notice, or
 - b. If any protest is received during the notice period, then not until:
 - i. the State Chief Procurement Officer or delegate issues a written disposition of the protest in accordance with ORS 279B.400 and OAR 125-247-0700 and OAR 137-047-0700, and
 - ii. confirms in writing the first possible date of use of the Special Procurement.
2. **ORS 279A.165 Requirements.** Agency shall comply with the requirements of ORS 279A.165 and OAR 125-247-0287(12) regarding a report about this Special Procurement. Agency shall use a form and follow the instructions provided by the State Chief Procurement Officer or delegate.

APPROVED:



Gail L. Carter, Procurement Policy Officer on behalf of
Debbie Dennis, State Chief Procurement Officer,
Department of Administrative Services

12/10/18

Date