



OKLAHOMA
Office of Management
& Enterprise Services

Central Purchasing

PROCUREMENT INFORMATION MEMORANDUM

Affected Entities/Personnel: State Agencies	Subject: Emergency Declaration by State Agencies
Effective Date of PIM: 05.01.2019	Point of Contact: PIM@omes.ok.gov
Prior PIM: 2010-03 and CAP Policy Memorandum P006	Statutory and Rule Reference: 1. Title 74 O.S. § 85.7(A)(4) and (5). 2. Title 61 O.S. § 130 and §65 3. OAC 260: 115-7-19
Approved: Ferris J. Barger, State Purchasing Director	Approval Date: 05.01.2019

As a means of disseminating relevant state procurement information to state entities, the Office of Management and Enterprise Services, Central Purchasing, periodically issues procurement information memoranda. To the extent any information in this procurement information memorandum (PIM) conflicts with information in a previously issued memorandum, the information in this PIM controls.

Summary

This joint Purchasing/Construction memorandum has been prepared by Central Purchasing to provide guidance and clarification to state agencies when an emergency event occurs that requires an emergency declaration for the procurement of goods and/or services. The intent of this document is to clarify jurisdiction and legal requirements under the Central Purchasing Act and the Public Competitive Bidding Act as applicable.

Statutory Reference

Central Purchasing Division	Construction and Properties Division
<p>Central Purchasing Act: 74 OS §85.7(A)(4), general, requisitions for emergency acquisitions</p> <p>74 OS §85.7(A)(5), requisitions for serious environmental emergency</p>	<p>Public Competitive Bidding Act: 61 O.S. §130, Emergencies, Construction</p> <p>State Consultants Act: 61 O.S. §65, Emergencies requiring design consultant</p>

Definitions

Central Purchasing Division	Construction and Properties Division
<ul style="list-style-type: none"> • "Acquisition" means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease-purchase, lease with option to purchase, or rental pursuant to The Oklahoma Central Purchasing Act unless the items, products, supplies, services, or equipment are exempt pursuant to The Oklahoma Central Purchasing Act. [74 O.S. 85.2] • "Emergency acquisition" means an acquisition made by the State Purchasing Director or a state agency without seeking competitive bids to relieve an unforeseen condition believed to endanger human life or safety, poses imminent danger to significant property or is a condition certified by the Governor as a serious environmental situation. [OAC 260:115-1-2] • Bid solicitation - Emergency notification. For an emergency acquisition authorized by Oklahoma statutes, the State Purchasing Director or a state agency shall select a supplier or a group of suppliers to notify utilizing telephone, facsimile or electronic commerce. [260:115-7-19(1)] 	<ul style="list-style-type: none"> • "Construction" means the process of planning, acquiring, designing, building, equipping, altering, repairing, improving, maintaining, or demolishing any structure or appurtenance thereto including facilities, utilities, or other improvements to any real property..." [61 O.S. §202(3)]. • Emergency as used in this section [61 O.S. §130] shall be limited to conditions resulting from a sudden unexpected happening or unforeseen occurrence or condition whereby the public health or safety is endangered.

Application: Examples of Emergency Events

Central Purchasing Division	Construction and Properties Division
<p>Event: Pipe breaks in an agency-owned building and floods office.</p> <p>Acquisitions:</p> <ul style="list-style-type: none"> • Agency needs to acquire moving and restoration services to move office contents and salvage personal property. • Agency needs to acquire replacement equipment in order to stay in operation. 	<p>Event: Pipe breaks in an agency-owned building and floods office.</p> <p>Acquisitions:</p> <ul style="list-style-type: none"> • Agency needs to retain plumbing contractor and/or general contractor to repair plumbing, replace damaged ceiling, and replace carpet and paint in order to move back in to the building. • Agency needs to acquire air quality testing by a Consultant or mold abatement by a qualified contractor.
<p>Event: Pipe breaks in leased building, floods office.</p> <p>Acquisitions:</p> <ul style="list-style-type: none"> • Agency needs to acquire moving services to move office contents and salvage personal property. • Agency needs to acquire replacement equipment in order to stay in operation. 	<p>Event: Pipe breaks in leased building, floods office.</p> <p>Acquisitions:</p> <ul style="list-style-type: none"> • No declaration under Title 61 required as state does not own building.
<p>Event: Tornado in state prompts Governor to issue a state emergency declaration.</p> <p>Acquisitions:</p> <ul style="list-style-type: none"> • Agency needs to lease generators to allow for dispensing of fuel in impacted areas. • Agency needs to purchase supplies to serve tornado victims. • Agency needs to hire assistance for debris removal. 	<p>Event: Tornado in state prompts Governor to issue a state emergency declaration. (No declaration by agency needed; reference Governor’s declaration on Requisition)</p> <p>Acquisitions:</p> <ul style="list-style-type: none"> • Agency needs to stabilize and repair damaged roof. • Agency needs to replace broken windows. • Agency needs to stabilize or remove structurally damaged building to prevent further damage. • Agency needs immediate building repair and restoration.

General Provisions for Emergencies

Central Purchasing Division	Construction and Properties Division
<p>For Emergency Acquisitions < \$100,000:</p> <ul style="list-style-type: none"> • Agency has authority to issue purchase order up to \$100,000 for an acquisition in response to an emergency. • Agency notifies Central Purchasing within five (5) days of issuance of purchase order. • State Purchasing Director sends the requisition and a written analysis to the Governor, President Pro Tempore of the Senate, and the Speaker of the House. 	<p>For Emergency Acquisitions < \$35,000:</p> <ul style="list-style-type: none"> • Per 61 O.S. § 130, agencies with boards or commissions may delegate to their chief executive officer the authority to declare an emergency up to \$35,000. <p>For Emergency Acquisitions > \$35,000:</p> <ul style="list-style-type: none"> • Emergencies above \$35,000 must be declared by official action of the board or commission. • For an agency without a board or

<p>For Emergency Acquisitions > \$100,000:</p> <ul style="list-style-type: none"> • Agency CPO notifies State Purchasing Director concerning the facts and circumstances giving rise to the emergency and actions taken to secure or contain the situation, including dollar amounts of any acquisitions for goods or services within the \$100,000 limit. • State Purchasing Director expedites emergency acquisition of goods or services that will exceed \$100,000 in accordance with the Oklahoma Central Purchasing Act. 	<p>commission, the agency director may declare an emergency for any amount.</p> <p>General Provisions:</p> <ul style="list-style-type: none"> • For acquiring the services of a contractor, an emergency declaration only suspends the requirement for competitive bids. All other requirements of the Public Competitive Bidding Act apply, such as written contract, insurance and bonds if the cost of the work exceeds the statutory amount (\$50,000) apply. • An emergency declaration does not suspend the Public Building Construction and Planning Act. All Emergency contracts > \$2,500 are awarded by Construction and Properties. • Agency Director notifies State Construction Administrator in writing within ten (10) days of a declaration. • State Construction Administrator submits an annual report summarizing all emergency declarations to the Governor, President Pro Tempore of the Senate, and the Speaker of the House.
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Recommended Procedures for Emergency Events

Note: The steps outlined below are for a typical agency that has a board or commission. The steps are recommended “best practices” for proper documentation. Each agency’s internal operating procedures may dictate adjustment to these recommendations.

<p>Central Purchasing Division: < \$100,000</p>	<p>Construction and Properties Division: < \$35,000</p>
<ul style="list-style-type: none"> • Agency representative (supervisor, division director) notifies CPO of emergency condition • CPO notifies Agency Director • Agency Director declares an Emergency and if applicable, notifies Board/Commission with details of emergency; Central Purchasing recommends the Agency Director notify the State Purchasing Director as a heads-up.* • Board documents Emergency in next regularly scheduled meeting • CPO/Agency staff locates suitable vendor and arranges scope of work/price • CPO issues Purchase Order to vendor(s). 	<p>Note: There is no dollar limit to these procedures if Agency does not have a governing board or commission.</p> <ul style="list-style-type: none"> • Agency representative (supervisor, division director) notifies Agency CPO of emergency condition • Agency CPO notifies Agency Director • Agency CPO or agency facility manager calls CAP Projects Administrator at 405/521-3171 for heads-up and/or assistance, depending on the situation. • Agency Director declares an Emergency and sends emergency declaration letter to State

<ul style="list-style-type: none"> • CPO notifies Central Purchasing within 5 days. Note: 74 OS §85.7(A)(4) requires sending a requisition for acquisitions that exceed delegated authority threshold. The requisition must include the facts and circumstances giving rise to the emergency and actions taken, including dollar amounts for goods or services secured to contain the situation. 	<p>Construction Administrator.*</p> <ul style="list-style-type: none"> • Agency CPO/Agency staff locates suitable contractor(s) and arranges scope of work/price. May ask assistance from CAP. • If a Consultant (i.e. architect or engineer) is required, CAP will secure the consultant and notify agency of requisition requirement. • Agency CPO issues Requisition(s) to CAP. • CAP awards contracts for emergency services (both contractor and consultant). • Reminder: when locating/negotiating with a suitable construction contractor, insurance is always required in reasonable amounts and bonds are required if the contract exceeds \$50,000.
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* If emergency situation potentially involves acquisitions under both Title 74 and Title 61, a single letter addressed jointly to the Purchasing Director and Construction Administrator is recommended.

Central Purchasing Division: > \$100,000	Construction and Properties Division: > \$35,000
<p>Note: Law is silent on this category. Following are recommendations from the State Purchasing Director.</p> <ul style="list-style-type: none"> • Agency representative (supervisor, division director) notifies Agency CPO of emergency condition • Agency CPO notifies Agency Director • Agency Director declares an Emergency and if applicable, notifies Board/Commission with details of emergency; Central Purchasing recommends the Agency Director notify State Purchasing Director as a heads-up. • Board documents Emergency in next regularly scheduled meeting. • Agency CPO notifies State Purchasing Director of the facts and circumstances giving rise to the emergency and actions taken including dollar amounts for goods or services secured to contain the situation. • State Purchasing Director expedites acquisition of goods or services subject to the Oklahoma Central Purchasing Act. 	<p>(Applies only to agencies governed by a board or commission.)</p> <ul style="list-style-type: none"> • Agency representative (supervisor, division director) notifies CPO of emergency condition • Agency CPO notifies Agency Director • Agency CPO or agency facility manager calls CAP Projects Administrator at 405/521-3171 for heads-up and/or assistance, depending on the situation. • Agency Director notifies Board and places emergency item on next board agenda for official action. • Following approval by 2/3 majority of the board, Agency Director forwards cover letter and copy of official Board action to State Construction Administrator. • Agency CPO/CAP staff locates suitable contractor(s) and arranges scope of work/price. May ask assistance from CAP. • If a Consultant (i.e. architect or engineer) is required, CAP will secure the consultant and notify agency of requisition requirement. • Agency CPO issues Requisition(s) to CAP.

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| | <ul style="list-style-type: none">• CAP awards contracts for emergency services (both contractor and consultant).• Reminder: when locating/negotiating with a suitable construction contractor, insurance is always required in reasonable amounts and bonds are required if the contract exceeds \$50,000.• **Special Note – see below. |
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** Depending on the severity of a construction emergency, the State Construction Administrator may authorize immediate assistance from a contractor in advance of Board approval. As an example, if a building is in danger of collapse or a condition exists that may cause further endangerment or property damage, the Administrator may recommend that the agency director exercise their authority for an acquisition up to \$35,000 to stabilize the condition pending Board approval. Also, pursuant to 61 O.S. §65, the State Construction Administrator has authorization to engage the services of a Consultant to immediately begin design/engineering work necessary to effect repairs.