



John S. Richard
Director

Brad Henry
Governor

STATE OF OKLAHOMA
DEPARTMENT OF CENTRAL SERVICES

Central Purchasing Division
PROCUREMENT INFORMATION MEMORANDUM 10-03

Construction and Properties Division
CAP POLICY MEMORANDUM P006

SUBJECT: Clarifications and Guidelines for Emergency Declarations by State Agencies

TO: All Certified Procurement Officers

DATE: July 6, 2010

This joint Purchasing/Construction memorandum has been prepared by DCS 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
Central Purchasing Act: 74 OS §85.7(A)(4), general, requisitions for emergency acquisitions 74 OS §85.7(A)(5), requisitions for serious environmental emergency	Public Competitive Bidding Act: 61 O.S. §130, Emergencies, Construction State Consultants Act: 61 O.S. §65, Emergencies requiring design consultant

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 	<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.

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<p>significant property or is a condition certified by the Governor as a serious environmental situation. [OAC 580:15-2-2]</p> <ul style="list-style-type: none"> • 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. [580:15-4-5(c)(3)] 	
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Application: Examples of Emergency Events

Central Purchasing Division	Construction and Properties Division
<p>Event: Pipe breaks in an agency-owned building and floods office. 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. 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. 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. 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. 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) 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 > \$100,000:</p> <ul style="list-style-type: none"> • Agency CPO notifies State Purchasing Director concerning the facts and circumstances giving rise 	<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 commission, the agency director may declare an emergency for any amount. <p>General Provisions:</p> <ul style="list-style-type: none"> • For acquiring the services of a contractor, an

<p>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.</p> <ul style="list-style-type: none"> • State Purchasing Director expedites emergency acquisition of goods or services that will exceed \$100,000 in accordance with the Oklahoma Central Purchasing Act. 	<p>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.</p> <ul style="list-style-type: none"> • An emergency declaration does not suspend the Public Building Construction and Planning Act. <u>All Emergency contracts > \$2,500 are awarded by Construction and Properties.</u> • 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.

Central Purchasing Division: < \$100,000	Construction and Properties Division: < \$35,000
<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; DCS 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). • 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>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 Construction Administrator.* • 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.

* 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; DCS 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. • 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.

** 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.

For further information, contact:

Central Purchasing Division
 Steve Hagar, 405/522-3369
 Lee Johnson, 405/522-5395

Construction and Properties Division
 Mo Banta, 405/522-5032 or
 Mike Jones, 405/521-3171



Scott Schlotthauer
 State Purchasing Director



John Morrison
 State Construction Administrator