

DAS Statewide Policy and Operating Procedure

SUBJECT: Delegation of Procurement Authority
Revision No. 2

NUMBER: 107-009-010

DIVISION: State Services Division,
State Procurement Office

EFFECTIVE DATE: November 3, 2005

APPROVED:

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**POLICY/
PURPOSE:**

This Policy provides guidance and direction on all delegations of authority, including:

- I. Revocation of prior delegation policies;
- II. Revocation of all delegation agreements below specified Thresholds;
- III. Conversion and continuation of delegation agreements;
- IV. The buy decision for all Procurements;
- V. Delegation of authority for specified types of Procurements;
- VI. Informal Procurements;
- VII. Delegation requests to the State Procurement Office;
- VIII. Revocation of delegations; and
- IX. Return of delegations from Agencies to the State Procurement Office.

These nine sections of Policy are set forth within the Guidelines below.

For Agencies requesting delegations, procedures follow Section IX of this Policy.

AUTHORITY:

Oregon Revised Statutes (ORS) 279A.140; Oregon Administrative Rules (OAR) 125-246-0170

APPLICABILITY:

All state agencies subject to the procurement authority of the Department of Administrative Services (DAS) in accordance with ORS 279A.140.

ATTACHMENTS:

None

DEFINITIONS:

All of the definitions in OAR 125-246-0110 are incorporated by reference in this Policy.

“Agency” or “Agencies” means one or more state agencies subject to the procurement authority of the Department of Administrative Services in accordance with ORS 279A.140.

“Analyst” means the individual who is responsible for evaluating any Delegation Request and making a recommendation for its disposition. “Analyst” is a functional term for purposes of this Policy and includes: the Rules and Policy Analyst, the Performance and Compliance Analyst, a State Procurement Analyst, or an Operations Manager.

“Authorized Agency” means those Agencies of the State of Oregon that are subject to the procurement authority of the Director of DAS pursuant to ORS 279A.050 and 279A.140 and with delegated authority pursuant to OAR 125-246-0170. This term

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DEFINITIONS (Continued)

“**DAS**” means the Department of Administrative Services of the State of Oregon.

“**Operations Manager**” or “**OM**” means the individual responsible for the work of the Analysts involved directly in purchasing on behalf of Agencies and who are now known as State Procurement Analysts, and their related operations.

“**SPO**” means the State Procurement Office of the State Services Division of DAS.

“**Supplies and Services**” includes “**Supplies or Services,**” and collectively means Goods, trade services, and personal services, separately or in any combination of these terms thereof as appropriate within the context of the Rule. “Supplies and Services” includes the terms “goods and services,” “goods or services,” and “personal services” contained in ORS 279A and B. This term does not include Construction Services or Architectural, Engineering and Land Surveying Services and Related Services, governed under ORS 279C.

GUIDELINES:

I. Revocation of Prior Delegation Policies

Effective March 1, 2005, this Policy revokes:

- A. Policy 125-2-200, “Delegation of Approval and Contracting Authority,” effective July 1, 1998; and
- B. Policy 125-3-230, “Delegated Purchasing,” effective October 1, 2002.

II. Revocation of All Delegation Agreements Below Specified Thresholds

Effective March 1, 2005, all delegations of authority to Agencies, whether by agreement or order, are hereby revoked, if such delegations authorize Procurements and Contracts, separately or together, and limited to a cumulative amount, including amendments, equal to or less than:

- A. \$150,000 for Supplies and Services;
- B. \$150,000 for Architectural, Engineering and Land Surveying Services and Related Services (A&E); or
- C. \$100,000 for Public Improvements, or \$50,000 in the case of Contracts for highways, bridges and other transportation projects; (collectively, Thresholds).

III. Conversion and Continuation of Delegation Agreements

- A. Effective March 1, 2005, all delegation agreements (also known as public contracting interagency agreements) exceeding the Thresholds described in Section II.A. continue, unless expressly modified or revoked by the State Procurement Office (SPO).

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GUIDELINES (Continued)

- B. Effective March 1, 2005, these continuing delegation agreements are amended as follows: all citations of Oregon Revised Statutes (ORS) 279 and Oregon Administrative Rules (OARs) within these agreements are deleted and replaced by the following new citations:

Old, Deleted Citations (general subject)

New, Replacement Citations

ORS 279 (formal procedures):	ORS 279ABC
ORS 279.005 to 279.795 (competitive procurement requirements):	ORS 279ABC
ORS 279.712 (DAS agencies):	ORS 279A.140
ORS 279.727 (delegation request):	ORS 279A.075; OAR 125-246-0170((8)
OAR 125-030-0001(3) (authority):	OAR 125-246-0170
OAR 125-025-0600 ([sic] A&E):	OAR 125-246-0170
OAR 125 Divisions 030 through 360:	OAR 125 Divisions 246 through 249
OAR Chapter 125 Divisions 30 and 310 rules:	OAR Chapter 125 Divisions 246 and 247
OAR 125-020 (personal services):	OAR 125-246 and 247
OAR Chapter 125 Divisions 020 and Chapter 137 Division 045 (personal services):	OAR Chapter 125 Divisions 246 and 247
Vendor Information Program (VIP):	Oregon Procurement Information Network (ORPIN)

IV. The Buy Decision for all Procurements

The "Buy Decision" means the initial procurement decision, whether to procure through various socio-economic programs, agreements, or the open market. Agencies must make their Buy Decisions for all Procurements in the order set forth in subsections A through D (Priority) and subject to the considerations described in subsection E below (Considerations). If a higher Priority satisfies a Procurement, the Agencies must procure through that higher Priority and may not elect to procure through a lower Priority, subject to the law and Considerations.

- A. Surplus Property, to promote the efficient use of existing resources (see OAR 125-246-0700 through 125-246-0730);
- B. Inmate Labor, as required by the Oregon Constitution, Article I;
- C. Qualified Rehabilitation Facilities (QRFs), to assist individuals with disabilities through gainful employment (see ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045); and
- D. Statewide DAS Price Agreement, to promote economy and efficiency through volume and strategic purchases (see OAR 125-247-0296).

GUIDELINES (Continued)

E. Considerations.

1. Agencies must comply with Oregon Chapter Law 351, 2005, amending ORS 200.035 (amended ORS 200.035) and any DAS-issued MWESB Policy in order to support certified minority, women and emerging small businesses; and
2. Agencies may elect to procure through an Intergovernmental Agreement (IGA) to support the use of existing state resources; this election preempts any Priority.

F. Open Market. If subsections A through D of this Section do not apply and the Agency does not elect to procure through an IGA in accordance with subsection E.2., then the Agency may procure Supplies and Services, Public Improvements, and Architectural, Engineering, Land Surveying and Related Services through the Open Market, using the methods provided under the Public Contracting Code, related Rules, and policies.

V. Delegation of Authority for Specified Types of Procurements

A. A&E Procurements. Agencies are hereby authorized to conduct all Procurement, including Solicitation, Award, execution of Contracts, Amendments, and other Contract Administration, for Architectural, Engineering and Land Surveying and Related Services (A&E) pursuant to ORS 279C.100 through 279C.125 and OAR Chapter 125, Division 248.

B. Brand Name.

1. **Specifications.** Agencies are hereby authorized to determine brand name specifications for Solicitations pursuant to ORS 279B.215. In addition to the authority given to the Agencies, the Chief Procurement Officer of SPO also has authority to determine brand name specifications for Solicitations pursuant to ORS 279B.215.
2. **Process.** Agencies are hereby authorized to determine brand name within a Sole Source Procurement not exceeding \$75,000 and pursuant to ORS 279B.075, OAR 125-247-0275 and 125-247-0288(3). The Chief Procurement Officer continues to have exclusive authority in accordance with OAR 125-246-0170 to determine brand name within a Sole Source Procurement and brand name within a Special Procurement exceeding \$75,000, and in accordance with ORS 279B.075, ORS 279B.085; OAR 125-247-0275 and 125-247-0287, respectively.

VI. Informal Procurements

A. General.

1. **Applicability.** This Section VI applies to Intermediate Procurements of Supplies and Services, Informal Selection of A&E, and Competitive Quotes for Public Improvements.
2. **Thresholds.** The following Thresholds apply for these Informal Procurements:
 - a. \$150,000 for Intermediate Procurement of Supplies and Services;

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- b. \$150,000 for Informal Selection of A&E; or
 - c. \$100,000 for Competitive Quotes for Public Improvements, or \$50,000 in the case of Competitive Quotes for highways, bridges and other transportation projects.
3. **Solicitation Through ORPIN.** An Agency must post on ORPIN a public notice of its Solicitation of at least three Quotes, Bids, or Proposals. In addition, the Agency may informally solicit Quotes, Bids, or Proposals by any other appropriate means.
4. **Other Policies.** Agencies must comply with the policies of DAS, including but not limited to the ORPIN Policy, No. 125-009-020, and any DAS-issued MWESB Policy.
- B. Informal Procurements Exceeding \$5,000 and Less Than \$75,000.**
- 1. Agencies must procure:
 - a. Intermediate Procurements for Supplies and Services less than \$75,000 in accordance with ORS 279A, ORS 279B.070, and OAR 125-247-0270;
 - b. Informal Selection for A&E less than \$75,000 in accordance with ORS 279A, ORS 279C.110, and OAR 125-248-0210; and
 - c. Competitive Quotes less than \$75,000, or for highways, bridges and other transportation projects equal to or less than \$50,000, in accordance with OAR 125-249-0160.
 - 2. In addition to its solicitation through ORPIN, Agencies may informally solicit Quotes, Bids, or Proposals by verbal or other written means.
- C. Equal to or Exceeding \$75,000 and up to the Specified Threshold.** For all Intermediate Procurements of Supplies and Services, Informal Selections of A&E, and Competitive Quotes for Public Improvements equal to or exceeding \$75,000, and not exceeding the Thresholds described in Section VI.A. above, an Authorized Agency must meet the following conditions:
- 1. **Written Solicitation.** Agencies must use a Written Solicitation that includes fair, efficient, competitive Award evaluation criteria. This Written Solicitation may allow revisions, at the discretion of the Agency. The process and potential revisions, if any, must be disclosed in the Solicitation. Agencies must document:
 - a. The Agency's methodology under this subsection VI. C.,
 - b. The Agency's compliance with legal sufficiency review requirements of the Attorney General under ORS 291.047; and
 - c. Communications between the Agency and Providers regarding:
 - i. The subject matter of OAR 125-246-0635;

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- ii. Offers;
 - iii. The Award; and
 - iv. Protests, if a protest opportunity is provided by the Agency, at its discretion.
2. **Notice.** In addition to its solicitation through ORPIN, Agencies may informally solicit Quotes, Bids, or Proposals by other written means (collectively, Notice). The Notice must provide:
- a. Where, when, how, and for how long the Written Solicitation may be obtained;
 - b. A general description of the Supplies and Services, A&E, or Public Improvement to be acquired;
 - c. A reasonable interval between the first date of notice of the Written Solicitation and the Closing; a reasonable interval for the purpose of this Policy is defined as at least seven (7) calendar Days;
 - d. The name, title and address of the individual authorized by the Agency to receive Offers; and
 - e. Any other information the Agency deems to be appropriate.
3. **Borderline Procurements.** If a Designated Procurement Officer or delegatee (DPO) in good faith estimated that the Procurement would be less than \$75,000, complied with section VI.B. and learned thereafter that all of the Quotes, Bids, or Proposals were equal to or minimally exceeding \$75,000, this Procurement is deemed to have complied with this Policy upon the following conditions:
- a. The Agency must document in its Procurement File the basis for its original estimate under \$75,000 and the process used; and
 - b. The Agency must still comply with sections VI.C.1a, 1c, 2b, 2c 3b, 3d, and 3e.

VII. Delegation Requests to the State Procurement Office

- A. Pursuant to OAR 125-246-0170(8), An Agency may submit a request for delegation to SPO for Procurement authority in accordance with the requirements of the Public Contracting Code, this Rule, and this Policy. SPO may delegate and revoke its Procurement authority, in whole or in part, to an [Authorized] Agency in accordance with this Rule and Policy. All delegations must be approved in Writing by the Chief Procurement Officer or delegatee (SPO) and based upon a determination, considering relevant factors set forth in this Policy. SPO may delegate its authority to meet short-term demands upon its staff and resources, arising from unusual circumstances.

GUIDELINES (Continued)

- B. Requests for delegation require SPO to consider each proposed delegation's impact on the SPO funding model and resources. This Policy involves continuous scanning of work by SPO for value and opportunities. If SPO cannot add value and a delegation to a capable Agency would be more streamlined and efficient, then pursuant to this Policy, SPO may delegate to such Agency.
- C. The goal of SPO is to conduct procurement and contracting activities that add value and support the strategic goals of the state. If the involvement of SPO does not lead to this goal, then pursuant to this Policy, SPO may delegate to a capable Agency in order to improve efficiencies, effectiveness and procurement outcomes.
- D. SPO may delegate authority to an Agency, provided SPO considers the criteria set forth in this Policy and the Agency has the capability to follow ORS 279ABC, related Rules, this Policy, and the conditions of the delegation.

VIII. Revocation of Delegations

SPO may revoke any delegation pursuant to this Policy at any time, by written notice, to the Agency based upon, but not limited to any of the following:

- A. Failure to comply with the requirements of the delegation;
- B. Deficiencies evidenced by performance audits performed by SPO, the Secretary of State, or the Legislative Assembly.
- C. Failure to comply with SPO training requirements to obtain an Oregon Basic Procurement Certification, Advanced Certification, or specific training described in the delegation;
- D. Lack of adequate experience in terms of procurement knowledge and any specialized knowledge pertinent to the authority delegated;
- E. The available resources of SPO to conduct the purchasing activities if authority is revoked; and
- F. The degree of economy and efficiency to be achieved in meeting the state's requirements if authority is revoked.

IX. Return of Delegations from Agencies to the State Procurement Office

If an Agency needs assistance, an Agency may request SPO to reclaim the authority previously delegated by SPO to the Agency. In its sole discretion, SPO may accept the reclamation request for assistance according to the responsibilities, resources, and needs of SPO and the Agency.

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PROCEDURES FOR AN AGENCY TO REQUEST A DELEGATION UNDER SECTION VII:

<u>Step</u>	<u>Responsible Party</u>	<u>Action</u>
1.	Initiator	Obtains from the SPO website the Delegation Request form and communicates with the Agency's DPO, who must make the Request.
2.	Designated Procurement Officer (DPO)	<ul style="list-style-type: none">a. Submits a signed Delegation Request to SPO's Chief Procurement Officer (CPO) or External Operations Manager (EOM), andb. If timing is an important factor, submits a Purchase Request to SPO's Internal Operations Manager (IOM) through ORPIN, indicating that a Delegation Request has also been made.
3.	CPO or EOM	Reviews and assigns the Delegation Request for Intake and Assessment.
4.	Analyst	<ul style="list-style-type: none">a. Confirms Intake has occurred (number, database, file, and tracking);b. Evaluates the Request, which may include information gathering and solicitation of expert assessments from others, pursuant to this criteria:<ul style="list-style-type: none">i The nature of the Supplies and Services to be provided;ii Resources of the Agency requesting the delegation, including trained and qualified contract officers and staff, the Agency's experience and expertise, staff time available, and the degree of economy and efficiency to be achieved in meeting the state's requirements if authority is delegated;iii The Agency's Procurement and public contracting past performance;iv SPO's resources to exercise the authority if it is not delegated; andv Value added by the Agency if the authority is delegated.c. If recommended, delivers the proposed Delegation Agreement and one (1) copy to the Agency's DPO for review and appropriate signature(s).
5.	Agency/DPO	Signs the proposed Delegation Agreement and returns it to the Analyst.
6.	Analyst	Presents two copies of the signed Delegation Agreement, together with the Analyst's recommendations, to the CPO.
7.	CPO	After any information-gathering, revisions, and appropriate consultations, approves and signs, refers, or denies the proposed Delegation Agreement.
8.	Analyst	Performs Closure, including: communicating with the Agency, delivering the Agreement, updating the database, and closing the files.
9.	Agency	Exercises its authority pursuant to the Delegation Agreement.