FAQ – Emergency Procurements

Oregon’s public contracting code is lengthy and can be difficult for the average public official to navigate and understand. And while the code may be cumbersome at times, it serves a valuable public purpose—ensuring that public dollars are spent wisely and justly by requiring that public contracts be awarded through a fair, open and competitive process. While an open and competitive process serves a valuable public policy purpose, and is typically required in Oregon, what about those emergency situations when public officials do not have the time or ability to follow normal public procurement processes?

This Emergency Procurements Frequently Asked Questions (FAQ) provides answers to the questions most often posed to the League about public procurements during emergency situations. It is not intended to provide an exhaustive legal analysis on the topic, nor is it intended to be a substitute for legal advice. The FAQ is meant to serve as a baseline for understanding emergency public procurements in Oregon. Each city in Oregon is subject to its own individual charter, municipal code and rules of procedures—any person reading this FAQ is strongly encouraged to conduct a thorough review of applicable charter provisions, municipal code sections, and their city’s rules of procedures to ensure that those provisions do not provide additional requirements to be followed when purchasing goods or services during an emergency.

1. **What is an Emergency Procurement?**

   An emergency, as defined by OAR 125-247-0280, means “circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a Contract to remedy the condition.”

2. **What is an Emergency Procurement?**

   An emergency procurement is any contract a city enters into in response to an emergency in the hopes of remediying the effects of the emergency.

3. **Are There Any Limits on an Emergency Procurement?**

   Yes, emergency procurements may only address the immediate needs caused by the emergency itself. Emergency procurements cannot be used to alleviate subsequent non-emergency-related needs. For example, if an earthquake causes such severe structural damage to a city-owned building that it is in imminent danger of collapsing and causing harm to the public, an emergency procurement can be utilized to immediately stabilize the building to keep it from collapsing. However, if the building can be stabilized to allow for the normal public procurement process to be utilized for the actual repair or replacement of the building, the emergency procurement should be limited to the stabilization process, and is not to include stabilization, repair and/or replacement.
4. **Do Emergency Procurements Require the Use of Normal Competitive Procurement Process Required by the Oregon Revised Statutes or Oregon Administrative Rules?**

No, emergency procurements do not require public officials to follow the normal competitive procurement processes required by the Oregon Revised Statutes, the Oregon Administrative Rules, or local contracting rules, if applicable.

5. **Are Public Officials Still Required to Seek Competition when Awarding Emergency Procurements?**

Yes, while the normal competitive procurement processes are not required to be followed when responding to an emergency, public officials are still required to “encourage competition that is reasonable and appropriate under the Emergency circumstances.”

Also, if the emergency procurement is for construction services that are not public improvements, public officials must “ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances.” This means that public officials must, at a minimum, set a solicitation time period that is “reasonable under the emergency circumstances.”

Note that cities can issue written or oral requests and even make direct appointments without competition in instances of “extreme necessity.”

6. **Who Can Authorize an Emergency Procurement?**

The head of the city, or a person delegated by the city as someone who can effectuate public procurements, is the person who may authorize an emergency procurement. Typically city managers are authorized to approve emergency procurements.

7. **How Does a City Document an Emergency Procurement?**

Cities are required to document emergency procurements either before or promptly after awarding the contract. The Oregon Department of Administrative Services has created an Emergency Procurement Report Form that cities are required to complete within 10 business days of executing the contract. This form is to be maintained in the relevant procurement file in accordance with the procurement statutes. The form is accessible at this website: https://www.oregon.gov/das/Procurement/Guiddoc/EmergencyProc.docx

---

1 OAR 125-247-0280(3).
2 ORS 279B.080(2).
3 Id.
4 Id.
5 OAR 125-247-0280(5).
6 ORS 279B.080(1) and OAR 125-247-0280(4)(5) and OAR 137-045-0070.
8. **Is a City Required to Advise the State of its Emergency Procurements?**

Yes, pursuant to OAR 137-045-0070(3), a copy of the Emergency Procurement Report Form is to be filed with the Business Transactions Section, in the Office of the Oregon Attorney General within 30 days of the report being prepared.

9. **My City has Adopted its Own Public Purchasing Policy; Do I Need to Review those Policies Before Making an Emergency Procurement?**

Yes, you must review any locally adopted public purchasing policies before making an emergency procurement. If your locally adopted public purchasing policy addresses how the city is to conduct itself in regards to emergency procurements, those policies must be followed.