



OKLAHOMA
**Office of Management
& Enterprise Services**

Central Purchasing

PROCUREMENT INFORMATION MEMORANDUM

Subject: Emergency Declaration by State Agencies
Effective Date: October 15, 2024
Issued by: Amanda Otis, Esq., State Purchasing Director

I. Introduction

As a means of disseminating relevant state procurement information to state entities, the Purchasing Division of Office of Management and Enterprise Services 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.

II. Summary

While in general, state purchases must be made in compliance with the competitive bidding requirements found in the Central Purchasing Act, 74 O.S. §§ 85.1-85.44E, and the Competitive Bidding Act, 61 O.S. §§ 101-139, the legislature has created methods for making acquisitions in a quicker manner when an agency is faced with an emergency. This memorandum has been jointly prepared by Central Purchasing (“CP”) and the Construction and Properties department within the Capitol Assets Management (“CAM”) division of OMES.

The intent of this PIM is to assist agencies by condensing and consolidating the process agencies must follow when responding to an emergency. This document aims to help clarify jurisdiction between CP and CAM as well as define the legal requirements and the procedure for making an emergency acquisition. All emergency purchases are reported to the Governor, Speaker of the House of Representatives and President Pro Tempore of the Senate as required by 61 O.S. § 130(G) and 74 O.S. § 85.5(M). For questions regarding this or any PIM, please contact central.purchasing@omes.ok.gov.

III. Determining whether the purchase falls under CP or CAM

The Competitive Bidding Act governs public construction contracts and construction management trade contracts for work done on state-owned property, while the Central Purchasing Act governs a broader scope including acquisitions of IT and non-IT goods and services. When an emergency such as flooding from a broken pipe or a weather-related

natural disaster damages an agency's building, Title 61 is only implicated if the state owns the building in which the agency resides. Examples are illustrated below to help distinguish between scope of the two bodies of law.

Example	Acquisitions under Construction and Properties Division	Acquisitions under the Central Purchasing
Event: Natural disaster or pipe breaks in an agency-owned building is impacted	<ol style="list-style-type: none"> 1. 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 into the building. 2. Agency needs to acquire air quality testing by a Consultant or mold abatement by a qualified contractor. 	<ol style="list-style-type: none"> 1. Agency needs to acquire moving and restoration services to move office contents and salvage personal property. 2. Agency needs to acquire replacement equipment necessary to stay in operation. 3. Agency needs to lease generators to allow for dispensing of fuel in impacted areas. 4. Agency needs to purchase supplies to serve tornado victims. 5. Agency needs to hire assistance for debris removal.
Event: Natural disaster or pipe breaks in building leased from a private party and building is impacted	<i>Title 61 is not relevant as state does not own building.</i>	

IV. Central Purchasing emergency acquisitions process:

A. Pursuant to Section 85.41A of the Central Purchasing Act an emergency includes:

1. An acquisition declared as an emergency by an authorized state agency;
2. An acquisition to alleviate a serious environmental emergency;
3. An acquisition of livestock through a market agency, dealer, commission house or livestock auction market bonded or licensed under federal or state law for the acquisition or collection of semen or embryos, and for the placement of embryos into recipient livestock;
4. An acquisition by a state agency pursuant to a contract with the United States Army Corps of Engineers for emergency response or to protect the public health, safety or welfare;
5. An acquisition declared by the Office of Management and Enterprise Services (OMES) Risk Management Administrator pursuant to Section 85.58A of Title 74 of the Oklahoma Statutes; or
6. A condition certified by the Governor as an emergency.

- B. Agency employee who discovers needs for emergency purchase notifies CPO and Agency Director of emergency condition.
- C. Authorized Agency Director declares an Emergency and if applicable, notifies Board/Commission with details of emergency.
- D. If applicable, the board will need to document the Emergency in next regularly scheduled meeting.
- E. CPO/Agency staff locates suitable vendor and negotiates scope of work/price.
 - 1. If the item is on a mandatory statewide but it is not feasible to purchase due to the emergent need, the Agency does not need to process an exception form CP 109.
- F. CPO issues Purchase Order or uses Pcard to pay vendors.
- G. CPO must notify Central Purchasing within 5 days of purchases made under this section.
 - 1. If purchase order was used, the notification is made by completing a requisition. 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.
 - a. The CPO must select that it is an exempt purchase in the requisition and select “ALL- 74 O.S. § 85.41 Emergency Acquisition” in the drop down.
 - b. For acquisitions that exceed the delegated authority threshold, the requisition will route to Central Purchasing. For emergency acquisitions under the agency threshold, Central Purchasing will capture that data to comply with reporting requirements.
 - 2. If Pcard was used, a summary of acquisitions should be sent via email to central.purchasing@omes.ok.gov

V. Construction and Properties emergency acquisitions process:

Please note, 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 (\$100,000). Additionally, all Emergency contracts greater than \$10,000 are awarded by Construction and Properties (CAP). All emergencies are required to be reported to CAP regardless of the cost to remedy the emergency.

- A. Agency representative (supervisor, division director) notifies Agency CPO and Agency Director of emergency condition.
- B. Agency **declares** an emergency* and sends an emergency declaration letter to the CAP email at cap@omes.ok.gov and copies the CAM Administrator. An agency must **report** the emergency to CAP within ten (10) days of the declaration of an emergency.
 - 1. *See [61 O.S. § 130](#) to determine whether the Executive Director or the Governing Board has authority to declare the emergency.
 - 2. A written letter (template attached) must be signed. The letter should include the following information:
 - a. A statement of the issue and reasons for this action,

- b. The letter should be signed by the appropriate agency's personnel,
 - c. Recorded minutes of the agency's governing body's approval of the emergency (if applicable).
 - d. Depending on the nature of the emergency an agency may initiate mitigation services prior to providing a formal written notification to Construction and Properties (CAP). If an emergency situation potentially involves acquisitions under Title 74 and Title 61, a single letter addressed jointly to CAM Administrator and the State Purchasing Director is recommended.
- 3. In addition to the written letter, please include these additional documents:
 - a. A completed Project Request Form - *Cap Form M701*,
 - b. Vendor's quote or estimate,
 - c. Required insurance,
 - d. Bond documents (if applicable),
 - e. Other documents for the OMES personnel to prepare the contract.
- C. Performance, Payment, and Statutory Defect Bonds are required for all contracts over \$100,000. CAP will provide the following bond forms to the vendor for completion:
 - 1. A312A Performance Bond or applicable bond form,
 - 2. A312B Payment Bond or applicable bond form,
 - 3. A312C Statutory Defect Bond or applicable bond form.
- D. OMES will **acknowledge** the emergency with a written letter signed by the Capital Assets Management (CAM) Administrator to include an assigned CAP project number and instructions on how to proceed with contract(s), plans, and specification as applicable.
- E. Notwithstanding an agency's separate obligation to notify Risk Management, CAP will additionally provide notice and supporting documentation to Risk Management upon receipt of a declared emergency on property insured by the State.
- F. Should Risk Management declare the emergency on behalf of an agency such notice will be provided to CAP and the agency for the purposes of mitigation and obtaining a contract or vendor to provide services within a timely manner.
- G. If CAP determines the emergency project to be complex, CAP will assign a Project Manager to provide oversight. If a Consultant (architect or engineer) is required, the CAP Project Manager will work with the using agency to secure the Consultant for the project. [[61 O.S. § 65](#)]
- H. The Contracts Coordinator and/or Project Manager will create and send the contract to the vendor to review and sign. The vendor has ten (10) days if there are no bonds required and twenty (20) days with bonds to return the contract.
- I. The Contracts Coordinator and/or Project Manager will review the signed contract and distribute it to the agency for signature. The agency has five (5) days to sign

and return the contract. Subsequently, after review of the contract and required documents, the contract will be submitted to the CAM Administrator for signature.

- J. CAP will provide a Notice to Proceed (NTP), signed PO, bond documents, and fully executed contract to the vendor and agency. CAP is aware that mitigation or work to resolve the emergency may begin prior to issuing the NTP.
- K. Change orders are reviewed and approved by the CAM Administrator as deemed appropriate.
- L. CAP will maintain a report of emergencies declared during the previous calendar year.

[USING AGENCY LETTERHEAD]
Via Email (cap@omes.ok.gov)

[DATE]

[Capital Assets Management Administrator]
Capital Assets Management
Office of Management and Enterprise Services
P.O. Box 53448
Oklahoma City, OK 73152-3448

RE: [Agency] Emergency Declaration – [Location]

[Capital Assets Administrator],

This letter is provided pursuant to [61 O.S. §130] [74 O.S. § 85.41(A)] [to an agency's enabling statutes] to declare an emergency regarding the following property located at [Location].

[State specific facts of the emergency]

[State the unforeseen occurrence or condition and whether public safety, health, or further property damage is likely]

[Does this impact the agency's mission and business operations?]

[Does declaring the emergency and/or estimated cost of the emergency require the approval of the governing body according to Title 61 O.S. §130 or the agency's internal procedures?]

[Include agency's board or commission official meeting minutes (if applicable)]

[Estimated cost of emergency (if available)]

[Provide the Executive Director's contact information]

Signed by the authorized agency Executive Director

CC:

[Copy the appropriate agency leadership]

[Copy Risk Management (if applicable)]

[Copy State Purchasing Director (if applicable)]