

Moving Oregon Forward:
 Oregon Forward Showcase
 and Procurement Forum

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Procurement Overview

Learn about the Oregon Public Contracting Code and the Public Contracting Rules:

- What is it?
- Why is it important?
- How does it impact you?
- How to use the Code?
- Where to turn for answers?

Gain a better understanding of Public Contracting laws, rules, policies, and other legal influences.

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**Public procurement
 (contracting) vs. private
 procurement?**

Procurement is the obtaining or buying of goods, services or works from an external source.

Public procurement requires legal authority for "Who" has the authority to do "What", and the "How" to do it.

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Application of the Code

ORS 279A.025

The Public Contracting Code **applies to all public contracting** (with some listed exceptions).

For example, the Public Contracting Code does not apply to:
Grants;
Acquisitions or disposals of interests in real property; or
Procurement or distribution of textbooks.

The Code addresses the actions of a contracting agency.

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Definitions under the Code

ORS 279A.010(1)(b)

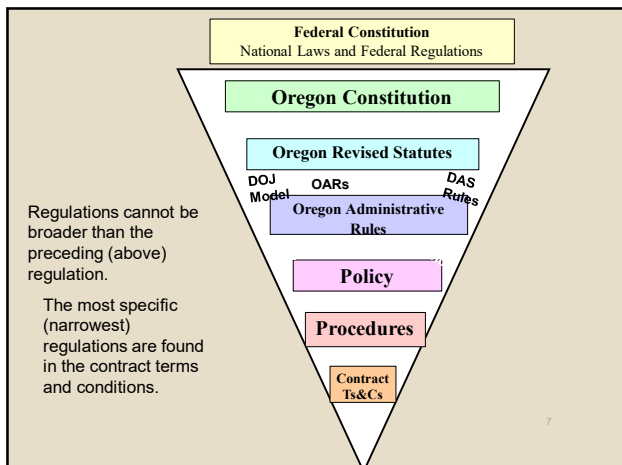
“**Contracting Agency**” means a public body authorized by law to conduct a procurement. Contracting Agency includes “Local Contracting Agencies.”

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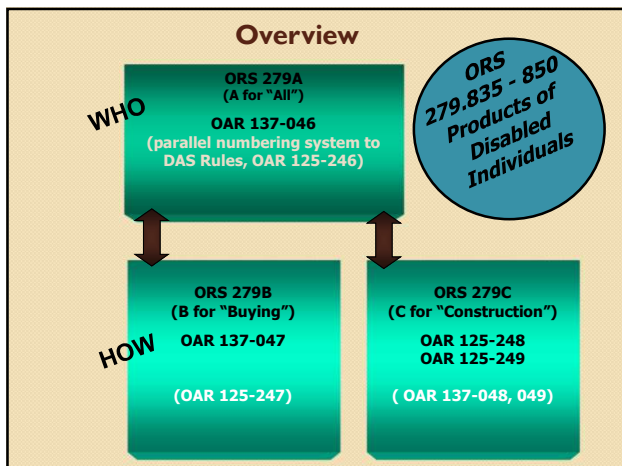
Knowledge of Oregon Law Structure

- Federal Constitution
- Oregon Constitution
- Oregon Revised Statutes
- Oregon Administrative Rules
- Policy (Local)
- Procedures (Agency Specific)
- Terms and Conditions (Allowable by Contract)

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Who has the authority to procure and **What**?

- **Under** the Public Contracting Code ORS 279ABC
- **Who:** State and Local Agencies
- **What:** Services, Goods, Architectural, Engineering and Land Surveying Services and Related Services (A&E), and Public Improvements

How is the procurement done?

Local Agencies follow their Rules (ORS 279A.065)

- Model Rules, or
- Adopt Their Own (through their Local Contract Review Boards)

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Procurement Law & Rules

- **Public Contracting Code:**
Oregon Revised Statute (ORS) 279 A, B, C
A = All applicable to everyone (well almost)
B = Buying - Goods & Services
C = Construction
- **OregonForward:**
ORS 279.835-855
Chapter 125, Division 055
- **DAS Rules:**
Chapter 125, Divisions 246, 247, 248, 249
- **DOJ Model Rules:**
Chapter 137, Divisions 046, 047, 048, 049

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Buy Decision Priority

Review each priority source in the order prescribed before going to the Open Market
OAR 125-247-0200(2)

- 2a. Surplus Property OAR 125-050
- 2b. Qualified Rehabilitation Facility (QRF) OAR 125-055
- 2c. Inmate Labor - Oregon Constitution, Article I, Section 41
- 2d. Statewide Price Agreements - OAR 125-247-0296
- **Open Market** OAR 125-247-0200(4) and OAR 125-246 & 247
- Agencies may elect to use an ORS 190 Agreement (IAA/IGA/ISA) at any time. OAR 125-246-0365 and OAR 125-247-0200(3)

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Sources Before “Open Market”

- 1) **Surplus Property:** Efficient use of existing resources
- 2) **OregonForward:** Applies to all agencies. Assists disabled individuals through gainful employment
- 3) **Inmate Labor:** Oregon Constitution-Article I – Bill of Rights
- 4) **Price Agreement:** Statewide policy. Volume and strategic purchases for economy and efficiency
- IGA (use anytime):** Supports use of existing state resources
- Open Market:** Use one of the 7 sourcing methods
- **COBID:** Inclusion is encouraged at any dollar threshold

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7 Sourcing Methods

- 1. Competitive Sealed Bidding (ITB)**
OAR 125-247-0255 + OAR 137-047-0255 & 137-047-0257
- 2. Competitive Sealed Proposals (RFP)**
OAR 125-247-0260 + OAR 137-047-0260 & 137-047-0261
- 3. Small Procurement (direct negotiation)**
OAR 125-247-0265 + OAR 137-047-0265
- 4. Intermediate Procurement (informal)**
OAR 125-247-0270 + OAR 137-047-0270
- 5. Sole-Source Procurement** OAR 125-247-0275
- 6. Emergency Procurement** OAR 125-247-0280
- 7. Special Procurement** OAR 125-247-0285 to 125-247-0287

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Competitive Sealed Bidding

DAS Rules

- Invitation to Bid (ITB) OAR 125-247-0255
 - Public Notice
 - Emerging Small Business
 - Revised Rounds of Bidding (Process, Revisions, Disclosures)

+ DOJ Model Rules

- Invitation to Bid OAR 137-047-0255
 - General Information
 - Bidding and Evaluation Process
- Multistep Sealed Bidding OAR 137-047-0257
 - Generally
 - Phased Process
 - Public Notice
 - Procedures

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Competitive Sealed Proposals

DAS Rules

- Request for Proposal (RFP) OAR 125-247-0260
 - Proposal Submission Requirements
 - Interviews and Competitive Range
 - Serial, Simultaneous or Revised Rounds of Negotiations

+ DOJ Model Rules

- Request for Proposals OAR 137-047-0260
 - General Information
 - Proposal and Evaluation Process
 - Good Cause
- Multi-tiered and Multistep Proposals
OAR 137-047-0261

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Small Procurement

- Procurements \$10,000 or less
- Amendments
 - An amendment can raise the total contract to \$12,500 with appropriate justification included in the procurement file
- No Fragmentation

DAS: OAR 125-247-0265
DOJ: OAR 137-047-0265

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Intermediate Procurements

- **DAS Rules** **OAR 125-247-0270**
 - Amendments
 - Written Solicitations
 - Documentation
 - Borderline Procurements
 - Notice on ORPIN
 - Negotiations
- **DOJ Rules** **OAR 137-047-0270**
 - General Information
 - Negotiations
 - Amendments

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Sole-Source Procurement

- Determination based on Written findings
- Documented Findings of Fact required
- Market Research
- Legal Sufficiency Review
- Notice posted on ORPIN if over \$150k
- Chance of getting a sustained Protest is high

OAR 125-247-0275

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Emergency Procurements

- Written Declaration of Emergency
- Encourage Competition
- Record the Measures
- Head of Authorized Agency signature
- Award within 60 days of Declaration
- ORPIN
- Exempt for Legal Sufficiency Review

OAR 125-247-0280

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Special Procurements

- Established criteria for procuring Supplies and Services using an alternative method
- Types
 - Class Special Procurement
 - Contract-specific Special Procurement
- Request Procedures
 - DAS Chief Procurement Officer's Approval
- By Rule

OAR 125-247-0285 - 0288

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Special Procurements by Rule

- Client Placement and Client Services
- Renegotiation of Existing Contracts
- Advertising Contracts
- Equipment Repair and Overhaul
- Investment Contracts and more

OAR 125-247-0288

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Specifications Policy

Specifications must seek to promote optimal value and suitability for the purposes intended and to reasonably encourage competition in satisfying an Agency's needs.

- Able to consult with contractors before solicitation goes out
- No appearance of contractor advantage
- Understand definition of affiliate: any person under contractor control

OAR 125-247-0690

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Contract Preferences

- Oregon Supplies and Services Preference
OARs 125-246-0300 and 137-046-0300
- Reciprocal Preferences
- Disabled Veterans Preference
- Lighting Preference Relating to Mercury
- Oregon Employment Preference
- Federally Funded Transit Projects – Buy America

OAR 125-246-0300 to OAR 125-246-0319

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COBID Notice Requirements

- OAR 125-246-0220
 - Contracts with a value of \$10,000
 - State agencies must provide timely notice and information to the Governor's Policy Advisor for Economic & Business Equity regarding: (1) Bid or proposal solicitations; and (2) Contract awards
- Governor's Executive Orders
- Statewide Policies
 - Posting on OregonBuys satisfies requirements for Notice.*

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Templates

ORS 279A.157 requires state contracting agencies to use contract forms, contract templates and solicitation templates approved and made available by DOJ and DAS.

OAR 125-246-0135 / 137-046-0140

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Standards

ORS 279A.159(2) requires that DAS establish, by administrative rule, standards for the education and training or experience a person must have to conduct a procurement or administer a public contract.

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Training

ORS 279A.159(1) requires that any person who conducts a procurement or administers a public contract for a state contracting agency must complete a course of education and training, or have professional experience that, at a minimum and in accordance with standards established by DAS Public Contracting Rules, adequately prepares the person to carry out those tasks or functions.

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Training (cont.)

DAS may provide or approve an education or training program that meets the standards.

A program must meet the standards by December 31, 2017.

All persons who conduct procurements or administer public contracts for state contracting agencies must meet the requirements by December 31, 2018.

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Director Responsibility

ORS 279A.157 requires that before a state contracting agency executes a public contract with a contract price that exceeds \$150,000, the director of the agency must review, and verify that the person who will administer the public contract has read and understands, all advice and recommendations that the Department of Administrative Services, the Department of Justice or other legal counsel gave to the agency with respect to the public contract and the procurement that resulted in the public contract.

OAR 125-246-0135 / 137-046-0140

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ORS 279A.159(1)

- (1) A person that conducts a procurement or administers a public contract for a state contracting agency shall complete a course of education and training or have professional experience that, at a minimum and in accordance with standards established under subsection (2) of this section, adequately prepares the person to:

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ORS 279A.159(1)(a) – (h)

- Develop specifications
- Understand and apply terms and conditions
- Draft scopes of work, statements of work, amendments, change orders, insurance requirements
- Monitor a contractor's performance
- Manage agency and contractor relations
- Resolve emerging disputes or other risks
- Know auditing requirements
- Follow business and office procedures, state policies and procedures

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ORS 279A.159(2)

- (a) DAS by rule shall *establish standards* for the education and training or experience a person must have to *conduct a procurement* or *administer a public contract*
- Standards must:
 - describe the contents and quality of a curriculum
 - fix a passing score for an examination
 - specify requirements for obtaining a certificate
 - describe the length of service or other evidence of adequate experience

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Summary of Recent DAS Rule Revisions

The recent DAS public contracting rule revisions are intended to accomplish the following:

- Transition from ORPIN to OregonBuys as the enterprise electronic procurement system
- Better align management of risk and procurement authority
- Provide better clarity and flexibility for agencies in their procurement processes
- Recognize and account for the impact of inflation on procurement authority thresholds
- Assist agencies in implementing the Governor's Executive Order and statewide policy for business equity, inclusion, and engagement in public procurement
- Help address procurement staffing challenges and workload demands

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Recent DAS Rule Revisions (cont.)

Multiple DAS Rules amended to:

- Change the name of Electronic Procurement System from ORPIN to OregonBuys;
- Clerical corrections.

125-246-0110

- Defining Authority and Procurement Authority.

125-246-0170

- Clarification of requirements;
- Adding delegated authorities.

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Recent DAS Rule Revisions (cont.)

125-246-0170
 125-246-0345
 125-246-0350
 125-246-0576
 125-247-0110
 125-247-0200
 125-247-0275
 125-247-0288
 125-247-0691
 125-247-0710

- Increasing dollar thresholds.

125-247-0288

- Adding additional Special Procurements by Rule;
- Clarification of requirements; Renumbering.

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Procurement Thresholds

- The DAS Rule revisions increased the dollar thresholds for delegated procurement authority. The thresholds for the required procurement methods are set by statute and are currently unchanged. Unless and until the Legislature amends the Procurement Code, the limits on procurement methods remain the same. That means although agencies have the procurement authority, they must still limit the use of the procurement method to the statutory threshold.

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Procurement Thresholds

SB 1047, the bill in the current Legislative Session, to increase the statutory thresholds for procurement methods, was passed by the Senate 4/10/23 and is in the House, scheduled for a vote on May 11. If it passes, and assuming the Governor signs it, the statutory threshold increases for the procurement methods will be effective the 91st day after the end of the legislative session and operative 1/1/2024.

At that point, the thresholds for procurement authority and required procurement methods will be the aligned and equal.

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Procurement Thresholds

Those thresholds will be:


- Small Procurement = \$1 - \$25,000
- Intermediate Procurement = \$25,001 - \$250,000

State agencies must still provide timely notice to the Governor's Policy Advisor for Economic & Business Equity for a contract with a value of \$10,000 or more regarding: (1) Bid or proposal solicitations; and (2) Contract awards.

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QUESTIONS?



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Thank You for Participating

If you have questions, please let me know.

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