



# OREGON DEPARTMENT OF FISH & WILDLIFE POLICY

## Administrative Services Division

<b>Title:</b> Contracting Policy		<b>ASD_230_PO</b>
<b>Supersedes:</b>	ASD_230_PO (dated 11/1/20), AS 250-05(dated 5/6/11), AS 250-01 (dated 12/01/04), and AS 250-01 (dated 3/19/15)	
<b>Applicability:</b>	All ODFW employees	
<b>Reference:</b>	OAR 125, OAR 137, ORS 190, 279, 291, 496, 501, and 506, Oregon Constitution Article IX, ORS 30, Federal Statutes and funding agreements	
<b>Effective Date:</b> April 12, 2023	<b>Approved:</b>	

### I. PURPOSE

To establish effective contracting policy which protects the interest of Oregon Department of Fish and Wildlife (ODFW) and its employees, to minimize ODFW and employee liability and to ensure the contracting process conforms to state and federal statutes, administrative rules, and regulations.

### II. DEFINITIONS

**ASD** means ODFW's Administrative Services Division, and includes Accounts Payable, Contract Services, Business Services, Accounting, Licensing, and Realty units.

**Amendment** means a written modification to the terms and conditions of a contract, other than by changes to the work, within the general scope of the original procurement that requires mutual written agreement between ODFW and the Contractor.

**Change Order** means changes to the work within the general scope of the original contract.

**Contract** means a legal instrument between ODFW and another party describing the work to be done and the obligations between the parties. These include but are not limited to: Personal Services Contracts, Goods and Trade Service Contracts, Permit Agreements such as Fencing, Forage, Haying, or Grazing Agreements, Grant Agreements, Cooperative Agreements, Price Agreements, Purchase Orders, Intergovernmental Agreements, and Memorandum of Understanding or Memorandum of Agreement.

**Contract Release Order (CRO)** means a purchase order which is used-to order products that have been established under a Price Agreement.

**Contract Authority** means the ODFW employee who has the authority to conduct, supervise, and manage ODFW's procurement process in accordance with applicable federal and state law and rule, including establishing specifications and statements of work, issuing solicitations and other non-solicitation methods for all ODFW procurements, awarding contracts, complying with reporting requirements, and monitoring all sourcing decisions, procurements, development of contracts, awarded contracts, delegations, special procurements and exemptions for compliance with applicable federal and state law and rule.

**Contractor** means the person with whom ODFW enters into a contract and is interchangeable with "consultant" and "provider."

**Cooperative Agreement (CA)** means

1. As defined by ODFW, agreements that require each party to perform some activity, and may or may not include actual funding to either party. Examples include habitat improvement, road closure, fire protection, and fencing;
2. If issued by the federal government, a cooperative agreement is a type of grant.

**Director** means the Director of the ODFW.

**Designated Procurement Officer (DPO)** means the individual designated by the Director to have Contracting Authority on behalf of ODFW, including conducting open competition, drafting and reviewing terms and conditions, creating related determinations and findings, and executing contracts in compliance with applicable state and federal law.

**Document Authorization Approval** means a written authorization to designate signature authorities who have the authority to commit funds on behalf of ODFW. This approval authorizes individuals to sign POs, CROs and Transmittals on behalf of ODFW. Such authority must be documented on the Document Authorization Approval form, as contained in Exhibit B to this policy. Execution means when all approvals and signatures to the Contract are in place and, if required, a notice to proceed is issued to the contractor(s).

**Grant** is defined in ORS 279A.010 and means:

1. A Contract under which the ODFW receives money, property or other assistance, from a grantor for the purpose of supporting or stimulating a program or activity of the ODFW; or
2. A Contract under which ODFW provides money, property or other assistance, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient.
3. A Grant is a type of Contract but a Grant does not include a Public Contract, and a Grant is not a Public Contract.

**Grant Application Coordinator** means a person delegated authority to complete an application for federal competitive funding opportunities and Grants. This authority does not apply to non-competitive or non-federal Grants.

**Goods** means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses that ODFW is authorized by law to procure.

**Intergovernmental Agreement (IGA)** means an agreement between ODFW and a unit of local government, a state agency of this or another state, or with the United States, or with a United States governmental agency, with an American Indian Tribe or an agency of an American Indian Tribe, or with a nation of public agency in any nation other than the United States. "Unit of local government" means a county, city, district or other public corporation, commission, authority or entity organized and existing under state statute or city or county charter (ORS 190.003) Intergovernmental Agreements include interagency agreements, interstate agreements, and international agreements. See ORS 190.110, 190.485.

**Memorandum of Agreement (MOA)** as defined by ODFW, means an agreement between ODFW and another entity where one or both parties conditionally agree to perform actions, services, or duties. Typically, MOAs are used for matters relating to policy, access, or details associated with the management of fish and wildlife and/or habitats in certain locations. MOAs are legal binding agreements, but do not include an exchange of funds or payments.

**Memorandum of Understanding (MOU)** as defined by ODFW, means a stated interest, common goal, program, or approach supported and agreed to by ODFW and another entity. No exchange of funds or agreements for payment can be authorized by MOUs. Less rigid and enforceable than an MOA, an MOU is generally less formal than an MOA or Cooperative Agreement.

**Permit Agreements** means any agreement where ODFW is authorizing use of ODFW real property in exchange for money. These include but are not limited to, rental agreements for less than one year, haying, grazing, foraging, and sharecropping agreements.

**Personal or Professional Service Contract (PSK)** means a Contract that calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment.

**Price Agreement** means a formally binding Contract established by DAS or ODFW which establishes the terms and conditions under which goods or services may be purchased from a selected vendor using a CRO.

**Project Manager or Contract Administrator** means the person designated in the contract that has responsibility for specific contract administration actions (i.e., authorizing the performance of work, evaluating the contractor's performance, approval of invoices for payment, requesting Contract Amendments, etc.).

**Public Contract** means a sale or other disposal, or a purchase, lease, rental or other acquisition by ODFW for supplies and services, Public Improvement, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

**Public Improvement** means a project for construction, reconstruction or major renovation on real property by or for ODFW, or another contracting agency.

**Public Works** means includes, but is not limited to: roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for or by ODFW, to serve the public interest, but does not include the reconstruction or renovation of privately-owned property that is leased by ODFW (ORS 279C.800).

**Purchase Order (PO)** means the document by which goods are procured to fill a requirement. It is ODFW's authority to purchase goods which cost no more than \$10,000, and to purchase trade services costing no more than \$5,000. A purchase order is the document which expresses to the vendor ODFW's terms and conditions of the purchase. Once accepted by the vendor, it has the legal force of a binding contract.

**Spending Authority** means the ODFW employee who has the authority to commit funds on behalf of ODFW, and may be referred to as commitment, expenditure, obligation, expenditure decision or signature authority.

**Statement of Work** is a written statement that specifically describes phases of work or services, major tasks, areas of responsibility, specific objectives the Contractor must attain, deliverables that the Contractor must provide and a stated schedule of deliverables aligned with payments.

**Trade Service Contract** means contracts for the acquisition of services including all types of services not classified under the "Personal or Professional" services or Public Improvement category.

**Transmittal** means the internal documents used to "transmit" approval of the payment of invoices for services which have been received pursuant to an executed Contract. Transmittals are also used for authorized non-contractual expenditures, such as utilities.

### III. POLICY

- A. This policy defines how ODFW Contracts are to be processed and executed on behalf of the Director at the lowest level of responsibility that is consistent with responsible financial and organizational control, and state and federal law.
- B. The various different types of agreements and associated processes are covered in "Clarifications" Section IV.
- C. Definitions of terms can be found in "Definitions" Section II.
- D. Two forms of signature authority are required for contract documents and agreements:
  1. The authority to spend from an associated budget (Spending Authority); and
  2. The authority to bind ODFW to an agreement (Contract Authority).
- E. Spending authority is provided through ODFW's signature authority process, managed by the Administrative Services Division (ASD), Disbursements. The authority to bind ODFW to an agreement (Contract Authority) is covered by ORS 279A.075 and this policy.
- F. Contract Authority:
  1. The Deputy Director for Administration is the primary signer as Contract Authority. The Director, Deputy Director for Fish and Wildlife Programs, ASD Administrator and the Designated Procurement Officer (DPO, ASD Deputy Administrator) also have Contract Authority.  
  
The Deputy Director for Administration may delegate primary signer authority to another individual who also has Contract Authority. Other ODFW positions can also have Contract Authority as provided in this policy.
  2. For multiple-agency Price Agreements and other Contracts outside of ODFW's Authority, DAS Procurement Services is the Contracting Authority, unless delegated to ODFW's DPO.
  3. Contract Authority is delegated by this policy to the Spending Authority for:
    - a. Purchase orders for the purchase of Goods which cost \$10,000 or less,
    - b. Purchase Orders for the purchase of Trade Services which cost \$5,000 or less, and
    - c. Contract Release Orders/Purchase Orders for the purchase of goods or Trade Services from a Price Agreement.
  4. Employees who do not have Contract Authority are not authorized to bind ODFW to terms and conditions unless otherwise delegated per policy. As such, when presented with paperwork for facility rentals, equipment rentals, or other terms and conditions, employees should contact ASD Contract Services for review, approval and ODFW authorized signature.
- G. All Contract Authority delegations will be maintained by ASD. A central registry of all signed Contracts and Grants is maintained by ASD Contract Services.

- H. All Contract documents must meet the form and content requirements of the Attorney General, and the Department of Administrative Services (DAS), as applicable. Contract documents prepared by a party outside of ODFW must still meet these requirements.
- I. Per Executive Order 18-03, when selecting, evaluating and awarding contracts, ODFW Employees shall:
1. Consider all providers (vendors) eligible to or wishing to do business within Oregon in any and all contract areas without regard for gender, race, ethnic origin, religion, social class, or other affiliation; and
  2. Develop a business climate where inclusiveness and open, honest business practice are recognized as a core value at all levels of state government; and
  3. Notify ASD to post the award on ORPIN (the state's procurement system) in order to maintain accurate data on the participation of Certification Office for Inclusion and Diversity (COBID) certified firms, track progress, and ensure that Oregon's entrepreneurial opportunities are accessible to all; and
  4. For contract opportunities over \$10,000, solicit quotes or invite bids from at least one minority owned business, one woman owned business, one business that a service disabled veteran owns, and one emerging small business, whenever possible.
- J. Feasibility Studies.
1. Labor Union Contractual. At least 30 days prior to posting an opportunity or contracting out for any services exceeding \$60,000 annually, Project Managers are responsible to complete a feasibility study to determine the potential costs and other benefits which would result from contracting-out the work in question. This is a condition of the Collective Bargaining Agreement between DAS and the Service Employees International Union (SEIU).
  2. Legislative. Prior to contracting out for services exceeding \$250,000 and six (6) months in length, Project Managers are responsible to complete a feasibility determination or cost analysis to determine whether the services could be more cost effectively provided by Agency staff. This provision does not apply to architectural, engineering or related services. This is a statutory requirement under 279B.030-036.
- K. The Project Manager is the Contract Administrator and is responsible for administering the Contract on behalf of the Director. The Contract Administrator assumes full responsibility for ODFW's obligations in the Contract, assuring that services and deliverables have been met by the contractor, and authorizing payment for those services in accordance with applicable federal and state law and rule.

#### IV. CLARIFICATIONS

##### A. Contracts when ODFW is receiving funds.

1. Grants, Contracts and Cooperative Agreements. Grants, Contracts and Cooperative Agreement applications and awards for more than \$5,000 must be processed through ASD's Procurement Information Exchange System (PIE).
  - a. Project Managers are responsible to submit a request in PIE at least 30 days prior to application or the initiation of work under a funding award. Exception: For federal **competitive** funding opportunities and Grants, Project Managers are responsible to submit a request in PIE within one week of receiving an award letter rather than at the application stage. This does not apply to non-competitive federal funding.
  - b. ASD Contract Services is responsible to
    1. submit all funding requests and amendments on behalf of ODFW, except for applications to BPA via the PISCES system, which may be submitted by Project Managers, and federal competitive applications, which may be submitted by Grant Application Coordinators;
    2. negotiate terms and conditions of funding awards on behalf of ODFW.

- c. The Contract Authority is authorized to sign or otherwise authorize receipt of funding awards.
2. Permit Agreements. District Watershed Managers, Regional Managers, Program Managers, Division Administrators, and the contract authority are authorized to sign Permit Agreements on behalf of ODFW. All payments must be directed to ASD, along with applicable paperwork, documentation, permits, and transmittals. All signed permit agreements shall be forwarded to ASD Contract Services for record keeping. ASD Contract services will notify the ASD Accounting Tech 3, when signed permit agreements are received.
3. Gifts/Donations. ODFW employees may accept gifts of money, equipment, supplies, or property on behalf of ODFW, provided a donation form is filled out and any funds are directed to ASD for deposit. Gifts may be for a specific purpose or for general use of ODFW. Below are special considerations when receiving a gift:
  - a. If a gift is money and has terms and conditions, other than regarding the specified use (e.g. reporting, invoicing, etc.), the gift is a grant and should be processed through PIE.
  - b. If a gift is professional or trade services on ODFW property, project managers should contact ASD Contract Services, to determine if an agreement should be written to mitigate risk to ODFW.

**B. Contracts when ODFW is spending funds.**

1. Buy Decision. The State of Oregon Public contracting code requires the use of the, following sourcing methods in the priority order set out below prior to contracting or soliciting bids with the open market:
  - a. Surplus Property
  - b. Qualified Rehabilitation Facility
  - c. Inmate Labor
  - d. Statewide DAS Price Agreement
  - e. Contracting with another governmental entity
  - f. COBID certified business
  - g. Open Market
2. Small Purchases. When purchasing Goods which cost \$10,000 or less, or Trade Services which cost \$5,000 or less, Project Managers and others with Spending Authority are authorized to sign the following:
  - a. Purchase Orders
  - b. SPOTS card
  - c. When purchasing Trade Services which cost \$5,000 or less under a federal grant, Project Managers or others with Spending Authority must submit a Contract Services request to Contract Services for development of a trade services contract because Davis-Bacon wage rates will apply.
3. Architectural, Engineering and Construction. Project Managers must submit all requests listed below first to the Fish Division, Engineering Section via an Engineering Work Order for review and approval prior to contacting ASD Contract Services. Types of Contracts:
  - a. Architectural, Engineering, and Land Surveying Services are a special type of personal services contract (PSK) for the architectural, engineering, land surveying, planning, designing, engineering or oversight of public improvement projects. These types of Contracts, regardless of value or purpose, must be processed through ASD Contract Services pursuant to ORS 279C. In addition, Architectural, Engineering, and Land Surveying Services and Related Services that are contracted to perform Public Improvement or Construction Services (defined under 279C) designs shall be reviewed and managed by the Fish Division, Engineering Section.

- b. Public Improvement Contracts. The Fish Division, Engineering Section is designated to design (or review) and to administer all public improvement projects and Contracts for new construction and improvements or major repairs to all buildings, structures, lands, roads, bridges, and related facilities. These Contracts are processed through ASD Contract Services in accordance with state law, Attorney General Public Contracting Rules, pursuant to ORS 279C and applicable federal law.
  - c. Construction Services (a type of trade service). The Fish Division, Engineering Section is designated to design (or approve design) and to administer all Contracts for emergency work, minor alteration, ordinary repair or maintenance necessary to preserve an ODFW owned public improvement. ASD Contract Services is responsible for soliciting public competition, and developing Contracts in accordance with state law pursuant to ORS 279B, Attorney General Public Contracting Rules, and federal requirements imposed by funding awards and applicable federal law and regulation. If the Contract is for more than \$150,000, ASD Contract Services will obtain necessary AG approval.
  - d. Contract Authority. The Contract Authority is authorized to sign all Architectural, Engineering, Public Improvement and Construction Service contracts.
4. Intermediate and Formal Procurements of Goods and Trade Services.
- a. Goods Contracts: Purchase of goods which cost more than \$10,000 must be processed and authorized by ASD Contract Services. If the purchase is for more than \$150,000, ASD Contract Services may procure the goods under ODFW's own authority or will contact DAS to either receive delegation of contracting authority or will ask DAS to conduct the procurement, and obtain any necessary AG approval.
  - b. Trade Service Contracts: Trade Services with a cost of more than \$5,000 must be processed and authorized by ASD Contract Services. These agreements include such services as landscape, janitorial, roofing, fencing, underground storage tank removal, minor facility repairs, standard training (not customized to ODFW's need), as well as others, not including office and storage leasing. If the purchase is for more than \$150,000, ASD Contract Services may procure the goods under ODFW' s own authority or contact DAS to either receive delegation of contracting authority or ask DAS to conduct the procurement, and obtain any necessary AG approval.
  - c. Contract Authority. The Contract Authority is authorized to sign all purchase orders for Goods in excess of \$10,000 and all Trade Service Contracts.
5. Information Systems Agreements or Contracts.
- a. All requests for purchase of computer software, hardware or equipment on Price Agreement must be reviewed and approved by ODFW' s Information Services Division (ISD) prior to contacting ASD Contract Services. If required, ISD will forward the request to Contract Services for open competition and/or contract development.
  - b. All requests for telecommunication services must be reviewed and approved by ISD. If required, ISD will forward the request to DAS for open competition and/or contract development.
  - c. Purchases of any products or services that are; cloud based, store or process data with asset classifications of L2 or higher, that is the authoritative source for the agency, is a sole source or risk to sustained operations, housed or operated in foreign countries, or in excess of \$150,000 must obtain the following approval(s):
    - 1. State of Oregon Chief Information Office. ISD is responsible to coordinate and obtain this approval.
    - 2. DAS Procurement Services. ASD Contract Services will coordinate any required DAS Procurement Services approval and any necessary AG approval.

3. DAS Enterprise Technology Services approval. ISD will coordinate all required approvals.
        - d. The Contract Authority is authorized to sign all purchase orders for more than \$10,000, and all Information System Contracts. Project Managers with Spending Authority are authorized to sign purchase orders for the purchase of IT software, hardware, or equipment which cost \$10,000 or less, that are explicitly designated by ISD as pre-approved and not requiring additional authorization. All other IT products or services require additional authorization. Authorization must be attached to payment documents submitted to Accounts Payable.
6. Intergovernmental Agreements (IGA). Intergovernmental Agreements require processing through ASD Contract Services and signature of the Contract Authority prior to work commencing. When necessary, ASD Contract Services will obtain AG approval.
7. Personal or Professional Service Contracts. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a Personal Services Contractor, with price being secondary.
  - a. These Contracts must be processed through the ASD Contract Services. The solicitation, screening and selection procedures for the award of Personal Services Contracts are governed by ORS 279A, B and C.
  - b. ODFW employees are encouraged to use qualified public sources through IGAs before using private Contractors.
  - c. When the Contract amount is over \$150,000, ASD Contract Services will obtain necessary DAS Procurement Services delegation of Contracting Authority and AG approval, or send through DAS Procurement Services.
  - d. The Contract Authority is authorized to sign all professional service contracts.
8. Realty Agreements.
  - a. Office Space Leasing- is processed through the ASD, Realty Section of Contract Services, according to DAS procedures. DAS requires space needs be documented prior to lease negotiations being entered into by DAS. In limited circumstances, an IGA may be used in lieu of a lease, and are processed by ASD Contract Services.
  - b. Storage Facilities- leasing/renting of commercial storage facilities is processed through the ASD Realty Section of Contract Services and approved by the Contract Authority.
  - c. Space Needs Assessment, Leases and Storage Facility leases may only be signed by a Contracting Authority within the Director's Office.
  - d. Property acquisitions and disposals- All property acquisitions or disposals (purchase or selling of land) must be processed through the ASD Realty Section, and be approved by a signature authority in the Director's Office, or in some cases, approved by the Commission.
9. Grants.
  - a. Competition for Grants is solicited by individual ODFW program managers, who are responsible for assuring compliance with federal and state regulations applicable to such processes.
  - b. Unless formally delegated in writing to an individual, Grant Agreements must be reviewed and authorized by ASD Contract Services Section, prior to signature by the Contract Authority.
10. Amendments and Change Orders. All Amendments and Change Orders must be submitted to ASD Contract Services and signed by the Contract Authority.

### **C. Other Contracts and Agreements**



1. Cooperative Agreements (CA). Cooperative agreements initiated by ODFW must be processed and authorized by ASD Contract Services prior to being signed. The Contract Authority is authorized to sign Cooperative Agreements.
2. Memorandums of Agreement and Memorandums of Understanding (MOA or MOU). MOAs and MOUs are similar to cooperative agreements except that they typically concern ODFW policy or commitments to work with other organizations on specific projects. MOAs and MOUs may not involve the exchange of money between the parties. These may be processed and signed by the corresponding Division Administrator, Region Manager, or processed through the ASD Contract Services Section and signed by a Contract Authority.
3. Travel Management Agreements (TMA). Cooperative agreements with landowners that limit motor vehicle travel at specific times to minimize impacts on wildlife. ODFW Watershed Managers, Region Managers, or a Contract Authority is authorized to sign Travel Management Agreements.
4. Data Sharing Agreements. Cooperative agreements that allow sharing of data, with entities that request data. These agreements could also include non-disclosure agreements. The Division Administrator or Deputy Administrator, from the Division responsible for the data being shared, or a Contracting Authority, is authorized to sign data sharing agreements. For data sharing requests that span multiple divisions, the request must be processed through the Information Management Program Leader in the Management Resource Division, and approved by the MRD Administrator, MRD Deputy Administrator, or a Contract Authority.
5. Non-Disclosure Agreements. Agreements, usually accompanying data or proprietary information being shared with ODFW or that ODFW is sharing with another entity, that set restrictions on how the corresponding information can or cannot be shared. These agreements may be signed by the corresponding Division Administrator or Deputy Administrator, or a Contract Authority.
6. Equipment Rental Agreements. Agreements for the rental of equipment, including but not limited to, heavy equipment, tools, trailers, or other pieces of equipment required to complete a job. For equipment rentals less than \$10,000, Program Managers, Watershed Managers, Region Managers, Deputy Administrators, Administrators, or a Contract Authority may sign agreements. For equipment rentals greater than \$10,000, procedures for intermediate/formal procurement of goods and services must be followed, per section 4 of this policy.
7. Facility Rental Agreements. Agreements for the rental of conference rooms, facilities, or property owned by another entity. Facility rental agreements must be submitted to contract services for review and signed by a Contract Authority.