



AGENDA
PUBLIC PROCUREMENT AUTHORITY
Wednesday, October 23, 2013
9:00 a.m. PST

1. CALL TO ORDER

A. Roll Call

☐

Mike Duyck, Chief TVFR

Non- voting Members

☐

Dan Peterson, Chief Jackson County

☐

Tim Moor, Chief Redmond Fire

☐

Jeff Johnson, CEO WFOA

B. Staff and guests in attendance

Heidi Chames, WFOA

Crosby Grindle, NPP/FRGPO

2. PUBLIC TESTIMONY

3. STAFF/GUEST PRESENTATION

A. Overview of PPA – Heidi Chames

B. Overview of NPP/FRGPO – Crosby Grindle

C. Public Procurement Process and Template Documents – Crosby Grindle

4. NEW BUSINESS

A. Review, Discussion, Adoption of Board Policy **

B. Election of Officers**

C. Review, Discussion, Adoption of Administration Agreement **

D. Review, Discussion, Adoption of Oregon Administrative Rules for Public Contracting **

E. Direct Administrator to Solicit Proposal(s) for Legal Services **

F. PPA/NPP Memorandum of Understanding

5. ADMINISTRATOR'S REPORT

6. GOOD OF THE ORDER – NEXT MEETING: _____

7. ADJOURN

** denotes items requiring action

PUBLIC PROCUREMENT AUTHORITY (PPA) **BOARD POLICY**

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POLICY NO.1 – NAME, PARTICPATING AGENCIES, ADMINISTRATOR, PURPOSE

SECTION 1.1 – NAME: The name of this organization shall be the Public Procurement Authority (PPA).

SECTION 1.2 – PARTICIPATING AGENCIES: Three participating agencies, Tualatin Valley Fire & Rescue, Redmond Fire & Rescue, and Jackson County Fire District 3 formed the PPA through an Intergovernmental Agreement entered into and filed in the State of Oregon.

SECTION 1.3 – ADMINISTRATOR: The PPA Board will select an Administrator of the PPA and delegate to said Administrator the responsibility for implementing plans and policies.

SECTION 1.4 – PURPOSE: The purpose of the PPA is to form an organization for the cooperative provision of local government public safety procurement functions. To carry out this purpose, the PPA shall:

- a) Act as the Administering Contract Agency for purposes of any group purchasing organizations to which the PPA and its participating agencies belong;
- b) Provide an avenue for public safety officials to exchange ideas and obtain expert advice on procurement of police, fire, and other public safety and government equipment;
- c) Solicit and award bids pursuant to ORS Chapter 279 for purposes of any group purchasing organizations to which the PPA and its participating agencies belong;
- d) Secure competitive pricing and volume discounts on equipment and technology to benefit the participating agencies by entering into Master Price Agreements;
- e) Secure uniform specifications on products and technology;
- f) Enable the PPA and other public entities to benefit from standardized equipment, specialized technology, and collective cost savings;
- g) Allow other public agencies who are members of the group purchasing organizations to which the PPA and its participating agencies belong to benefit from the Master Price Agreements.

Date Originated: 10/23/2013

Date Revised: _____

POLICY NO.2 – BOARD OF DIRECTORS

SECTION 2.1 – MEMBERS: The Board shall be composed of three members, one delegate from each of the three participating agencies of the PPA, each of whom shall be the Fire Chief in the public agency that they represent. The Administrator's designated representative shall also serve as an ex-officio, non-voting Board member.

SECTION 2.2 – OFFICERS: The officers of the Board shall consist of a President and Administrator.

SECTION 2.3 – POSITIONS: The President shall be elected each year for an approximate one year term subject to the annual meeting date. The Administrator shall be appointed by the Board of Directors and shall hold office at the pleasure of the Board and pursuant to the terms of an Administration Agreement.

SECTION 2.4 - TERMS OF OFFICE: No member may serve more than three consecutive terms as President. In case of a change of Presidents during mid-term, any period served in excess of six months shall be considered a term. At the annual meeting each year, taking place in November, the Board shall elect/appoint its officers for the ensuing year.

SECTION 2.5 – REMOVAL OF OFFICERS: Upon withdrawal from the Intergovernmental Agreement by any of the participating agencies, that agency's board member shall automatically be removed as a board member or officer of the board. Additionally, any officer shall be removed from office for any of the following reasons:

- a. Conviction of a felony
- b. Misfeasance, malfeasance, or nonfeasance in office
- c. Failure to participate in meetings and conference calls
- d. Loss of qualification

Provided, however, that such removal shall not be effective unless and until the evidence has been reviewed by, and a determination made by the Board of Directors; provided further, however, that the Board shall meet within forty-five (45) days of the date of filing and any charges made upon an officer to deliberate the issue, declare its findings, and take necessary action.

SECTION 2.6 – FILLING OFFICER VACANCY: A vacancy occurring in any office shall be immediately filled with an appointment from the Board of Directors.

Date Originated: 10/23/2013

Date Revised: _____

POLICY NO.3 – POWERS AND DUTIES OF THE BOARD/OFFICERS

SECTION 3.1 – BOARD POWERS: It is the policy of the Board of Directors to exercise those powers granted to it, and to carry out those duties assigned to it by law, in such a way as to best meet the needs of the PPA. The Board shall establish policy, reserving to itself all authority and responsibility not expressly assigned to the Administrator. No individual Board member may speak for, represent a position of, or act on behalf of the Board or PPA, except as authorized to do so by a majority vote of the members of the Board and as recorded in the official minutes, guidelines, or policies of the PPA. Board Members shall adhere to the highest ethical standards in the conduct of PPA business.

SECTION 3.2 – DUTIES OF THE BOARD: It shall be the duty of the Board of Directors to conduct all business of the PPA not otherwise assigned to the Administrator; recognize confidentiality of certain information obtained at Board meetings; approve specific important projects; approve any significant departure from established plans or policy; select legal counsel for the PPA if necessary; authorize the Administrator to enter into contracts; cause to be made an annual audit as may be required by Oregon law; to have the PPA and its Board of Directors be insured in an amount to be determined by the Board, the cost of said insurance to be paid by the Administrator; any other duties as authorized by these policies.

SECTION 3.3 – DUTIES OF THE PRESIDENT: The President shall preside at all meetings, and shall have the right to make motions, discuss questions, and vote on any issue. The President shall sign on behalf of the Board such documents as may require an official signature. The Administrator, by Board action, may be authorized to sign such documents. The President or designee shall represent the Board in deliberations with other Boards, districts, or agencies unless another member is nominated and elected by a majority of the Board. The President shall appoint all committees, subject to approval of a majority of the Board, call special meetings, and perform all other duties prescribed by law or set forth in the Board's policies and rules.

SECTION 3.4 – DUTIES OF ADMINISTRATOR AS OFFICER OF BOARD: In the absence or inability of the President of the Board, the Administrator shall perform the duties of the President except the ability to cast a vote.

SECTION 3.5 – DUTIES OF ADMINISTRATOR AS CLERK OF BOARD: It shall be the duty of the Administrator to perform the following functions as clerk of the Board:

- a. Manage routine correspondence directly.
- b. Prepare for Board Meetings: Prepare the agenda with the advice of the President; maintain a calendar of the Board's unfinished business; in concurrence with legal counsel, call to the attention of the Board the legal requirements and related Oregon Revised Statutes in those matters for which the PPA is responsible; draft policy motions at the request of any Board member.
- c. Board Meeting Duties: Attend all Board meetings or designate an alternate; provide notice of Board meetings in accordance with Public Meetings Law; make physical arrangements for Board meetings; record briefly the disposition of all matters on which the Board considered action, referring to the source of major written recommendations by title and date; prepare, check, and distribute minutes in advance for approval; maintain properly authenticated official copy of minutes.
- d. Maintain an official record of policies of the Board.



Date Originated: October 23, 2013

Date Revised: _____

POLICY NO.4 – RELATIONSHIP WITH ADMINISTRATOR

SECTION 4.1 – FUNCTIONS OF THE ADMINISTRATOR: The administration of the PPA in all aspects shall be delegated to the Administrator, who shall carry out the administrative functions according to the policies adopted by the Board. At a minimum, the Administrator shall:

- A. Initiate, administer, and supervise the programs of the PPA.
- B. Keep and maintain proper fiscal records for the PPA.
- C. Hire and, when necessary, terminate, promote, and demote all personnel necessary to carry out the business of the PPA.

SECTION 4.2 – AUTHORITY GRANTED TO ADMINISTRATOR: Unless otherwise directed by a majority vote of the Board, the Administrator is granted the general authority to administer the formal competitive public contracting bid process on behalf of and in the name of the PPA which will include, but is not limited to:

- A. Identifying products and services that will benefit the PPA and its partners
- B. Drafting or appointing a committee to draft specifications for such products and services
- C. Drafting solicitation documents
- D. Publishing solicitation documents
- E. Responding to questions regarding solicitation documents
- F. Receiving responses to solicitation documents
- G. Evaluating or appointing a committee to evaluate responses
- H. Making a recommendation to the Board on an Intent to Award
- I. Receiving the Board's decision on Intent to Award
- J. Publishing the Intent to Award
- K. Drafting Master Price Agreements
- L. Entry into Master Price Agreements on behalf of Board
- M. Providing an avenue for other public agencies to benefit from PPA Master Price Agreements

SECTION 4.3 – VOLUNTARY ROLE OF BOARD IN PUBLIC CONTRACTING PROCESS: With respect to the formal competitive public contracting bid process, any Board Member may if they so choose:

- A. Suggest products and services for PPA contracting
- B. Serve on a committee to draft specifications
- C. Serve on a committee to evaluate bid responses

SECTION 4.4 – MANDATORY ROLE OF BOARD IN PUBLIC CONTRACTING PROCESS:
The Board shall be required to:

- A. Receive the Intent to Award recommendation from the Administrator and make a final determination on the Intent to Award
- B. Approve the Public Contracting Process and assign Administrator the authority to enter into and sign Master Price Agreements on behalf of the Board.



Date Originated: October 23, 2013

Date Revised: _____

POLICY NO.5- PUBLIC BOARD MEETINGS

SECTION 5.1 – MEETING OF BOARD OF DIRECTORS: The Board of Directors and such other persons as the Board may see fit for the proper transaction of business, shall hold an annual meeting at a time and place determined by the Board as well as meet quarterly on a fixed day at such time and place as it determines within the State of Oregon. The annual meeting shall be held in place of one of the quarterly meetings. Special meetings of the Board shall be called by the President and convened consistent with Public Meeting Law. The Board reserves the right to cancel or change the place, time, and date of such regular Board meetings and to call and hold such additional meetings as shall be deemed necessary. All meetings are to be properly posted and advertised subject to Public Meeting Law.

SECTION 5.2- LOCATION OF MEETING: All meetings shall be held within the State of Oregon. No meeting shall be held in any place where discrimination on the basis of race, creed, color, sex, age, national origin, sexual preference, or disability is practiced. All meetings shall be held in places accessible to the handicapped. Meetings held by telephone or other electronic communication is subject to the Public Meetings Law. Notice and opportunity for public access shall be provided when meetings are conducted by electronic means. At least one location shall be provided where meetings held by telephone or other electronic means may be listened to by members of the public.

SECTION 5.3 – NOTICE OF MEETING: Notice of the time, place, and principal subjects to be considered shall be given for all meetings. For regular meetings, the notice shall be in the form of an agenda, which shall be sent to all Board Members and to all persons having requested notice in writing of every meeting. The agenda shall also be posted at the following locations with the State of Oregon: PPA website and Daily Dispatch newsletter. Written notice shall also be sent to any persons who the Board knows may have a special interest in a particular action, unless such notification would be unduly burdensome or expensive.

SECTION 5.4 – AGENDA: The agenda shall be given to each Board Member at least three (3) days prior to Board meetings. All agenda items shall clearly describe actions to be considered by the Board. The Administrator shall draft the agenda after conferring with the President of the Board in the following general order: Consent Agenda (including approval of the minutes of the previous Board meeting(s), Recognition, Citizen participation, Staff presentation, Finance report (annually), Correspondence, Old business, New business, Administrator's Report, President's Report, Items not listed on the agenda, Executive Session (if necessary).

SECTION 5.5 – VOTING: A majority of voting members of the Board shall constitute a quorum. If only a quorum is present a unanimous vote is required to approve a motion. Votes will be recorded at the meeting. Members having an actual or potential conflict of interest must declare it and if the conflict of interest is actual the member must abstain from voting. If the member's vote is necessary to meet the minimum number of votes to take official action, and the issue is emergent to the PPA, the member may vote but not participate in any discussion on the issue related to the actual conflict of interest. Members may append to the record at the time of voting, a statement indicating the reason for the vote or the reason for abstaining.

SECTION 5.6 – MINUTES: The Board shall keep minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the written minutes must give a true reflection of the matters discussed and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting by posting on PPA website and shall include at least the following information: Members of the governing body present; motions and their disposition; results of all votes; the substance of any discussions on any matter. Minutes of executive sessions may be limited to material the disclosure of which is consistent with Public Meeting Law.

SECTION 5.7– PROCEDURE: Except as otherwise provided by State Law and/or Board policy, the rules of parliamentary procedure comprised in “Roberts Rules of Order” (Revised) shall govern the Board in its deliberations. Rules may be amended at any meeting by majority vote. The order of business may be suspended at any meeting by a majority vote of those present.

Date Originated: October 23, 2013

Date Revised: _____

POLICY NO.6 – PUBLIC RECORDS

SECTION 6.1 – COMPLIANCE: The PPA recognizes that records created, prepared, owned, used, and maintained by the PPA are the property of the public and shall fully comply with Oregon Public Records Law. In the event of a Public Records Request, the following policy will apply:

- A. The PPA will encourage requests for public records to be submitted in writing
- B. The PPA will endeavor to assist all requestors with locating the records and information they seek, but is not required to create records in response to a request
- C. The PPA shall permit inspection and examination of its records during regular business hours in the PPA Administrator offices, or such other location as agreed upon
- D. The PPA may charge a fee in order to recover its actual costs for responding to public records requests

SECTION 6.2 - RECORDS EXEMPT FROM DISCLOSURE: While the general policy of the PPA will be to provide public access to its records, some types of records are prohibited from disclosure as defined in the Oregon Revised Statutes. In addition, the PPA may deny access to certain records when it is determined that the need for confidentiality outweighs the public interest in disclosure under the particular circumstance. In the event a request for public records is denied, the PPA will provide the requestor with a written explanation for denying the request showing that the denial is consistent with the law.

Date Originated: October 23, 2013

Date Revised: _____

POLICY NO.7 – FINANCES

SECTION 7.1 – REVENUE: The activities of the PPA are not intended as a revenue generating venture for the PPA . The Administrator shall not be entitled to profit from any activity of the PPA except to the extent that the Administrator receives compensation via independent agreements resulting from use of PPA Master Price Agreements. Such compensation shall not be considered revenue to the PPA.

SECTION 7.2 – EXPENSES: All expenses incurred in connection with the Administrator and Board activities on behalf of the PPA shall be borne solely by the Administrator. Such expense shall not be considered an expense of the PPA.

SECTION 7.3 – BUDGET: A basic annual budget shall be prepared by the Administrator and submitted to the Board for review and approval by June 30 of each year. The fiscal year of the PPA shall run from July 1 through June 30.

SECTION 7.4 – INSURANCE: The Administrator shall maintain, at its sole cost and expense, insurance in the name of PPA . Coverage shall meet legal requirements or exceed those minimum requirements at the discretion of the Board as necessary to protect the PPA as a public entity and the PPA's Board of Directors. The Administrator shall also maintain insurance in its own name and at its own expense, in an amount reasonably sufficient to cover claims that may arise out of its activities, including but not limited to tort claims under ORS 30.260-300. The PPA, its members, officers, employees, agents, successors and permitted assigns shall be named as additional insured's on this policy.

Date Originated: October 23, 2013

Date Revised: _____



POLICY NO.8 – ADOPTION AND AMENDMENTS TO POLICY

SECTION 8.1 – AMENDMENT: The policy of the PPA may be amended by a majority vote.

SECTION 8.2 – EFFECTIVE DATE: Unless otherwise specifically determined, an amendment shall become effective thirty days after adoption.

SECTION 8.3 – POLICY ADOPTED: This policy was approved and adopted on

_____.

President: _____

Administrator: _____ Jeffrey D. Johnson

ADMINISTRATION AGREEMENT

BETWEEN: Public Procurement Authority (“PPA”)
AND: WFCA Fire Chiefs Association (“WFCA”)
DATED: _____, 2013

RECITALS

A. WHEREAS, PPA is an intergovernmental entity comprised of fire protection districts organized under ORS Chapter 478, authorized by ORS 190.010, *et seq.*, and empowered to perform certain public procurement functions in accordance with applicable public procurement statutes and supporting regulations, including without limitation ORS 279A, 279B and 279C (the “Oregon Public Contracting Code”); and

B. WHEREAS, the purpose of the PPA is to improve the efficiency and economy of the procurement process while reducing solicitation and procurement costs and providing a mechanism for increased standardization of necessary tools and equipment for the participating public agencies and others similarly situated; and

C. WHEREAS, the PPA acts as the “Administering Contract Agency” as that term is defined in ORS 279A.200-.225 and to act as the “Lead Contracting Agency” for purposes of any cooperative and/or group purchasing organizations to which the PPA, and its participating public entities belong; and

D. WHEREAS, PPA is governed by the terms of an Intergovernmental Agreement (IGA) that directs the PPA to appoint an Administrator to perform certain procurement functions set forth in the IGA; and

E. WHEREAS, PPA desires to appoint WFCA to act as Administrator and to perform certain tasks and responsibilities set forth in the IGA and as expressly assigned and directed by PPA; and

F. WHEREAS, WFCA desires to accept such appointment on the terms and conditions set forth herein.

AGREEMENT

Section 1. Powers and Duties of Administrator.

1.1 **Appointment and Delegation of Authority.** PPA appoints WFCA to act as Administrator pursuant to the IGA and to the directives of PPA as communicated to it by the PPA Board of Directors (the “Board”), and thereby delegates to WFCA all authority granted and duties conferred upon the PPA by the Oregon Public Contract Code and the IGA, and WFCA hereby accepts such appointment and delegation on the terms and conditions set forth in this agreement.

1.2 **Administrative Duties.** Unless otherwise directed by a majority vote of the Board, the Administrator is responsible to:

- Administer the procurement of bids for goods and services as directed by PPA, including but not limited to drafting specifications, drafting procurement documents, allowing or rejecting bid substitutions, evaluating bids, and recommending award.
- Administer the public contracting bid process on behalf of and in the name of PPA, engaging in the formal competitive solicitation and selection process for goods and services, but not public improvements, in accordance with and as required by the Oregon Public Contracting Code.
- Enter into Master Price Agreements on behalf of the PPA with one or more vendors to provide goods and services, subject to the approval of PPA.
- As directed by PPA, to allow other public safety agencies to benefit from the contracts secured by PPA and made available to those public entities who are members of the cooperative purchasing groups to which the Participating Public Agencies and/or the PPA belong.
- To identify products and technology that will benefit the members of the PPA and public safety agencies nationwide, and to make recommendations to the board on bidding and awards for same.
- Carry out other directives of the Board in accordance with the purpose of this Agreement and as permitted by law.
- Maintaining the books and records of the PPA, prepare annual budgets and financial reports, and ensure PPA compliance with the annual auditing and financial oversight requirements of ORS 297.405 to 297.555, as applicable to PPA.
- Perform such other Administrator duties as set forth in the IGA or specifically assigned by the Board in furtherance of the purposes set forth in the IGA.

1.3 **Board Duties.** WFCA's Executive Director, or another designated representative appointed by WFCA, will serve as the Ex Officio Board Member of the PPA as provided in the IGA, and will be required to attend all meetings of the PPA Board unless excused by the Board or Board President. WFCA recognizes that the PPA Board is the policy-making body of the PPA and agrees to respond promptly and equally to any and all members of the Board regarding their concerns.

Section 2. Costs and Expenses.

2.1 Any and all costs or expenses incurred in connection with the Administrator's activities hereunder shall be borne solely by WFCA, unless expressly authorized by the PPA Board.

2.2 The activities of the PPA are not intended as a revenue generating venture for the PPA or any Participating Public Agency. WFCA shall not be entitled to profit from any activity of the PPA, and should there be any incidental income from any activity of the PPA, it shall be devoted solely to the governmental purposes of the PPA and its participating agencies.¹

2.3 Notwithstanding the above, the parties acknowledge that WFCA has and will continue to receive compensation via independent agreements with group purchasing organizations, and that such compensation may result from purchases made under Master Price Agreements negotiated and awarded by the PPA, and that such compensation is not revenue to the PPA.

Section 3. Term and Termination.

Once executed, this Agreement remains in force for one (1) year. On completion of the first year, this Agreement automatically renews for successive terms of one (1) year unless terminated: (a) by either party for any reason upon thirty (30) days prior written notice to the other party; or (b) by mutual written agreement of the parties.

Section 4. Independent Relationship

4.1 The parties mutually understand and acknowledge that PPA is retaining the services of WFCA as an independent contractor and not an employee. WFCA will perform the duties and responsibilities as set forth in this Agreement, at its offices with its equipment and personnel and at its sole cost and expense.

4.2 Neither WFCA nor any of its employees performing services pursuant to this Agreement shall be an employee of PPA. WFCA shall be responsible to ensure it is properly performing its respective legal obligations to its employees at all times during the term of this Agreement including providing workers compensation coverage, proper payment of wages, and reporting and withholding employment-related taxes.

Section 5. Indemnification, Defense, and Hold Harmless.

5.1 Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, PPA shall defend, indemnify, and hold harmless WFCA, its members, board, officers, agents, and employees against any tort, claim, liability, loss, damages, professional liability claim, demand, or other action asserted by a third party and arising out of an alleged act or omission, including any negligent acts or omissions of WFCA or third parties, occurring in the performance of WFCA's duties as Administrator, in accordance with its duties and obligations under ORS 30.285 *et seq.*, unless prohibited by law; provided, however, that the action is not based upon WFCA's malfeasance or willful or wanton neglect of duty. WFCA's duties do not include the commission of any criminal act or intentional tort. This indemnification shall include the cost of defense, provided that the PPA will choose or approve legal representation for WFCA and will retain control over the defense of the claim, including the sole power to compromise and settle any claim or action and pay the amount of the

settlement or judgment.

5.2 To the extent permitted by the Oregon Constitution and the within the limits of the Oregon Tort Claims Act, WFCA shall defend, indemnify and hold harmless PPA, its members, board, officers and agents against any tort, claim, liability, loss, damages, professional liability claim, demand, or other action arising out of an alleged act or omission by WFCA that: (a) occurs or is alleged to have arisen out of WFCA's duties as Administrator and not otherwise subject to the indemnification at 5.1 above; (b) is based upon WFCA's malfeasance or willful or wanton neglect of its duty as Administrator; (c) involves the commission of any criminal act or intentional tort committed by WFCA, its agents, or employees; (d) arising out of or in connection with employee relationship of any WFCA employee performing work on behalf of PPA under this Agreement; or (e) arises outside the scope of WFCA's duties hereunder.

Section 6. Bond and Insurance.

6.1 WFCA shall obtain and maintain during the term of this Agreement, at its sole cost and expense, insurance in the name of PPA and in the specific amount and types approved by the Board, but in no event less than the minimum amounts for which public entities are liable under Oregon Revised Statutes as those statutes now exist or may be amended.

6.2 WFCA shall also maintain insurance in its own name and at its own expense, in an amount reasonably sufficient to cover claims that may arise out of its Administrator's activities, including but not limited to tort claims under ORS 30.260-.300. This policy or policies, shall name PPA as an additional insured. All policies except WFCA's Worker's Compensation Insurance Policy will name PPA and its members, officers, directors, employees, agents, successors, and permitted assigns as additional insureds.

Section 7. Confidentiality.

7.1 In connection with this Agreement and its duties as Administrator, WFCA will be provided with certain financial and other confidential information regarding PPA and its operations ("PPA Confidential Information"). WFCA agrees to use and disclose PPA Confidential Information only as necessary to provide the services specified in the Agreement and to take all steps reasonably necessary to ensure the confidentiality of such information while within WFCA's possession or control, including any duty or obligation under the Oregon Public Records law.

Notwithstanding the above, WFCA may disclose PPA Confidential Information to a third party where and to the extent such disclosure is: (i) necessary and incidental to the Contractor's performance of the services specified in this Agreement; (ii) expressly authorized by PPA in writing; or (iii) required by applicable law, regulation or legal process. In the event that disclosure is required by court or order or legal process, WFCA shall provide written notice to PPA prior to making the disclosure so that PPA may object or otherwise intervene to prohibit or limit disclosure as it deems appropriate.

Section 8. Miscellaneous.

8.1 If any provision, or any portion thereof, contained in this Agreement, is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable, shall not be affected and shall remain in full force and effect. It is the intent of the parties that this Agreement and the appointment of the WFCB be, in all aspects, in compliance with the provisions of the IGA. If any provision of this Agreement is capable of two constructions, only one of which complies with the IGA, the construction that complies with the IGA shall control. If any provision of the Agreement conflicts with the IGA, the IGA shall control and the conflicting provision of this Agreement shall be of no effect. All other provisions not in conflict with the IGA shall remain in full force and effect.

8.2 The parties may, from time to time, agree to modify the terms of this Agreement, provided that the amendment is reduced to writing and made a part of this Agreement.

8.3 The parties acknowledge that they have had Agreement independently reviewed by their own attorney(s).

8.4 This Agreement is governed by and construed in accordance with the laws of the State of Oregon; and may be enforced in Marion County Circuit Court in Salem, Oregon.

8.5 The representations, acknowledgements and indemnities provided in Sections 5 and 7 shall survive the termination of this Agreement.

8.6 The parties specifically agree that no persons, other than the parties hereto, have any interest in this Agreement and that no persons, including without limitation the employees, shall be considered intended third-party beneficiaries or entitled to rely upon the provisions of this Agreement for any purpose.

8.7 If one or more of the provisions or portions thereof of this Agreement are found to be illegal or unenforceable, the remainder of this Agreement will not be affected and each remaining provision or portion thereof will continue to be valid, effective, and enforceable to the fullest extent permitted by law.

8.8 No right or obligation set forth in this Agreement may be assigned or transferred to any third party without the prior written consent of both parties.

8.9 This Agreement shall be binding upon and/or to the benefit of the parties hereto and to their respective successors, legal and personal representatives, heirs and permitted assigns.

IN WITNESS WHEREOF, PPA has caused this Agreement to be signed and executed on its behalf by its Board President, and by the WFCA on the day and year first above written.

**PUBLIC PROCUREMENT
AUTHORITY:**

WESTERN FIRE CHIEFS ASSOCIATION:

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

ⁱ ORS 190.020(1)(b).

Oregon State Archives

800 Summer St NE Salem OR 97310
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► **The Oregon Administrative Rules contain OARs filed through September 15, 2013** ◀

QUESTIONS ABOUT THE CONTENT OR MEANING OF THIS AGENCY'S RULES?

[CLICK HERE TO ACCESS RULES COORDINATOR CONTACT INFORMATION](#)

DEPARTMENT OF JUSTICE

DIVISION 46

MODEL RULES

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

137-046-0100

Content and General Application; Federal Law Supremacy

(1) These Model Rules are rules of procedure for Public Contracting as required under ORS 279A.065 and consist of the following four divisions:

(a) This division 46, which applies to all Public Contracting;

(b) Division 47, which describes procedures for Public Contracting for Goods, Services and Personal Services other than Architectural, Engineering and Land Surveying Services and Related Services;

(c) Division 48, which describes procedures for Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 49, which describes procedures for Public Contracting for Construction Services.

(2) If a conflict arises between these division 46 rules and rules in divisions 47, 48 and 49, the rules in divisions 47, 48 and 49 take precedence over these division 46 rules.

(3) Except as otherwise expressly provided in ORS 279C.800 through 279C.870, and notwithstanding ORS Chapters 279A, 279B, and 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS Chapters 279A, 279B, or 279C.005 through 279C.670 or these Model Rules, or require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, and 279C.005 through 279C.670 or these Model Rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030 & 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-046-0110

Definitions for the Model Rules

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Model Rules have the meaning set forth in the division of the Model Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and if not defined here, the meaning set forth in the Code. The following terms, when capitalized in these Model Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "Administering Contracting Agency" has the meaning set forth in ORS 279A.200(1)(a) and for Interstate Cooperative Procurements includes the

entities specified in ORS 279A.220(4).

(3) "Award" means, as the context requires, either identifying or the Contracting Agency's identification of the Person with whom the Contracting Agency intends to enter into a Contract following the resolution of any protest of the Contracting Agency's selection of that Person and the completion of all Contract negotiations.

(4) "Bid" means a Written response to an Invitation to Bid.

(5) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(6) "Code" means the Public Contracting Code.

(7) "Competitive Range" means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with OAR 137-047-0261 or 137-049-0650.

(8) "Contract" means a contract for sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Contract" does not include grants.

(9) "Contract Price" means, as the context requires, the maximum monetary obligation that a Contracting Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(10) "Contract Review Authority" means:

(a) For State Contracting Agencies, generally the Director of the Oregon Department of Administrative Services;

(b) For Local Contracting Agencies, the Local Contracting Agency's Local Contract Review Board determined as specified in ORS 279A.060; and

(c) Where specified by statute, the Director of the Oregon Department of Transportation.

(11) "Contractor" means the Person, including a Consultant as defined in OAR 137-048-0110(1), with whom a Contracting Agency enters into a Contract.

(12) "DBE Disqualification" means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.

(13) "Descriptive Literature" means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.

(14) "Electronic Advertisement" means a Contracting Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Contracting Agency's Procurements made available over the Internet via:

(a) The World Wide Web or some other Internet protocol; or

(b) A Contracting Agency's Electronic Procurement System.

(15) "Electronic Offer" means a response to a Contracting Agency's Solicitation Document or Request for Quotes submitted to a Contracting Agency via:

(a) The World Wide Web or some other Internet protocol; or

(b) A Contracting Agency's Electronic Procurement System.

(16) "Electronic Procurement System" means an information system that Persons may access through the Internet using the World Wide Web or some other Internet protocol or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.

(17) "Invitation to Bid" or "TTB" means the Solicitation Document issued to invite Offers from prospective Contractors pursuant to either ORS 279B.055 or 279C.335.

(18) "Model Rules" means the Attorney General's model rules of procedure for Public Contracting as required under ORS 279A.065.

(19) "Offer" means a Written offer to provide Goods or Services in response to a Solicitation Document.

(20) "Offeror" means a Person who submits an Offer.

(21) "Opening" means the date, time and place specified in the Solicitation Document for the public opening of Offers.

(22) "Person" means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(23) "Personal Services" as used in division 47 and as used in division 46 when applicable to division 47 means the services performed under a Personal Services Contract. "Personal Services" as used in division 48 and division 49, and as used in this division 46 when applicable to division 48 or division 49, or both, has the meaning set forth in ORS 279C.100.

(24) "Personal Services Contract" means:

(a) For a Local Contracting Agency, a Contract or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), that the Local Contracting Agency's Local Contract Review Board has designated as a personal services contract pursuant to ORS 279A.055; or

(b) For a State Contracting Agency, a Contract, or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver or sculptor).

(25) "Product Sample" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(26) "Proposal" means a Written response to a Request for Proposals.

(27) "Recycled Materials" means recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii)).

(28) "Request for Qualifications" or "RFQ" means a Written document issued by a Contracting Agency to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services or Architectural, Engineering or Land Surveying Services, or Related Services, described in the document.

(29) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.

(30) "Responsible" means meeting the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and not debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(31) "Responsible Offeror" means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and who has not been debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(32) "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(33) "Responsive Offer" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(34) "Signature" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

(35) "Signed" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(36) "Solicitation Document" means an Invitation to Bid, Request for Proposals, Request for Quotes, or other similar document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C. The following are not Solicitation Documents unless they invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, a sole source notice, an approval of a Special Procurement, or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Solicitation Document is not itself a Solicitation Document.

(37) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings. "Writing" when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(38) "Written" means existing in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

Policy

Contracting Agencies subject to the Code shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Model Rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.015 & ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-046-0130

Application of the Code and Model Rules; Exceptions

(1) Except as set forth in this section, a Contracting Agency shall exercise all procurement authority related to Public Contracting in accordance with the Code and the Model Rules.

(2) A Contracting Agency that has specifically opted out of the Model Rules and adopted its own rules of procedure for Public Contracting pursuant to 279A.065 in the exercise of its own contracting authority is not subject to these Model Rules, except for those portions of the Model Rules that the Contracting Agency has prescribed for its own use for Public Contracting.

(3) Contracts or classes of Contracts for Personal Services of a Local Contracting Agency designated as such by the Local Contracting Agency's Local Contract Review Board pursuant to ORS 279A.055, are not subject to these Model Rules, unless the Local Contracting Agency adopts OAR 137-047-0250 through 137-047-0290 as the procedures the Local Contracting Agency will use to screen and select persons to perform Contracts for Personal Services other than Architectural, Engineering and Surveying Services and Related Services.

(4) These Model Rules do not apply to the Contracts or the classes of Contracts described in ORS 279A.025(2).

(5) These Model Rules do not apply to the contracting activities of the public bodies listed in ORS 279A.025(3).

(6) Contracting Agencies otherwise subject to the Code and these Model Rules may enter into Contracts for Goods or Services with non-profit agencies providing employment opportunities for individuals with disabilities pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either 279A.200 through 279A.225, or 279B.050 through 279B.085. However, Contracting Agencies must enter into such Contracts in accordance with administrative rules promulgated by the Department.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.050, 279A.055, 279A.065 & 279A.180

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

Minorities, Women and Emerging Small Businesses

137-046-0200

Notice to Advocate for Minorities, Women and Emerging Small Businesses

Pursuant to ORS 200.035, State Contracting Agencies shall provide timely notice of all Procurements and Contract Awards to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.035

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0210

Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification

(1) For purposes of ORS 279A.105, a subcontractor certified under 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

(b) The Contractor certifies in a Signed Writing to the Contracting Agency that a substantial number of the subcontractor's employees or subcontractors that will manufacture or provide the Goods or perform the Services or Personal Services under the Contract reside in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, the Contracting Agency shall determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitute a substantial number.

(2) Contracting Agencies shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the Contracting Agency, that the Offeror has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.

(3) DBE Disqualification.

(a) A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Contract pursuant to 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with subsections (b) and (c) of this Section.

(b) The Contracting Agency shall provide Written notice to the Person of a proposed DBE Disqualification. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the Contracting Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the DBE Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived the right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed DBE Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) Hearing. The Contracting Agency shall schedule a hearing upon the Contracting Agency's receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.

(d) Notice of DBE Disqualification. The Contracting Agency shall provide Written notice of the DBE Disqualification to the Person. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of DBE Disqualification;

(B) The grounds for DBE Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, 200.075, 279A.065, 279A.105 & 279A.110

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-046-0252

Personnel Employment Disclosure and Preference — State Agency Contracts for Goods or Services

(1) As authorized by subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a state contracting agency may state, in its Solicitation Documents for a procurement of goods or services, that the state contracting agency will consider, and award a preference based on, personnel deployment disclosures submitted by bidders or proposers in response to the solicitation.

(2) A state contracting agency may not reject a bidder or proposer on the ground that it submitted a non-responsive bid or proposal solely due to the bidder's or proposer's failure to submit a personnel employment disclosure. However, the state contracting agency may not apply the preference authorized by subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518) in favor of a bidder or proposer that fails to submit a complete and accurate personnel disclosure form with its bid or proposal on or before the date and time bids or proposals are due.

(3) To qualify for the application of the preference under subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a bidder's or proposer's personnel deployment disclosure form must state:

(a) The number of workers the bidder or proposer and the bidder's or proposer's subcontractors will, if awarded a contract, deploy to perform the overall contract work described in the Solicitation Documents.

(b) The number of workers the bidder or proposer and the bidder's or proposer's first-tier subcontractors will, if awarded a contract, employ in this state to perform contract work described in the Solicitation Documents.

(c) The number of jobs to be held by workers employed by the bidder or proposer and by the bidder's or proposer's subcontractors to perform the contract work described in the Solicitation Documents that will be newly created jobs that result from the award of the contract.

(d) The duration of the work of any workers (stated in number of work days) who will be employed in this state to perform contract work described in the Solicitation Documents for all workers (including workers of first-tier subcontractors) for whom the work duration will not be as long as the initial term of the contract.

(e) The rates of pay of all reported workers (including workers of first-tier subcontractors), described either individually, by position, or by job classification, who will be employed in this state to perform contract work described in the Solicitation Documents.

(4) To qualify for the application of the preference under subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a bidder or proposer must make a promise in its bid or proposal to ensure that the deployment of workers will comply, in terms of worker positions, duration of the work, and the location of the employment of workers, with the personnel deployment disclosure submitted with its bid or proposal. If awarded a contract, a bidder or proposer must commit, in the contract, to ensure that the deployment of workers will comply, in terms of worker positions, duration of the work, and the location of the employment of workers, with the personnel deployment disclosure submitted with its bid or proposal. In the contract, the contractor must agree to pass this obligation to all first-tier subcontractors.

(5) A state contracting agency may require a contractor under a contract awarded with the application of the preference under subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518) to submit, on a monthly or other periodic basis, the contractor's certification of its employment of workers and its first-tier subcontractors' workers) within this state in accordance with the contractor's personnel deployment disclosure.

(6) A state contracting agency may give a preference of not more than ten percent to a bid or proposal that states that the bidder or proposer (and its first-tier subcontractors) will employ more workers within this state than competing bidders or proposers. In determining the bidder or proposer who will employ more workers within this state, the state contracting agency may take the rates of pay and the duration of the work into account by averaging the rates of pay for all disclosed in-state work positions and averaging the duration of the in-state work positions among all disclosed in-state work positions. Before granting the preference to a bid or proposal, the agency must determine that the competing proposals otherwise suit the state agency's specifications for the procurement equally well.

(7) In applying the preference, a state contracting agency must achieve fairness by assigning a standard work-deployment period for each solicitation that does not exceed the duration of the initial term of any contract awarded with the application of the preference, or in project completion-based contracts, does not exceed the probable duration of the project work exclusive of a contractor's performance of warranty work and maintenance.

(8) Where a state contracting agency determines that a personnel deployment disclosure unreasonably or unrealistically overstates the number of workers a bidder or proposer (and first-tier subcontractors) will employ within this state, the state contracting agency may reject the bid or proposal on grounds of bidder or proposer non-responsibility, or in a proposal situation, may deduct proposal evaluation points.

Stat. Auth.: ORS 279A.065

Stats. Implemented: 2012 OL, ch 53

Hist.: DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

Contract Preferences

Preference for Oregon Goods and Services

(1) Tiebreaker Preference and Award When Offers Are Identical. Under ORS 279A.120, when a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the Contracting Agency shall Award the Contract based on the following order of precedence:

(a) The Contracting Agency shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon.

(b) If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, the Contracting Agency shall Award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(c) If the Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, then the Contracting Agency shall award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(2) Determining if Offers are Identical. A Contracting Agency shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services, or both, or Personal Services, described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Offers received in response to a Special Procurement conducted under ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Contracting Agency determines, in Writing, that two or more Offers are equally advantageous to the Contracting Agency.

(d) Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the Contracting Agency in accordance with 279B.070(4).

(3) Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon. In applying Section 1 of this rule, Contracting Agencies shall determine whether a Contract is predominantly for Goods, Services or Personal Services and then use the predominant purpose to determine if the Goods, Services or Personal Services are manufactured, produced, or performed in Oregon. Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time the Contracting Agency determines is appropriate, any information the Contracting Agency may need to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods, Services or Personal Services are manufactured, produced, or performed in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency applies those criteria equally to each Offer.

(4) Procedure for Drawing Lots. When this rule calls for the drawing of lots, the Contracting Agency shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) Discretionary Preference and Award. Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. A Contracting Agency may establish a preference percentage higher than ten percent by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage. A Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

Stat. Auth.: ORS 279A.065; OL 2011, ch 237

Stats. Implemented: ORS 279A.065; 279A.120 & 279A.128; OL 2011, ch 237

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-

137-046-0310

Reciprocal Preferences

When evaluating Bids pursuant to OAR 137-047-0255, 137-047-0257 or 137-049-0390 and applying the reciprocal preference provided under ORS 279A.120(2)(b) a Contracting Agency may rely on the list prepared and maintained by the Department pursuant to ORS 279A.120(4) to determine (i) whether the Nonresident Bidder's state gives preference to in-state bidders and (ii) the amount of such preference.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279A.120

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0320

Preference for Recycled Materials

(1) In comparing Goods from two or more Offerors, if at least one Offeror offers Goods manufactured from Recycled Materials, and at least one Offeror does not, a Contracting Agency shall select the Offeror offering Goods manufactured from Recycled Materials if each of the conditions specified in ORS 279A.125(2) exists. When making the determination under 279A.125(2)(d), the Contracting Agency shall consider the costs of the Goods following any adjustments the Contracting Agency makes to the price of the Goods after evaluation pursuant to OAR 137-046-0310.

(2) A Contracting Agency shall determine if Goods are manufactured from Recycled Materials in accordance with standards established by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279A.125

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0330

Federally Funded Transit Projects — Preference for Exceeding Federal Buy America Requirements

(1) A contracting agency, in its Solicitation Documents to award a contract for a transit project that will be funded in whole or in part with funds from the federal government or a federal government agency, may provide for the application of a preference in favor of an Offeror whose bid or proposal exceeds the applicable federal Buy America requirements.

(a) A contracting agency has discretion to adjust the amount or character of the preference to account for variations in the nature of the contract or project, and the degree to which each Offeror's bid or proposal exceeds the federal Buy America requirements.

(b) For example, in an invitation to bid procurement the contracting agency may authorize a range of preference price percentages to account for the various degrees to which the bidders might exceed the federal Buy America requirements. In no event, however, may the percentage preference given to a bidder exceed ten percent of the total bid price.

(c) Similarly, under a request for proposals, the contracting agency may allocate and award evaluation points to reflect the degrees to which the proposers might exceed the applicable federal Buy America requirements. In no event, however, may those percentage points exceed ten percent of the total number of points available for award under the request for proposals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: 2012 OL, ch 58

Hist.: DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

Cooperative Procurement

137-046-0400

Authority for Cooperative Procurements

(1) Contracting Agencies may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225.

(2) Each Purchasing Contracting Agency shall determine in Writing whether the solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085, consistent with 279A.200(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279A.205

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0410

Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies

(1) If a Contracting Agency is an Administering Contracting Agency of a Cooperative Procurement, the Contracting Agency may establish the conditions under which Persons may participate in the Cooperative Procurement administered by the Administering Contracting Agency. Such conditions may include, without limitation, whether each Person who participates in the Cooperative Procurement must pay administrative fees to the Administering Contracting Agency, whether each Person must enter into a Written agreement with the Administering Contracting Agency, and any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. A Contracting Agency that acts as an Administering Contracting Agency may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement and advertise the Solicitation Document in a manner to assist Purchasing Contracting Agencies' compliance with the Code or these Model Rules.

(2) If a Contracting Agency acting as a Purchasing Contracting Agency enters into a Contract based on a Cooperative Procurement, the Contracting Agency shall comply with the Code and these Model Rules, including without limitation those sections of the Code and these Model Rules that govern:

- (a) The extent to which the Purchasing Contracting Agency may participate in the Cooperative Procurement;
- (b) The advertisement of the Solicitation Document related to the Cooperative Procurement; and
- (c) Public notice of the Purchasing Contracting Agency's intent to establish Contracts based on a Cooperative Procurement.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279A.205

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0420

Joint Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement may do so only in accordance with ORS 279A.210.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279A.210

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-046-0430

Permissive Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Permissive Cooperative Procurement may do so only in accordance with ORS 279A.215.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279A.215

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-046-0440

Advertisements of Intent to Establish Contracts through a Permissive Cooperative Procurement

(1) For purposes of determining whether a Purchasing Contracting Agency must give notice of intent to establish a Contract through a Permissive Cooperative Procurement as required by ORS 279A.215(2)(a), the estimated amount of the procurement will exceed \$250,000 if:

- (a) The Purchasing Contracting Agency's Contract arising out of the Permissive Cooperative Procurement expressly provides that the Purchasing Contracting Agency will make payments over the term of the Contract that will, in aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated;
- (b) The Purchasing Contracting Agency's Contract arising out of the Permissive Cooperative Procurement expressly provides for

payment, whether in a fixed amount or up to a stated maximum amount, that exceeds \$250,000; or

(c) At the time the Purchasing Contracting Agency enters into the Contract, the Purchasing Contracting Agency reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services, or both, or Personal Services, under the Contract will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract.

(2) An Administering Contracting Agency that intends to establish a Contract arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in ORS 279A.215(2)(a) by including the information required by 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with 279A.215(2), 279A.215(3) and these Model Rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279A.215

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0450

Interstate Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer an Interstate Cooperative Procurement may do so only in accordance with ORS 279A.220.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279A.220

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-046-0460

Advertisements of Interstate Cooperative Procurements

(1) The Solicitation Document for an Interstate Cooperative Procurement is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with 279B.055(4) or 279B.060(4) by:

(a) The Administering Contracting Agency;

(b) The Purchasing Contracting Agency;

(c) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Purchasing Contracting Agency is a member; or

(d) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or 279B.060(4) with respect to the Purchasing Contracting Agency.

(2) A Purchasing Contracting Agency or the Cooperative Procurement Group of which the Purchasing Contracting Agency is a member satisfies the advertisement requirement under ORS 279A.220(2)(b) if the notice is advertised in the same manner as provided in 279B.055(4)(b) and (c).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279A.220

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0470

Protests and Disputes

(1) An Offeror or potential Offeror wishing to protest the procurement process, the contents of a solicitation document related to a Cooperative Procurement or the award or proposed award of an Original Contract shall make the protest in accordance with ORS 279B.400 through 279B.425 unless the Administering Contracting Agency is not subject to the Code. If the Administering Contracting Agency is not subject to the Code, then the Offeror or potential Offeror shall make the protest in accordance with the processes and procedures established by the Administering Contracting Agency.

(2) Any other protests related to a Cooperative Procurement, or disputes related to a Contract arising out of a Cooperative

Procurement, shall be made and resolved as set forth in ORS 279A.225.

(3) The failure of a Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract entered into through a Cooperative Procurement shall not affect the rights or remedies of any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative Procurement.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279A.225

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0480

Contract Amendments

A Purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in OAR 137-047-0800.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

Repealed Rules

137-046-0500

Repealed Rules

As required by Or Laws 2003, Chapter 794, Section 334, OAR 137-030-0000, 137-030-0005, 137-030-0006, 137-030-0008, 137-030-0010, 137-030-0011, 137-030-0012, 137-030-0013, 137-030-0014, 137-030-0015, 137-030-0020, 137-030-0030, 137-030-0035, 137-030-0040, 137-030-0050, 137-030-0055, 137-030-0060, 137-030-0065, 137-030-0070, 137-030-0075, 137-030-0080, 137-030-0085, 137-030-0090, 137-030-0095, 137-030-0100, 137-030-0102, 137-030-0104, 137-030-0105, 137-030-0110, 137-030-0115, 137-030-0120, 137-030-0125, 137-030-0130, 137-030-0135, 137-030-0140, 137-030-0145, 137-030-0155, 137-035-0000, 137-035-0010, 137-035-0020, 137-035-0030, 137-035-0040, 137-035-0050, 137-035-0060, 137-035-0065, 137-035-0070, 137-035-0080, 137-040-0000, 137-040-0005, 137-040-0010, 137-040-0015, 137-040-0017, 137-040-0020, 137-040-0021, 137-040-0025, 137-040-0030, 137-040-0031, 137-040-0035, 137-040-0045, 137-040-0500, 137-040-0510, 137-040-0520, 137-040-0530, 137-040-0540, 137-040-0550, 137-040-0560, 137-040-0565, 137-040-0570, 137-040-0590 are repealed effective March 1, 2005. The repealed rules will continue to apply to the solicitation of Public Contracts first advertised, but if not advertised then entered into, before March 1, 2005.

Stat. Auth.: ORS 279A.065 & OL 2003, Ch. 795, 334

Stats. Implemented: ORS 279A.065 & OL 2003, Ch. 795, 334

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

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DEPARTMENT OF JUSTICE

DIVISION 47

MODEL RULES

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES

General Provisions

137-047-0000

Application

These division 47 rules implement ORS Chapter 279B, Public Procurements and apply to the Procurement of Goods and Services. State Contracting Agencies shall also procure Personal Services, except for Architectural, Engineering, Land Surveying and Related Services, in the same manner other Services are procured under these division 47 rules. Local Contracting Agencies, pursuant to 279B.050(4), may also adopt these division 47 rules to govern the Procurement of Personal Services Contracts or elect to award Personal Services Contracts under procedures set forth in 279B.055 through 279B.085.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0100

Definitions

(1) "**Advantageous**" means in the Contracting Agency's best interests, as assessed according to the judgment of the Contracting Agency.

(2) "**Affected Person**" or "**Affected Offeror**" means a Person whose ability to participate in a Procurement is adversely affected by a Contracting Agency decision. See ORS 279B.410.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

Source Selection

137-047-0250

Source Selection

Methods of Source Selection; Feasibility Determination; Cost Analysis

(1) Except as permitted by ORS 279B.065 through 279B.085 and 279A.200 through 279A.225, a Contracting Agency shall

Award a Contract for Goods or Services, or both based on Offers received in response to either competitive sealed Bids pursuant to 279B.055 or competitive sealed Proposals pursuant to 279B.060.

(2) Written Cost Analysis for Contracts for Services. Before conducting the Procurement of a Contract for Services that is subject to sections 2 to 4 of Oregon Laws 2009, chapter 880, a Contracting Agency must, in the absence of a determination under section 34 of that enactment that performing the services with the Contracting Agency's own personnel and resources is not feasible, conduct a Written cost analysis.

(3) Feasibility Determination for Contracts for Services. A Contracting Agency may proceed with the procurement of a Contract for Services without conducting a cost analysis under Oregon Laws 2009, chapter 880, section 3, if the Contracting Agency makes Written findings that one or more of the special circumstances described in Oregon Laws 2009, chapter 880, section 4, make the Contracting Agency's use of its own personnel and resources to provide the Services not feasible.

(4) Special Circumstances. The special circumstances identified in Oregon Laws 2009, section 4 that require a Contracting Agency to procure the Services by Contract include any circumstances, conditions or occurrences that would make the Services, if performed by the Contracting Agency's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the Contracting Agency.

(5) Written Cost Analysis under Section 3 of Oregon Laws 2009, chapter 880.

(a) Basic Comparison. The Written cost analysis must compare an estimate of the Contracting Agency's cost of performing the Services with an estimate of the cost a potential Contractor would incur in performing the Services. However, The Contracting Agency may proceed with the Procurement for Services only if it determines that the Contracting Agency would incur more cost in performing the Services with the Contracting Agency's own personnel than it would incur in procuring the Services from a Contractor. In making this determination, the cost the Contracting Agency would incur in procuring the Services from a Contractor includes the fair market value of any interest in equipment, materials or other assets the Contracting Agency will provide to the Contractor for the performance of the Services.

(b) Costs of Using Contracting Agency's Own Personnel and Resources. When estimating the Contracting Agency's cost of performing the Services, the Contracting Agency shall consider cost factors that include:

(A) The salary or wage and benefit costs for the employees of the Contracting Agency who would be directly involved in performing the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision, or monitoring of the performance of the subject Services.

(B) The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, equipment and supplies used or consumed in the provision of the Services.

(C) The costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

(D) Any costs related to stopping and dismantling a project or operation because the Contracting Agency intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.

(E) The miscellaneous costs related to performing the Services. These costs exclude the Contracting Agency's indirect overhead costs for existing salaries or wages and benefits for administrators, and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the Contracting Agency performed the Services.

(F) Oregon Laws 2009, chapter 880, section 3(1)(a) provides that an estimate of the Contracting Agency's costs of performing the Services includes the costs described in subsections (5)(b)(A) through (E) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. A Contracting Agency may consider other reliable information that bears on the cost to the Contracting Agency of performing the Services. For example, if the Contracting Agency has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, the Contracting Agency may consider those actual costs in making its estimate.

(c) Costs a Potential Contractor Would Incur. When estimating the costs a potential Contractor would incur in performing the Services, the Contracting Agency shall consider cost factors that include:

(A) The average or actual salary or wage and benefit costs for Contractors and Contractor employees:

(i) Who work in the business or industry most closely involved in performing the Services; and

(ii) Who would be necessary and directly involved in performing the Services or who would inspect, supervise or monitor the performance of the Services.

(B) The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) The miscellaneous costs related to performing the Services. These miscellaneous costs include reasonably foreseeable fluctuations in the costs listed in subsections (5)(c) (A) and (B) of this rule over the expected duration of the Procurement.

(D) Oregon Laws 2009, chapter 880, section 3(1)(b) provides that an estimate of the costs a potential Contractor would incur in performing the Services includes the costs described in subsections (5)(c)(A) through (C) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. A Contracting Agency may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if the Contracting Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable Services, the Contracting Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Contracting Agency may consider what it actually paid out under a Contract for the same or similar Services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five years preceding the date of the cost estimate. The Contracting Agency must take into account, when considering the pricing offered in previous Bids, Proposals or Contracts, adjustments to the pricing in light of measures of market price adjustments like the consumer price indexes that apply to the Services.

(6) Decision Based on Cost Comparison. After comparing the difference between the costs estimated for the Contracting Agency to perform the Services under section (5)(b) and the estimated costs a potential Contractor would incur in performing the Services under section (5)(c), the Contracting Agency may proceed with the Procurement only if the Contracting Agency would incur more cost in performing the Services with the agency's own personnel and resources than it would incur in procuring the Services from a Contractor.

(7) Exception Based on Salaries or Wages and Benefits. If the sole reason that the costs estimated for the Contracting Agency to perform the Services under section (5)(b) exceed the estimated costs a potential Contractor would incur in performing the Services under section (5)(c) is because the average or actual salary or wage and benefit costs for Contractors and their employees estimated under subsection (5)(c)(A) are lower than the salary or wage and benefit costs for employees of the Contracting Agency under subsection (5)(b)(A), then the Contracting Agency may not proceed with the Procurement.

(8) Exception Based on Lack of Contracting Agency Personnel and Resources; Reporting. In cases in which the Contracting Agency determines that it would incur less cost in providing the Services with its own personnel and resources, the Contracting Agency nevertheless may proceed with the Procurement if, at the time the Contracting Agency intends to conduct the Procurement, the Contracting Agency determines that it lacks personnel and resources to perform the Services within the time the Contracting Agency requires them. When a Contracting Agency conducts a Procurement under this section, the Contracting Agency must:

(a) Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the Contracting Agency requires them and of the basis for the Contracting Agency's decision to proceed with the Procurement.

(b) If the Contracting Agency is a Local Contracting Agency, provide to its Local Contract Review Board, each calendar quarter, copies of each Written cost analysis and Written determination.

(c) If the Contracting Agency is a State Contracting Agency, provide to the Emergency Board, each calendar quarter, copies of each Written cost analysis and Written determination.

(d) If the Contracting Agency is a State Contracting Agency, prepare a request to the Governor for an appropriation and authority necessary for the State Contracting Agency to hire personnel and obtain resources necessary to perform the Services that are the subjects of the Written cost analyses and Written determinations within the time needed by the State Contracting Agency. The request to the Governor must include copies of the records submitted to the Emergency Board under subsection (8)(c) of this rule.

Stat. Auth.: ORS 279A.065, OL 2009, c 880, §§ 3, 4

Stats. Implemented: ORS 279B.050, OL 2009, c 880, § 2-4

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0255

Competitive Sealed Bidding

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by 279B.055(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed bidding solicitation as set forth in OAR 137-047-0300.

(2) Invitation to Bid. In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See OAR 137-047-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-046-0210(2)); and

(G) How the Contracting Agency will notify Bidders of Addenda and how the Contracting Agency will make Addenda available (See OAR 137-047-0430).

(b) Contracting Agency Need to Purchase. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by Oregon Laws 2009, chapter 880, section 5, the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Bidding and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, the evaluation factors shall be reasonable estimates of actual future costs based on information the Contracting Agency has available concerning future use; and

(C) If the Contracting Agency intends to Award Contracts to more than one Bidder pursuant to OAR 137-047-0600(4)(c), the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(d) Applicable preferences pursuant to ORS 279B.055(6)(b).

(e) For Contracting Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All contractual terms and conditions in the form of Contract provisions the Contracting Agency determines are applicable to the Procurement. As required by Oregon Laws 2009, chapter 880, section 5, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. A Contracting Agency will have Good Cause to specify otherwise under the following circumstances:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) Any other circumstances in which Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065, OL 2009, ch. 880, sec. 5

Stats. Implemented: ORS 279B.055

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0257

Multistep Sealed Bidding

(1) Generally. A Contracting Agency may procure Goods or Services by using multistep sealed bidding under ORS 279B.055(12).

(2) Phased Process. Multistep sealed bidding is a phased Procurement process that seeks information or unpriced submittals in the first phase combined with regular competitive sealed bidding, inviting Bidders who submitted technically eligible submittals in the first phase to submit competitive sealed price Bids in the second phase. The Contract must be Awarded to the lowest Responsible Bidder.

(3) Public Notice. When a Contracting Agency uses multistep sealed bidding, the Contract Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the second phase to all Bidders, inform Bidders of the right to protest Addenda issued after the initial Closing under OAR 137-047-0430, and inform Bidders excluded from the second phase of the right, if any, to protest their exclusion under OAR 137-047-0720.

(4) Procedures Generally. In addition to the procedures set forth in OAR 137-047-0300 through 137-047-0490, a Contracting Agency shall employ the procedures set forth in this rule for multistep sealed bidding and in the Invitation to Bid.

(5) Procedure for Phase One of Multistep Sealed Bidding.

(a) Form. A Contracting Agency shall initiate multistep sealed bidding by issuing an Invitation to Bid in the form and manner required for competitive sealed Bids except as provided in this Rule. In addition to the requirements set forth OAR 137-047-0255(2), the multistep Invitation to Bid must state:

(A) That the solicitation is a multistep sealed Bid Procurement and describe the process the Contracting Agency will use to conduct the Procurement;

(B) That the Contracting Agency requests unpriced submittals and that the Contracting Agency will consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;

(C) Whether Bidders must submit price Bids at the same time as unpriced submittals and, if so, that Bidders must submit the price Bids in a separate sealed envelope;

(D) The criteria to be used in the evaluation of unpriced submittals;

(b) Evaluation. The Contracting Agency shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.

(6) Procedure for Phase Two of Multistep Sealed Bidding.

(a) After the completion of phase one, if the Contracting Agency does not cancel the Solicitation, the Contracting Agency shall invite each eligible Bidder to submit a price Bid.

(b) A Contracting Agency shall conduct phase two as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this rule or the Invitation to Bid;

(B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0260

Competitive Sealed Proposals

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Contracting Agency shall use a Request for Proposal to initiate a competitive sealed Proposal solicitation. The Request for Proposal must contain the information required by 279B.060(2) and by section (2) of this rule. The Contracting Agency shall provide public notice of the Request for Proposal as set forth in OAR 137-047-0300.

(2) Request for Proposal. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal must include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means. (See OAR 137-047-0330 for required provisions of electronic Proposals);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-046-0210(2)); and

(F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See OAR 137-047-0430).

(b) Contracting Agency Need to Purchase. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by ORS 279B.060(2)(c), the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services, or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Proposal and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, the factors shall be reasonable estimates of actual future costs based on information available to the Contracting Agency;

(C) If the Contracting Agency's solicitation process calls for the Contracting Agency to establish a Competitive Range, the Contracting Agency shall generally describe, in the Solicitation Document, the criteria or parameters the Contracting Agency will apply to determine the Competitive Range. The Contracting Agency, however, subsequently may determine or adjust the number of Proposers in the Competitive Range in accordance with OAR 137-047-0262(1)(a)(B).

(d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2) and 282.210.

(e) For Contracting Agencies subject to ORS 305.385, the Proposers' certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See OAR 137-047-0260(3)).

(g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the Contracting Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under OAR 137-047-0550(3), but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 137-047-0420.

(4) For multiple Award Contracts, the Contracting Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 137-047-0420.

(5) Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services under the Contract, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specifying otherwise. A Contracting Agency will have Good Cause to specify otherwise when the Contracting Agency determines:

- (a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;
- (b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;
- (c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;
- (d) That other circumstances exist in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279B.060, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0261

Multi-tiered and Multistep Proposals

- (1) Generally. A Contracting Agency may use one or more, or any combination, of the methods of Contractor selection set forth in ORS 279B.060(7), 279B.060(8) and this rule to procure Goods or Services. In addition to the procedures set forth in OAR 137-047-0300 through 137-047-0490 for methods of Contractor selection, a Contracting Agency may provide for a multi-tiered or multistep selection process that permits award to the highest ranked Proposer at any tier or step, calls for the establishment of a Competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers.
- (2) When conducting a multi-tiered or multistep selection process, a Contracting Agency may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting information from Proposers that bears on the selection of a Contractor or Contractors. In multi-tiered and multistep competitions, a Contracting Agency may use these means of soliciting information from prospective Proposers and Proposers in any sequence or order, and at any stage of the selection process, as determined in the discretion of the Contracting Agency.
- (3) When a Contracting Agency's Request for Proposals prescribes a multi-tiered or multistep Contractor selection process, a Contracting Agency nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposer (or, in multiple-award situations, on determining the awardees of the Public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The Contracting Agency also may, at any time, cancel the Procurement under ORS 279B.100.
- (4) Exclusion Protest. A Contracting Agency may provide, before the notice of an intent to Award, an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in OAR 137-047-0720.
- (5) Award Protest. A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and OAR 137-047-0740. An Affected Offeror may protest, for any of the bases set forth in 137-047-0720(2), its exclusion from the Competitive Range or from any phase of a multi-tiered or multistep sealed Proposal process, or may protest an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.
- (6) Competitive Range. When a Contracting Agency's solicitation process conducted under ORS 279B.060(8) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, the Contracting Agency may do so as follows:
 - (a) Determining Competitive Range.
 - (A) The Contracting Agency may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the Contracting Agency may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the Contracting Agency determines that a single Proposer has a reasonable chance of

being determined the most Advantageous Proposer, the Contracting Agency need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, a Contracting Agency may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The Contracting Agency may establish the number of Proposers in the Competitive Range in light of whether the Contracting Agency's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) **Protesting Competitive Range.** The Contracting Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with OAR 137-047-0720.

(7) **Discussions.** The Contracting Agency may initiate oral or written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, the Contracting Agency:

(a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(b) May disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

(c) May adjust the evaluation of a Proposal as a result of discussions. The conditions, terms, or price of the Proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.

(d) At any time during the time allowed for discussions, the Contracting Agency may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide, to the then-eligible Proposers, notice requesting best and final Offers.

(8) **Negotiations.** A Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers. A Contracting Agency may negotiate:

(a) The statement of work;

(b) The Contract Price as it is affected by negotiating the statement of work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and

(c) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and a Contracting Agency shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum.

(9) **Terminating Negotiations.** At any time during discussions or negotiations a Contracting Agency conducts under this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(a) The eligible Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.

(c) **Continuing Serial Negotiations.** If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with an eligible Proposer, the Contracting Agency may then commence negotiations with the next highest scoring eligible Proposer, and continue the sequential process until the Contracting Agency has either:

(A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the Procurement under ORS 279B.100.

(d) **Competitive Simultaneous Negotiations.** If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing eligible Proposers. The Contracting Agency:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the Contracting Agency notifies all of the eligible Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any eligible Proposer.

(e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.

(10) Best and Final Offers. If a Contracting Agency requires best and final Offers, a Contracting Agency must establish a common date and time by which eligible Proposers must submit best and final Offers. If a Contracting Agency is dissatisfied with the best and final Offers, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. A Contracting Agency must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The Contracting Agency shall evaluate Offers as modified by the best and final Offers. The Contracting Agency shall conduct the evaluations as described in OAR 137-047-0600. The Contracting Agency may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(11) Multistep Sealed Proposals. A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals under ORS 279B.060(8)(b)(g). Multistep sealed Proposals is a phased Procurement process that seeks necessary information or unpriced technical Proposals in the first phase and, in the second phase, invites Proposers who submitted technically qualified Proposals to submit competitive sealed price Proposals on the technical Proposals. The Contracting Agency must award the Contract to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

(a) Public Notice. When a Contracting Agency uses multistep sealed Proposals, the Contracting Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion under OAR 137-047-0720.

(b) Procedure for Phase One of Multistep Sealed Proposals. A Contracting Agency may initiate a multistep sealed Proposals Procurement by issuing a Request for Proposals in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements required for competitive sealed Proposals, the multistep Request for Proposals must state:

(A) That unpriced technical Proposals are requested;

(B) That the solicitation is a multistep sealed Proposal Procurement and that, in the second phase, priced Proposals will be accepted only from those Proposers whose unpriced technical Proposals are found qualified in the first phase;

(C) The criteria for the evaluation of unpriced technical Proposals; and

(D) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposals.

(c) Addenda to the Request for Proposals. After receipt of unpriced technical Proposals, Addenda to the Request for Proposals shall be distributed only to Proposers who submitted unpriced technical Proposals.

(d) Receipt and Handling of Unpriced Technical Proposals. Unpriced technical Proposals need not be opened publicly.

(e) Evaluation of Unpriced Technical Proposals. Unpriced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposals.

(f) Discussion of Unpriced Technical Proposals. The Contracting Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one unpriced technical Proposal to any other Proposer.

(g) Methods of Contractor Selection for Phase One. In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.

(h) Procedure for Phase Two. On the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except as set forth in this rule.

(i) No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stats. Implemented: ORS 279B.060

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0265

Small Procurements

(1) Generally. For Procurements of Goods or Services less than or equal to \$5,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065.

(2) Amendments. A Contracting Agency may amend a Contract Awarded as a small Procurement in accordance with OAR 137-047-0800, but the cumulative amendments shall not increase the total Contract Price to greater than \$6,000.

Stat. Auth.: ORS 279A.065 & 279B.065

Stats. Implemented: ORS 279B.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0270

Intermediate Procurements

(1) Generally. For Procurements of Goods or Services greater than \$5000 and less than or equal to \$150,000, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) Negotiations. A Contracting Agency may negotiate with a prospective Contractor who offers to provide Goods or Services in response to an intermediate Procurement to clarify its quote or Offer or to effect modifications that will make the quote or Offer more Advantageous to the Contracting Agency.

(3) Amendments. A Contracting Agency may amend a Contract Awarded as an intermediate Procurement in accordance with OAR 137-047-0800, but the cumulative amendments shall not increase the total Contract Price to a sum that is greater than \$150,000.00 or twenty-five percent (25%) of the original Contract Price, whichever is greater.

Stat. Auth.: ORS 279A.065 & 279B.070

Stats. Implemented: ORS 279B.070

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 5-2012, f. & cert. ef. 2-27-12

137-047-0275

Sole-source Procurements

(1) Generally. A Contracting Agency may Award a Contract without competition as a sole-Source Procurement pursuant to the requirements of ORS 279B.075.

(2) Public Notice. If, but for the Contracting Agency's determination that it may enter into a Contract as a sole-source, a Contracting Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or 279B.060, a Contracting Agency shall give public notice of the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source. The Contracting Agency shall publish such notice in a manner similar to public notice of competitive sealed Bids under 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The Contracting Agency shall give Affected Persons at least seven (7) days from the date of the notice of the determination that the Goods or Services are available from only one source to protest the sole source determination.

(3) Protest. An Affected Person may protest the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with OAR 137-047-0710.

Stat. Auth.: ORS 279A.065 & 279B.075

Stats. Implemented: ORS 279B.075

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0280

Emergency Procurements

A Contracting Agency may Award a Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. When an Emergency Procurement is authorized, the Procurement shall be made with competition that is reasonable and appropriate under the circumstances. However, for emergency Procurement of construction services, see 279B.080(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-1

137-047-0285

Special Procurements

(1) Generally. A Contracting Agency may Award a Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) Public Notice. A Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as public notice of competitive sealed Bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The Contracting Agency shall give Affected Persons at least seven (7) days from the date of the notice of approval of the Special Procurement to protest the Special Procurement.

(3) Protest. An Affected Person may protest the request for approval of a Special Procurement in accordance with ORS 279B.400 and OAR 137-047-0700.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.085

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0290

Cooperative Procurements

A Contracting Agency may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in ORS 279A.200 through 279A.225 and OAR 137-046-0400 through 137-046-0480.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.205

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

Procurement Process

137-047-0300

Public Notice of Solicitation Documents

(1) Notice of Solicitation Documents; Fee. A Contracting Agency shall provide public notice of every Solicitation Document in accordance with section (2) of this rule. The Contracting Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing notice on the Contracting Agency's Internet World Wide Web site.

(2) Advertising. A Contracting Agency shall advertise every notice of a Solicitation Document as follows:

(a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(4); or

(b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b) if, by rule or order, the Contracting Agency's Contract Review Authority has authorized the Contracting Agency to publish notice of Solicitation Documents on the Contracting Agency's Electronic Procurement System.

(3) Content of Advertisement. All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with section (2)(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Contracting Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with section (2)(a) or (b) above and Closing be less than seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons must be prequalified;

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The name, title and address of the individual authorized by the Contracting Agency to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the Contracting Agency deems appropriate.

(4) Posting Advertisement for Offers. The Contracting Agency shall post a copy of each advertisement for Offers at the principal business office of the Contracting Agency. An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) Fees. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document.

(6) Notice of Addenda. The Contracting Agency shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with OAR 137-047-0430.

Stat. Auth.: ORS 279A.065, 279B.055 & 279B.060

Stats. Implemented: ORS 279B.055 & 279B.060

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0310

Bids or Proposals are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e. the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in OAR 137-047-0480. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in OAR 137-047-0480, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to OAR 137-047-0262, a Proposer shall not make its Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposers to propose alternative terms or conditions under OAR 137-047-0261, the Offeror's Offer includes any nonnegotiable terms and conditions, any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, 279B.055 & 279B.60

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0320

Facsimile Bids and Proposals

(1) **Contracting Agency Authorization.** A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize facsimile Offers unless the Contracting Agency has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

- (a) To receive, identify, record, and safeguard facsimile Offers;
- (b) To ensure timely delivery of Offers to the location of Opening; and
- (c) To preserve the Offers as sealed.

(2) **Provisions To Be Included in Solicitation Document.** In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer, the Contracting Agency will include in the Solicitation Document the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";

(e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and

(f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0330

Electronic Procurement

(1) Electronic Procurement Authorized.

(a) A Contracting Agency may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Contracting Agency specifies in a Solicitation Document, a Request for Quotes, or any other Written instructions on how to participate in the Procurement.

(b) The Contracting Agency shall open an Electronic Offer in accordance with electronic security measures in effect at the Contracting Agency at the time of its receipt of the Electronic Offer. Unless the Contracting Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Contracting Agency's use of electronic Signatures shall be consistent with applicable statutes and rules. A Contracting Agency may limit the use of electronic methods of conducting a Procurement as Advantageous to the Contracting Agency.

(d) If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize Electronic Offers unless the Contracting Agency has another method for receipt of such security.

(2) Rules Governing Electronic Procurements. The Contracting Agency shall conduct all portions of an electronic Procurement in accordance with these division 47 rules, unless otherwise set forth in this rule.

(3) Preliminary Matters. As a condition of participation in an electronic Procurement the Contracting Agency may require potential Contractors to register with the Contracting Agency before the date and time on which the Contracting Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Contracting Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) Offer Process. A Contracting Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Contracting Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Contracting Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Contracting Agency will first receive Electronic Offers, the Contracting Agency must begin to accept real time Electronic Offers on the Contracting Agency's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with section (5)(b) of this rule until the date and time specified by the Contracting Agency, after which the Contracting Agency will no longer accept Electronic Offers.

(5) Receipt of Electronic Offers.

(a) When a Contracting Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Contracting Agency shall receive the Electronic Offers in accordance with these division 47 rules.

(b) When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a period of time, the Contracting Agency shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time the Contracting Agency first receives Electronic Offers the Contracting Agency shall post on the Contracting Agency's Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the Contracting Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(B) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Contracting Agency first accepts Electronic Offers.

(C) A Person may withdraw an Electronic Offer only in compliance with these division 47 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) Failure of the E-Procurement System. In the event of a failure of the Contracting Agency's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Contracting Agency may cancel the Procurement in accordance with OAR 137-047-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes

available.

Stat. Auth.: ORS 279A.065 & 279B.055

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

Bid and Proposal Preparation

137-047-0400

Offer Preparation

(1) Instructions. An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) Documents. An Offeror shall provide the Contracting Agency with all documents and Descriptive Literature required by the Solicitation Document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0410

Offer Submission

(1) Product Samples and Descriptive Literature. A Contracting Agency may require Product Samples or Descriptive Literature if the Contracting Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Contracting Agency will dispose of Product Samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) Identification of Offers:

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable. If the Contracting Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) Receipt of Offers. The Offeror is responsible for ensuring the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0420

Pre-Offer Conferences

(1) Purpose. A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.

(2) Required Attendance. The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) Scheduled Time. If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the

Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) **Statements Not Binding.** Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) **Agency Announcement.** The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with OAR 137-047-0255(2) or 137-047-0260(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0430

Addenda to Solicitation Document

(1) **Issuance; Receipt.** The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda.

(2) **Notice and Distribution.** The Contracting Agency shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the Contracting Agency will engage in a multistep competitive sealed Bid process in accordance with OAR 137-047-0257, or a multi-tiered or multistep competitive sealed Proposal process in accordance with 137-047-0261. The following is an example of how a Contracting Agency may specify how it will provide notice of Addenda: "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's web site. Addenda may be downloaded off the Contracting Agency's web site. Offerors should frequently check the Contracting Agency's web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) **Timelines; Extensions.**

(a) The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding subsection (3)(a) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal issued in accordance with ORS 279B.060(6)(d) and OAR 137-047-0261 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the Contracting Agency determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The Contracting Agency shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR 137-047-0730, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under 137-047-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with 137-047-0730, then the Contracting Agency may consider an Offeror's request for change or protest to the Addendum only, and the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, a Contracting Agency is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or 279B.060.

Stat. Auth.: ORS 279A.065 & 279B.060

Stats. Implemented: ORS 279B.060

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0440

Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with OAR 137-047-0400 and 137-047-0410, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Contracting Agency.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection (2)(a) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement file.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0450

Receipt, Opening, and Recording of Offers; Confidentiality of Offers.

(1) Receipt. A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer.").

(2) Opening and Recording. A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to OAR 137-047-0440(1). In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, and such other information as the Contracting Agency considers appropriate. However, the Contracting Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(5). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0460

Late Offers, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Agency shall not consider late Offers, withdrawals or modifications except as permitted in OAR 137-047-0470 or 137-047-0261.

137-047-0470

Mistakes

(1) Generally. To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) Contracting Agency Treatment of Mistakes. A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example, a missing unit price may be established by dividing the total price for the units by the quantity of units for that item, or a missing or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and

the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 47 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065 & 279B.055

Stats. Implemented: ORS 279B.055

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0480

Time for Agency Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than thirty (30) Days following Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0490

Extension of Time for Acceptance of Offer

A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

Qualifications and Duties

137-047-0500

Responsibility of Bidders and Proposers

Before Awarding a Contract the Contracting Agency shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The Contracting Agency shall use the standards set forth in ORS 279B.110 and OAR 137-047-0640(1)(c)(F) to determine if a Bidder or Proposer is Responsible. In the event a Contracting Agency determines a Bidder or Proposer is not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.110

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0525

Qualified Products Lists

A Contracting Agency may develop and maintain a qualified products list pursuant to ORS 279B.115.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.115

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0550

Prequalification of Prospective Offerors; Pre-negotiation of Contract Terms and Conditions

(1) A Contracting Agency may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.

(2) Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), a Contracting Agency may determine that a prequalified Offeror is not Responsible prior to Contract Award.

(3) A Contracting Agency may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in section (1) or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the Contracting Agency and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. A Contracting Agency may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When a Contracting Agency has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, a Contracting Agency may consider the terms and conditions in the Proposal evaluation process.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.015, 279B.120

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0560

Personal Services Contract to Provide Specifications — State Agency Disqualification as Bidder or Proposer

(1) For the purposes of subsection 2(1) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a reasonable person would believe that a person who assisted a state contracting agency, under a personal services contract, in the development of a solicitation for goods or services (or that person's affiliate), would have an advantage in obtaining the public contract that is the subject of the solicitation if:

(a) The specifications recommended by the personal service contractor for the sequence of services, incorporation of special service or fabrication techniques, or design of any goods or components or elements of goods that the state contracting agency published in its solicitation documents call for, expressly or implicitly, requirements that only the personal services contractor (or the contractor's affiliate), or a limited class of individuals in the contractor's area of specialty, have the ability to perform or produce or have the rights to perform or produce.

(b) The rendering of solicitation document development assistance under the personal services contract gives the contractor knowledge of the state contracting agency's special needs or procedures, not generally known to the public, that give the contractor (or the contractor's affiliate) a material competitive advantage in competing for the contract for goods or services.

(c) The rendering of solicitation document development assistance under the personal services contract gives the contractor, significantly in advance of other prospective bidders or proposers, knowledge of the solicitation document requirements that would allow the personal services contractor (or the contractor's affiliate) a materially longer period in which to craft or refine a proposal in response to the solicitation documents.

(2) For the purposes of subsection 2(1) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a reasonable person would believe that a person who assisted a state contracting agency, under a personal services contract, in the development of a solicitation for goods or services (or that person's affiliate) would appear to have an advantage in obtaining the public contract that is the subject of the solicitation if:

(a) Taking into account the personal services contractor's announced areas of specialization, expertise or experience, the personal service contractor (or the contractor's affiliate), or only a limited class of individuals in the contractor's area of specialty, appear to have the capability to conform closely with the solicitation document requirements.

(b) Taking into account the personal services contractor's announced areas of specialization, expertise or experience, the personal service contractor (or the contractor's affiliate), or only a severely limited class of individuals in the contractor's area of specialty, appear to have the qualifications, training, experience or capacity to satisfy any minimum requirements that may be stated in the solicitation documents.

(c) The solicitation documents for a contract for goods or services contain restrictions, deadlines or requirements that do not, when viewed objectively, reasonably promote rational procurement objectives of the state contracting agency.

(3) If a state contracting agency engages a personal services contractor to advise or assist in the development of solicitation documents for a public contract for goods or services and the personal services contractor is engaged in the business of providing goods or services described in the solicitation documents, and the agency wishes to accept a bid or proposal from the personal services contractor under conditions described in section (2) or section (3) of this rule, the agency must apply to the Director of the Department of Administrative Services, as permitted by subsection 2(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), for an exemption from the disqualification from the ability to submit a bid or proposal.

Stat. Auth.: ORS 279A.065

Stats. Implemented: 2012 OL, ch 53

137-047-0575

Debarment of Prospective Offerors

(1) Generally. A Contracting Agency may Debar prospective Offerors for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

(2) Responsibility. Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), a Contracting Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

(3) Imputed Knowledge. A Contracting Agency may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) Limited Participation. A Contracting Agency may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to a Contracting Agency. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.130

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

Offer Evaluation and Award

137-047-0600

Offer Evaluation and Award

(1) Contracting Agency Evaluation. The Contracting Agency shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Contracting Agency shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and OAR 137-046-0310 for Nonresident Bidders.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Bids apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Contracting Agency determines that one or more Bids are identical under OAR 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in OAR 137-046-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the Contracting Agency determines that one or more Proposals are identical under OAR 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in OAR 137-046-0300.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Contracting Agency shall give preference for recycled materials as set forth in ORS 279A.125 and OAR 137-046-0320.

(2) Clarification of Bids or Proposals. After Opening, a Contracting Agency may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Bids or Proposals. All Bids or Proposals, in the Contracting Agency's sole discretion, needing clarification must be accorded such an opportunity. The Contracting Agency shall document clarification of any Bidder's Bid in the Procurement file.

(3) Negotiations.

(a) Bids. A Contracting Agency shall not negotiate with any Bidder. After Award of the Contract the Contracting Agency and Contractor may only modify the Contract in accordance with OAR 137-047-0800.

(b) Requests for Proposals. A Contracting Agency may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and OAR 137-047-0261. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with OAR 137-047-0800.

(4) Award.

(a) General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the Contracting Agency's expected purchases, or grand total of all items.

(c) Multiple Awards – Bids.

(A) Notwithstanding subsection (4)(a) of this rule, a Contracting Agency may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility and skills. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude the Contracting Agency from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Contracting Agency shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(d) Multiple Awards – Proposals.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude the Contracting Agency from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Contracting Agency shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services, which may include consideration and evaluation of the Contract terms and conditions agreed to by the Contractors.

(e) Partial Awards. If after evaluation of Offers, the Contracting Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Contracting Agency may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Contracting Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or none Offers. A Contracting Agency may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

Stat. Auth.: ORS 279A.065 & 279B.060

Stats. Implemented: ORS 279B.055 & 279B.060

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0610

Notice of Intent to Award

(1) Notice of Intent to Award. The Contracting Agency shall provide Written notice of its intent to Award to all Bidders and

Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Contracting Agency determines that circumstances justify prompt execution of the Contract, in which case the Contracting Agency may provide a shorter notice period. The Contracting Agency shall document the specific reasons for the shorter notice period in the Procurement file.

(2) Finality. The Contracting Agency's Award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to OAR 137-047-0740; or

(b) The Contracting Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

Stat. Auth.: ORS 279A.065 & 279B.135

Stats. Implemented: ORS 279B.135

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0620

Documentation of Award

(1) Basis of Award. After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Procurement file.

(2) Contents of Award Record. The Contracting Agency's record shall include:

(a) For Bids:

(A) Bids;

(B) Completed Bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals:

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher scoring Proposals; and

(D) If the Contracting Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and OAR 137-047-0261, Written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the Contracting Agency used to select a Proposer to which the Contracting Agency Awarded a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0630

Availability of Award Decisions

(1) Contract Documents. To the extent required by the Solicitation Document, the Contracting Agency shall deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.

(2) Availability of Award Decisions. A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the Contracting Agency a Written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the Contracting Agency may make available tabulations of Bids and Proposals through the Electronic Procurement System of the Contracting Agency or the Contracting Agency's website.

(3) Availability of Procurement Files. After notice of intent to Award, the Contracting Agency shall make Procurement files available in accordance with applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055 & ORS 279B.060

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

Rejection of an Offer

(1) Rejection of an Offer.

(a) A Contracting Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public Procurement procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to OAR 137-046-0210(3) (DBE Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine pursuant to ORS 279B.110 that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to 279B.110(2)(c);

(iv) Is legally qualified to contract with the Contracting Agency; and

(v) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) Form of Business Entity. For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100 & 279B.110

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

137-047-0650

Rejection of All Offers

(1) Rejection. A Contracting Agency may reject all Offers as set forth in ORS 279B.100. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) Criteria. The Contracting Agency may reject all Offers based upon the following criteria:

(a) The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Contracting Agency cancels the Procurement or solicitation in accordance with OAR 137-047-0660; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0660

Cancellation of Procurement or Solicitation

(1) Cancellation in the Public Interest. A Contracting Agency may cancel a Procurement or solicitation as set forth in ORS 279B.100.

(2) Notice of Cancellation Before Opening. If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall provide Written notice of cancellation in the same manner that the Contracting Agency initially provided notice of the solicitation. Such notice of cancellation shall:

(a) Identify the Solicitation Document;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) Notice of Cancellation After Opening. If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency shall provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

Disposition of Offers if Procurement or Solicitation Canceled

(1) Prior to Opening. If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the Contracting Agency shall delete the Offers from the Contracting Agency's Electronic Procurement System or information technology system.

(2) After Opening. If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency:

(a) May return Proposals in accordance with ORS 279B.060(56)(c); and

(b) Shall keep Bids in the Procurement file.

(3) Rejection of All Offers. If the Contracting Agency rejects all Offers, the Contracting Agency shall keep all Proposals and Bids in the Procurement file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

Legal Remedies

137-047-0700

Protests and Judicial Review of Special Procurements

(1) Purpose. An Affected Person may protest the approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person must file a Written protest with the Contract Review Authority for the Contracting Agency and exhaust all administrative remedies.

(2) Delivery. Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Authority for the Contracting Agency within seven (7) Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Authority for the Contracting Agency, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Contract Review Authority Response. The Contract Review Authority shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) Judicial Review. An Affected Person may seek judicial review of the Contract Review Authority's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065 & 279B.400

Stats. Implemented: ORS 279B.400

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0710

Protests and Judicial Review of Sole-Source Procurements

(1) Purpose. For sole-source Procurements requiring public notice under OAR 137-047-0275, an Affected Person may protest the determination of the Contract Review Authority or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a

Written protest with the Contract Review Authority or designee and exhaust all administrative remedies.

(2) **Delivery.** Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Contract Review Authority or designee within seven (7) Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

(3) **Content of Protest.** The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) **Contract Review Authority Response.** The Contract Review Authority or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Contract Review Authority or designee shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority or designee upholds the protest, in whole or in part, the Contracting Agency shall not enter into a sole-source Contract.

(5) **Judicial Review.** Judicial review of the Contract Review Authority's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.075

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0720

Protests and Judicial Review of Multi-Tiered and Multistep Solicitations

(1) **Purpose.** An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(2) **Basis for Protest.** An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for the Contracting Agency's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

(3) **Delivery.** Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

(4) **Content of Protest.** The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(5) **Contracting Agency Response.** The Contracting Agency shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum under OAR 137-047-0430 reflecting its disposition or cancel the Procurement or solicitation under 137-047-0660.

(6) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

Protests and Judicial Review of Solicitations

- (1) Purpose. A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in 279B.405(2). Pursuant to 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.
- (2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Contracting Agency not less than ten (10) Days prior to Closing.
- (3) Content of Protest. In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.
- (4) Contracting Agency Response. The Contracting Agency shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Contracting Agency shall issue a Written disposition of the protest in accordance with the timeline set forth in 279B.405(6). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum reflecting its disposition under OAR 137-047-0430 or cancel the Procurement or solicitation under 137-047-0660.
- (5) Extension of Closing. If the Contracting Agency receives a protest from a prospective Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider and respond to the protest.
- (6) Clarification. Prior to the deadline for submitting a protest, a prospective Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.
- (7) Judicial Review. Judicial review of the Contracting Agency's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065 & 279B.405

Stats. Implemented: ORS 279B.405

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0740

Protests and Judicial Review of Contract Award

- (1) Purpose. An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's Contract Award decision.
- (2) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after the Award of a Contract, or issuance of the notice of intent to Award the Contract, whichever occurs first.
- (3) Content of Protest. An Offeror's Written protest shall specify the grounds for the protest to be considered by the Contracting Agency pursuant to ORS 279B.410(2).
- (4) Contracting Agency Response. The Contracting Agency shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.
- (5) Judicial Review. Judicial review of the Contracting Agency's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065 & 279B.410

Stats. Implemented: ORS 279B.410 & 279B.415

137-047-0745

Protests and Judicial Review of Qualified Products List Decisions

(1) Purpose. A prospective Offeror may protest the Contracting Agency's decision to exclude the prospective Offeror's goods from the Contracting Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's qualified products list decision.

(2) Delivery. Unless otherwise stated in the Contracting Agency's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the Contracting Agency's decision to exclude the prospective Offeror's goods from the qualified products list.

(3) Content of Protest. The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(4) Contracting Agency Response. The Contracting Agency shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Contracting Agency's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, it shall include the successful protestor's goods on the qualified products list.

(5) Judicial Review. Judicial review of the Contracting Agency's decision relating to a qualified products list protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.115

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0750

Judicial Review of Other Violations

Any violation of ORS Chapter 279A or 279B by a Contracting Agency for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.420

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0760

Review of Prequalification and Debarment Decisions

Review of the Contracting Agency's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.425

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0800

Amendments to Contracts and Price Agreements

(1) Generally. A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

(a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any. An amendment is not within the scope of the Procurement if the Agency determines that if it had described in the Procurement the changes to be made by the amendment, it would likely have increased competition or affected award of the Contract.

(b) These Model Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:

(A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.

(B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract.

(C) The amended Contract does not have a total term greater than allowed in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any, after combining the initial and extended terms. For example, a one-year Contract described as renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years.

(2) Small or Intermediate Contract. A Contracting Agency may amend a Contract Awarded as a small or intermediate Procurement pursuant to section (1) of this rule, provided that the total increase in Contract price does not exceed the amount set forth in OAR 137-047-0265 for small Procurements or 137-047-0270 for intermediate Procurements.

(3) Price Agreements. A Contracting Agency may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) If the circumstances set forth in ORS 279B.140(2) exist; or

(c) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

137-047-0810

Termination of Price Agreements

A Contracting Agency may terminate a Price Agreement as follows:

(1) As permitted by the Price Agreement;

(2) If the circumstances set forth in ORS 279B.140(2) exist; or

(3) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279B.140

Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

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MEMORANDUM OF UNDERSTANDING

This MOU is made and entered into as of the ___ day of _____ 2013, by and between **National Purchasing Partners**, hereinafter collectively called “**NPP**” and the **Public Procurement Authority**, hereinafter collectively called “**PPA**”.

UNDERSTANDING

NPP wishes to provide PPA with a group purchasing benefit. And the PPA wishes to expand its current group purchasing options.

NPP will provide PPA members access to a portfolio of vendor contracts offering a variety of products and services at rates that are discounted based on volume. These contracts are established using formal bid and/or proposal solicitation.

FEEES

There are no membership fees to PPA members, and therefore no membership fees to PPA. Participating vendors, manufacturers and distributors pay fees to NPP for program administration.

ROLE OF NPP

NPP will be responsible for negotiating and maintaining contracts with vendors who provide services and products of interest to PPA members. NPP will provide customer service to PPA members in the form of a forty (40) hour/week phone help line and a web site providing access to vendor and purchasing information.

ROLE OF PPA

At its complete discretion, PPA may, from time to time, serve as Lead Contract Agency and issue formal solicitations for products and services. In the event of such solicitation(s), PPA may elect to include language in the solicitation that permits other government entities across the nation that are members of NPP to access (piggyback) the contract.

CLARIFICATION OF LIABILITY

Any goods and services purchased as a result of PPA’s role as Lead Contracting Agency shall be at the absolute discretion of the Participating Government Agencies and neither PPA nor NPP shall be held liable for any costs or damages incurred by or as a result of the actions of the Vendor or any other Participating Government Agency.

COLLECTIVE PURPOSE

The parties envision that NPP's administration of the cooperative procurement program utilizing PPA's role as a lead agency will expand the opportunity of government entities to access national tier pricing to PPA members and other government entities while reducing repetitive solicitation efforts.

CONFIDENTIALITY

PPA and NPP will treat all information provided to it by the other as confidential with the same degree of care and confidentiality that it provides for its own confidential information.

TERM

This MOU will continue until the first anniversary of the date of the signing of this MOU and shall continue automatically unless terminated by either party but not less than sixty (60) days prior written notice to the other.

INDEPENDENT OPERATION

NPP and PPA agree that each is acting independently of the other and that this is not a joint venture and that neither is the agent of the other.

AMENDMENTS

Modifications to this MOU shall be made by mutual consent of the parties, by the issuance of a written Amendment, signed and dated by all parties, prior to any changes being performed.

PARTICIPATION IN SIMILAR ACTIVITIES

This MOU in no way restricts PPA or NPP from participating in similar activities with other public or private agencies, organizations, and individuals.

Public Procurement Authority

By: _____ **Date:** _____

Title: _____

National Purchasing Partners

By: _____ **Date:** _____

Title: _____