

HOW TO USE THIS DOCUMENT

The proposed changes to the Community College Rules of Procurement (CCRP), for summer, 2011, are provided herein

Proposed changes to Chemeketa Community College's Section 300 are appended to the end of this document and have been provided as a courtesy. They are not intended to be adopted, as is, by other Oregon community colleges.

Board action must be taken in order for procurement rules to become effective. A contracting agency that has not adopted its own rules is subject to the model rules adopted by the Attorney General (ORS 279A.065(4)).

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FINAL VERSION OF THIS DOCUMENT FOR
YOUR COMMUNITY COLLEGE**

**PROPOSED CHANGES TO THE
COMMUNITY COLLEGE RULES OF PROCUREMENT
DATED JANUARY 19, 2005, FOR ADOPTION IN SUMMER 2011, PENDING BOARD APPROVAL.**

(5/20/11)

This document contains *proposed* changes to the Community College Rules of Procurement (CCRP), that were previously revised and formally adopted by the Board of Education for **INSERT NAME OF COMMUNITY COLLEGE** on **INSERT DATE OF MOST RECENT ADOPTION**. Note that this document does not contain all of the Community College Rules of Procurement but *only* those rules that contain proposed changes or are new rules.

KEY: Deletions to the current CCRP are highlighted in **YELLOW** and are shown with a line drawn through them.

Additions are shown in **RED** and are underlined.

Commentary appears in bold/italics and is *highlighted in gray*. Commentary will not remain in the final, published form of the document after adoption of these proposed changes.

The current Participating Oregon Community College (POCC), Rules of Procurement can be found at <http://www.occa17.com/mc/page.do?sitePageId=98519>

This proposed change to Section 100, the Preamble, demonstrates the college's commitment to protect and restore the natural environment in its community through socially responsible use and reuse of all resources, while meeting its educational goals.

Purpose and Statutory Authority

CCR.102

- (1) **Purpose.** These rules prescribe public contract Special Procurements (exemptions), whereby a Local Contract Review Board may approve a special procurement (pursuant to ORS 279B.085), personal services contracting rules, competitive procurement process rules, and supplementary provisions for community colleges, who have formally adopted through board resolution, these Community College Rules of Procurement, hereinafter referred to as Rules or CCRP.
- (2) **Statutory Authority.** These Rules are authorized by Public Contracting Code 279A.050 (*Procurement Authority*), 279A.055 (*Personal Services Contracts*), 279A.060 (*Local Contract Review Boards*), and 279A.070 (*Rules*). All references to PCC shall mean Public Contracting Code as defined in ORS 279A.010(1)(bb). (*Note: Under ORS 279A.065(4), public contracting agencies in Oregon will be operating under the State of Oregon Attorney General's Model Rules unless they have taken special action to opt out and adopt their own contracting rules.*)
- (3) **Participating Oregon Community Colleges** These Community College Rules of Procurement (CCRP), were drafted through a statewide, collaborative effort by representatives of Participating Oregon Community Colleges (POCC). Pursuant to the POCC participatory agreement, Sections 100 and 200 of the CCRP shall remain unchanged unless modified by the POCC at a later date and subsequently ratified by each institution's Local Contract Review Board. Any member of the POCC that adopts changes to Sections 100 and/or 200 of the CCRP that have not been mutually agreed upon and adopted by all other POCC members, shall by and through its actions, no longer qualify as a member of the POCC cooperative procurement group and shall not represent itself as such.
- (4) **Sustainability Commitment**
In accordance with the Oregon Community College Rules of Procurement, member colleges are committed to the use and purchase of environmentally and socially responsible materials and products, which are fiscally responsible, reduce resource consumption and waste, perform adequately, and promote human health and well-being. Recognizing their regional economic role, colleges shall seek opportunities to educate, encourage, and influence their respective markets by utilizing, where feasible, products and services, including new environmentally preferable products, reusable products, recycled content and recycled products.

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This proposed change is intended to clarify and reiterate that Public Notices for public improvement contracts with an estimated cost in excess of \$125,000 must be published in a newspaper of general statewide circulation.

Advertisement Contracts

CCR.202

The College may purchase advertising, which does not include contracting with advertising agencies, regardless of dollar amount, without competitive bidding. Where it is determined to be cost effective, the College may publish its public notices electronically, via the college's or other public entity's electronic procurement system or world wide web site instead of, or in addition to, a newspaper of general circulation unless otherwise required by law.

Findings of Fact

1. By their nature, media sources are generally unique. Advertisements are placed in a particular source because of the specific audience that source serves.
2. Competition to furnish advertising space in daily newspapers of general, trade, or business circulation in the vicinity of the College is limited.
3. Cost savings are difficult to quantify where the sources are unique and not interchangeable. Where the volume of purchases warrants, the College may enter into advertising contracts in accordance with ORS 279B.065 and ORS 279B.070 whenever possible to maximize savings achieved through economies of scale.
4. Public notices may be advertised electronically and/or in a newspaper of general circulation in an effort to increase exposure and generate more widespread competition, except for public improvement contracts with an estimated cost in excess of \$125,000, which must be published in at least one trade newspaper of general statewide circulation (ORS 279C.360). Cost savings for increased competition are difficult to quantify, but the cost to the College for advertising may be significantly reduced where electronic advertising methods are utilized.

Conclusion of Compliance with Law

It is unlikely that this Special Procurement will result in favoritism in the awarding of public contracts or substantially diminish competition since all vendors, including Oregon businesses, are able to compete (ORS 279B.085(4)(a)), and it will enable the College to promote the public interest (ORS 279B.085(4)(b)(B)), by expediting its procurement processes while maximizing its circulation efforts and notice of bidding opportunities without compromising integrity for cost.

This rule satisfies the requirements of Oregon Revised Statute 279B.055(4)(c), wherein a Local Contract Review Board may, by rule or order, authorize public notice of bids or proposals to be published electronically instead of in a newspaper of general circulation if it is likely to be cost-effective.

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These proposed modifications are intended to address situations, where the College may need to establish “open Purchase Orders” for small gas purchases at local filling stations in order to achieve efficiencies and minimize administrative costs. Under the CCRP as it is currently written, these “open Purchase Orders” might not be considered “requirements contracts” subject to CCR.226, since they may not have resulted from a predetermined price let by a competitive procurement process.

Price Regulated Items (Including Gas, Diesel Fuel, Heating Oil, Lubricants, Asphalts, Distilled Alcohol, Postage, and Certain Utilities

CCR.222

The College may, without competitive bidding, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority (ORS 279A.025(2)(g) and ORS 279A.025(2)(j). **Regardless of whether fuel is price regulated, it may be procured via spot purchases, and such purchases may be combined on a single, written agreement such as an open purchase order between the supplier and the College, in an effort to reduce administrative costs to the College. Spot purchases are defined as one-time purchases occasioned by a small requirement (for example, one vehicle’s tankful of gasoline), where the purchase is taking advantage of availability and the most favorable market conditions.**

Comment

If competition exists and it is practical to solicit quotations, bids, or proposals for Price Regulated Items, then these procurement methods should be utilized in an effort to obtain best value.

Conclusion of Compliance with Law

Competition is not generally a relevant issue in the procurement of goods or services where the provider’s rate or price of the goods or services being purchased is established by federal, state, or local regulatory authority, and the goods or services are provided through a sole source. Examples include: Postage, Sewer/Water Service, Garbage Service, Electricity, Etcetera. Since there is virtually no competition available within these price regulated items, **and/or the amount of the non-regulated fuel acquisitions are spot purchases and are subject to market forces and availability**, it is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts. Consequently, findings otherwise required by law are unnecessary here.

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This proposed change is intended to ensure compliance between the college’s contract administration processes and the Chemeketa Community College Rules of Procurement.

Contract Amendments & Reinstatements

CCR.302

- A. The College may award an amendment(s) to a Public Contract for additional work or product which is reasonably related to the scope of work under the original contract, including change orders, extra work, field orders, or other changes in the original specifications that increases the original Contract Price subject to the following conditions:
- (1) Contract amendments must be made in writing;
 - (2) Amendments to contracts must fall within the scope of the original solicitation. Amendments shall not be used to circumvent rules establishing approvals at certain monetary thresholds;
 - (3) The original contract was let by competitive bidding or alternate contracting method or is a Special Procurement that has been exempted from competitive processes;
 - (4) Such amendment(s) shall not exceed a total of thirty-three percent (33%) of the original Contract Price for goods and services or twenty-five percent (25%) over the original Contract Price if the Contract is for public improvements, public works, or general trade services and the amount of the amended Contract is defined as a Small or Intermediate Procurement as these thresholds are defined in Section 300, “Public Contracts Under Certain Dollar Amounts,” Supplementary Provisions of the Community College Rules of Procurement;
 - (5) Such amendment(s) shall not exceed a total of fifty percent (50%) of the original Contract Price, if the original Contract Price exceeds the threshold for Intermediate Procurements as this threshold is defined in Section 300, “Public Contracts Under Certain Dollar Amounts,” Supplementary Provisions of the Community College Rules of Procurement, and the Contract is for public improvements, public works, or general trade services;
 - (6) The **Local Contract Review Board Vice President/Chief Financial Officer or designee** approves the amendment if the contract is for a Public Contract and the amended value of the contract is equal to or in excess of \$100,000.

- B. The “Reinstatement of Expired Contracts” means the action of reinstatement of an expired Contract that was previously properly executed containing all the required approval signatures and following all required procurement processes. The College may approve reinstatement of an expired Contract if the following conditions are met:
- (1) The College determines concisely, in writing, that the failure to extend or renew the Contract in a timely manner was due to unforeseen or unavoidable conditions;
 - (2) The written reinstatement justification is presented to Purchasing for approval within ninety (90) days after expiration of the original Contract; and
 - (3) The reinstatement is exclusively for the purpose of permitting completion of the work or services for no additional compensation; or
 - (a) When the services are of a continuing or repetitive nature, which are compensated at an hourly, daily or similar periodic rate, the reinstatement either:
 - (i) Does not increase the rate of compensation; or
 - (ii) Does not increase the rate of compensation so as to exceed the rate of the increase determined by comparing the Portland, Oregon Metropolitan Area Consumer Price Index (all items), published immediately prior to the date the original contract was established with the same Index published immediately prior to the date of the reinstatement and extension.
 - (4) When a Contract is reinstated pursuant to this Rule, the College may compensate the Contractor, at the rate of compensation established in the original Contract, for work performed in the interim between the expiration of the original Contract and the execution and approval(s) of the extension or amendment.
 - (5) This rule authorizes only one reinstatement of a Contract.
 - (6) No reinstatement of a Contract must modify the original contract except with respect to the time for performance.
 - (7) If the reinstatement of a Contract pursuant to this rule raises the aggregate amount of compensation to a level that requires approval by the Local Contract Review Board, the College must obtain such approval before the extension becomes binding and before any services may be performed under the reinstated contract.
 - (8) Once a Contract is reinstated, it is in full force and effect, as if it had not expired.
- Stat. Auth: ORS 279A.065(5)(a); ORS 279A.070

Conclusion of Compliance with Law

Contracts are living entities. The work they represent is subject to change at any moment; contract amendments record and formalize those changes. Options for change orders are needed for contract administrators and contractors to perform the work in the most efficient manner. As the contract amendment process is not an exemption from the competitive procurement requirements of law, the College has determined that findings of fact are not required. It is unlikely that this process will encourage favoritism in the awarding of public contracts or substantially diminish competition, and is reasonably expected to result in substantial cost savings to the College or to the public (ORS 279B(4)). Consequently, findings otherwise required by law are unnecessary here.

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This proposed change is intended to clarify that although Special Procurements, as defined in and subject to the provisions of ORS 279B.085, could be for a series of Contracts, they are not included in this Anti-Fragmenting Rule. (Special Procurements are used when applicable and have been approved by the College’s local contract review board.)

Cumulative Awards of Small Contracts (i.e., Anti-Fragmenting Rule)

CCR.304

When the College awards a series of small contracts, other than Special Procurements subject to ORS 279B.085, with values less than or equal to \$100,000, intends to award a series of such contracts, or is likely to award a series of such contracts within one fiscal year, the sum of which will, or is likely to, meet or exceed \$100,000, and the Work of which is similar, identical, or within the same operational domain, the College shall submit findings to its Local Contract Review Board to the effect that:

- (1) The contracts are not intentionally fractionalized to avoid sealed, competitive public procurement; and,
- (2) Competition is not being diminished by the awarding of such contracts and the consequent avoidance of public advertising of the requirement; and,
- (3) Other requirements such as those of the Bureau of Labor and Industries, (prevailing wage rates), bonding, insurance and OMWESB (Office of Minority, Women and Emerging Small Business, reporting requirements), will not be avoided by the award of such contracts;

or, the College shall formulate and issue a formal solicitation for the totality of such annual requirements, and shall, as a result of such solicitation, establish a requirements contract naming one or more qualified providers, for the provision of the required goods or services.

Conclusion of Compliance with Law

This rule is intended to apply to all goods, services, client services, public improvements, public works, maintenance, repair, supplies, and all other College requirements. Its purpose is to ensure that the College does not intentionally or inadvertently exceed the

College's formal competitive procurement threshold requirement of \$100,000 without good cause. As Special Procurements may result in a series of Contracts over time or for multiple projects, and the Cumulative Awards of Small Contracts Rule is not an exemption from the competitive procurement requirements of law, the College has determined that findings of fact are not required.

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Two proposed changes are recommended: 1) The first proposed change provides additional assurances that the provisions of the College's business practice and approval procedures for sole-source procurements satisfy the requirements of ORS 279B.075; and 2) the second change provides a timeframe upon which written findings may be relied.

Exception (Including Sole Source) – Purchases of Goods or Services through

CCR.310

Competitive procurement processes need not be used for the procurement of goods or services when the College makes a determination, based on written findings subject to ORS 279B.075(2), that the goods or services, or class of goods or services, are available from only one source, and the award of the Contract waived, is approved, in writing, by the College's chief ~~fiscal~~ financial officer or designee with such approved waiver(s) determination of sole source being placed on file in the Purchasing office or other designated official location; notification shall subsequently be given to the college's Local Contract Review Board, if the amount of the contract exceeds \$100,000. The College is entitled to negotiate with any sole source Contractor to obtain a favorable price, terms, and/or conditions. This exception may be used for either a Contract or class of goods or services resulting in a series of Contracts, subject to these written findings, without submitting written findings for each subsequent request for a Contract, for not longer than five years, and This exception is to be used infrequently and only when deemed by the chief financial ~~fiscal~~ officer or designee to be in the best interest of the College.

Findings of Fact

1. In some cases, the use of competitive procurement processes is either not practicable, advantageous, or in the College's best interest due to unforeseen circumstances, unreasonable costs, difficulty in locating vendors even after extensive searches, or where time constraints occur that are due to circumstances beyond reasonable control.
2. All practical measures will be taken to encourage competition when possible.
3. The chief fiscal officer or designee will report to the Local Contract Review Board the reason(s) that competitive procurement processes were deemed to be impracticable and what steps, where possible, were taken to encourage competition if the acquisition exceeds \$100,000. A copy of the waiver shall be placed on file in the Purchasing office or other designated official location.

Conclusion of Compliance with Law

It is unlikely that this exemption from competitive procurement processes will encourage favoritism in the awarding of public contracts or substantially diminish competition, and it is reasonably expected to result in substantial cost savings to the College or to the public (ORS 279B.085(4)), since it would be an Exception, and would be due to extenuating circumstances. Additionally, this Special Procurement will substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065, or 279B.070 or under any rules adopted thereunder. (Stat. Auth.: ORS 279B.075 and 279B.085, Sole-Source Procurements and Special Procurements, respectively.)

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Personal Services Contracts (CCR.250 Amended)

CCR.312

This rule replaces and amends Personal Services Contracts Rule CCR.250(I.) (2) to read:

- (2) The College may waive the requirement for a competitive selection process and directly negotiate a Personal Services Contract, if the Contract Price is not more than the Minimum Threshold as this threshold is defined in Section 300-Supplementary Provisions, Rule CCR.312. "Minimum Threshold" means \$50,000; "Intermediate Threshold" means \$100,000. Regardless of the dollar value of the Contract, the College may, at its discretion, enter into a Personal Services Contract without complying with formal or informal solicitation requirements if an Emergency, as defined in CCR.206 exists.
 - (a) Unless there are compelling reasons not to do so, competitive selection processes for Personal Services contractors should take place at intervals not greater than five years.
 - (1) Informal Selection Procedures may be used for contracts less than or equal to the Minimum Threshold (i.e., \$50,000), but are not required to be used for contracts less than or equal to the Minimum Threshold.
 - (2) Informal Selection Procedures shall be used for contracts estimated or anticipated to be more than \$50,000, and which are not estimated or anticipated to be more than or equal to the Intermediate Threshold (i.e., \$100,000).

- (3) Formal Selection Procedures shall be used for contracts estimated or anticipated to be more than the Intermediate Threshold (i.e., \$100,000), but may be used for contracts of any estimated dollar value if it is deemed to be in the college's best interest.
- (b) The screening and selection procedures for the award of Personal Services Contracts are governed by ORS 279A.055 and are subject to the competitive procurement provisions of the Personal Services Contracting rules and procedures adopted herein. Every contract for Personal Services shall be based upon these screening and selection procedures developed by the College. Personal Services Contracts are considered "Public Contracts" as defined in ORS 279A.010. Pursuant to ORS 279A.010(1)(kk), services designated as "personal services" under ORS 279A.055 are excepted from the definition of "services" and are, therefore, not subject to the Cost Analysis or feasibility determination requirements of ORS 279B.030, 279B.033, or 279B.036.

This rule replaces and amends Personal Services Contracts Rule CCR.250(I.)5) to read:

- (5) Personal Services Contracts do not include:
 - (a) Contracts, even though in a professional capacity, if primarily for equipment, supplies or materials, e.g., a contract to supply all hardware and standard software is not a Personal Services Contract, but a contract with a technology consultant to design or develop a new computer system is a Personal Services Contract;
 - (b) Contracts with a temporary service or personnel agency to supply labor, which is of a type that can generally be done by any skilled worker;
 - (c) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures;
 - (d) Employees or leased employees, except for those professional/managerial, leased employees retained under contract with the College's preferred provider, Northwest Innovations, Incorporated.
- (6) If the procurement is grant-funded, "Minimum Threshold" means the amount as identified by the grant-funding agency, if the grant-funding agency's threshold requirements are more restrictive than the College's. The College will follow the provisions of Personal Services contracting rules of the grant-funding agency and/or those of the College, or a combination thereof, as identified by the grantor.

Conclusion of Compliance with Law

The definition of Personal Services Contracts as it is written in CCR.250 excludes employees or leased employees. With the increased number of managerial/professional staff retirements, the College has lost a body of specialized knowledge and has developed an ongoing need for a provider of managerial/professional services in order to provide uninterrupted services to the College. These services are not typically available from other staffing agencies; however, it is desirable to the College to retain this body of experience that would otherwise be lost through retirements. Northwest Innovations, Incorporated (NWI), is uniquely capable of providing short-term professional/managerial employment services to the College, because of its access to a unique pool of managerial/professional employees.

The requirements of Rule CCR.250 and its subsequent amendment, CCR.312, ensure that competition will be carefully addressed and protected, if the College finds it is in the public's best interest to competitively procure Personal Services. This rule satisfies the requirements of Oregon Revised Statute ORS 279A.055 wherein the College may enter into Personal Services contracts, subsequent to the Local Contract Review Board's designation of certain service contracts or classes of service contracts as Personal Services Contracts. Consequently, findings otherwise required by law are unnecessary here.

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The proposed, minor modifications to (2)(c) and (2)(e) are "housekeeping." "Disadvantaged" business enterprises certified under 200.055, through the Oregon Business Development Department, were inadvertently omitted.

Public Contracts Under Certain Dollar Amounts

CCR.314

- (1) The College shall submit recommendations for contract award to the Local Contract Review Board for contracts greater than \$100,000, subsequent to College policies and procedures contained herein and defined in Appendix A.
- (2) The College may, at its discretion, enter into Public Contracts not to exceed \$100,000 for the purchase of goods, materials, supplies, and services, including contracts for architectural, engineering, land surveying, and related services, and public improvements or general trade services, without issuing a formal competitive Solicitation Document, if the College has determined that the awarding of the contract without issuing a formal competitive Solicitation Document will result in cost savings and the following conditions are met:
 - (a) The Contract is for a single project, and is not a component of or related to any other project;
 - (b) When the amount of the Contract does not exceed \$5,000, defined herein as a "Small Procurement," the College shall, where feasible, obtain competitive quotes, unless the contract is for architectural, engineering, land surveying, and

related services procedures in which case a Direct Appointment (see Appendix B, 137-048-0200), may be made for contracts with Estimated Fees less than or equal to \$50,000;

- (c) When the amount of the Contract is more than \$5,000, but less than or equal to \$100,000, defined herein as an “Intermediate Procurement,” and is not for architectural, engineering, land surveying services, or related services, the College shall obtain a minimum of three informally solicited competitive quotes. At least one of the three quotes should be obtained from a disadvantaged, minority, women or emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225. The College shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes;
 - (d) The College will abide by ORS 279A.025(4), regarding Qualified Nonprofit Agencies, unless the required goods, materials, supplies or services are unavailable from a Qualified Nonprofit Agency as provided in ORS 279.835 to 279.855;
 - (e) The College shall encourage certified disadvantaged, minority, women-owned and or emerging small businesses to participate in its purchasing processes, where applicable, by notifying the Advocate for Minority, Women and Emerging Small Business as required by ORS 200.035; and
 - (f) The goods or services, or class of goods or services, are available from only one source and the determination of a sole source is based upon written findings in accordance with the provisions set forth in ORS 279B.075.
- (3) The College may, at its discretion, enter into Public Contracts not to exceed \$100,000, where competitive procurement processes have been waived pursuant to ORS 279B.075 and/or 279B.085, and the provisions of CCR.310, “Exception (Including Sole Source) – Purchases of Goods or Services through.”
- (4) The College may, at its discretion, enter into Public Contracts for trade-related projects, i.e., construction, maintenance, repair, or similar labor and materials contracts without competitive bidding if the College has determined that the awarding of the Contract without competitive bidding will result in cost savings and the following conditions are met:
- (a) The Contract is for a single project, and is not a component of or related to any other project;
 - (b) When the amount of the Contract does not exceed \$5,000, the College should, where feasible, obtain competitive quotes (ORS 279B.065);
 - (c) When the amount of the Contract is more than \$5,000, but less than or equal to \$100,000 the College shall obtain a minimum of three competitive quotes. The College shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes;
 - (d) When the Contract is a public improvement Contract of less than or equal to \$100,000, and the bidders are being drawn exclusively from a list of certified emerging small businesses maintained by the Office of Minority, Women and Emerging Small Business, the College may let the Contract without formal competitive bidding after a good faith effort to obtain a minimum of three competitive quotes from Emerging Small Businesses. To obtain maximum exposure for all firms and guard against favoritism, care shall be taken to obtain quotes from different firms each time the list is used. The College shall keep a written record of the source and amount of the quotes received and comply with the requirements, as applicable, of subsection (2)(e) of this rule. A lesser number will suffice provided a written record is maintained of the effort to obtain the quotes; and
 - (e) When the Contract is for a “public improvement” as defined in ORS 279A.010(1)(cc) and/or for “public works” as defined in ORS 279C.800(6), and the Contract Price exceeds \$50,000 but is less than or equal to \$100,000, the College and the contractor shall comply with:
 - (i) The prevailing wage provisions of ORS 279C.800 to 279C.870, when applicable;
 - (ii) The contractor registration requirements of ORS 701; and
 - (iii) Any other law applicable to such a Contract.
- (5) If more than one supplier may be available and the total purchase is estimated to exceed \$100,000, the College shall select a contractor through a formal competitive solicitation process;
- (6) Pursuant to ORS 279C.105, when the Contract is for architectural, engineering, land surveying, and related services, and the Estimated Fee is greater than \$100,000, the College shall screen and select a contractor through a formal competitive solicitation process as these procedures are defined in Appendix B, 137-048-0220, of these Community College Rules of Procurement.
- (7) Renegotiated Contracts for Supplies and Services
- The College may renegotiate the terms and conditions, including the Contract Price, of a Contract without additional competition and amend a Contract if it is in the best interest of the College subject to the following conditions:
- (a) The College must determine that, with all things considered, the renegotiated Contract is at least as favorable to the College as the original Contract; and
 - (b) The renegotiated Contract will not have a total term greater than allowed in the original Solicitation Document, Contract or approval of a Special Procurement after combining the initial and extended terms. For example, a one-year Contract, 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. Also, if Contracts with a single Contractor are restated as a single Contract, the term of the single Contract may not have a total term greater than any one of the prior Contracts.

- (c) If a Contractor offers a lower price in exchange for a change in term or condition that was expressly rejected in the original solicitation, the amended Contract may be structured with this changed term as an optional, but not as a mandatory Contract term.
 - (d) If the Contract is the result of a Cooperative Procurement, the amended Contract must be within the Scope of the Original Contract and may not materially change the terms, conditions, and prices of the Original Contract.
- (8) If the procurement is grant-funded, “Minimum Threshold” means the amount as identified by the grant-funding agency, if the grant-funding agency’s threshold requirements are more restrictive than the College’s. The College will follow the provisions of the Public Contracting rules of the grant-funding agency and/or those of the College, or a combination thereof, as identified by the grantor.

Comment:

Public Contract shall mean the “*completed project cost basis*” of a Public Contract (i.e., the total cost of performing one discrete, identifiable totality of work, including all components, shipping, warranty costs, service agreements obtained in conjunction with the purchase contract, reimbursables, and any other associated costs).

Conclusion of Compliance with Law

This rule is more restrictive than the requirements of the Public Contracting Code. As such, it is not an exemption or Special Procurement to the competitive bidding requirements of law. Consequently, findings otherwise required by law are unnecessary here.

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This is an amendment to Attorney General Model Rule, OAR 137-047-025. New language appears in italics and is intended to provide direction for the administration of contract amendments subject to the Cost Analysis requirements of HB 2867 (ORS 279B.030). Both (a) and (a)(i) have been gleaned from rules promulgated by DAS’ OAR 125-247-0110.)

Source Selection

CCR.317

This rule amends (i.e., additions are indicated by italics), Appendix B of these Community College Rules of Procurement (i.e., State of Oregon, Department of Justice, Model Public Contract Rules effective January 1, 2010, Division 47), as follows:

OAR 137-047-0250(2) shall be replaced with:

- (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~~ *the College* must, in the absence of a determination under section 34 of that enactment that performing the services with the ~~College’s Contracting Agency’s~~ *College’s* own personnel and resources is not feasible, conduct a Written cost analysis. *The College has specifically opted out of the model rules adopted by the Attorney General and adopted its own rules of procedure for Public Contracting pursuant to 279A.065 in the exercise of its own contracting authority and is not subject to these model rules, except for those portions of the model rules that the College has prescribed for its own use for Public Contracting.*
 - (a) This rule applies to a procurement for services—other than personal services designated under ORS 279A.055—that the College estimates will result in one or more Contracts with a value that exceeds \$250,000 for the estimated term of the Contract(s) Value, including incidental costs related to the services, and anticipated amendments, but not unanticipated amendments:*
 - (i) If a procurement is conducted in accordance with these rules, an Award is made, and one or more unanticipated amendments then increase the estimated Contract Value over \$250,000, a Cost Analysis is not required at that time.*

Conclusion of Compliance with Law

As this amendment to the Attorney General’s Public Contract Rules is not a Special Procurement or exemption from the competitive procurement requirements of law, the College has determined that findings of fact are not required.

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