

**PROPOSED CHANGES TO THE  
COMMUNITY COLLEGE RULES OF PROCUREMENT  
DATED JANUARY 19, 2005, AND REVISED OCTOBER, 2008, PENDING BOARD APPROVAL.**

(09/17/08)

This document contains *proposed* changes to the CCRP Rules that were previously revised and formally adopted by Chemeketa's Board on October 17, 2007.

KEY: Deletions to the current Community College Rules of Procurement (CCRP), are highlighted in **YELLOW** and are shown with a line drawn through them.

Additions are shown in **RED** font 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.

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**The current Community College Rules of Procurement can be found at  
<http://www.chemeketa.edu/workforce/procurement/procurementrules.html>.**

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*These Community College Rules of Procurement were drafted by participating statewide community college representatives with the intent that Sections 100 and 200 be adopted in their entirety and remain unchanged by their respective institutions unless modified by participating committee members at a later date and subsequently ratified by all their Local Contract Review Boards. Section 300 has been specifically set aside to address the unique philosophies, cultures, and/or concerns of the various community colleges, voting districts, and Local Contract Review Boards. In the event of conflict between rules or sections within these Community College Rules of Procurement, the rules in Section 300 (excluding Appendix B), shall take precedence over the rules in Sections 100 and/or 200 except as otherwise expressly provided in Sections 100 and 200; in all cases, Sections 100, 200, and 300 (excluding Appendix B), shall take precedence over Appendix B.*

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Sections 100, 200, and/or 300 (excluding Appendix B), in these Community College Rules of Procurement shall prevail in every instance where there is a conflict or similarity between the Oregon Attorney General’s Model Public Contract Rules, (Appendix B), and these Community College Rules of Procurement, effective March 1, 2005, subsequently reviewed/modified pursuant to ORS279A.065(5)(b). *Rules from the Oregon Attorney General’s Model Public Contract Rules that have been identified but which are shown with a line drawn through them have been stricken and have not been adopted by the College.*

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## SECTION 100 - GENERAL INFORMATION

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(z)~~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) 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.

### Definitions for these Community College Rules of Procurement

CCR.104

The following terms, when they appear capitalized in these Community College Rules of Procurement, shall have the meaning set forth below unless otherwise indicated:

- (1) **"Addendum" or "Addenda"** means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document. Addenda shall be labeled as such and distributed to all interested persons in accordance with these rules.
- (2) **"Auxiliary Funds"** means funds intended to be profit making and/or self-sustaining for providing product or services to the College's customers. (See also "Enterprise Funds.") Examples of Auxiliary Fund or Enterprise Fund operations may include: bookstores; food services; printing services; medical/dental/science stores; student automotive and mechanical stores; and miscellaneous student stores for the resale of books and computers for instruction.
- (3) **"Award" or "Intent to Award"** means, as the context requires, either the act or occurrence of the College's identification of the Person with whom the college will enter into a Contract following the resolution of any protest of the College's selection of that Person, and the completion of all Contract negotiations.
- (4) **"Best Value"** means evaluation or assessment of performance factors and other aspects of service and product quality, as well as pricing, which may include, but not be limited to, combinations of quality, services, time, and cost considerations over the useful life of the acquired item.
- (5) **"Bid"** means a competitive offer in response to an Invitation to Bid in which price, delivery (or project completion), and conformance to specifications will be the predominant award criteria.
- (6) **"Bidding/Proposing Period"** means the span of time between the date of the Solicitation Document and the time and date set for receipt of Offers. The time period shall be stated in the Solicitation Document. Generally a period of fourteen (14) calendar days shall be provided, but in no case shall the time provided be less than five (5) calendar days.
- (7) **"Closing"** means the date and time specified in a Solicitation Document as the deadline for submitting Offers.
- (8) **"Code"** means the Public Contracting Code, as defined in ORS 279A.010.
- (9) **"College"** means Community College District or Community College Service District established under ORS chapter 341, hereinafter known as the specific College whose name appears on the Solicitation Document and/or subsequent Contract and whose Local Contract Review Board has adopted by resolution or ordinance these Community College Rules of Procurement.
- (10) **"Competitive Range"** means the Offerors with whom the College will conduct discussions or negotiate if the College intends to conduct discussions or negotiations in accordance with its own rules.
- (11) **"Competitive Sealed Bidding"** means the issuing of Invitations to Bid, which follow the formal process for advertising, submitting bids, and conducting of public bid openings as required by ORS 279B.055.
- (12) **"Competitive Sealed Proposals"** means the issuing of Request for Proposals, which follow the formal process for advertising, submitting proposals, and conducting of public openings as required by ORS 279B.060.
- (13) **"Contract"** means a "Public Contract," as defined in ORS ~~279A.010(1)(x)~~279A.010(1)(z), a 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. "Public Contract" does not include grants. The "Contract" includes the College's Solicitation Document and the accepted portions of a Solicitation Document, whether attached or incorporated by reference, between the College and Contractor describing the work to be done and the obligations of the parties. Depending upon the goods and services being procured, the College may use "Contract" as meaning a purchase order, price agreement, or other contract document in addition to the College's Solicitation Document and the accepted portions of a Solicitation Document. If the Contract is for a public improvement or public work, the "Contract" may consist of the College's Solicitation Document, including any addenda, the



general and special and/or supplementary conditions or other conditions governing the work, the accepted portions of the Solicitation Document, the performance and payment bond (if required), certificates of insurance, plans, technical specifications, approved shop drawings, Construction Change Directive or written order for a minor change in the Work, Notice of Award, Notice to Proceed, and any contract amendments, including approved change orders.

- (14) **“Contract Price”** means, as the context requires, (i) the maximum monetary obligation that the College will or may incur under a Contract, including bonuses, incentives, approved alternates, fully executed change orders or amendments, and contingency amounts, if the Contractor fully performs under the Contract, (ii) the maximum not-to-exceed amount of payments specified in the Contract, or (iii) the unit prices for Goods or Services set forth in the Contract.
- (15) **“Contract Review Authority”** means the College’s Local Contract Review Board as set forth in ORS 279A.060.
- (16) **“Contract Value”** - in determining the applicability of dollar threshold requirements for competitive procurements within these Community College Rules of Procurement, “Contract Value” means the gross amount of goods and/or services procured by or for the College and shall take into consideration, but not be limited to, the following elements: (1) Contract Price; (2) total amount estimated to be generated, if contract is anticipated to be revenue generating; (3) economic value, and (4) total estimated expenses incurred for which the College would be required to report to the Internal Revenue Service (e.g., 1099).
- (17) **“Contractor”** means the Person with whom the College enters into a Contract and shall be synonymous with “Independent Contractor” (i.e., a person or business that provides services to the College in which the College neither controls nor has the right to control the means or manner by which work is performed). The College may control the results of the services, but not control the means or manner of the Contractor’s performance of the Work.
- (18) **“Cost”** means not only the product price but also other items of expense such as the actual or reasonably estimated costs related to quality or conversion, and may include such actual or estimated items as shipping, delivery, setup, installation, and training.
- (19) **“Descriptive Literature”** means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.
- (20) **“Disadvantaged Business Enterprise (DBE)”** means a small business concern pursuant to ORS 200.005(1), which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (21) **“Effective Date of Contract”** means the date established in the Contract for the Contractor’s work to begin, or the date the Contract has been fully executed and received all required approvals, whichever date is later.
- (22) **“Electronic Advertisement”** means notice of the College’s request for Offers or request for quotes, available over the Internet via (a) The World Wide Web or some other Internet protocol; or (b) the College’s electronic procurement system. An Electronic Advertisement may include a Solicitation Document.
- (23) **“Electronic Offer”** means a response to the College’s request for Offers or request for quotes submitted to the College via email or through the College’s Electronic Procurement System.
- (24) **“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 the College to post Electronic Advertisements, receive Electronic offers, and conduct other activities related to a procurement.
- (25) **“Emergency”** means circumstances that were not reasonably foreseen by the governing body of the College, its President or another officer authorized by the College, and create a substantial risk of loss, damage or interruption of services; a substantial threat to property, public health, welfare or safety of the environment that requires prompt execution of a contract to remedy the condition or deal with the risk. *(Verbiage gleaned from OAR 137-045-0010(8).)*
- (26) **“Enterprise Funds”** means funds intended to be profit making and/or self-sustaining for providing product or services to the College’s customers. (See also “Auxiliary Funds.”) Examples of Auxiliary Fund or Enterprise Fund operations may include: bookstores; food services; printing services; medical/dental/science stores; student automotive and mechanical stores; and miscellaneous student stores for the resale of books and computers for instruction.
- (27) **“Evidence of Competition”** means College documentation demonstrating competitive solicitation of responses/offers from Person(s) in selecting a Contractor in accordance with the College’s public contracting rules.
- (28) **“Expert Witness”** means Contracts for services of witnesses for the purposes of evaluating a claim or cause of action, preparing for or assisting with actual or likely litigation or otherwise assisting in resolving a dispute. This includes a person possessing specialized knowledge, skills, or experience of a particular subject or profession engaged to assist or consult on the College’s presentation of its case in legal, administrative, and other official proceedings, regardless of whether the Contractor is called to testify.
- (29) **“Facsimile”** means electronic equipment that communicates and reproduces both printed and handwritten material.
- (30) **“Gift”** means something of economic value given to a public official or the public official’s relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official’s relative for valuable consideration less than that required from others who are not public officials.
- (31) **“Goods and Services”** or “Goods or Services” have the meaning set forth in ORS ~~279B.005(1)(b)~~ **279A.010(1)(j)**.
- (32) **“Interstate Agreement”** means any agreement between the College and a unit of local government or state agency of another state. *(Verbiage gleaned from OAR 137-045-0010(15).)*

- ~~(32)~~ **33** “**Invitation to Bid**” (ITB) means all documents used for soliciting **Bids Offers** in accordance with ~~either~~ ORS **279B.055** **279A.010(2)(bb)** ~~or 279C.335~~. (See also “Competitive Sealed Bidding.”)
- 33**~~34~~ “**Life Cycle Costing**” means determining the cost of a product for its estimated useful life, including its disposal.
- ~~34~~**35** “**Local Contract Review Board**” (LCRB) means the LCRB and/or Board of Education as established by Board resolution or ordinance by each respective College adopting these Community College Rules of Procurement, to serve as its public contract review authority.
- ~~35~~**36** “**Lowest Responsible Bidder**” means: (a) the bidder whose Offer substantially complies with the requirements and criteria set forth in the Invitation to Bid and with all prescribed public procurement procedures and requirements; or (b) When the invitation to bid specifies or authorizes the award of multiple contracts to the responsible bidders, the bidder whose bids substantially comply with the requirements and criteria set forth in the Invitation to Bid and with all prescribed public procurement procedures and requirements and who qualify for the award of a public contract under the terms of the Invitation to Bid. (ORS 279B.055(10) Depending upon the requirements of the Solicitation Document, “Lowest Responsible Bidder” may also mean one who, in the determination of the Advocate for Minority, Women and Emerging Small Businesses, has undertaken both a policy and practice of actively pursuing participation by minority and women-owned business in all bids, both public and private, submitted by such bidder, pursuant to ORS 200.025 and 200.045.
- ~~36~~**37** “**Model Rules**” means the State of Oregon’s Attorney General’s model rules of procedure for Public Contracting, which are set forth in OAR Chapter 137, divisions 46, 47, 48, and 49.
- ~~37~~**38** “**ORPIN**” **System**: The on-line electronic Oregon Procurement Information Network (ORPIN) administered through the State Procurement Office of the Procurement, Fleet and Surplus Services Division of the Oregon Department of Administrative Services.
- ~~38~~**39** “**ORS**” means Oregon Revised Statutes.
- ~~39~~**40** “**Offer**” means a response to a Solicitation Document that is binding on the Offeror.
- ~~40~~**41** “**Offeror**” means a Person, who submits an Offer.
- ~~41~~**42** “**Opening**” means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.
- ~~42~~**43** “**PCC**” means Public Contracting Code as it is defined in ORS ~~279A.010(z)~~ **279A.010(1)(bb)**.
- ~~43~~**44** “**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.
- ~~44~~**45** “**Personal Property**” means everything subject to ownership, which is not real property and has exchangeable value; includes all chattels and movables, such as boats and vessels, merchandise and stock in trade, furniture and personal effects, goods, livestock, vehicles, farming implements, movable machinery, movable tools and movable equipment pursuant to ORS 307.020.
- ~~45~~**46** “**Personal Services Competitive Solicitation**” means a documented process providing an equal and open opportunity to qualified parties, which culminates in a selection based on criteria that include, but are not limited to, the Contractor’s availability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance and fees or costs.
- ~~46~~**47** “**Personal Services Contract**” or “**Contract for Personal Services**” means 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 (which are subject to ORS 279C.105, ORS 279C.110 or ORS 279C.120, and which are defined as Personal Contracts pursuant to ORS 279C.100(5)), that the College’s Local Contract Review Board has designated as a Personal Services Contract pursuant to ORS 279A.055, 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 a(n): accountant; physician, dentist or lawyer; educator; consultant(s) for information technology, travel, banking, investing, collections, or other consultant; broadcaster or artist (including a photographer, filmmaker, painter, weaver, or sculptor). (See also Personal Services Contracting Rules section within these Community College Rules of Procurement for an expanded definition.)
- ~~47~~**48** “**Personal Services Contractor**” means an Independent Contractor that performs a Contract for Personal Service(s) for the College, when the College has no right to and does not control the means and manner of performing the contract, except as to the delivery schedule, determining compliance with the Statement of Work, and accepting or rejecting the deliverables or results required under the Contract.
- ~~48~~**49** “**Prequalification of Offeror**” means a process followed by the College, in advance of issuance of Solicitation Documents, to determine the qualifications of prospective Offerors to perform public contracts.
- ~~49~~**50** “**Product Sample**” means the exact Goods or a representative portion of the Goods offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of that product offered by the Offeror.
- ~~50~~**51** “**Proposal**” means an Offer in response to a Request for Proposals.
- ~~51~~**52** “**Public Contract**” means a sale or other disposal, or a purchase, lease, rental or other acquisition, by the College of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. (ORS ~~279A.010(1)(x)~~ **279A.010(1)(z)**).

- (5253) **“Public Notice”** means a public notice of Solicitation Document that is published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the College determines or is published electronically.
- (5354) **“Request for Proposals”** or **“RFP”** means all documents used for soliciting Proposals in accordance with either ORS 279B.060 or 279C.110, where proposal evaluation and contract award is based on criteria such as proposer qualifications and experience, product features and characteristics, service quality and efficiency, and conformance with the specifications and requirements of the Solicitation Document. Price may be evaluation criterion for an RFP, but will not necessarily be the predominant basis for contract award.
- (5455) **“Request for Qualifications”** means a written document describing the College’s circumstances and the type of service(s) desired, setting forth all significant evaluation factors and their relative importance, written qualifications, and, if appropriate, price. The Request for Qualifications will not result in a Contract but is intended to establish a list of qualified Contractors from which to seek Offers and select a Contractor.
- (5556) **“Request for Quotes”** or **“RFQ”** means the solicitation by the College of offers from competing vendors in an effort to obtain competitive quotes. The solicitation may be by advertisement or by the College initiating a request to vendors to make an offer in accordance with the provisions of Small Procurements and Intermediate Procurements as these categories are defined in ORS 279B.065 and ~~279.070~~279B.070, pursuant to the rules established by the College’s Local Contract Review Board for competitive thresholds. The solicitation may be accomplished by advertisement or by the College initiating a request to vendors to make an offer. The solicitation and the offer may be electronic, in writing, or oral.
- (5657) **“Requirements Contract”** means a price agreement that constitutes a firm offer by the Contractor, regardless of whether any order or purchase has been made or any performance has been tendered under the price agreement and is enforceable for the period stated in the price agreement and is not revocable by the Contractor. A price agreement does not constitute an exclusive dealing commitment on the part of the College or the Contractor unless the price agreement expressly so provides. (ORS 279B.140)
- (5758) **“Responsible Offeror”** (also, **“Responsible Bidder”** or **“Responsible Proposer,”** as applicable), means a Person that has submitted an Offer and meets the standards set forth in ORS ~~279B.100~~ 279B.005 and/or ORS 279B.110, and that has not been debarred or disqualified by the College. When used alone, **“Responsible”** means meeting the aforementioned standards.
- (5859) **“Responsive Offer”** (also, **“Responsive Bid”** or **“Responsive Proposal,”** as applicable), means an Offer that substantially complies in all material respects with applicable solicitation requirements. When used alone, **“Responsive”** means having the characteristic of substantially complying in all material respects with applicable solicitation requirements.
- (5960) **“Service Contract”** means a contract that calls primarily for a contractor’s time and effort rather than for an end product.
- (6061) **“Signed”** means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.
- (6162) **“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 and executed or adopted by a Person with the intent to be bound.
- (6263) **“Solicitation Document”** means an Invitation to Bid, Request for Proposals or other document issued to invite offers from prospective contractors pursuant to ORS Chapter 279B or 279C, and includes all documents incorporated by reference.
- (6364) **“Special Procurement”** means, unless the context requires otherwise, a Class Special Procurement, a Contract-Specific Special Procurement or both (ORS 279B.085). A “Class Special Procurement” means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services (ORS 279B.085(1)(a)). “Contract-Specific Special Procurement” means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single contract or a number of related contracts for the acquisition of specified goods or services on a one-time basis or for a single project (ORS 279B.085(1)(b)).
- (6465) **“Specification”** means any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed. Specifications may be incorporated by reference and/or through attachment to the Contract.
- (6566) **“Standard Fee Contract”** means a contract awarded for service to be performed for a standard fee, when the standard fee is established by the College, and a like contract is available to all qualified applicants.
- (6667) **“Statement of Work”** means a written statement that specifically describes the phases of work or services, major tasks, or areas of responsibility the Contractor is to perform at a particular site, or within a particular locale during a stated period of time, according to a schedule of delivery. The statement must identify specific objectives that the Contractor is to attain or describe, in detail, and the deliverables that the Contractor is to provide.
- (68) **“Telecommunications”** means 1-way and 2-way transmission of information over a distance by means of electromagnetic systems, electro-optical systems, or both. *(Verbiage taken verbatim from OAR 137-045-0010(26).)*
- (6769) **“Work”** means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a Contract or the entire Contract, and successful completion of all duties and obligations imposed by the Contract.

~~(68)~~70) “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.

~~(69)~~71) “Written” means existing in Writing.

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**CHANGES TO CCR.204**

**Bid Security and Bond Requirements, Waiver of**

**CCR.204**

Pursuant to ORS 279C.390, the College may, at its discretion, exempt certain contracts or classes of contracts from all or a portion of the requirement for bid security and from all or a portion of the requirement that good and sufficient bonds be furnished to ensure performance of the contract and payment of obligations incurred in the performance.

The College may waive bid security requirements and/or performance/payment bond requirements pursuant to ORS 279C.390 and this rule under the following conditions:

- (1) If the contract is for a public improvement or a public work and the amount of the contract does not exceed \$75,000 or another threshold as indicated by rule amendment in Section 300, and the contractor has filed a public works bond with the State of Oregon Construction Contractors Board ;
- (2) If the contract is not for a public improvement;
- (3) Where bidders are drawn exclusively from a list of certified Emerging Small Businesses maintained by the Advocate for Minority, Women and Emerging Small Business, and the College has been provided funds by the legislature for the purpose of assisting Emerging Small Businesses;
- (4) In cases of emergency, or when the interest or property of the College or the public agency or agencies for whose benefit the contract was awarded probably would suffer material injury by delay or other cause and a declaration of such emergency has been made in accordance with rules adopted under ORS 279A.065.

The College shall not use Bid or Proposal security to discourage competition. The Offeror shall forfeit Bid or Proposal security after award of the contract if the Offeror fails to execute the contract and promptly return it with any required Performance Bond and Payment Bond.

**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 reducing costs of bidding and maximizing participation from Emerging Small Businesses.

This rule satisfies the requirements of ORS 279C.390 wherein a Local Contract Review Board may exempt certain contracts or classes of contracts from all or a portion of the requirement for bid security and from all or a portion of the requirement that good and sufficient bonds be furnished to ensure performance of the contract and payment of obligations incurred in the performance. Consequently, findings otherwise required by law are unnecessary here.

\* \* \* \* \*

## **TITLE CHANGE TO RULE - ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES**

**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

### **COMMENTARY:**

**-1-** In 2003, the Legislative Assembly enacted the revised Public Contracting Code as Oregon Laws 2003, chapter 794 (House Bill 2341 (2003)), *codified as* ORS 279A.005 to 279A.990, ORS 279B.005 to 279B.425, and ORS 279C.005 to 279C.870. Subsequently, the Legislative Assembly amended the Public Contracting Code, primarily by passing Oregon Laws 2005, chapter 103 (House Bill 2214, (2005)) and Oregon Laws 2007, chapter 764 (House Bill 2140 (2007)).

The commentary identifies additional significant amendments that either were made to the Code or which affect public contracting processes. Those discussions appear in the commentary to the Model Rules that those amendments affected.

For example, Oregon Laws 2007, chapters 764 and 844, made changes to the Prevailing Wage Rate Law, ORS 279C.800 to 279C.870. We call attention to those amendments in the commentary to OAR 137-049-0860.

In addition, Oregon Laws 2007, chapter 310 (House Bill 2620 (2007)) enacted new provisions, *codified as* ORS 279C.527 and 279C.528, that require contracting agencies to address the inclusion of solar energy technology in public buildings. Those amendments are discussed in the commentary to OAR 137-049-0100.

Outside the Code, the new Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628 (2007 Oregon Laws, Chapter 759) imposes contracting requirements to protect the confidentiality of personal financial information. Those new requirements will have an impact on many client-services contracts and contracts for personal services. The commentary to OAR 137-047-0000 points out the public contracting aspects of the new law.

### **-2- Repeal of Old Rules and Exemptions/Continuation of Contracts Formed under the Old Chapter and Rules.**

The Public Contracting Code, Oregon Laws 2003, chapter 794, §334, repealed all old rules and exemptions that state and local contracting agencies (and public contract review boards) previously had adopted under *former* ORS chapter 279.<sup>1</sup> However, that section contained a grandfather clause that provided for the continuing validity of public contracts that were formed under the old rules or exemptions, and whose duration extended beyond March 1, 2005.<sup>2</sup>

Under section 334 of the 2003 revision, public contracts of a continuing nature that a contracting agency established under *former* ORS chapter 279 and under rules or exemptions adopted under the old chapter continued to remain in effect after the March 1, 2005 applicability date of the new Public Contracting Code. The application of the former statutes, rules and exemptions may continue to be significant in the administration of long-term public contracts that contracting agencies established before March 1, 2005.

However, contracting agencies that need to form new public contracts under the equivalents of previously existing exemptions from the general requirement for competitive bidding or proposals, and those that want to adopt their own special rules to

govern their public contracting, must adopt new rules and exemptions to replace their old rules and exemptions that were repealed, on March 1, 2005, by Oregon Laws 2003, chapter 794, §334, *supra*.<sup>3</sup>

-3- The four-division structure of the DOJ Model Public Contract Rules, described in OAR 137-046-0100(1), reflects the structure of the Public Contracting Code. The Legislative Assembly divided the Code into three chapters (but these Model Rules are divided into four divisions):

**ORS chapter 279A** - Chapter 279A contains definitions, general policies, and provisions that regulate the contracting authority of contracting agencies. These provisions have general applicability throughout the entire Public Contracting Code. The Model Rules that implement provisions of **ORS chapter 279A** are codified in **OAR chapter 137, division 046**.

**ORS chapter 279B** - Chapter 279B governs public contracting for “goods and services,” and prescribes source selection and judicial review procedures for general purchasing activities (generally, all procurements except public improvement contracts and professional services that relate to public improvements). The Model Rules that implement **ORS chapter 279B** are codified in **OAR chapter 137, division 047**.

**ORS chapter 279C** - Chapter 279C governs public improvement contracting, but also contains the laws that apply to the selection of architects, engineers and related services. Due to the special requirements in **ORS 279C.100 to 279C.125** for the selection of professionals who provide architectural, engineering, and land surveying services and related services, the Model Rules segregate the rules that apply to contracting for these services into their own division, **OAR chapter 137, division 048**.

In addition, of course, the rules that implement those provisions in **ORS chapter 279C** that govern public improvement contracting are contained in **OAR chapter 137, division 049**.

The subsequent amendments to the Public Contracting Code made by Oregon Laws 2005, chapter 103, and by Oregon Laws 2007, chapter 764, contained no provisions that repealed preexisting public contracting rules or exemptions. However, contracting agencies that have adopted their own contracting rules under **ORS 279A.065(5)** must review these amendments to determine whether they should modify their rules to adjust to the most recent statutory changes, which became effective July 13, 2007.

<sup>1</sup> Oregon Laws 2003, chapter 794, §334 stated:

Rules and exemptions adopted under statutes repealed by \* \* \* this 2003 Act expire on March 1, 2005. However, nothing in this 2003 Act operates to invalidate or terminate any public contract that is entered into pursuant to a rule or an exemption that expires on March 1, 2005.

## ***TITLE CHANGE TO RULE - ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES, JANUARY 1, 2008***

**137-046-0200**

**Notice to Advocate for Minorities, Women and Emerging Small Businesses ~~Affirmative Action; Limited Competition Permitted~~**

<sup>1</sup> In *Time Warner Telecom of Oregon v. City of Portland*, 452 F Supp2d 1103, 1106 (D Or 2006), the court recognized that ORS 279A.025(2)(a), as it existed prior to the 2007 amendments, specifically exempted an intergovernmental agreement from the public bidding requirements of the Public Contracting Code.

<sup>1</sup> Oregon Laws 2007, chapter 764, §2(2)(a) amended ORS 279A.025(2)(a) to state:

- (2) The Public Contracting Code does not apply to:
  - (a) Contracts between a contracting agency and:
    - (A) Another contracting agency;
    - (B) The Oregon Health and Science University;
    - (C) The Oregon State Bar;
    - (D) A governmental body of another state;
    - (E) The federal government;
    - (F) An American Indian tribe or an agency of an American Indian tribe;
    - (G) A nation, or a governmental body in a nation, other than the United States;
    - (H) An intergovernmental entity formed between or among:
      - (i) Governmental bodies of this or another state;
      - (ii) The federal government;
      - (iii) An American Indian tribe or an agency of an American Indian tribe;

- (iv) A nation other than the United States; or
- (v) A governmental body in a nation other than the United States.
- (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;

\* \* \* \*

<sup>1</sup> See also, ORS 279A.200(1)(b), as amended by 2007 Oregon Laws, chapter 764, §4(1)(b) (providing that a “cooperative procurement” does not include “an agreement formed among only governmental bodies \* \* \*”).

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

**COMMENTARY:**

**-1- Contract Solicitation and Award Reporting Requirement for State Agencies.** OAR 137-046-0200 responds to the 2005 Legislative Assembly’s enactment of a requirement that state contracting agencies must make timely reports to the Advocate for Minority, Women and Emerging Small Business on their contract solicitations and contract awards. The reporting requirement applies only to state agencies. It requires a state agency to report on all its public contract bid and proposal solicitations, and all its contract awards, that involve a contract that has a value of \$5,000 or more. ORS 200.035, as amended by 2005 Oregon Laws, chapter 351.<sup>4</sup>

Before the 2005 amendments, ORS 200.035 required state agencies to give the Advocate notice only of “contract and bid request solicitations” in excess of \$5,000. That reporting obligation was expanded to include information about contract awards, but the 2005 amendments did not repeal the pre-existing requirement that state agencies provide the Advocate timely notice of their public contract solicitations. The Advocate’s administrative rules, therefore, continue to state that “timely notice,” as it relates to state agency releases of contract solicitations, “shall mean at the time the state agency publicly releases the contract and bid request solicitations.” OAR 445-050-0200.

***TITLE CHANGE TO RULE - ATTORNEY GENERAL’S MODEL PUBLIC CONTRACT RULES, JANUARY 1, 2008***

**137-046-0210**

**Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification**

(1) For purposes of ORS 279A.105, a subcontractor certified under ORS 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.

**(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 ORS 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;

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(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

<sup>1</sup> ORS 200.035 states:

(1) For a public contract with a value of \$5,000 or more, a state agency shall provide timely notice and information to the Advocate for Minority, Women and Emerging Small Business regarding:

(a) Bid or proposal solicitations; and

(b) Contract awards.

(2) Each state agency shall, in consultation with the advocate, establish a process and timeline for providing the notice and information required by subsection (1) of this section to the advocate.

## ***ADDITIONAL RULE - ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES, JANUARY 1, 2008***

### **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

## ***ADDITIONAL RULE - ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES, JANUARY 1, 2008***

### **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

## **ADDITIONAL RULE - ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES, JANUARY 1, 2008**

### **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 & ORS 279B.140

## **TITLE CHANGE TO RULE - ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES, JANUARY 1, 2008**

### **137-048-0100**

#### **Application; Effective Date**

(1) The Attorney General is required to prepare and maintain model rules of procedure that govern Public Contracting under the Public Contracting Code and that are appropriate for use by all Contracting Agencies. These division 48 rules apply to the screening and selection of Architects, Engineers and Land Surveyors, and providers of Related Services, under Contracts and set forth the following procedures:

(a) Procedures through which Contracting Agencies select Consultants to perform Architectural, Engineering and Land Surveying Services, or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Land Surveyors and providers of Related Services for certain Public Improvements owned and maintained by a Local Government.

(2) These division 48 rules apply to any Contracting Agency with independent contracting authority that is seeking the services of a Consultant to perform Architectural, Engineering and Land Surveying Services, or Related Services, if the Contracting Agency has not adopted its own rules of procedure for the screening and selection of Consultants to perform Architectural, Engineering and Land Surveying Services or Related Services, as provided in ORS 279A.065(a).

(3) The dollar threshold amounts that are applicable to the Direct Appointment Procedure, OAR 137-048-0200, the Informal Selection Procedure, 137-048-0210, and the Formal Selection Procedure, 137-048-0220, are independent from and have no effect on the dollar threshold amounts that trigger the legal sufficiency review requirement for State Contracting Agencies under OAR 291.047.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

**TITLE CHANGE TO RULE - ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES,  
JANUARY 1, 2008**

**137-048-0250**

**~~RFP or RFQ~~ Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility For Costs**

A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary procurement document, whether related to a direct appointment, informal selection procedure or formal selection procedure, or reject all Proposals, responses to RFQs, responses to other preliminary procurement documents, or any combination of the foregoing, if Contracting Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary procurement documents.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

**TITLE CHANGE TO RULE - ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES,  
JANUARY 1, 2008**

**137-048-0310**

**~~Effect of Material Alteration or Delay of Project~~ Expired or Terminated Contracts; Reinstatement**

(1) If a Contracting Agency enters into a Contract for Architectural, Engineering and Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Contracting Agency may proceed as follows, subject to the requirements of subsection (2) of this rule:

(a) **Expired Contracts.** If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering and Land Surveying Services or Related Services required under the contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended; or

(b) **Terminated Contracts.** If the Contracting Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Contracting Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering and Land Surveying Services or Related Services not completed under the contract as adjusted to reflect a material alteration of the Project.

(2) The Contracting Agency may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with Consultant will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings to Contracting Agency;

(b) Protect the integrity of the Public Contracting process and the competitive nature of the procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts.; and

(c) Result in a Contract that is still within the scope of the final form of the original procurement document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279C.110

**COMMENTARY:**

-1- See the Commentary to OAR 137-048-0200.

**ADDITIONAL RULE - ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES, JANUARY 1, 2008**

**137-049-0395**

**Notice of Intent to Award**

(1) **Notice.** At least seven days before the Award of a Public Improvement Contract, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small (under \$5,000) or intermediate (informal competitive quotes) Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d).

(2) **Form and Manner of Posting.** The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.

(3) **Finalizing Award.** The Contracting Agency's Award shall not be final until the later of the following:

(a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.

(4) **Prior Notice Impractical.** Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

2005 Oregon Laws, chapter 413, §2.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

**COMMENTARY:**

-1- OAR 137-049-0395 implements ORS 279C.375(2), requiring a contracting agency to issue to each bidder or to post electronically, at least seven days before the award of a contract under ORS 279C.375, notice of the agency's intent to award a contract. The seven-day minimum does not apply to contracts small or intermediate procurement contracts awarded under ORS 279C.335(1)(c) or (d).

**ADDITIONAL RULE - ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES, JANUARY 1, 2008**

**137-049-0645**

**Requests for Qualifications (RFQ)**

As provided by ORS 279C.405(1), Contracting Agencies may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two step solicitation process, in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, Contracting Agencies shall first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, specifically stating that RFPs will be distributed only to the qualified firms in the RFQ process. In such cases the Contracting Agencies shall also provide within the RFQ a protest provision substantially in the form of OAR 137-049-0450(5) regarding protests of the Competitive Range. Thereafter, contracting agencies may distribute RFPs to those qualified firms without further advertisement of the solicitation.

Stat. Auth.: ORS 279C.405, 279A.065

Stats. Implemented: ORS 279C.405

**ADDITIONAL RULE - ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES, JANUARY 1, 2008**

**137-049-0815**

**BOLI Public Works Bond**

Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting

Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

Stat. Auth: ORS 279A.065

Business Operations Series - 6000

## **SURPLUS PROPERTY**

“Surplus Property” means all personal property, vehicles, and titled equipment/property received/purchased by the College. Examples include, but are not limited to: chairs, calculators, staplers, desks, automobiles, computers, media equipment, printers, etcetera.

Department:

1. Identifies an item that is no longer being used and designates it as surplus. Submits a work order to Facilities Operations Department that includes description, model and serial number, fixed asset inventory number and location of item for those items sold, transferred, or disposed of through the State of Oregon Surplus Property Division.

2. Where work order is not used, the college’s Surplus Property form is to be filled out by the department and submitted to Business Services.

Facilities ~~and~~  
Operations Department  
Office:

1. Confirms receipt of work order.
2. Picks up item(s) in accordance with documentation and determines appropriate method of disposal or transfer.
  - a. If Facilities Operations Department confirms that an item could be used in a classroom, common area, or future remodel, the item is disbursed to the appropriate area or put in storage for future use.
  - b. If Facilities Operations Department determines that the item might be considered for on-campus re-sale or lease, the item is provided to Bookstore for viewing.
  - c. If the Bookstore determines that an item is suitable for on-campus resale or lease, Facilities Operations Department delivers the item to Bookstore storage.
  - d. If Facilities Operations Department and/or the Bookstore determine that an item has no further useful life, it is disposed of according to (4) below.
  - e. Facilities Operations Department in cooperation with the Business Services Department may delegate authority to department(s) to accumulate and publicly dispose of surplus items.
3. Forwards a copy of all Surplus Property forms and surplus property work orders for items with fixed asset tag numbers to Business Services. The work order or Surplus Property form should describe the disposal method or transfer location.

Business Operations Series - 6000

## **SURPLUS PROPERTY**

Facilities ~~and~~  
Operations Department  
~~Office~~:

4. Accumulates and publicly disposes of surplus items in an economically, socially, and environmentally responsible manner through the State of Oregon, Surplus Property Division, State Surplus Web Site, or disposed of by other methods permitted or not prohibited by Oregon Revised Statutes. Other methods of disposal shall be exercised at the discretion of the Facilities ~~and~~ Operations Department Office or other designated College department in cooperation with the Purchasing Office and may include, but not be limited to: internet auctions, oral auctions, sealed bid sales, and/or fixed price retail sales.

Business Services

1. The Purchasing Office of Business Services, in cooperation with the Facilities Operations Department or other designated College department, may transfer surplus items, including recyclable or reclaimed materials, without remuneration or only nominal remuneration to the following:
  - (a) Another public agency; or
  - (b) Any recognized non-profit educational or public health institution or organization, exempt from taxation under section 501 of the Internal Revenue Code of 1954, which is certified to receive federal surplus property, subject to the following conditions:
    - (A) A determination has been made that the property is not needed for other public purposes;
    - (B) The college documents that it is clearly in the public's interest—the agreement or arrangement will promote the economic development of the college, of the college's geographical area, or of other public bodies that perform similar functions (Stat. Auth. ORS 279A.185);
    - (C) The college determines this is the most efficient and cost-effective method for disposing of the property;
    - (D) The college shall maintain a record of all donations, transfers, or sales authorized by this Procedure.

Business Operations Series - 6000

## **SURPLUS PROPERTY**

### Business Services

2. The Information Technology Department, in cooperation with the Purchasing Office of Business Services, may participate in take-back/asset recovery programs that promote sustainability, and/or transfer surplus items, including recyclable or reclaimed materials, without remuneration or only nominal remuneration to Marion County Recycling Center or other public or non-profit reclamation center(s).

3.~~4.~~Makes adjustments to fixed asset inventory to reflect changes in location and responsible department.

4.~~2.~~Determines disposition of item(s) and makes necessary accounting transfers. Records any revenue according to the schedule below:

- a. Proceeds from the sale of fixed assets may be returned to the department(s), if approved by the Chief Administrative Officer or designee. Any item disposed of on the fixed asset list that sells for more than \$250—the amount exceeding \$250 will be returned to the department.
- b. Any item not on the fixed asset list that sells for more than \$250 may be partially reimbursed to the department by prior agreement between the department and Facilities.
- b.e. Any amount not returned to the department will be returned to the Surplus Property Disposition Account, unless otherwise approved by the Chief Administrative Officer or designee.

***June 25, 1985***

*Adopted College Council*

May 11, 1994; June 10, 1998; May 7, 2003

*Revised*