

# **COMMUNITY COLLEGE RULES OF PROCUREMENT**

**(EFFECTIVE MARCH 1, 2005, REVISED OCTOBER 15, 2008  
THROUGH BOARD RESOLUTION 08-09-08)**

**ADOPTED IN ACCORDANCE WITH  
ORS 279A.065(5)(a) and ORS 279A.070**

**JANUARY 19, 2005  
UPDATED FALL 2008**

These Community College Rules of Procurement shall remain in effect unless modified, in writing, and adopted by the College's Local Contract Review Board through Board Resolution.



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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(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)(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.
- (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 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.
- (33) **“Invitation to Bid” (ITB)** means all documents used for soliciting Offers in accordance with ORS 279A.010(2)(bb). (See also “Competitive Sealed Bidding.”)
- (34) **“Life Cycle Costing”** means determining the cost of a product for its estimated useful life, including its disposal.
- (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.
- (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.
- (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.
- (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.
- (39) **“ORS”** means Oregon Revised Statutes.
- (40) **“Offer”** means a response to a Solicitation Document that is binding on the Offeror.
- (41) **“Offeror”** means a Person, who submits an Offer.
- (42) **“Opening”** means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.
- (43) **“PCC”** means Public Contracting Code as it is defined in ORS 279A.010(1)(bb).
- (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.
- (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.
- (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.
- (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.)
- (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.
- (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.
- (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.
- (51) **“Proposal”** means an Offer in response to a Request for Proposals.

- (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)(z)).
- (53) **“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.
- (54) **“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.
- (55) **“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.
- (56) **“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 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.
- (57) **“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)
- (58) **“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.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.
- (59) **“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.
- (60) **“Service Contract”** means a contract that calls primarily for a contractor’s time and effort rather than for an end product.
- (61) **“Signed”** means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.
- (62) **“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.
- (63) **“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.
- (64) **“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)).
- (65) **“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.
- (66) **“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.
- (67) **“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.
- (69) **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.
- (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.
- (71) **Written**” means existing in Writing.

## SECTION 200 - PUBLIC CONTRACT SPECIAL PROCUREMENTS

### General Contract Special Procurements

#### 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.

#### 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. 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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#### 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.

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### **Donated Materials and/or Services**

**CCR.205**

The College may authorize a Person to perform services and/or provide materials regardless of dollar amount, if:

- (1) The Person has agreed to donate all, or a portion of, the materials and/or services necessary to perform the work; and
- (2) The Person enters into a license or agreement with the College whereby the Person agrees to comply with the public contract requirements applicable to the particular project and any requirements that the College deems necessary or beneficial in order to protect the College.

### **Findings of Fact**

1. Students, staff, contractors, and other community groups from time to time offer to donate all or a portion of their professional skilled services and/or materials, to help the College meet its facilities' and/or educational needs. The ability to take advantage of such donated materials and/or services enables the College to use its limited funds in other areas, and frequently results in improvements or services that the College would not otherwise be able to afford. This class special procurement thus has budgetary, operational, and public benefits.
2. This class special procurement enables the College to take advantage of these offers, while continuing to ensure that the requirements of the Public Contracting Code continue to be met.

### **Conclusion of Compliance with Law**

It is unlikely that this class special procurement will encourage favoritism in the award of College Contracts or substantially diminish competition for College Contracts, because it will only apply when a Person donates all or part of the materials and/or services. In many instances, the donations are outside of the competitive market for goods and/or services. In many instances, the donations will enable the College to construct or complete projects that it otherwise would not be able to afford to do, and thus will not displace what would otherwise be a competitively solicited project. This class special procurement also substantially promotes the public interest because award of contracts pursuant to the procurement procedures in ORS Chapter 279B is not practicable in the case of donated goods and/or services.

The use of this class special procurement will result in substantial cost savings to the College, because the College is not required to pay for the goods and/or services if they are donated.

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### **Emergency Contracts (Including Oil or Hazardous Material Removal)**

**CCR.206**

- (1) Pursuant to the requirements of this rule, the College may, at its discretion, enter into a public contract without competitive solicitation if an emergency exists. Emergency means circumstances that could not have been reasonably foreseen which create a substantial risk of loss, damage, interruption of services or threat to public health, welfare, or safety, and require prompt execution of a contract to remedy the condition (ORS 279A.010(1)(f)).
- (2) Regardless of the dollar value of the contract, when entering into an emergency contract the College shall:
  - (a) Make a written declaration of emergency, including findings describing the emergency circumstances that require the prompt performance of the contract, stating the anticipated harm from failure to establish the contract on an expedited basis; and
  - (b) Encourage competition to the extent reasonable under the circumstances; and
  - (c) Record the measures taken under subsection (b) of this section to encourage competition, the amounts of the bids, quotes or proposals obtained, and the reason for selecting the contractor.
- (3) Pursuant to ORS 279B.080, if an emergency exists as defined in subsection (1) of this rule, the Board of Education, its President, or another officer authorized by the College shall declare the existence of the emergency as required by subsection (2) of this rule, which shall authorize the College to enter into an emergency contract.

- (4) The written declaration of an Emergency and resulting contract are solely entered into at the discretion of the College's President or authorized officer.
- (5) If the total award exceeds the threshold for formal public bidding, the Board shall be notified at its next available public meeting and provided with an opportunity to discuss the emergency, the award, and ratification thereof.
- (6) Any Public Improvement contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted by the Board (ORS 279C.335(5)).
- (7) Oil or Hazardous Material Removal: The College may enter into public contracts without competitive bidding, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ), under ORS 466.605 through 466.680 and such DEQ order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that has created an emergency condition. In exercising its authority under this exemption, the College shall:
  - (a) (1) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;
    - (1) Make written findings describing the circumstances requiring clean up or a copy of the DEQ order ordering such cleanup;
    - (2) Record the measures taken under subsection (a) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.
  - (b) The College shall not contract pursuant to this exemption in the absence of an order from the Department of Environmental Quality to clean up a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.

### **Findings of Fact**

1. Under ORS 279B.080, public contracts may be exempted from the requirements of ORS 279B.050 if emergency conditions exist, which require prompt execution of the contract, subject to the additional requirements of ORS 279B.080.
2. ORS 279B.080 allows the Local Contract Review Board to adopt rules to allow the head of the contracting agency or a designated person to declare that an emergency exists and to establish procedures for determining when emergency conditions are present. Subsections (2)(a), (2)(b), and (2)(c) of this rule accomplish this.
3. Further, ORS 279C.335(4) and (5) requires that the rules shall prescribe that if an emergency is declared, any public improvement contract awarded under this exemption must be awarded within 60 days following the declaration of the emergency, unless an extension is granted by the Local Contract Review Board.
4. When DEQ orders a public agency to remove or clean up hazardous material or oil, the public agency must respond within a very short time, which is stated in the DEQ order. This time period does not generally allow the agency to take the time necessary to solicit written bids or proposals for the work to be performed. The College would be liable for any delay in responding to DEQ orders to perform hazardous material removal or clean up.
5. This exemption, as it pertains to subsection (7), will not be used in those situations where there is no DEQ order to remedy the situation. Routine competitive procurement methods will be used where there is no DEQ order to act immediately. The college maintains open lists of vendors, who are interested in providing hazardous materials removal and clean up services. Whenever it needs hazardous material removal or disposal, the College makes use of these lists to solicit quotes, bids, or proposals as needed, in addition to advertising the procurement as required.
6. Cost savings are achieved through this exemption, because the college can be liable for DEQ penalties and fines, if it does not timely remove hazardous materials or oil as ordered. Serious risk in these situations could result in property damage or personal injury, if the College is slow to act.

### **Conclusion of Compliance with Law**

Procurements made by the College in compliance with this exemption meet the requirements of emergency public contracts pursuant to: ORS 279B.050; 279B.080, and 279C.335.

It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279C.335(2)(a). If the College is under DEQ order to act immediately, the College will still attempt to obtain competitive quotes for the work to be performed as it has the ability and time to do so. Unless the College is faced with the quasi-emergency situation of a DEQ order to remove or clean up hazardous waste or oil, it will follow normal competitive procedures to obtain these services.

The award of public contracts pursuant to this exemption will result in a cost savings to the College in these situations, as required by ORS 279C.335(2)(b), because the College must comply with the law and avoid and minimize risk to persons and property. Where possible, the College will seek competitive quotes for the work to be performed and will award the contract to the lowest, responsive and responsible proposer.

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### **Equipment Repair & Overhaul (Including Maintenance Agreements)**

**CCR.208**

- (1) The College may enter into a public contract for equipment repair, maintenance agreements, or overhaul of equipment without competitive bidding, subject to the following conditions:
  - (a) Service and/or parts required are unknown, and the cost cannot be determined without extensive preliminary dismantling or testing; and/or
  - (b) Service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source;
  - (c) Maintenance agreements must be procured from the provider of the equipment and/or software being maintained in order to be valid, preserve warranties, provide the best possible service, or conform to other similar agreements being provided by the same provider for maximizing economy and/or servicing functions;
  - (d) The College shall conduct its procurement for equipment repair, maintenance agreements, or overhaul of equipment pursuant to methods and parameters established in (2) of this rule.
- (2) The following limitations shall apply:
  - (a) At the discretion of the College, if it is practical to competitively procure equipment repair, maintenance agreements, or overhaul of equipment using quotations or other forms of Solicitation Documents then these competitive processes shall be utilized. If not, the file should be documented with the reasons for invoking this exemption from competitive procurement, specifically supporting the impracticality of a competitive procurement.
  - (b) If the contract exceeds or is anticipated to exceed the thresholds for Small or Intermediate Procurements as these thresholds are defined in Section 300, the College shall document in its procurement file the reasons why a competitive procurement process was deemed impractical, and the College may directly enter into the contract.

### **Findings of Fact**

The need for equipment repair or overhaul of equipment cannot always be anticipated by College staff. If a piece of equipment is broken or not working properly, the College incurs the cost of down time, possible replacement equipment rental fees, staff time, and other inconveniences or liabilities to its programs.

1. Generally, there are a limited number of vendors, who are able to perform repair or overhaul on a particular piece of equipment, because of its make or manufacture. Sophisticated equipment may require specially trained personnel available from only one source. Often, a piece of equipment will have a partial warranty in place, which will guarantee some savings to the College in the parts and/or labor needed to do the repair or overhaul. This warranty savings may only be achieved if the original manufacturer or provider of the equipment performs the necessary repair or overhaul.
2. The dollar limits on the use of this Special Procurement ensure that when the cost of the equipment repair or overhaul is expected to exceed threshold amounts for Small and Intermediate Procurements as these are defined in Section 300, the College will competitively procure, or if that is not practical or cost effective, declare an emergency or obtain a specific exemption from the president of the College or the president's designee, with notification to the LCRB to proceed with the purchase of the needed repair or overhaul.

### **Conclusion of Compliance with Law**

It is unlikely that this Special Procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279B.085(4)(a), because the dollar amount of the exempted purchase (i.e., Special Procurement), may not exceed the thresholds established in Section 300 for Intermediate Procurements without additional notification and/or approval from the LCRB and/or the College president or the president's designee. Where it is practical, the College will competitively procure equipment repair, maintenance agreements, and overhaul of equipment; where it is impractical, written justification, provided by the department, will become part of the public record of the contract.

The awarding of public contracts pursuant to this exemption will result in a cost savings to the College, as required by ORS 279B.085(4)(b)(A), because the College incurs direct and indirect costs from the moment equipment breaks down or becomes unusable. This Special Procurement only applies to equipment already owned by the College. Time is of the essence in contracts for equipment repair, maintenance agreements, and equipment overhaul. The College must be able to purchase necessary services and parts as quickly as possible in order to minimize equipment down time and provide uninterrupted levels of service to support the College's educational initiatives.

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**Federal Contracts, Purchases under**

When the price of goods and services has been established by a contract with the federal government pursuant to a federal contract award, the College may purchase the goods and services in accordance with the federal contract. In exercising this authority under this class special procurement, the College must:

- (1) Include in the contract file a memorandum confirming the federal official who granted permission to the College to purchase under the federal contract; and
- (2) Include documentation in the contract file showing the cost savings to be gained from anticipated purchases from the federal contract.

**Comment:**

In order to utilize GSA contracts, a class special procurement must be adopted by the local contract review board. For those GSA schedules available for use by local governments or any other federal contracts for goods and/or services, this rule requires a two-prong test be met prior to its use.

**Findings of Fact**

1. Federal contracts for goods and/or services are established by federal agencies with private vendors through competitive processes, which meet the standards of the Public Contracting Code. These processes include open competitive bidding, to which all interested vendors are invited to participate. No Oregon company is excluded from, or disadvantaged in, participation in bidding on federal contracts. Thus the class special procurement has the public benefit of supporting a competitive selection process, while providing the operational and budgetary benefits to the College by avoiding the cost and delay of replicating the solicitation process.
2. The prices or rates for goods and services under federal contracts are based upon competitive bids or proposals. This rule requires the College to document the cost savings to be gained from the anticipated purchase(s) from the federal contract. Documentation might include competitive comparison of previous bid prices obtained from other sources, including local Oregon businesses.
3. This rule requires that the College obtain the permission of both the federal agency and the federal vendor to use the federal contract.

**Conclusions of Compliance with the Law:**

This class special procurement will not encourage favoritism or substantially diminish competition in the awarding of College contracts. All vendors, including Oregon businesses, are able to compete for the initial federal contract. Also, the College will not use a federal contract without agency and vendor permission.

This special procurement will result in substantial cost savings to the College. Federal contracts are based on competitive bidding, which result in the most advantageous price to the federal agency. Before it makes a purchase from a federal contract, the College will document the cost savings it will achieve by using the contract. These two facts will ensure that the College purchases the desired goods or services at the best price available. Further, by being able to take advantage of a competitive federal procurement, the College saves the cost of needlessly duplicating the solicitation process.

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**Intellectual Property (Periodicals, Library Books, Proprietary Software Licenses, Art, and Other Products of the Creative Process)**

If the contract is for the purchase of Intellectual Property, which shall include, but not be limited to, Periodicals, Library Books, Subscription Services, Proprietary Software Licenses, Art, and Other Products of the Creative Process, the College may contract for the purchase of the product(s) without competitive procurement, regardless of dollar amount when the product(s) are protected under copyright law, and/or there is only one known supplier (e.g., manufacturer, copyright holder), available for such products.

Examples of copyrighted materials typically covered by this Special Procurement include, but are not limited to: magazines and other periodicals; textbooks; workbooks; curriculum kits; reference materials; audio tapes; video tapes; calculators such as those used for aircraft navigation; and most software and products of the visual, aural and written arts. It should be noted that if there is more than one supplier of copyrighted materials (especially software), and the product(s) are not being purchased directly from the writer, manufacturer or other original source, every attempt should be made to establish a competitive selection process in order to achieve the greatest economy.

**Findings of Fact**

1. By design, Intellectual Property is protected for the use of a single owner. Copyrighted products may not be duplicated by others without the express permission or license of the copyright holder.
2. Instructional initiatives define the various materials, which the college will purchase for use in its educational programs, and it is not uncommon for Intellectual Property to be produced by only one supplier (i.e., sole source), who may be the copyright holder or licensee.

**Conclusion of Compliance with Law**

This rule will not encourage favoritism or substantially diminish competition in the awarding of public contracts. The production and distribution of Intellectual Property is controlled by the copyright holder/owner, and may only be permitted through a sole source. This rule provides additional parameters for consideration that are complementary to the Public Contracting Code where competition does exist. It is not intended to diminish the College’s ability to consider other factors or limit fair and open competition when arriving at best value. It is the policy of the State of Oregon that public contracting activities should provide effective outcomes that represent optimal value to the contracting agency, and to the greatest extent feasible, be consistent with market practices (ORS 279B.010(1)).

Additionally, pursuant to ORS 279A.025(2)(g), the Public Contracting Code does not apply to contracts for the procurement or distribution of textbooks; consequently, findings otherwise required by law are unnecessary when the procurement or distribution of Intellectual Property is specifically for textbooks—a subcategory of Intellectual Property.

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**Intergovernmental Cooperative Purchasing Participation**

CCR.214

Examples of intergovernmental cooperative purchasing participation may include, but not be limited to: Oregon Cooperative Purchasing Program (ORCPP), Western States Contracting Alliance (WSCA), Association of Educational Purchasing Agencies (AEPA), Organization for Educational Technology and Curriculum (OETC), and US Communities Government Purchasing Alliance.

Pursuant to Oregon Revised Statutes 279A.205, 279A.210, 279A.215, and 279A.220, other governmental agencies, bodies, or districts may participate in any joint cooperative procurement and/or subsequent contract award resulting from any solicitation which has been accomplished in compliance with Oregon Revised Statutes, as if said agencies had generated the solicitation and made the award on their own behalf.

**Comment**

In general, the results of any solicitation, formal or informal, which has taken place under the requirements of Oregon Revised Statutes and has resulted in an award, and is current (i.e., not closed, terminated, in abeyance or in default), may be utilized by the College pursuant to Oregon Revised Statutes 279A.205, 279A.210, 279A.215, and 279A.220.

**Conclusion of Compliance with Law**

Intergovernmental Cooperative Purchasing Participation is not an exemption from the competitive procurement requirements of law; therefore, the College has determined that findings of fact are not required. The awarding of contracts pursuant to this process will “provide effective outcomes that represent optimal value to the College and, to the greatest extent feasible, be consistent with market practices” (ORS 279B.010(1)). Consequently, findings otherwise required by law are unnecessary here.

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**Life Cycle Costing/Best Value**

CCR.216

- (1) In determining the lowest bid or best proposal, in the award of a contract, the College may use the concept of life cycle costing if it complies with section (2) of this rule:

- (2) (a) At the time of writing specifications for the product, the College shall identify those factors which will have cost implications over the life of the product, and which, for evaluation purposes, will be used to adjust the bid or proposal price of the product;
- (b) The solicitation document shall set out clearly the factors and methodology to be used in life cycle cost adjustments; and
- (c) The results of life cycle costing adjustments shall be applied to the bid or proposal price of the product(s) offered, and the bid or proposal that results in the lowest overall ownership cost or "best value" as it is determined by ORS 279.015(5), taking into account the life cycle costing adjustments, and other aspects of service and product quality, as well as pricing.

**Conclusion of Compliance with Law**

This rule provides additional parameters for consideration that are complementary to the Public Contracting Code while supporting impartial and open competition. It is not intended to diminish the College's ability to consider other factors when arriving at best value. As such, it is not an exemption or Special Procurement to the competitive bidding requirements of law. It is the policy of the State of Oregon that public contracting activities should provide effective outcomes that represent optimal value to the contracting agency, and to the greatest extent feasible, be consistent with market practices (ORS 279B.010(1)). Consequently, findings otherwise required by law are unnecessary here.

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**Perishables (Chemicals, Food, Laboratory Supplies)**

CCR.218

Competitive procurement need not be used for the procurement of perishables under this Special Procurement provided that the perishability and commensurate quality is of greater importance than the cost to the College.

**Comment**

If longevity is not an issue and multiple sources exist, standard procurement practices shall be utilized.

**Findings of Fact**

This rule permits such items as foodstuffs and scientific supplies, which have definitive shelf lives, and associated attributes such as quality and longevity, to be purchased without strict competitive processes based upon price. Shelf life and the associated attributes may be the determining factors.

The rule enables the buyer to decide on a source based upon time since manufactured, remaining shelf life, and interim quality, since various states of decay can affect the product.

**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)), through expediting its procurement processes without compromising integrity for cost.

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**Personal Property, Used (Purchase of)**

CCR.220

Competitive procurement need not be used for the procurement of Used Personal Property if the College has determined that the purchase will result in cost savings and will not diminish competition or encourage favoritism.

For purchases of used personal property or equipment costing \$25,000 or more, or an amount otherwise indicated in Section 300, the College shall, where feasible, obtain three competitive quotations, unless such comparisons are highly impractical to obtain. Procurement files pertaining to Used Personal Property shall

contain documentation of price comparisons and attempts to secure competitive pricing as much as is practical.

When the value of any such purchase exceeds the threshold for Intermediate Procurements as that threshold is defined herein, Section 300, Supplementary Provisions of the Community College Rules of Procurement, such purchases shall be authorized and/or delegated only by the College President, who shall notify the LCRB of such purchases at the next regularly scheduled meeting of the LCRB.

**Comment**

Used Personal Property is property which has been placed in use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as “used,” at the time of purchase.

Used Personal Property generally does not include property or equipment of which the College was the previous or current user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

**Findings of Fact**

The additional liberty for purchasing used personal property is essential for those who participate in auctions or other spot sales, where it is impractical to utilize conservative procedures because of the necessities of the selling process.

**Conclusion of Compliance with Law**

This rule provides additional parameters for consideration that are complementary to the Public Contracting Code while supporting impartial and open competition as much as is practical. It is the policy of the State of Oregon that public contracting activities should provide effective outcomes that represent optimal value to the contracting agency, and to the greatest extent feasible, be consistent with market practices (ORS 279B.010(1)). Pursuant to ORS 279B.075(1) Used Personal Property may be considered a sole-source procurement, if it is available from only one source; written findings supporting this determination and conclusion shall be made by the College. Findings otherwise required by law to support this Special Procurement are unnecessary here.

\* \* \* \* \*

**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)(f) and ORS 279A.025(2)(i).

**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, 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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**Request for Proposals**

The College may, at its discretion, use Request for Proposal competitive procurement methods subject to the following conditions:

- (1) The procurement is advertised and a written solicitation document is issued that invites the submission of sealed, written offers to be opened publicly at a designated time and place; and
- (2) Contractual requirements are stated clearly in the solicitation document; and
- (3) Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation document. Criteria used to identify the proposal that best meets the College needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential, and proposer's qualifications and experience; and
- (4) The solicitation document clearly states all complaint processes and remedies available; and
- (5) The solicitation document states the provisions for proposers to comment on any specifications that they feel limit competition.

**Conclusion of Compliance with Law**

As the RFP process is an alternate method of competitive source selection and 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 for such contracts as required by ORS 279B.085(4)(a). The awarding of contracts pursuant to this process will result in best value to the College based on selection by the College of the most responsive proposal that meets the stated evaluative criteria. Consequently, findings otherwise required by law are unnecessary here.

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**Requirements Contracts and Price Agreements**

- (1) Requirements contracts, for the purposes of this Rule, mean price agreements, services agreements, and sales that may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining college requirements for volume discounts, standardization among agencies, and reducing lead time for ordering. The College may enter into requirements contracts whereby it is agreed to purchase supplies and/or services for an anticipated need at a predetermined price provided the contract is let by a competitive procurement process pursuant to the requirements of ORS 279ABC and these Rules.
- (2) The College may purchase the supplies and/or services from a contractor awarded a requirements contract without first undertaking additional competitive solicitation.
- (3) The term of the contract including renewals, must not exceed the maximum term stated in the original solicitation.

**Conclusion of Compliance with Law**

This rule provides additional parameters for consideration that are complementary to the Public Contracting Code while supporting impartial and open competition as much as is practical. It is the policy of the State of Oregon that public contracting activities should provide effective outcomes that represent optimal value to the contracting agency, and to the greatest extent feasible, be consistent with market practices (ORS 279B.010(1)). Pursuant to ORS 279A.065(5)(a) and ORS 279A.070, a contracting agency may, in the exercise of authority granted under ORS 279A.050, adopt rules necessary to carry out the provisions of the Public Contracting Code; consequently, findings otherwise required by law are unnecessary when the College has determined it is in its best interests to purchase supplies and/or services utilizing a competitively procured requirements contract or price agreement.

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**Resale – Items for**

Competitive procurement processes need not be used for the procurement of product or services being purchased strictly for resale. This Special Procurement applies to products or services that are specifically for resale as opposed to internal use or consumption.

### **Findings of Fact**

1. College Enterprise, Auxiliary Fund, and/or General Fund operations that compete in the open market need to be able to purchase products or services for resale without undue restrictions.
2. In order to compete in the open market, these operations must be knowledgeable, proactive, and stay abreast of current trends, consumer wants, tastes and desires, and be able to meet those needs in their offerings. Additionally, fund operators must be free to purchase products or services for resale that the consumers want even if it means having a limiting factor such as brand, functionality, price, or quality.
3. These operations must work as efficiently as possible to hold down their own costs as well as to present the goods or services to the public at a fair market price. Thus, they will be looking for the goods for resale at the most competitive prices and highest quality within their parameters.
4. In awarding contracts, these operations must ensure the appropriate amount of the product or service will be in stock or be readily available, received, or provided at the appropriate time. Ensuring that the products or services are available and of the proper freshness and quality may prevent the operation from conducting timely competitive buying.

### **Conclusion of Compliance with Law**

It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279B.085(4)(a). Additionally, this Special Procurement will substantially promote the public interest as required by ORS 279B.085(4)(b)(B), in a manner that could not practically be realized under the requirements of ORS 279B.050, 279B.055, 279B.060, 279B.065, 279B.070 (Methods of Source Selection).

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### **Telecommunications Services**

CCR.230

- (1) This rule is intended to allow the College to secure the most competitive, cost-effective telecommunications services of the quality needed to meet all service, performance requirements while minimizing administrative and service delivery costs.
- (2) In determining the appropriate procurement method for telecommunications services, the College must determine whether competition exists. The College may consider the following factors:
  - (a) The extent to which alternative providers exist in the relevant geographic and service market. The relevant market will vary with the geographic area and from service category to service category, depending on changes in the regulatory environment and competitive marketplace. Thus, the relevant market will depend on the facts and circumstances of each case. For example, an alternative local access service or private line provider might offer services in Portland, but not in Salem or the rest of the state;
  - (b) The extent to which alternative services offered are comparable or substitutable in technology, service provided, and performance. (For example, if the College requires digital services, analog services are not comparable or substitutable, or if the College requires fiber optic technology, then copper, microwave, or satellite transmission technology may not be comparable or substitutable);
  - (c) The extent to which alternative providers can respond to the College's interests in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management, and limiting College liability. For example, to be considered as the College's telephone long distance provider, any long distance service vendor must be able to meet, support, and interface with the College's centralized automated billing requirements. The College must document for the record the findings on these factors or any other factors used in determining whether competition exists. In developing its findings, the College may solicit the information either through informal telephone or written contacts or through a formal request for information.
- (3) Upon determining that competition does not exist for the relevant service and geographical area, the College may proceed to secure the service on a sole source basis, as described in these Rules.

**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 meets or 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 for such contracts as required by ORS 279B.085(4)(a), 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 SERVICE CONTRACTING RULES

CCR.250

### Personal Services Contracts

#### I. Definition - General

- (1) A contract for "Personal Services" is a public contract that calls for specialized skills, knowledge, and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a Personal Services Contractor, with price being secondary.
- (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. 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.
  - (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.
- (3) The College may enter into Personal Services Contracts with an independent contractor when:
  - (a) The work to be performed requires specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment;
  - (b) The College will not control the means or manner of the contractor's performance, but must rely on the Contractor's specialized skills, knowledge and expertise to accomplish the work. Note: The College's reservation of the right to determine and modify the delivery schedule, evaluate the quality of completed performance, and accept or reject the completed performance does not mean that the College will control the means and manner of performance; and
  - (c) Selecting a Contractor primarily on the basis of qualifications, rather than price, in accordance with the provisions of the Personal Services Contracting Rules and Procedures adopted herein would most likely meet the College's needs and result in obtaining satisfactory contract performance and optimal value for the College.
- (4) Pursuant to ORS 279A.055(2), the College has the authority to designate certain service contracts or classes of service contracts as Personal Services Contracts. Personal Services Contracts may include, but are not limited to, contracts for services performed in a professional capacity such as:
  - (a) Contracts for the services of an accountant;
  - (b) Contracts for the services of an attorney;
  - (c) Contracts for the services of a physician or dentist,
  - (d) Contracts for the services of an information technology consultant,
  - (e) Contracts for the services of a broadcaster;
  - (f) Contracts for services as an artist in the performing or fine arts including, but not limited to, any person identified as a photographer, filmmaker, painter, weaver, or sculptor;
  - (g) Contracts for services that are specialized, creative and research-oriented;
  - (h) Contracts for services as a consultant;
  - (i) Contracts for educational services;
  - (j) Contracts for investment services;
  - (k) Contracts for travel services;
  - (l) Contracts for banking services;
  - (m) Contracts for auditing services;
  - (n) Contracts for student loan and college receivables;

- (o) Contracts for real estate services (ORS 279A.025(2)(e));
- (p) Contracts for property management;
- (q) Contracts for employee benefit insurance (ORS 279A.025(2)(r));
- (r) Contracts for investments (ORS 279A.025(2)(q)(c));
- (s) Contracts for energy savings performance contracts (ORS 279C.335(1)(f));
- (t) Contracts for agents of record (examples where agents of record may be used are advertising, general insurance, sales of surplus property, workers compensation insurance, etcetera);
- (u) Contracts for speakers, lecturers, and performers; and
- (v) Contracts for human custodial care services;

- (w) Contracts for food service management; and
- (x) Contracts for telecourse providers.

(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 (e.g., janitorial, security guard, crop spraying, laundry, and landscape maintenance service contracts)
- (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.

## II. Screening and Selection Procedures and Assistance

These rules set forth procedures for the College to follow when entering into Personal Services Contracts.

- (1) The policy of the College is to select Contractors based on demonstrated qualifications and competence to perform the required services, encourage competition, discourage favoritism and obtain services at a fair and reasonable price. The purpose of this rule is to specify the College's policies and procedures for screening and selection of Contractors to perform Personal Services.
- (2) The College shall comply with the procedures set out in these rules for screening and selecting Contractors to perform Personal Services Contracts.
- (3) The College shall provide Evidence of Competition for all Public Contracts where competition exists or justify entering into contracts by direct negotiation if an exemption from the screening and selection process is utilized. While qualifications are the primary criteria, whenever the College determines that the services offered by two or more individuals or firms are equally able to meet the College's needs and are of equal value, the College shall award the contract to the individual or firm offering the service at the lowest price.
- (4) The College may procure Personal Services from Contractors who are under contract with another governmental entity pursuant to a Cooperative Agreement as permitted and subject to ORS 279A.200 to 279A.225, if such action is expressly permitted under the original contract and if the administering agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in ORS 279B.055, 279B.060 or uses a competitive bidding process substantially equivalent to the competitive bidding process in ORS chapter 279C.

## III. Solicitation Requirements

### A. General

- (1) All formal solicitations must satisfy the requirements of this rule. Request for Proposals and Request for Qualifications must be in writing and must be advertised in accordance with the following procedures:
  - (a) All advertisements for a formal solicitation shall be placed in at least one newspaper of general circulation and in as many additional issues and publications as may be necessary or desirable to achieve adequate competition. At the option of the College, the College may publish its public notices electronically instead of, or in addition to, a newspaper of general circulation. The advertisement(s) for a formal solicitation shall be first published and appear at least once, no fewer than fourteen (14) calendar days before close of the solicitation, unless the governing body of the College, its President, or another officer authorized by the College declares in writing that a shorter period is deemed necessary in the public interest for a particular procurement. Conversely, the College shall broaden and extend public notice if deemed necessary to serve the public's interest for a particular procurement; and

- (b) All advertisement(s) shall describe, at a minimum, a brief summary of the proposed contract, the services sought, where copies of the solicitation may be obtained, and the deadline for submitting a proposal.
- (2) The Solicitation Document must provide that the College may, at any time during the solicitation process, reject any or all proposals or cancel the solicitation without liability if it is in the public interest to do so.
- (3) Unless compensation is expressly provided for in the Solicitation Document, the Request for Proposals or Request for Qualifications must provide that the College is not responsible for any costs of any Offeror incurred while submitting Offers and that all Offerors who respond to solicitations do so solely at their own expense
- (4) The Solicitation Document must:
  - (a) Notify proposers of potential Solicitation Document addenda. Failure to provide such notice in any solicitation may prevent addenda from being incorporated into any resulting contract, and include protest procedures for all formal solicitation and selection.

## B. Formal Selection Procedures

The College shall use a formal selection procedure whenever the cost of the services is estimated or anticipated to be equal to or more than the Intermediate Threshold for Personal Services contracts as this threshold is defined in Section 300--Supplementary Provisions. Under these formal procedures, Requests for Proposals (RFP) or Requests for Qualifications must be advertised in at least one newspaper of general circulation or through electronic means as indicated in Section 200, Rule 202, and in as many other issues or electronic procurement systems, and publications as may be necessary or desirable to achieve adequate competition.

- (1) Request for Qualifications. A Request for Qualifications may be used to determine whether competition exists to perform the needed services or to establish a list of qualified Contractors prior to issuing an RFP (Note: It is not mandatory that the College issue a Request for Qualifications; it may elect to forego using a Request For Qualifications before issuing an RFP.)
  - (a) At a minimum, the Request for Qualifications shall describe the particular specialty desired, the qualifications the Contractor(s) must have in order to be considered, and the evaluation factors and their relative importance. The Request for Qualifications may require information including, but not limited to: the Contractor's particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services the Contractor has completed, with references concerning past performance; and any other information necessary to evaluate Contractor qualifications.
  - (b) A qualifications pre-submission meeting (voluntary or mandatory) may be held for all interested Contractors to discuss the proposed services. If the meeting is mandatory, the Request for Qualifications shall include the date, time and place of the meeting(s).
  - (c) Unless the Request for Qualifications establishes that competition does not exist or unless the solicitation process is canceled or all qualification statements rejected, all respondents (who met the published qualifications) shall receive a notice (or other materials as appropriate) of any required services and have an opportunity to submit an Offer in response to the College's subsequent RFP.
- (2) Request for Proposals. The RFP is used as a formal competitive solicitation that describes specific services to be performed within a defined period of time. The solicitation sets forth criteria and methods for screening, selecting and ranking the best proposal(s). The RFP may result in contracts with more than one provider.
  - (a) The RFP must either describe the situation and background for which Offers are being requested and state the outcome(s) desired, or propose a Statement of Work. The RFP must describe any conditions affecting the delivery of the services and the time period in which the services are to be completed. The RFP must, at a minimum, address the following information:
    - (i) Minimum standards and qualifications required to be met by the Offeror(s) to be eligible to provide the services;
    - (ii) The evaluation process and criteria to be used to select the Contractor(s), including the weight or points applicable to each criterion. Information must include the manner in which the Offeror's cost and pricing proposal will be evaluated;
    - (iii) A requirement to provide a list of similar services completed by the proposer(s) with references concerning past performance;
    - (iv) The closing date and time of the solicitation and the delivery location(s) for proposals;
    - (v) Reservation of the right to seek clarifications of each proposal, and the right to negotiate the Statement of Work within the scope of work described in the RFP;
    - (vi) Reservation of the right to reject any or all Proposals, if such rejection would be in the public interest;
    - (vii) Reservation of the right to cancel the solicitation, if such cancellation would be in the public interest;

- (viii) Contractual provisions that will be contained in the resulting contract;
  - (ix) The possibility of interviews; and
  - (x) Any other information to be used to evaluate, rank and select the best proposer(s). This should include, but is not limited to: anticipated contract award date, and at the College's discretion, funding information and budget requirements.
- (b) A pre-proposal meeting (voluntary or mandatory) may be held for all prospective Contractors to discuss the proposed services, solicitation provisions and contract requirements. The RFP shall include the date, time and place of the meeting(s).
- (c) An evaluation committee shall evaluate Proposals. The College's Purchasing Department shall provide the evaluation committee with guidelines for completing evaluations consistent with the process described in the RFP. The evaluation committee may consist of College employees and, if desired, members of the community with experience in related services. Evaluators shall be selected on the basis of their ability to provide an objective, impartial evaluation of the proposals. If there is a conflict of interest, the evaluator shall declare this in writing and shall be excluded from participating in the evaluation.
- (d) The proposal evaluation committee shall review, score and rank all responsive proposals according to the evaluation criteria in the RFP, which may include, but are not limited to, the following:
- (i) Availability and capability to perform the work;
  - (ii) Experience of key staff on comparable projects, or in performing comparable services;
  - (iii) Demonstrated ability to successfully complete similar projects or perform similar services on time and within budget;
  - (iv) References from past clients, public and private;
  - (v) Performance history in meeting deadlines, submitting accurate estimates, producing quality work, and meeting financial obligations;
  - (vi) Status and quality of any required licensing or certification;
  - (vii) Knowledge and understanding of the required services as shown through the proposed approach to staffing and scheduling needs;
  - (viii) Fees or costs;
  - (ix) Results from oral interviews, if conducted;
  - (x) Availability of any specific required resources or equipment;
  - (xi) Geographic proximity to the project or the area where the services will be performed;
  - (xii) Identity of proposed subcontractors and their qualifications; and
  - (xiii) Any other criteria deemed relevant to the provision of services.
- (e) Final ranking will be based on the evaluation criteria consistent with the process described in the RFP. Price will be considered, but will not necessarily govern selection of the Contractor(s).
- (f) Contracts entered into under the formal selection procedure may be amended, provided the original contract allows for the particular amendment and the services to be provided under the amendment are included within, or directly related to, the scope of the project or the scope of the services described in the solicitation document.

### C. Informal Selection Procedures

The College may use an informal selection process to obtain services if the estimated fee or contract price is less than the Minimum Threshold for Personal Services Contracts as this threshold is defined in Section 300-Supplementary Provisions.

- (1) The informal selection process shall solicit Offers from at least three qualified contractors offering the required services. Prospective contractors may be drawn from the ORPIN System and/or from the certified list of the Advocate for Minority, Women and Emerging Small Business or its list of Contractors. The College may place the solicitation on the ORPIN System and/or use the system-generated potential Offer list to meet the three (3) responses/proposals requirement for informal solicitations.

- (2) The informal selection process shall be competitive. The selection and ranking may be based on criteria including, but not limited to, each Offeror's:
  - (a) Particular capability to perform the services required;
  - (b) Experienced staff available to perform the services required, including each Offeror's recent, current, and projected workloads;
  - (c) Performance history;
  - (d) Approach and philosophy used in providing services;
  - (e) Fees or costs;
  - (f) Geographic proximity to the project or the area where the services are to be performed; and
  - (g) Work volume previously awarded by the College, with the object of effecting an equitable distribution of contracts among qualified Contractors, provided such distribution does not violate the policy of selecting the most highly-qualified Contractor to perform the services at a fair and reasonable price.
- (3) All proposals received shall be reviewed and documented and the most qualified Contractor(s) selected.
- (4) If the scope of the services is revised to the extent that the estimated cost of the services is considered to be equal to or more than the Minimum Threshold as this threshold is defined in Section 300-Supplementary Provisions, and the services are still required, the College shall either (a) terminate the contract and issue a new solicitation using the formal selection procedures or procedures allowed by subsequent rules set forth in this Section, unless waived under the provisions of Section CCR.250(I)(2), or (b) seek approval by the College's Local Contract Review Board for contract amendment.

D. Selection by Negotiation

- (1) The College may procure Personal Services with Contractors directly through negotiation if the contract price is less than the Minimum Threshold as this threshold is defined in Section 300-Supplementary Provisions.
- (2) If the scope of the services is revised to the extent that the estimated cost of the services is equal to or more than the Minimum Threshold as this threshold is defined in Section 300-Supplementary Provisions, the College shall solicit for a new Contractor(s) using applicable selection procedures under these rules.

**Conclusion of Compliance with Law**

The requirements of this rule 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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## **PUBLIC IMPROVEMENT CONTRACTS EXCEPTIONS AND EXEMPTIONS**

### **Alternative Contracting Methods**

CCR.280

The College may, at its discretion, exempt public improvement contracts from competitive bidding requirements utilizing Alternative Contracting Methods (ORS 279C.335(3)(a)). These methods shall take into account market realities and modern practices that are consistent with the public policy of encouraging competition. Examples of Alternative Contracting Methods are Request for Proposals for the selection of construction manager/general contractor firms (CM/GC), and Design/Build firms.

The College shall prepare written findings that support the use of this exemption from competitive bidding and obtain approval from its Local Contract Review Board. A public hearing shall be held before final adoption (ORS 279C.335(4)(a)) of the exemption. The findings must show compliance with ORS 279C.330, and shall include, but not be limited to, information regarding:

- (a) Operational, budget and financial data;
- (b) Public benefits;
- (c) Value engineering;
- (d) Specialized expertise required;
- (e) Public safety;
- (e) Market conditions;
- (f) Technical complexity; and
- (g) Funding sources but shall not be based solely on funding sources, such as a particular bond fund, or by the method of procurement.

### **Conclusion of Compliance with Law**

The College must demonstrate that the use of this exemption will not encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts (ORS 279C.335(2)(a)). The requirements of this rule ensure that competition will be carefully addressed and protected, if the College's Local Contract Review Board finds it is in the public's best interest to use an Alternative Contracting Method. Consequently, findings otherwise required by law are unnecessary here.

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### **Donated Public Improvements**

CCR.281

The College may authorize a Person to construct a public improvement without competitive bidding or other competitive process regardless of dollar amount, if:

- (1) The Person has agreed to donate all of the labor, materials and services necessary to construct the public improvement and perform the work; and
- (2) The Person enters into a license or agreement with the College whereby the Person agrees to comply with the public contract requirements applicable to the particular project, requirements of the Public Contracting Code, and any requirements that the College deems necessary or beneficial to protect the College.

### **Findings of Fact**

1. Students, staff, contractors, and other community groups from time to time offer to donate all or a portion of their professional skilled services and/or materials, to help the College meet its facilities' and/or educational needs. The ability to take advantage of such donated materials and/or services enables the College to use its limited funds in other areas, and frequently results in improvements or services that the College would not otherwise be able to afford. This class special procurement thus has budgetary, operational, and public benefits.
2. This exemption enables the College to take advantage of these offers, while continuing to ensure that the requirements of the Public Contracting Code continue to be met.
3. ORS 279A.010 excludes projects for which no funds of a public entity are used from the definition of Public Improvement subject to the Code. This exemption will allow the College to take advantage of donated materials and/or services, where all or part of the project or funds used for the project are donated.



**Conclusion of Compliance with Law**

It is unlikely that this exemption will encourage favoritism in the award of College Contracts or substantially diminish competition for College Contracts because it will only apply when a Person donates all or part of the materials and/or services. Charitable donations are outside of the competitive market for construction services. In many instances, the donations will enable the College to construct or complete projects that it otherwise would not be able to afford to do, and thus will not displace what would otherwise be a competitively bid project.

The use of this class special procurement will result in substantial cost savings to the College because the College is not required to pay for the goods and/or services if they are donated.

\* \* \* \* \*

**First-Tier Subcontractors; Disclosure and Substitution**

CCR.282

This rule amends (i.e., additions are indicated by *italics* and deletions are indicated by a line drawn through the word(s) that has been stricken.), Appendix B of these Community College Rules of Procurement (i.e., Model Public Contract Rules adopted on December 27, 2005, by the State of Oregon, Department of Justice, General Counsel Division, effective January 1, 2006, Division 49), as follows:

OAR 137-049-0360(2)(b) shall be replaced with:

*“(b) The College may, at its discretion, Open Bids publicly immediately after the Bid Closing; ~~and~~ or it may open Bids publicly immediately following the deadline for submission of the first-tier subcontractor disclosure forms, or some other time as permitted or not prohibited by Oregon Revised Statutes.”*

**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.

\* \* \* \* \*

**Limited Negotiations with Bidder**

CCR.283

I. Definitions

For purposes of this rule, the terms below shall be defined, as follows:

“College’s Cost Estimate” shall mean the fixed limit of construction cost that has been agreed upon by the College and the College’s consultant.

“Value Engineering and Other Options” refers to a process agreed upon by the College, which involves the lowest responsive, responsible bidder and may include other consultants to identify deletions or adjustments to the project to reduce the cost of such work.

“Significantly Changed” with reference to the scope of the project, shall mean deletion or adjustment of components of the project or elements of the work, which in the aggregate are estimated to cost in excess of twenty-five percent of the College’s Cost Estimate as originally designed.

II. Limited Negotiations and College’s Cost Estimate

- (1) If a project is competitively bid and all the responsive bids from responsible bidders exceed the College’s Cost Estimate, the College may, prior to award, negotiate with the Lowest Responsible Bidder utilizing Value Engineering and Other Options to bring the contract price within the College’s Cost Estimate.
- (2) The College’s negotiation with the Lowest Responsible Bidder shall not result in award of the contract to such bidder if the scope of the project is Significantly Changed from that specified in the Invitation to Bid at the time of bidding.

- (2) If the College elects to use the negotiation process under this rule, the College will not produce for public inspection prior to award or termination of the negotiation process, any records of the Lowest Responsible Bidder. After award of the contract or termination of the negotiation process, the College will make available for public inspection such records as are subject to inspection under any other provision of law.

### III. Negotiation and Award Process

- (1) If the Lowest Responsible Bidder's Bid exceeds the College's Cost Estimate, the College may, but shall not be required to, negotiate with the Lowest Responsible Bidder to bring the cost of the project within the College's Cost Estimate.
- (2) If the College elects to negotiate with the Lowest Responsible Bidder, the College shall give written notice to the Lowest Responsible Bidder of its intent, within ten (10) days of bid Opening. The notice shall include disclosure to the Lowest Responsible Bidder of the College's Cost Estimate.
- (3) During any such negotiations, the Lowest Responsible Bidder's bid shall remain firm for the period prescribed in the Bid. At all times until such expiration of the Bid, and notwithstanding the occurrence of negotiations under this rule, the College shall have the right to accept the original Bid.
- (4) Upon and within five (5) days of receipt of the College's notice of intent to negotiate, the Lowest Responsible Bidder and the College's representative shall meet and present to each other, in writing, any proposals either may have for Value Engineering and Other Options to bring the project within the College's Cost Estimate.
- (5) The College and the Lowest Responsible Bidder shall negotiate in good faith regarding value engineering and other options, exerting their best efforts to bring the cost of the project within the College's Cost Estimate.
- (6) If the College and the Lowest Responsible Bidder are able to reach agreement through value engineering and other options to identify measures which bring the project within the college's Cost Estimate, but do not Significantly Change the scope of the project, such value engineering and other options shall be reduced to writing and signed by the Lowest Responsible Bidder as an amendment to its bid and will be incorporated into the Contract at the time of award.
- (7) Upon award, the terms and conditions of the amendment to the Bid shall be made public.
- (8) Any protest of this negotiation process shall be subject to the Protest Process specified in the Invitation to Bid.

### **Conclusion of Compliance with Law**

This rule satisfies the requirements of Oregon Revised Statute 279C.340 wherein the College may negotiate with the lowest responsive, responsible bidder in accordance with rules adopted by the College. Consequently, findings otherwise required by law are unnecessary here.

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