

HOW TO USE THIS DOCUMENT

The proposed changes to the Community College Rules of Procurement (CCRP), for summer, 2012, are provided herein.

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

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

**DELETE THIS PAGE WHEN DEVELOPING A
FINAL VERSION OF THIS DOCUMENT FOR
YOUR COMMUNITY COLLEGE**

**PROPOSED CHANGES TO THE
COMMUNITY COLLEGE RULES OF PROCUREMENT
DATED JANUARY 19, 2005, FOR ADOPTION IN SUMMER 2012, PENDING BOARD APPROVAL.**

(5/23/12)

This document contains *proposed* changes to the Community College Rules of Procurement (CCRP), that were previously revised and formally adopted by the Board of Education for *(insert name of college)* on *(insert date of most recent revision/adoption)* . Note that this document does not contain all of the Community College Rules of Procurement but *only* those rules that contain proposed changes or are new rules.

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

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

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

The current Chemeketa Community College Rules of Procurement can be found at
http://www.chemeketa.edu/busprofession/procurementservices/documents/CCRPwithoutFindingsAdoptedJuly2011_001.pdf.

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

TABLE OF CONTENTS

SECTION 100 GENERAL INFORMATION

CCR.102	Purpose and Statutory Authority
CCR.104	Definitions

SECTION 200 PUBLIC CONTRACT SPECIAL PROCUREMENTS AND RULES OF PROCEDURE

For the sake of brevity, rules that contain only proposed changes to their titles or the numeric order in which they appear within the CCRP are not provided in their entirety in this document.

GENERAL CONTRACT PROVISIONS

CCR.202	Advertisement Contracts
CCR.204	Bid Security and Bond Requirements, Waiver of
CCR.21405	Intergovernmental Cooperative Procurement Purchasing Participation (Oregon Cooperative Purchasing Program, Western States Contracting Alliance, Association of Educational Purchasing Agencies, Oregon Educational Technology Consortium, US Communities & Government Purchasing Alliance, Etcetera)
CCR.20506	Donated Materials and/or Services
CCR.20607	Emergency Contracts (Including Oil or Hazardous Material Removal)
CCR.208	Equipment Repair and Overhaul (Including Maintenance Agreements)
CCR.210	Federal Contracts, Purchases under
CCR.212	Intellectual Property (Periodicals/Library Books, Proprietary Software Licenses, Art, and Other Products of the Creative Process)
CCR.216	Life Cycle Costing/Best Value
CCR.218	Perishables (Chemicals, Food, Laboratory Supplies)
CCR.220	Personal Property, Used (Purchase of)
CCR.222	Price Regulated Items (Including Gas, Diesel Fuel, Heating Oil, Lubricants, Asphalts, Distilled Alcohol, Postage, and Certain Utilities)
CCR.224	Request for Proposals
CCR.226	Requirements Contracts and Price Agreements
CCR.228	Resale – Items for
CCR.230	Telecommunications Services

PERSONAL SERVICES CONTRACTING RULES

CCR.250	Personal Services – General
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PUBLIC IMPROVEMENT CONTRACTS EXCEPTIONS AND EXEMPTIONS

CCR.280	Alternative Contracting Methods
CCR.281	Donated Public Improvements
CCR.282	First-Tier Subcontractors; Disclosure and Substitution
CCR.283	Limited Negotiations with Bidder

SECTION 300 SUPPLEMENTARY PROVISIONS – CONTRACTING RULES

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.

CCR.301	Consultant Selection: Architects ural , Engineers ing , <u>Photogrammetrists</u> , <u>Transportation Planners</u> , Land Surveyors ing and <u>Providers</u> of Related Services Contracts (See also OAR 137, Division 48, contained in Appendix B.)
CCR.302	Contract Amendments & Reinstatements (See also OAR 137-047-0800 contained in Appendix B.)
CCR.304	Cumulative Awards of Small Contracts (i.e., Anti-Fragmenting Rule)
CCR.306	Educational & Institutional Cooperative Service, Incorporated
CCR.308	Energy Management Controls Systems
CCR.310	Exception (Including Sole Source) – Purchases of Goods or Services through
CCR.312	Personal Services Contracts (Amends CCR.250.)
CCR.314	Public Contracts Under Certain Dollar Amounts: Small Procurements and Intermediate Procurements (See also ORS 279B.065 and 279B.070.)
CCR.316	Rejection of an Offer (Amendments to OAR 137-047-0640 and 137-049-0440 contained in Appendix B.)
CCR.317	Source Selection
CCR.318	Space Rentals (hotels, conferences, temporary offices, etcetera)
CCR.320	Special Risk Insurance Policies

APPENDIX A: PROCUREMENT-RELATED COLLEGE PROCEDURES/POLICIES INCORPORATED HEREIN BY REFERENCE

Unless otherwise indicated, the “College’s Procedures and/or Policies incorporated herein by reference” shall mean the College’s Policies and Procedures that have been adopted and which are in effect at the time of the procurement transaction and/or contract award.

1150 POL	Duties and Responsibilities of the Board
1160 POL	Board Delegation of Administrative Authority
1710 POL	Rebates and Gifts (Policy #1710 POL)
6210 POL	Purchasing and Expenditures (Policy #6210 POL)
6210 PRO	Purchasing and Expenditures (Procedure #6210 PRO)
6220 POL	Surplus Property (Policy #6220 POL)
6220 PRO	Surplus Property (Procedure #6220 PRO)
6230 POL	Contracts (Policy #6230 POL)
6230 PRO	Contracts for Services (Procedure #6230 PRO)
6231 PRO	Instructional Contracting (Procedure #6231 PRO)

APPENDIX B: OREGON ATTORNEY GENERAL’S MODEL PUBLIC CONTRACT RULES (OREGON ADMINISTRATIVE RULES), AS EXPRESSLY IDENTIFIED BY RULE NUMBER, AND INCORPORATED HEREIN BY REFERENCE--DIVISIONS 46, 47, 48, AND 49, PREPARED AND MAINTAINED BY THE STATE OF OREGON, DEPARTMENT OF JUSTICE, GENERAL COUNSEL DIVISION, EFFECTIVE JANUARY 1, 20~~12~~10.

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 ORS 279A.065(5)(b). *Rules from the Oregon Attorney General’s Model Public Contract Rules that have been identified in the Table of Contents herein but which are shown with a line drawn through them have been stricken and have not been adopted by the College.*

DIVISION 46 GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

- 137-046-0100 Content and General Application; Federal Law Supremacy
- 137-046-0110 Definitions for the Model Rules
- 137-046-0120 Policy
- 137-046-0130 Application of the Code and Model Rules; Exceptions
- 137-046-0200 Notice to Advocate for Minorities, Women and Emerging Small Businesses
- 137-046-0210 Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification
- 137-046-0300 Preferences for Oregon Goods and Services
- 137-046-0310 Reciprocal Preferences
- 137-046-0320 Preference for Recycled Materials
- 137-046-0400 Authority for Cooperative Procurements
- 137-046-0410 Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies
- 137-046-0420 Joint Cooperative Procurements
- 137-046-0430 Permissive Cooperative Procurements
- 137-046-0440 Advertisements of Intent to Establish Contracts through a Permissive Cooperative Procurement
- 137-046-0450 Interstate Cooperative Procurements
- 137-046-0460 Advertisements of Interstate Cooperative Procurements
- 137-046-0470 Protests and Disputes
- 137-046-0480 Contract Amendments (*See also CCR.302.*)
- 137-046-0500 Repealed Rules

OADR 137-047-0262 AND 137-047-0263 HAVE BEEN REPEALED BY THE ATTORNEY GENERAL BUT THEIR CONCEPTS HAVE BEEN ADDED TO OADR 137-047-0261

DIVISION 47 GENERAL PROVISIONS

- 137-047-0000 Application
- 137-047-0100 Definitions
- 137-047-0250 Methods of Source Selection; Feasibility Determination; Cost Analysis
- 137-047-0255 Competitive Sealed Bidding
- 137-047-0257 Multistep Sealed Bidding
- 137-047-0260 Competitive Sealed Proposals
- 137-047-0261 ~~Procedures for Competitive Range~~, Multi-tiered and Multistep Proposals
- ~~137-047-0262 Competitive Range, Discussions and Negotiations for Multi-tiered or Multistep Proposals~~
- ~~137-047-0263 Multistep Sealed Proposals~~
- 137-047-0265 Small Procurements
- 137-047-0270 Intermediate Procurements
- ~~137-047-0275 Sole Source Procurements (*See ORS 279B.075.*)~~
- 137-047-0280 Emergency Procurements
- 137-047-0285 Special Procurements
- 137-047-0290 Cooperative Procurements
- ~~137-047-0300 Public Notice of Solicitation Documents~~
- 137-047-0310 Bids or Proposals are Offers
- 137-047-0320 Facsimile Bids and Proposals
- 137-047-0330 Electronic Procurement
- 137-047-0400 Offer Preparation
- 137-047-0410 Offer Submission
- 137-047-0420 Pre-Offer Conferences
- 137-047-0430 Addenda to Solicitation Document
- 137-047-0440 Pre-Closing Modification or Withdrawal of Offers
- 137-047-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers
- 137-047-0460 Late Offers, Late Withdrawals and Late Modifications
- 137-047-0470 Mistakes
- 137-047-0480 Time for Agency Acceptance
- 137-047-0490 Extension of Time for Acceptance of Offer
- 137-045-0500 Responsibility of Bidders and Proposers
- 137-047-0525 Qualified Products Lists
- 137-047-0550 Prequalification of Prospective Offerors; Pre-negotiation of Contract Terms and Conditions
- 137-047-0575 Debarment of Prospective Offerors
- 137-047-0600 Offer Evaluation and Award
- 137-047-0610 Notice of Intent to Award
- 137-047-0620 Documentation of Award

- 137-047-0630 Availability of Award Decisions
- 137-047-0640 Rejection of an Offer (*See CCR.316.*)
- 137-047-0650 Rejection of All Offers (*See CCR.316.*)
- 137-047-0660 Cancellation of Procurement or Solicitation
- 137-047-0670 Disposition of Offers if Procurement or Solicitation Canceled
- 137-047-0700 Protests and Judicial Review of Special Procurements
- ~~137-047-0710 Protests and Judicial Review of Sole Source Procurements~~
- 137-047-0720 Protests and Judicial Review of Multiple-Tiered and Multistep Solicitations
- 137-047-0730 Protests and Judicial Review of Solicitations
- 137-047-0740 Protests and Judicial Review of Contract Award
- 137-047-0745 Protest and Judicial Review of Qualified Products List Decisions
- 137-047-0750 Judicial Review of Other Violations
- 137-047-0760 Review of Prequalification and Debarment Decisions
- 137-047-0800 Amendments to Contracts and Price Agreements
- 137-047-0810 Termination of Price Agreements

DIVISION 48 CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING AND LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS (*See also CCR.301.*)

- 137-048-0100 Application
- 137-048-0110 Definitions
- 137-048-0120 List of Interested Consultants; Performance Record
- 137-048-0130 Applicable Selection Procedures; Pricing Information, Disclosure of Proposals; Conflicts of Interest
- 137-048-0200 Direct Appointment Procedure
- 137-048-0210 Informal Selection Procedure
- 137-048-0220 Formal Selection Procedure
- 137-048-0230 Ties Among Proposers
- 137-048-0240 Protest Procedures
- 137-048-0250 Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility For Costs
- 137-048-0260 Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects
- 137-048-0270 Price Agreements
- 137-048-0300 Prohibited Payment Methodology; Purchase Restrictions
- 137-048-0310 Expired or Terminated Contracts; Reinstatement
- 137-048-0320 Contract Amendments

DIVISION 49 GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

- 137-049-0100 Application
- 137-049-0110 Policies
- 137-049-0120 Definitions
- 137-049-0130 Competitive Bidding Requirement
- 137-049-0140 Contracts for Construction Other Than Public Improvements
- 137-049-0150 Emergency Contracts; Bidding and Bonding Exemptions
- 137-049-0160 Intermediate Procurements; Competitive Quotes and Amendments
- 137-049-0200 Solicitation Documents; Required Provisions; Assignment or Transfer
- 137-049-0210 Notice and Advertising Requirements; Posting
- 137-049-0220 Prequalification of Offerors
- 137-049-0230 Eligibility to Bid or Propose; Registration or License
- 137-049-0240 Pre-Offer Conferences
- 137-049-0250 Addenda to Solicitation Documents
- 137-049-0260 Request for Clarification or Change; Solicitation Protests
- 137-049-0270 Cancellation of Solicitation Document
- 137-049-0280 Offer Submissions
- 137-049-0290 Bid or Proposal Security
- 137-049-0300 Facsimile Bids and Proposals
- 137-049-0310 Electronic Procurement
- 137-049-0320 Pre-Closing Modification or Withdrawal of Offers
- 137-049-0330 Receipt, Opening and Recording of Offers; Confidentiality of Offers
- 137-049-0340 Late Bids, Late Withdrawals and Late Modifications
- 137-049-0350 Mistakes
- 137-049-0360 First-Tier Subcontractors; Disclosure and Substitution

137-049-0370 Disqualification of Persons
137-049-0380 Bid or Proposal Evaluation Criteria
137-049-0390 Offer Evaluation and Award; Determination of Responsibility
137-049-0395 Notice of Intent to Award
137-049-0400 Documentation of Award; Availability of Award Decisions
137-049-0410 Time for Contracting Agency Acceptance; Extension
137-049-0420 Negotiation With Bidders Prohibited
137-049-0430 Negotiation When Bids Exceed Cost Estimate
137-049-0440 Rejection of Offers (*See CCR.316.*)
137-049-0450 Protest of Contractor Selection, Contract Award
137-049-0460 Performance and Payment Security; Waiver
137-049-0470 Substitute Contractor
137-049-0490 Foreign Contractor
137-049-0600 Purpose (Alternative Contracting Methods)
137-049-0610 Definitions for Alternative Contracting Methods
137-049-0620 Use of Alternative Contracting Methods
137-049-0630 Findings, Notice and Hearing
137-049-0640 Competitive Proposals; Procedure
137-049-0645 Requests for Qualifications (RFQ)
137-049-0650 Requests for Proposals (RFP)
137-049-0660 RFP Pricing Mechanisms
137-049-0670 Design-Build Contracts
137-049-0680 Energy Savings Performance Contracts (ESPC)
137-049-0690 Construction Manager/General Contractor (CM/GC)
137-049-0800 Required Contract Clauses
137-049-0810 Waiver of Delay Damages Against Public Policy
137-049-0815 BOLI Public Works Bond
137-049-0820 Retainage
137-049-0830 Contractor Progress Payments
137-049-0840 Interest
137-049-0850 Final Inspection
137-049-0860 Public Works Contracts
137-049-0870 Specifications; Brand Name Products
137-049-0880 Records Maintenance; Right to Audit Records
137-049-0890 Contracting Agency Payment for Unpaid Labor or Supplies
137-049-0900 Contract Suspension; Termination Procedures
137-049-0910 Changes to the Work and Contract Amendments

The addition of “Photogrammetrists,” “Photogrammetric Mapping,” “Transportation Planners,” and “Transportation Planning” to any references to “Architectural, Engineering and Land Surveying Services,” is to address the expansion of qualifications-based selection processes under HB 3316 (2011).

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) **Participating Oregon Community Colleges.** These Community College Rules of Procurement (CCRP), were drafted through a statewide, collaborative effort by representatives of Participating Oregon Community Colleges (POCC). Pursuant to the POCC participatory agreement, Sections 100 and 200 of the CCRP shall remain unchanged unless modified by the POCC at a later date and subsequently ratified by each institution’s Local Contract Review Board. Any member of the POCC that adopts changes to Sections 100 and/or 200 of the CCRP that have not been mutually agreed upon and adopted by all other POCC members, shall by and through its actions, no longer qualify as a member of the POCC cooperative procurement group and shall not represent itself as such.
- (4) **Sustainability Commitment.** In accordance with the Oregon Community College Rules of Procurement, member colleges are committed to the use and purchase of environmentally and socially responsible materials and products, which are fiscally responsible, reduce resource consumption and waste, perform adequately, and promote human health and well-being. Recognizing their regional economic role, colleges shall seek opportunities to educate, encourage, and influence their respective markets by utilizing, where feasible, products and services, including new environmentally preferable products, reusable products, recycled content and recycled products.

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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 to or deletion from, a material change in, or general interest explanation of a Solicitation Document.
- (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, Arriving at”** 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, total cost of ownership considerations, and the probability of the Offeror performing the requirements stated in the Solicitation.
- (5) **“Bid”** means a Written response to an Invitation to Bid.
- (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 negotiations if the College intends to conduct discussions or negotiations in accordance with its own rules.
- (11) **“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.

- (12) "**Contract Price**" means, as the context requires, (i) the maximum monetary obligation that the College either will or may incur under a Contract, including bonuses, incentives, approved alternates, and contingency amounts, if the Contractor fully performs under the Contract.
- (13) "**Contract Review Authority**" means the College's Local Contract Review Board as set forth in ORS 279A.060.
- (14) "**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).
- (15) "**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.
- (16) "**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.
- (17) "**Descriptive Literature**" means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.
- (18) "**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.
- (19) "**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.
- (20) "**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.
- (21) "**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.
- (22) "**Electronic Procurement System**" means an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and the College to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a procurement.
- (23) "**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.
- (24) "**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.
- (25) "**Evidence of Competition**" means College documentation demonstrating competitive solicitation of responses/Offer from Person(s) in selecting a Contractor in accordance with the College's public contracting rules.
- (26) "**Facsimile**" means electronic equipment that communicates and reproduces both printed and handwritten material.
- (27) "**Gift**" means something of economic value given to a public official or a relative or member of the household of the public official without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives or members of the household of public officials on the same terms and conditions; or for valuable consideration less than that required from others who are not public officials.
- (28) "**Goods and Services**" or "Goods or Services" have the meaning set forth in ORS 279A.010(1)(j).
- (29) "**Interstate Agreement**" means any agreement between the College and a unit of local government or state agency of another state.

- (30) **“Invitation to Bid” (ITB)** means the Solicitation Document issued to invite Offers from prospective Contractors pursuant to either ORS 279B.055 or 279C.335.
- (31) **“Life Cycle Costing”** means the total cost of ownership, including the total cost of acquiring, operating, maintaining, supporting, and if applicable, disposal.
- (32) **“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.
- (33) **“Lowest Responsible Bidder”** as defined in ORS 279A.010(1)(r) means: (a) the lowest 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 bidders 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); and who has met the standards of responsibility set forth in ORS 279B.110(2) or 279C.375, has not been debarred or disqualified by the College under ORS 279B.130 or 279C.440, and is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract. 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, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.
- (34) **“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, and required under ORS 279A.065.
- (35) **“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.
- (36) **“ORS”** means Oregon Revised Statutes.
- (37) **“Offer”** means a Written offer to provide Goods or Services in response to a Solicitation Document.
- (38) **“Offeror”** means a Person, who submits an Offer.
- (39) **“Opening”** means the date, time and place specified in the Solicitation Document for the public opening of Offers.
- (40) **“PCC”** means Public Contracting Code as it is defined in ORS 279A.010(1)(bb).
- (41) **“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.
- (42) **“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.
- (43) **“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.
- (44) **“Personal Services Contract”** or **“Contract for Personal Services”** means a Contract or member of a class of Contracts for Personal Services, other than a Contract for the services of an Architect, Engineer, [Photogrammetrist](#), [Transportation Planner](#), [Land Surveyor](#), or Provider of Related Services as defined in ORS 279C.100 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; information technology professional, travel, banking, investing, collections, or other consultant; broadcaster or artist (including a photographer, filmmaker, painter, weaver, or sculptor). “Personal Services” is also defined in ORS 279C.100, and that definition applies only to ORS 279C.100 to 279C.125 for Architectural, Engineering, [Photogrammetric Mapping](#), [Transportation Planning](#), Land Surveying Services, or [Related Services](#). Contracts for Architectural, Engineering, [Photogrammetric Mapping](#), [Transportation Planning](#), and Land Surveying Services, and Related Services are designated as a special class of Personal Services Contracts, defined in ORS 279C.100(5). (See also Personal Services Contracting Rules section within these Community College Rules of Procurement for an expanded definition.)
- (45) **“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.
- (46) **“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.

- (47) **“Product Sample”** means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.
- (48) **“Proposal”** means a Written response to a Request for Proposals.
- (49) **“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)).
- (50) **“Public Notice”** means a public notice of Solicitation Document that is published electronically or at least once in at least one newspaper of general circulation in the area where the Contract is to be performed, in at least one trade newspaper of statewide circulation if the Solicitation Document is for a public improvement and the Contract has an estimated cost in excess of \$125,000, and in as many additional issues and publications as the College determines is likely to be cost effective.
- (51) **“Recycled Materials”** means recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii)).
- (52) **“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.
- (53) **“Request for Qualifications”** means a Written document issued by the College, to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services, or Architectural, Engineering: [Photogrammetric Mapping](#), [Transportation Planning](#), or Land Surveying Services, or Related Services, described in the document.
- (54) **“Request for Quotations”** means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.
- (55) **“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)
- (56) **“Responsible”** means meeting the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and not debarred or disqualified by the College under OAR 137-047-0575 or 137-049-0370.
- (57) **“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 OAR 137-047-0640 or 137-049-0390(2), and that has not been debarred or disqualified by the College under OAR 137-047-0575 or 137-049-0370. When used alone, **“Responsible”** means meeting the aforementioned standards.
- (58) **“Responsive Offer”** means, as the context requires, a **Responsive Bid** or **Responsive Proposal**, or other 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.
- (59) **“Service Contract”** means a Contract that calls primarily for a Contractor’s time and effort rather than for an end product.
- (60) **“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.
- (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) **“Solicitation”** means: (a) a request by the College for the purpose of soliciting Offers. This request may take the form of an Invitation to Bid, a Request for Proposal, a Request for Quotation, a Request for Qualifications or a similar document; or (b) the process of notifying prospective Offerors that the College requests such Offers; or the Solicitation Document itself.
- (63) **“Solicitation Document”** means an Invitation to Bid, Request for Proposals, Request for Quotations, or other similar document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C. The following are not Solicitation Documents if they do not invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, or a request for product prequalification.
- (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.

A change to this title is proposed, so it will reflect all types of cooperative procurements—joint, permissive, and interstate, subject to Oregon Revised Statutes 279A.200 thru 279A.220, which provide the definitions, authorization, and parameters for the use of cooperative procurements. (Since a change to the title is recommended, the rule number will also need to be reassigned, so the CCRs within this Section 200 will continue to fall in alphabetical order.)

Intergovernmental Cooperative Procurement Purchasing Participation

CCR.20514

Examples of intergovernmental cooperative procurement 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), Participating Oregon Community Colleges (POCC), and US Communities Government Purchasing Alliance.

Pursuant to ORS Oregon Revised Statutes 279A.205, 279A.210, 279A.215, and 279A.220, other governmental contracting agencies, bodies, or districts may participate in any joint, permissive, or interstate cooperative procurement and/or subsequent contract award resulting from any solicitation which has been accomplished in compliance with ORS 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 ORS 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 ORS Oregon Revised Statutes 279A.205, 279A.210, 279A.215, and 279A.220. Prior to the College engaging in a cooperative procurement, due diligence must be performed, best practices employed, and factors in the buying decision considered. Examples of these factors include: in-state preferences, legislatively-mandated or LCRB-approved socioeconomic programs that overlay public contracting and accompany the expenditure of public funds; sustainability objectives; administrative resources and capacity; contracting efficiencies; time constraints; member participation costs; and ability to leverage economies of scale.

Conclusion of Compliance with Law

Intergovernmental Cooperative Procurement 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 should “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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The proposed change more closely mirrors the statutory citation.

Emergency Contracts (Including Oil or Hazardous Material Removal)

CCR.2067

- (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) 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. 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.
4. 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.
5. 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 likely result in a substantial 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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The proposed change to CCR.250 clarifies what procedures are applicable, if the estimated fee or Contract Price falls in the range between the Minimum and Intermediate thresholds.

PERSONAL SERVICES S CONTRACTING RULES

Personal Services Contracts

CCR.250

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.
 - (a) Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, and Land Surveying Services, and or Related Services are designated as a special class of Personal Services Contracts, defined in ORS 279C.100 (5), and that definition applies only to ORS 279C.100 to 279C.125. Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, and Land Surveying Services and or Related Services are not subject to the provisions of rule CCR.250 of the Community College Rules of Procurement, but are, instead, subject to the provisions of

Division 48 of the *Oregon Attorney General's Model Public Contract Rules* as adopted by the College, and the Community College Rules of Procurement adopted by the College, excluding rule CCR.250.

- (2) The College may waive the requirement for a competitive selection process and directly negotiate a Personal Services Contract, if the **C**ontract **P**rice 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 after initial completion and acceptance of services.
 - (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)(f));
 - (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 **C**ontract **P**rice is less than the Minimum Threshold for Personal Services Contracts ~~as this threshold is defined in Section 300-Supplementary Provisions,~~ and the College shall use an informal selection process to obtain services if the estimated fee or Contract Price is more than the Minimum Threshold but less than the Intermediate Threshold for Personal Services Contracts as this threshold is defined in Section 300-Supplementary Provisions, unless otherwise exempted.

- (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 **C**ontract **P**rice 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.

* * * * *

Since Request for Proposals (RFPs), are already permitted for goods and services pursuant to ORS 279B.060, this rule is no longer necessary. (Public Improvements must still be competitively bid pursuant to 279C.355 unless exempted by the Local Contract Review Board.)

Request for Proposals

CCR.224

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, and it is reasonably expected to result in substantial cost savings to the College or to the public (ORS 279B.085(4)(b)(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.

* * * * *

This rule represents proposed changes to two Oregon Administrative Rules (OAR 137-048-0200 and OAR 137-048-0210), where previously CCR.301 represented changes to only one Oregon Administrative Rule--OAR 137-048-0210. A row of asterisks is intended to illustrate the break between the amended OARs within CCR.301 and/or their respective subsections.

The proposed changes to OAR 137-048-0200 ensures that, although the 2012 Attorney General's Model Public Contract Rules have been amended to include Local Contracting Agencies under subsections (1)(c) and (1)(d)--subsections which were formerly restricted to State Contracting Agencies only and which have been recently amended to reflect an increase in the dollar threshold for Direct Appointments from \$50,000 to \$100,000, it is recommended that the College only increase its current Direct Appointment threshold from \$50,000 to \$75,000, and to prescribe an upper limit of not more than \$100,000--not \$250,000 as the Attorney General's Model Public Contract Rules provides for Estimated Fees in situations where the Contract is a Continuation of a Project that has met certain requirements provided in Oregon Administrative Rules.

The double-strike through of the dollar figure "\$150,000" in OAR 137-048-0210 is intended to indicate that the Attorney General's Model Public Contract Rules previously stated "\$150,000" but that the College had previously amended that figure downward to \$100,000. The 2012 Attorney General's Model Public Contract Rules have since increased the threshold to \$250,000, but the College is not proposing, at this time, that the upper threshold of \$100,000 be proportionately increased.

The proposed modification to OAR 137-048-0210(2)(b) better reflects market realities yet ensures competition is generated.

The stricken text in OAR 137-048-0210(5), is intended to mirror changes made in the 2012 Attorney General's Model Public Contract Rules.

Consultant Selection: Architect~~ect~~ural, Engineer~~ing~~, Photogrammetrists, Transportation Planners, Land Survey~~ors~~ing, and Providers of Related Services Contracts

CCR.301

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., State of Oregon, Department of Justice, Model Public Contract Rules effective January 1, 2012, Division 48), as follows:

OAR 137-048-0200(1)(b) shall be replaced with: "Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed ~~\$50,000~~ \$75,000 ~~\$100,000~~; or"

OAR 137-048-0200(1)(c) shall be replaced with: "Continuation of Project With Intermediate Estimated Fee. For Contracting Agencies where a Project is being continued, as more particularly described below, and where the Estimated Fee will not exceed \$100,000"

\$250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Estimated Fee to be made under the Contract does not exceed \$100,000 \$250,000 and

(C) The Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; or”

OAR 137-048-0200(1)(d) shall be replaced with: “Continuation or Project With Extensive Estimated Fee. For Contracting Agencies where a Project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed \$100,000 \$250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:”

OAR 137-048-0210(1) shall be replaced with: “The College Contracting Agencies may use the informal selection procedure described in this rule to obtain a contract if the Estimated Fee is expected not to exceed \$100,000 \$150,000 \$250,000.”

OAR 137-048-0210(2)(b) shall be replaced with: “Provide a Request for Proposals to a minimum of five (5) three (3) prospective Consultants drawn from:

(A) Contracting Agency’s list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency’s list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the Contracting Agency reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, or any combination of the foregoing.”

OAR 137-048-0210(5) shall be replaced with: “The College Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under OAR 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$100,000 \$150,000 \$250,000.” Notwithstanding the foregoing, the College Contracting Agency may continue Contract negotiations with the Proposer selected under the informal selection procedure if the College Contracting Agency makes written determinations that contracting with that Proposer will:

(a) Promote efficient use of the College’s Contracting Agency’s resources and result in substantial cost savings to the College Contracting Agency; and

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

Conclusion of Compliance with Law

As this amendment to the Attorney General’s Public Contract Rules, 2010¹² 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. 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 Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services or and Related Services Contracts. 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, and ORS 279C.105 wherein a Local Contract Review Board shall adopt procedures for the screening and selection of persons to perform those services under ORS 279C.110 or 279C.120. Consequently, findings otherwise required by law are unnecessary here.

The proposed change to CCR.302 clarifies the approval process for construction-related contract amendments.

Contract Amendments & Reinstatements

CCR.302

- A. The College may award an amendment(s) to a Public Contract for additional work or product which is reasonably related to the scope of work under the original contract, including change orders, extra work, field orders, or other changes in the original specifications that increases the original Contract Price subject to the following conditions:
- (1) Contract amendments must be made in writing;
 - (2) Amendments to **C**ontracts must fall within the scope of the original solicitation. Amendments shall not be used to circumvent rules establishing approvals at certain monetary thresholds;
 - (3) The original **C**ontract was let by competitive bidding or alternate contracting method or is a Special Procurement that has been exempted from competitive processes;
 - (4) Such amendment(s) shall not exceed a total of thirty-three percent (33%) of the original Contract Price for goods and services or twenty-five percent (25%) over the original Contract Price if the Contract is for public improvements, public works, or general trade services and the amount of the amended Contract is defined as a Small or Intermediate Procurement as these thresholds are defined in Section 300, "Public Contracts Under Certain Dollar Amounts," Supplementary Provisions of the Community College Rules of Procurement;
 - (5) Such amendment(s) shall not exceed a total of fifty percent (50%) of the original Contract Price, if the original Contract Price exceeds the threshold for Intermediate Procurements as this threshold is defined in Section 300, "Public Contracts Under Certain Dollar Amounts," Supplementary Provisions of the Community College Rules of Procurement, and the Contract is for public improvements, public works, or general trade services;
 - (6) The Vice President/Chief Financial Officer or designee approves the amendment if the **C**ontract is for a Public Contract, including a Public Contract for a Special Procurement, but may authorize the Director of Capital Projects/Facilities and Operations to approve amendments, if the Contract is for a public improvement, public work, or general trade services Contract. ~~and the unanticipated amended value of the contract is equal to or in excess of \$100,000.~~
- B. The "Reinstatement of Expired Contracts" means the action of reinstatement of an expired Contract that was previously properly executed containing all the required approval signatures and following all required procurement processes. The College may approve reinstatement of an expired Contract if the following conditions are met:
- (1) The College determines concisely, in writing, that the failure to extend or renew the Contract in a timely manner was due to unforeseen or unavoidable conditions;
 - (2) The written reinstatement justification is presented to Purchasing for approval within ninety (90) days after expiration of the original Contract; and
 - (3) The reinstatement is exclusively for the purpose of permitting completion of the work or services for no additional compensation; or
 - (a) When the services are of a continuing or repetitive nature, which are compensated at an hourly, daily or similar periodic rate, the reinstatement either:
 - (i) Does not increase the rate of compensation; or
 - (ii) Does not increase the rate of compensation so as to exceed the rate of the increase determined by comparing the Portland, Oregon Metropolitan Area Consumer Price Index (all items), published immediately prior to the date the original contract was established with the same Index published immediately prior to the date of the reinstatement and extension.
 - (4) When a Contract is reinstated pursuant to this Rule, the College may compensate the Contractor, at the rate of compensation established in the original Contract, for work performed in the interim between the expiration of the original Contract and the execution and approval(s) of the extension or amendment.
 - (5) This rule authorizes only one reinstatement of a Contract.
 - (6) No reinstatement of a Contract must modify the original contract except with respect to the time for performance.
 - (7) If the reinstatement of a Contract pursuant to this rule raises the aggregate amount of compensation to a level that requires approval by the Local Contract Review Board, the College must obtain such approval before the extension becomes binding and before any services may be performed under the reinstated contract.
 - (8) Once a Contract is reinstated, it is in full force and effect, as if it had not expired.
- Stat. Auth: ORS 279A.065(5)(a); ORS 279A.070

Conclusion of Compliance with Law

Contracts are living entities. The work they represent is subject to change at any moment; contract amendments record and formalize those changes. Options for change orders are needed for contract administrators and contractors to perform the work in the most efficient manner. As the contract amendment process is not an exemption from the competitive procurement requirements of law, the College has determined that findings of fact are not required. It is unlikely that this process will encourage favoritism in the awarding

of public contracts or substantially diminish competition, and is reasonably expected to result in substantial cost savings to the College or to the public (ORS 279B(4)). Consequently, findings otherwise required by law are unnecessary here.

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The substantive changes to CCR.312 are intended to proportionately reflect economic trends and to parallel proposed threshold changes to personal services contracts for architectural, engineering, and related services contracts.

Personal Services Contracts (CCR.250 Amended)

CCR.312

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

- (2) The College may waive the requirement for a competitive selection process and directly negotiate a Personal Services Contract, if the Contract Price is not more than the Minimum Threshold as this threshold is defined in Section 300-Supplementary Provisions, Rule CCR.312. "Minimum Threshold" means \$~~50,000~~75,000; "Intermediate Threshold" means \$100,000. Regardless of the dollar value of the Contract, the College may, at its discretion, enter into a Personal Services Contract without complying with formal or informal solicitation requirements if an Emergency, as defined in CCR.2067 exists.
- (a) Unless there are compelling reasons not to do so, competitive selection processes for Personal Services contractors should take place at intervals not greater than five years.
- (1) Informal Selection Procedures may be used for contracts less than or equal to the Minimum Threshold (i.e., \$~~50,000~~75,000), but are not required to be used for contracts less than or equal to the Minimum Threshold.
- (2) Informal Selection Procedures shall be used for contracts estimated or anticipated to be more than \$~~50,000~~75,000, and which are not estimated or anticipated to be more than the Intermediate Threshold (i.e., \$100,000).
- (3) Formal Selection Procedures shall be used for contracts estimated or anticipated to be more than the Intermediate Threshold (i.e., \$100,000), but may be used for contracts of any estimated dollar value if it is deemed to be in the college's best interest.
- (b) The screening and selection procedures for the award of Personal Services Contracts are governed by ORS 279A.055 and are subject to the competitive procurement provisions of the Personal Services Contracting rules and procedures adopted herein. Every contract for Personal Services shall be based upon these screening and selection procedures developed by the College. Personal Services Contracts are considered "Public Contracts" as defined in ORS 279A.010. Pursuant to ORS 279A.010(1)(kk), services designated as "personal services" under ORS 279A.055 are excepted from the definition of "services" and are, therefore, not subject to the Cost Analysis or feasibility determination requirements of ORS 279B.030, 279B.033, or 279B.036.

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

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

Conclusion of Compliance with Law

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

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

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The substantive change to (2)(b) provides guidance and parameters for conducting procurement transactions in an electronic marketplace. The proposed change to (2)(c) ensures consistency between the Attorney General's Model Public Contract Rules and the College's CCRP with regards to types of professional consultants subject to these provisions.

Public Contracts Under Certain Dollar Amounts

CCR.314

- (1) The College shall submit recommendations for contract award to the Local Contract Review Board for contracts greater than \$100,000, subsequent to College policies and procedures contained herein and defined in Appendix A.
- (2) The College may, at its discretion, enter into Public Contracts not to exceed \$100,000 for the purchase of goods, materials, supplies, and services, including contracts for architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services or ~~and~~ related services, and public improvements or general trade services, without issuing a formal competitive Solicitation Document, if the College has determined that the awarding of the contract without issuing a formal competitive Solicitation Document will result in cost savings and the following conditions are met:
 - (a) The Contract is for a single project, and is not a component of or related to any other project;
 - (b) Due to the challenges in negotiating favorable or equivalent terms and conditions in the electronic marketplace, securing reasonable assurances regarding ownership/title of property, and the diminished capacity for the College to have recourse in the event the goods and/or services are not as indicated by the seller, procurements conducted via electronic commerce marketplace (e.g., eBay, Amazon, Google Shopping, NexTag, etcetera), are not permitted unless express authorization from the College's Chief Financial Officer or designee has been granted to the College's staff member(s) who is/are requesting to utilize or authorize the use of an auction transaction;
 - (c**b**) When the amount of the Contract does not exceed \$5,000, defined herein as a "Small Procurement," the College shall, where feasible, obtain competitive quotes, unless the contract is for architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services or ~~and~~ related services procedures in which case a Direct Appointment (see Appendix B, 137-048-0200), may be made for contracts with Estimated Fees less than or equal to \$50,000;
 - (d**e**) When the amount of the Contract is more than \$5,000, but less than or equal to \$100,000, defined herein as an "Intermediate Procurement," and is not for architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services, or related services, the College shall obtain a minimum of three informally solicited competitive quotes. At least one of the three quotes should be obtained from a disadvantaged, minority, women or emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225. The College shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes;
 - (e**d**) The College will abide by ORS 279A.025(4), regarding Qualified Nonprofit Agencies, unless the required goods, materials, supplies or services are unavailable from a Qualified Nonprofit Agency as provided in ORS 279.835 to 279.855;
 - (f**e**) The College shall encourage certified disadvantaged, minority, women-owned or emerging small businesses to participate in its purchasing processes, where applicable, by notifying the Advocate for Minority, Women and Emerging Small Business as required by ORS 200.035; and
 - (g**f**) The goods or services, or class of goods or services, are available from only one source and the determination of a sole source is based upon written findings in accordance with the provisions set forth in ORS 279B.075.
- (3) The College may, at its discretion, enter into Public Contracts not to exceed \$100,000, where competitive procurement processes have been waived pursuant to ORS 279B.075 and/or 279B.085, and the provisions of CCR.310, "Exception (Including Sole Source) – Purchases of Goods or Services through."
- (4) The College may, at its discretion, enter into Public Contracts for trade-related projects, i.e., construction, maintenance, repair, or similar labor and materials contracts without competitive bidding if the College has determined that the awarding of the Contract without competitive bidding will result in cost savings and the following conditions are met:
 - (a) The Contract is for a single project, and is not a component of or related to any other project;
 - (b) When the amount of the Contract does not exceed \$5,000, the College should, where feasible, obtain competitive quotes (ORS 279B.065);

- (c) When the amount of the Contract is more than \$5,000, but less than or equal to \$100,000 the College shall obtain a minimum of three competitive quotes. The College shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes;
- (d) When the Contract is a public improvement Contract of less than or equal to \$100,000, and the bidders are being drawn exclusively from a list of certified emerging small businesses maintained by the Office of Minority, Women and Emerging Small Business, the College may let the Contract without formal competitive bidding after a good faith effort to obtain a minimum of three competitive quotes from Emerging Small Businesses. To obtain maximum exposure for all firms and guard against favoritism, care shall be taken to obtain quotes from different firms each time the list is used. The College shall keep a written record of the source and amount of the quotes received and comply with the requirements, as applicable, of subsection (2)(e) of this rule. A lesser number will suffice provided a written record is maintained of the effort to obtain the quotes; and
- (e) When the Contract is for a “public improvement” as defined in ORS 279A.010(1)(cc) and/or for “public works” as defined in ORS 279C.800(6), and the Contract Price exceeds \$50,000 but is less than or equal to \$100,000, the College and the contractor shall comply with:
 - (i) The prevailing wage provisions of ORS 279C.800 to 279C.870, when applicable;
 - (ii) The contractor registration requirements of ORS 701; and
 - (iii) Any other law applicable to such a Contract.
- (5) If more than one supplier may be available and the total purchase is estimated to exceed \$100,000, the College shall select a contractor through a formal competitive solicitation process;
- (6) Pursuant to ORS 279C.105, when the Contract is for architectural, engineering, **photogrammetric mapping, transportation planning, or** land surveying **services, or and** related services, and the Estimated Fee is greater than \$100,000, the College shall screen and select a contractor through a formal competitive solicitation process as these procedures are defined in Appendix B, 137-048-0220, of these Community College Rules of Procurement.
- (7) Renegotiated Contracts for Supplies and Services
The College may renegotiate the terms and conditions, including the Contract Price, of a Contract without additional competition and amend a Contract if it is in the best interest of the College subject to the following conditions:
 - (a) The College must determine that, with all things considered, the renegotiated Contract is at least as favorable to the College as the original Contract; and
 - (b) The renegotiated Contract will not have a total term greater than allowed in the original Solicitation Document, Contract or approval of a Special Procurement after combining the initial and extended terms. For example, a one-year Contract, renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years. Also, if Contracts with a single Contractor are restated as a single Contract, the term of the single Contract may not have a total term greater than any one of the prior Contracts.
 - (c) If a Contractor offers a lower price in exchange for a change in term or condition that was expressly rejected in the original solicitation, the amended Contract may be structured with this changed term as an optional, but not as a mandatory Contract term.
 - (d) If the Contract is the result of a Cooperative Procurement, the amended Contract must be within the Scope of the Original Contract and may not materially change the terms, conditions, and prices of the Original Contract.
- (8) If the procurement is grant-funded, “Minimum Threshold” means the amount as identified by the grant-funding agency, if the grant-funding agency’s threshold requirements are more restrictive than the College’s. The College will follow the provisions of the Public Contracting rules of the grant-funding agency and/or those of the College, or a combination thereof, as identified by the grantor.

Comment:

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

Conclusion of Compliance with Law

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

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