OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

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CHAPTER 291
DEPARTMENT OF CORRECTIONS

FILING CAPTION: DOC Procurements for Institutions and Administration

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CONTACT: Julie Vaughn
971-701-0139
Julie.A.VAUGHN@doc.oregon.gov

3601 State St
Salem,OR 97301

Filed By:
Julie Vaughn
Rules Coordinator

RULES:
291-159-0010, 291-159-0020, 291-159-0030, 291-159-0040, 291-159-0050, 291-159-0060, 291-159-0070, 291-159-0080, 291-159-0090, 291-159-0100, 291-159-0110, 291-159-0120, 291-159-0130

ADOPT: 291-159-0010

RULE TITLE: Application

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts guidelines for the application of Division 159 regarding procurements or contracts.

RULE TEXT:
(1) Procurements conducted under ORS 179.040 and 279A.050(6)(i):
(a) OAR 291-159 rules apply to procurements of goods and services for Oregon Department of Corrections (DOC) institutions conducted under ORS 179.040 and 279A.050(6)(i) except as set forth in subsections (2)(b) and (2)(c) of this rule.
(b) For procurements conducted under subsection (1)(a) of this rule, DOC adopts:
(A) OAR 137-046-0100 through 137-046-0480 in effect as of January 1, 2023; and
(B) OAR 137-047-0000 through 137-047-0810 in effect as of January 1, 2023, with the exception of OAR 137-047-0330 and 137-047-0800. As applied to these procurements, references to OAR 137-047-0330 are replaced by OAR 291-159-0100 and references to OAR 137-047-0800 are replaced by OAR 291-159-0110.
(2) Other Procurements:
(a) OAR Chapter 291 Division 160 applies to Procurements of Goods and Services for the following programs conducted under ORS 421.438:
(A) Prison work and on-the-job training programs;
(B) Forest and work camps;
(C) Farm and agricultural operations and programs;
(D) Food Services Operations and Programs; and
(E) Facility or property maintenance operations and programs.
(b) OAR Chapter 125 Divisions 246, 247, 248, and 249, apply to:
(A) Procurements of Goods and Services for DOC institutions that DOC elects to conduct under OAR 125-247-0288

(Special Procurements; by Rule, including but not limited to client services);
(B) Procurements of Goods and Services not otherwise specified in this rule; and
(C) Intergovernmental and interagency agreements, but only to the extent they are specifically governed by OAR Chapter 125 Divisions 246, 247, 248, and 249.
(c) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services and Related Services. For Procurements of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, and Land Surveying Services and Related Services, DOC adopts OAR Chapter 125 Divisions 246, 247, 248, and 249 in effect as of January 1, 2023.
(3) In the event a conflict arises between these Division 159 rules and OAR Chapter 137 Division 46, the conflict will be resolved in the following order of precedence:
(a) The Public Contracting Code, ORS 279A, 279B, and 279C;
(b) OAR Chapter 291 Division 159;
(c) OAR Chapter 137 Division 46.
(4) For the convenience of the user, pointer rules pertaining to preferences are found at OAR 291-159-0050 through 291-159-0070. A pointer rule pertaining to protests is found at OAR 291-159-0140.
(5) These Division 159 rules apply to Procurements that DOC first advertises or otherwise solicits on or after January 1, 2023, or, if DOC does not advertise or solicit the Procurement, to Contracts that DOC enters into on or after January 1, 2023.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.065, 279A.140(1), 421.438

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.065, 279A.140(1), 421.438, 279.030

ADOPT: 291-159-0020

RULE TITLE: Definitions

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts definitions, including reference to the resources used for general definitions applicable to capitalized terms in Division 159 rules.

RULE TEXT:

(1) Food Services Operations and Programs: All material, equipment, food products, personal property, used equipment, and Services required for the handling, preparation, delivery, serving, consumption, and storage of food products for DOC's adult in custody (AIC) population.

(2) Independent Contractor: A Person who provides Services to DOC in which DOC neither controls nor has the right to control the means or manner by which work is performed. DOC may control the results of the Services but will not control the means or manner of the Contractor's performance of the work.

(3) The Public Contracting Code and Attorney General's Model Rules contain general definitions applicable to capitalized terms in these Division 159 rules.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.065, 279A.070, 279A.075

STATUTES/OTHER IMPLEMENTED: 279A.065, 279A.070, 279A.075

ADOPT: 291-159-0030

RULE TITLE: Delegation of Authority

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts guidelines for the Department of Corrections (DOC) to delegate any procurement for which DOC has independent statutory contracting authority to the Department of Administrative Services.

RULE TEXT:
The DOC Designated Procurement Officer may delegate in Writing, on a case-by-case basis, any Procurement for which DOC has independent statutory Contracting authority to the Oregon Department of Administrative Services (DAS). If DAS accepts a delegation, DAS shall process the delegated Procurement under OAR Chapter 125, Divisions 246, 247, 248, and 249. The DOC Designated Procurement Officer may at any time rescind any Written delegation issued under this rule.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.065, 279A.070, 279A.075

STATUTES/OTHER IMPLEMENTED: 279A.065, 279A.070, 279A.075

ADOPT: 291-159-0040

RULE TITLE: Disabled Veteran Preference

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts guidelines for the application of preference to businesses owned by disabled veterans.

RULE TEXT:

(1) Generally. DOC may promote goals, policies, or programs for a Disabled Veteran-owned business by giving a preference to a Disabled Veteran-owned business when awarding a Contract. In carrying out this goal, policy, or program, DOC may:

(a) Solicit the Contract exclusively to entities owned or controlled by Disabled Veterans;

(b) Award the Contract directly to an entity owned or controlled by Disabled Veterans;

(c) Use a percentage preference for entities owned or controlled by Disabled Veterans.

(2) Application. DOC may apply this preference as follows:

(a) For Procurements under OAR 291-159-0010(1)(a):

(A) DOC may give this preference for Contracts for Goods and Services estimated not to exceed $150,000; and

(B) DOC may give this preference for all other Contract types estimated not to exceed $50,000.

(b) For Procurements under OAR 291-159-0010(2)(b) and (2)(c), see OAR 125-246-0314.

(3) The DOC Designated Procurement Officer will make a Written determination supporting application of the preference including the estimation that a Contract will not exceed the applicable dollar thresholds specified in subsection (2) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.065, 279A.070, 279A.100(1)

STATUTES/OTHER IMPLEMENTED: 279A.065, 279A.070, 279A.100(1)

ADOPT: 291-159-0050

RULE TITLE: Resident Bidder Preference

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts rules that guide application of preferences for bidders whose principal place of business is in Oregon.

RULE TEXT:

(1) For Procurements under OAR 291-159-0010(1)(a), see OAR 137-046-0310.

(2) For Procurements under OAR 291-159-0010(2)(b) and (2)(c), see OAR 125-246-0310.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.120

STATUTES/OTHER IMPLEMENTED: 279A.120

ADOPT: 291-159-0060

RULE TITLE: Oregon Goods or Services Preference

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts rules that guide application of preference for procurements of goods and services that have been manufactured or produced in Oregon.

RULE TEXT:

(1) For Procurements under OAR 291-159-0010(1)(a), see OAR 137-046-0300.

(2) For Procurements under OAR 291-159-0010(2)(b) and (2)(c), see OAR 125-246-0300.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.128

STATUTES/OTHER IMPLEMENTED: 279A.128

ADOPT: 291-159-0070

RULE TITLE: Recycled Materials Preference

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts rules that guide application of preference for goods manufactured from recycled materials.

RULE TEXT:

(1) For Procurements under OAR 291-159-0010(1)(a), see OAR 137-046-0320.

(2) For Procurements under OAR 291-159-0010(2)(b) and (2)(c), see OAR 125-246-0322.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (i), 279A.125

STATUTES/OTHER IMPLEMENTED: 279A.125

ADOPT: 291-159-0080

RULE TITLE: Federal Program Procurements

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts guidelines for procurements made through federal programs.

RULE TEXT:

(1) For Procurements under OAR 291-159-0010(2)(b) and (2)(c), see OAR 125-246-0360.

(2) For Procurements under OAR 291-159-0010(1)(a), DOC may purchase supplies and Services through the General Service Administration (GSA) federal program or federal Contracts (Federal Program) without competitive sealed bidding, competitive sealed Proposals or other competition required under ORS 279B.050 to 279B.085, provided the following conditions are met:

(a) DOC has authority, including federal authorization, to purchase supplies and Services through Federal Programs;

(b) The purchase meets DOC's needs;

(c) The price and other terms of the purchase are advantageous to DOC;

(d) No mandatory Price Agreement for the supplies and Services exists, based upon DOC's inquiry through the Electronic Procurement System;

(e) State and local preference programs, including but not limited to adult in custody labor in accordance with the Oregon Constitution, Article I, Section 41, products of disabled individuals program of ORS 279.835 to 279.850, and mandatory use Contracts under OAR 125-247-0296, are not waived or otherwise adversely affected by an acquisition through a Federal Program;

(f) DOC has complied with OAR 137-045-0010 to 137-045-0090, and if it is required, obtained a legal sufficiency review or exemption from the Department of Justice; and

(g) DOC has considered the following impacts upon local business:

(A) If the Procurement is in excess of $10,000, DOC has given notice through the Electronic Procurement System of its needs, reasons, and intent to procure through a Federal Program;

(B) DOC has provided a reasonable time period under the circumstances for individuals to respond to the notice and send Written comments to DOC; and

(C) DOC has considered any comments and replied, if appropriate, before proceeding with its Procurement through a Federal Program.

(3) When DOC purchases supplies or Services under this rule, a new Contract will be formed when a Contractor accepts an order from DOC. The Contract's terms and conditions will be incorporated by reference.

(4) DOC and Contractors participate voluntarily. Contractors providing Services and supplies under this administrative rule will make direct deliveries to DOC. DOC retains the right to decline orders on a case-by-case basis, for any reason, within a five-business day period of receipt of any DOC Contract order made under this administrative rule.

(5) DOC may add any significant and substantial Contract terms and conditions that are required by state statutes or rules to any Contract created under this rule, provided the additional Contract terms and conditions do not conflict with the Federal Program's Contract terms and conditions. Examples of such terms and conditions include, but are not limited to:

(a) Prompt Payment. DOC may apply the terms and conditions of Oregon's prompt payment law to its Contracts, but if DOC fails to make this addition, then DOC may be subject to the Federal Prompt Payment Act, 31 U.S.C. sec. 3901 et seq., as implemented at subpart 32.9 of the Federal Acquisition Regulation (FAR);

(b) Commercial Terms. Patent indemnity and other commercial terms and conditions may be added if they do not conflict with the Federal Program's terms and conditions; and

(c) Conflict Resolution. DOC may revise the Contract's dispute resolution provision to use Alternative Dispute Resolution (ADR) to the extent authorized by law.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.065, 279A.070, 279A.180

STATUTES/OTHER IMPLEMENTED: 279A.065, 279A.070, 279A.180

ADOPT: 291-159-0090

RULE TITLE: Independent Contractor Status for Services Contracts

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts rules that guide contracts for services with independent contractors.

RULE TEXT:

(1) DOC will Contract for Services with Persons who are Independent Contractors.

(2) DOC will develop a statement of work for Services that will not result in an employee relationship with the potential contractor.

(3) An Independent Contractor certification shall be completed for each Independent Contractor and will be included as a provision in each Contract.

(4) If the nature of the Services or project is such that an employee/employer relationship exists or will likely exist, DOC will hire the individual through normal personnel procedures.

(5) All Contracts shall include the Independent Contractor's legal name and address. The Contractor shall provide DOC its federal Employer Identification Number (EIN) or Social Security Number (SSN), as applicable.

(6) All Contracts shall provide that the Independent Contractor is responsible for federal Social Security, except those categories excluded by law, and for any federal or state taxes applicable to the Contract payment.

(7) Violation of this administrative rule may result in DOC withdrawing an intent to Award a Contract, or termination of an existing Contract.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.065, 279A.070

STATUTES/OTHER IMPLEMENTED: 279A.065, 279A.070

ADOPT: 291-159-0100

RULE TITLE: Fragmentation

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts rule about artificially fragmenting procurements.

RULE TEXT:

A Procurement may not be artificially divided or fragmented for the purpose of restricting competition or circumventing a legal requirement.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.065, 279A.070

STATUTES/OTHER IMPLEMENTED: 279A.065, 279A.070

ADOPT: 291-159-0110

RULE TITLE: Electronic Procurement and Submittals

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts guidelines for posting electronic procurement advertisements and receiving electronic offers.

RULE TEXT:

(1) Electronic Procurement and Offers Authorized.

(a) DOC may conduct all phases of a Procurement under these rules, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent DOC specifies in the Written instructions of a Solicitation Document how to participate in the Procurement.

(b) DOC shall open Electronic Offers in accordance with electronic security measures in effect at the time of its receipt of the Electronic Offer.

(c) DOC may use electronic or digital Signatures in issuing, awarding, or executing any Solicitation, Procurement or Contract. DOC's use of electronic or digital Signatures shall be consistent with all applicable statutes and rules.

(d) If DOC determines that proposal security is or will be required, DOC shall not authorize Electronic Offers unless it has established methods for receipt of such security.

(2) Receipt of Electronic Offers.

(a) If DOC requires Electronic Offers in a Solicitation Document, the Offeror must submit an Electronic Offer in accordance with the Solicitation Document. DOC shall not consider Electronic Offers unless authorized by the Solicitation Document.

(b) When DOC conducts an electronic Procurement, all Electronic Offers must be submitted by the date and time identified in the Solicitation Document.

(c) A Person may withdraw an Electronic Offer at any time prior to the specified date and time in accordance with the Solicitation Document.

(3) Failure of the Electronic Procurement System. In the event of a failure of an Electronic Procurement System or electronic mail system that interferes with the ability of Persons to submit Electronic Offers, to protest or to otherwise participate in the Procurement, DOC may cancel the Procurement or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System or electronic mail system becomes available.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.065, 279A.070

STATUTES/OTHER IMPLEMENTED: 279A.065, 279A.070

ADOPT: 291-159-0120

RULE TITLE: Amendments to Contracts

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts guidelines for amendments to contracts.

RULE TEXT:

(1) For Procurements under OAR 291-159-0010(2)(b) and (2)(c), see OAR Chapter 125, Divisions 246, 247, 248, and 249.

(2) For Procurements under OAR 291-159-0010(1)(a), DOC may amend a Contract without additional competition in any of the following circumstances:

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

(b) These Division 159 rules otherwise permit DOC to award a Contract without competition for the Goods or Services to be procured under the amendment.

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

(d) The amendment results from renegotiation of the terms and conditions, not exclusive to Contract price, of a Contract and the amendment is advantageous to DOC, subject to all of the following conditions:

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

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

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

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

(4) Price Agreements. DOC may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) For Price Agreements subject to ORS Chapter 279B, if the circumstances set forth in ORS 279B.140(2) exist; or

(c) As permitted by applicable law.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.065, 279A.070

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.065, 279A.070

ADOPT: 291-159-0130

RULE TITLE: Protests

NOTICE FILED DATE: 09/14/2022

RULE SUMMARY: Adopts guidelines for when an offeror or potential offeror wishes to protest the procurement process, contents of a solicitation document, or award or proposed award.

RULE TEXT:

(1) Protests of Solicitation Documents.

(a) For Procurements under OAR 291-159-0010(1)(a), see OAR Chapter 137 Division 046.

(b) For Procurements under OAR 291-159-0010(2)(b) and (2)(c), see OAR 125-247-0240, 125-248-0240, or 125-249-0450, as applicable.

(2) Protests of Notices of Intent to Award and Contract Awards.

(a) For Procurements under OAR 291-159-0010(1)(a), see OAR 137-046-0470.

(b) For Procurements under OAR 291-159-0010(2)(b) and (2)(c), see OAR 125-247-0700 to 125-247-0740.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 279A.050(6)(h) - (6)(i), 279A.120

STATUTES/OTHER IMPLEMENTED: 279A.120