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DEPARTMENT OF JUSTICE

FILING CAPTION: Amends rules governing the Attorney General's Model Rules for Public Contracting Division 46.

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RULES:
137-046-0110, 137-046-0140, 137-046-0210, 137-046-0252, 137-046-0300

AMEND: 137-046-0110

RULE TITLE: Definitions for the Model Rules

NOTICE FILED DATE: 11/09/2023

RULE SUMMARY: RULE SUMMARY: Addition of two new definitions and renumbering of subsections, as appropriate:
- Section (4) Benefit Company: to address changes and comply with HB 3572 (2023).
- Section (38) Veteran: to address changes and comply with HB 2295 (2023)

RULE TEXT:
Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Model Rules have the meaning set forth in the division of the Model Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and if not defined here, the meaning set forth in the Code. The following terms, when capitalized in these Model Rules, have the meaning given below:
(1) “Addendum” or “Addenda” means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.
(2) “Administering Contracting Agency” has the meaning set forth in ORS 279A.200(1)(a) and for Interstate Cooperative Procurements includes the entities specified in ORS 279A.220(4).
(3) “Award” means, as the context requires, either identifying or the Contracting Agency’s identification of the Person with whom the Contracting Agency intends to enter into a Contract following the resolution of any protest of the Contracting Agency’s se election of that Person and the completion of all Contract negotiations.
(4) “Benefit company” means a corporation or a limited liability company that is incorporated, organized, formed or created under ORS 60.754 and the corporation’s articles of incorporation state that the corporation is a benefit company subject to ORS 60.750 to 60.770.
(5) “Bid” means a Written response to an Invitation to Bid.
(6) “Closing” means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(7) “Code” means the Public Contracting Code.
(8) “Competitive Range” means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with OAR 137-047-0261 or 137-049-0650.
(9) “Contract” means a contract for 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. “Contract” does not include grants.
(10) “Contract Price” means, as the context requires, the maximum monetary obligation that a Contracting Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.
(11) “Contract Review Authority” means:
(a) For State Contracting Agencies, generally the Director of the Oregon Department of Administrative Services;
(b) For Local Contracting Agencies, the Local Contracting Agency’s Local Contract Review Board determined as specified in ORS 279A.060; and
(c) Where specified by statute, the Director of the Oregon Department of Transportation.
(12) “Contractor” means the Person, including a Consultant as defined in OAR 137-048-0110(1), with whom a Contracting Agency enters into a Contract.
(13) “Descriptive Literature” means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.
(14) “Disqualification” means a disqualification, suspension or debarment under ORS 200.065, 200.075 or 279A.110.
(15) “Electronic Advertisement” means a Contracting Agency’s Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Contracting Agency’s Procurements made available over the Internet via:
(a) The World Wide Web or some other Internet protocol; or
(b) A Contracting Agency’s Electronic Procurement System.
(16) “Electronic Offer” means a response to a Contracting Agency's Solicitation Document or Request for Quotes submitted to a Contracting Agency via:
(a) The World Wide Web or some other Internet protocol; or
(b) A Contracting Agency’s Electronic Procurement System.
(17) “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 a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.
(18) “Invitation to Bid” or "ITB" means the Solicitation Document issued to invite Offers from prospective Contractors under either ORS 279B.055 or 279C.335.
(19) “Model Rules” means the Attorney General’s model rules of procedure for Public Contracting as required under ORS 279A.065.
(20) “Offer” means a Written offer to provide Goods or Services in response to a Solicitation Document.
(21) “Offeror” means a Person who submits an Offer.
(22) “Opening” means the date, time and place specified in the Solicitation Document for the public opening of Offers.
(23) “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.
(24) “Personal Services” as used in division 47 and as used in division 46 when applicable to division 47 means the services performed under a Personal Services Contract. “Personal Services” as used in division 48 and division 49, and as used in this division 46 when applicable to division 48 or division 49, or both, has the meaning set forth in ORS

279C.100.
(25) “Personal Services Contract” means:
(a) For a Local Contracting Agency, a Contract or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), that the Local Contracting Agency's Local Contract Review Board has designated as a personal services contract pursuant to ORS 279A.055; or
(b) For a State Contracting Agency, a Contract, or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), 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 an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver or sculptor).
(26) “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.
(27) “Proposal” means a Written response to a Request for Proposals.
(28) “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)).
(29) “Request for Qualifications” or “RFQ” means a Written document issued by a Contracting Agency to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services or Architectural, Engineering or Land Surveying Services, or Related Services, described in the document.
(30) “Request for Quotes” 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.
(31) “Responsible” means meeting the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and not debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.
(32) “Responsible Offeror” means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and who has not been debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.
(33) “Responsive” means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.
(34) “Responsive Offer” means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.
(35) “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.
(36) “Signed” means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.
(37) “Solicitation Document” means an Invitation to Bid, Request for Proposals, Request for Quotes, or other similar document issued to invite Offers from prospective Contractors under ORS Chapter 279B or 279C. The following are not Solicitation Documents unless they invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, a sole source notice, an approval of a Special Procurement, or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Solicitation Document is not itself a Solicitation Document.
(38) “Veteran” has the meaning set forth in ORS 200.005.
(39) “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.

(40) “Written” means existing in Writing.

STATUTORY/OTHER AUTHORITY: ORS 279A.065

STATUTES/OTHER IMPLEMENTED: ORS 279A.065

AMEND: 137-046-0140

RULE TITLE: Solicitation Document Templates; Contract Forms and Contract Templates; Accountability for Advice

NOTICE FILED DATE: 11/09/2023

RULE SUMMARY: • Section (1): 2015 Oregon Laws, chapter 646, section 2 updated to ORS 279A.157.
• Sections (3) and (6): In anticipation of a revision to the legal sufficiency review and approval thresholds, references to $150,000 were deleted and more generic language incorporating references to the statutes, ORS 279A.157 and ORS 279A.161 were inserted.

RULE TEXT:
(1) The Attorney General and the Director of the Oregon Department of Administrative Services will make available to state agencies Solicitation Document templates, Contract forms, and Contract templates as described in ORS 279A.157. State agencies shall use approved Solicitation Document templates, Contract forms or Contract templates as required byORS 279A.157.
(2) The Attorney General, in cooperation with the Oregon Department of Administrative Services, will develop and make available to state agencies the process the Attorney General and the department will use to approve and designate Solicitation Document templates, Contract forms and Contract templates for required use, including the process for revising, updating or approving agency-specific variations of the approved Solicitation Document templates, Contract forms, and Contract templates.
(3) Contract forms and Contract templates include amendments to Contracts, including change orders, purchase orders, and other ordering instruments issued under Contracts, when the amendments, change orders, purchase orders, or other ordering instruments provide for payment in excess of the threshold for legal sufficiency review and approval as set forth in ORS 291.047 and the Attorney General's Rules for the Review of Public Contracts.
(4) The Attorney General may exempt from required use a Solicitation Document template, Contract form, or Contract template that is approved by the Attorney General, subject to any conditions the Attorney General may impose on the continued use of the exempted and approved Solicitation Document template, Contract form or Contract template.
(5) The Attorney General, in cooperation with the Department of Administrative Services, shall specify how state agencies may access the approved Solicitation Document templates, Contract forms or Contract templates and shall also provide a list of the Solicitation Document templates, Contract forms or Contract templates that are exempt from the required use.
(6) Before a State Contracting Agency executes a Contract with a Contract Price that exceeds the threshold for legal sufficiency review and approval as set forth in ORS 291.047 and the Attorney General's Rules for the Review of Public Contracts, the State Contracting Agency must designate in Writing the state employee who will oversee a specific Contract, or specifically identified Contracts, or a specifically identified category of Contracts. The Written designation must identify the employee as the "Contract Administrator" for the Contract or Contracts. The director or other head of the State Contracting Agency (or that officer's designee under ORS 279A.161 must verify that the Contract Administrator has read and understands all advice and recommendations given with respect to the Contract and Procurement. The director or other head of the State Contracting Agency (or that officer's designee) shall sign and preserve as an Agency record a statement acknowledging that the officer reviewed the advice and recommendations, and made the verification, in accordance with ORS 279A.161.
(7) As used in ORS 279A.161, "advice and recommendations" means material advice and recommendations from the Oregon Department of Justice or the Oregon Department of Administrative Services to a State Contracting Agency with respect to a specific Contract and amendments to the Contract, or a Procurement that resulted in the Contract. The term does not include advice or recommendations provided to a State Contracting Agency that were not directed to a specific Contract or Procurement. For example, programmatic advice or recommendations that address the general scope of authority or required procedures of a State Contracting Agency program do not constitute advice and recommendations. Material advice or recommendations are Written communications that address: (i) subject matter that modifies or influences the meaning, performance, administration, or means of enforcement of a Contract; or (ii) the

allocation of significant liabilities or risk under a Contract.

STATUTORY/OTHER AUTHORITY: ORS 279A.065, OL 2015, ch 646 (HB 2375)

STATUTES/OTHER IMPLEMENTED: OL 2015, ch 646 (HB 2375)

AMEND: 137-046-0210

RULE TITLE: Subcontracting to and Contracting with Emerging Small Businesses; Disqualification

NOTICE FILED DATE: 11/09/2023

RULE SUMMARY: Revisions to Section (2) to comply with the changes in law under HB 2295 (2023) related to preferences for "service-disabled veteran" to "veteran owned businesses."

RULE TEXT:

(1) For purposes of ORS 279A.105, a subcontractor certified under 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed under administrative rules adopted by the Oregon Business Development Department; or

(b) The Contractor certifies in a Signed Writing to the Contracting Agency that a substantial number of the subcontractor's employees or subcontractors that will manufacture or provide the Goods or perform the Services or Personal Services under the Contract reside in an area designated as economically distressed under administrative rules adopted by the Oregon Business Development Department. For the purposes of making the foregoing determination, the Contracting Agency shall determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitutes a substantial number.

(2) Contracting Agencies shall include in each Solicitation Document a requirement that Offerors certify in their Offers, in a form prescribed by the Contracting Agency, that the Offeror has not discriminated, and will not discriminate, against a subcontractor in the awarding of a subcontract because the subcontractor is certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, an emerging small business, or a Veteran-owned business .

(3) Disqualification.

(a) A Contracting Agency may disqualify a Person from consideration for Award of the Contracting Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Contract under ORS 200.075(1), after providing the Person with notice and a reasonable opportunity to be heard in accordance with subsections (b) and (c) of this Section.

(b) The Contracting Agency shall provide Written notice to the Person of a proposed Disqualification. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the Contracting Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived the right to a hearing;

(D) Include a statement of the authority under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) Hearing. The Contracting Agency shall schedule a hearing upon the Contracting Agency's receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.

(d) Notice of Disqualification. The Contracting Agency shall provide Written notice of the Disqualification to the Person. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of Disqualification;

(B) The grounds for Disqualification; and
(C) A statement of the Person's appeal rights and applicable appeal deadlines.
(4) Contract and Subcontract Conditions. If a Contracting Agency awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8) and 200.045(3), or awards a Contract under ORS 279A.100:
(a) The Contracting Agency must provide, as a material condition of the Contract:
(A) That the Contractor must maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the award of the Contract);
(B) That the Contractor must promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or 279C.570 and ORS 279C.580, whichever apply to the Contract;
(C) That the Contractor must include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the award of the subcontract);
(D) That the Contracting Agency may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.
(b) In the administration of Contracts that are subject to section (4) of this rule, the Contracting Agency must verify the Contractor's and any subcontractor's compliance with subsection (4)(a) of this rule.
(c) Subparagraph (4)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This section (4) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

STATUTORY/OTHER AUTHORITY: ORS 279A.065

STATUTES/OTHER IMPLEMENTED: ORS 200.065, ORS 200.075, ORS 279A.065, ORS 279A.105, ORS 279A.110, OL 2015, ch 325 (HB 2716), OL 2015, ch 565 (HB 3303)

AMEND: 137-046-0252

RULE TITLE: Personnel Employment Disclosure and Preference — State Agency Contracts for Goods or Services

NOTICE FILED DATE: 11/09/2023

RULE SUMMARY: Update Session law references with applicable statutory reference.

- Sections (1), (2), (3), (4), (5): subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518) updated to ORS 279B.112

RULE TEXT:

(1) As authorized by ORS 279B.112, a state contracting agency may state, in its Solicitation Documents for a procurement of goods or services, that the state contracting agency will consider, and award a preference based on, personnel deployment disclosures submitted by bidders or proposers in response to the solicitation.

(2) A state contracting agency may not reject a bidder or proposer on the ground that it submitted a non-responsive bid or proposal solely due to the bidder's or proposer's failure to submit a personnel employment disclosure. However, the state contracting agency may not apply the preference authorized by ORS 279B.112in favor of a bidder or proposer that fails to submit a complete and accurate personnel disclosure form with its bid or proposal on or before the date and time bids or proposals are due.

(3) To qualify for the application of the preference under ORS 279B.112, a bidder's or proposer's personnel deployment disclosure form must state:

(a) The number of workers the bidder or proposer and the bidder's or proposer's subcontractors will, if awarded a contract, deploy to perform the overall contract work described in the Solicitation Documents.

(b) The number of workers the bidder or proposer and the bidder's or proposer's first-tier subcontractors will, if awarded a contract, employ in this state to perform contract work described in the Solicitation Documents.

(c) The number of jobs to be held by workers employed by the bidder or proposer and by the bidder's or proposer's subcontractors to perform the contract work described in the Solicitation Documents that will be newly created jobs that result from the award of the contract.

(d) The duration of the work of any workers (stated in number of work days) who will be employed in this state to perform contract work described in the Solicitation Documents for all workers (including workers of first-tier subcontractors) for whom the work duration will not be as long as the initial term of the contract.

(e) The rates of pay of all reported workers (including workers of first-tier subcontractors), described either individually, by position, or by job classification, who will be employed in this state to perform contract work described in the Solicitation Documents.

(4) To qualify for the application of the preference under ORS 279B.112, a bidder or proposer must make a promise in its bid or proposal to ensure that the deployment of workers will comply, in terms of worker positions, duration of the work, and the location of the employment of workers, with the personnel deployment disclosure submitted with its bid or proposal. If awarded a contract, a bidder or proposer must commit, in the contract, to ensure that the deployment of workers will comply, in terms of worker positions, duration of the work, and the location of the employment of workers, with the personnel deployment disclosure submitted with its bid or proposal. In the contract, the contractor must agree to pass this obligation to all first-tier subcontractors.

(5) A state contracting agency may require a contractor under a contract awarded with the application of the preference under ORS 279B.112 to submit, on a monthly or other periodic basis, the contractor's certification of its employment of workers and its first-tier subcontractors' workers) within this state in accordance with the contractor's personnel deployment disclosure.

(6) A state contracting agency may give a preference of not more than ten percent to a bid or proposal that states that the bidder or proposer (and its first-tier subcontractors) will employ more workers within this state than competing bidders or proposers. In determining the bidder or proposer who will employ more workers within this state, the state contracting agency may take the rates of pay and the duration of the work into account by averaging the rates of pay for all disclosed in-state work positions and averaging the duration of the in-state work positions among all disclosed in-

state work positions. Before granting the preference to a bid or proposal, the agency must determine that the competing proposals otherwise suit the state agency's specifications for the procurement equally well.
(7) In applying the preference, a state contracting agency must achieve fairness by assigning a standard work-deployment period for each solicitation that does not exceed the duration of the initial term of any contract awarded with the application of the preference, or in project completion-based contracts, does not exceed the probable duration of the project work exclusive of a contractor's performance of warranty work and maintenance.
(8) Where a state contracting agency determines that a personnel deployment disclosure unreasonably or unrealistically overstates the number of workers a bidder or proposer (and first-tier subcontractors) will employ within this state, the state contracting agency may reject the bid or proposal on grounds of bidder or proposer non-responsibility, or in a proposal situation, may deduct proposal evaluation points.

STATUTORY/OTHER AUTHORITY: ORS 279A.065

STATUTES/OTHER IMPLEMENTED: 2012 OL, ch 53

AMEND: 137-046-0300

RULE TITLE: Preference for Oregon Goods and Services

NOTICE FILED DATE: 11/09/2023

RULE SUMMARY: In Section (5), the addition of a discretionary preference for benefit companies under HB 3572 (2023).

RULE TEXT:

(1) Tiebreaker Preference and Award When Offers Are Identical. Under ORS 279A.120, when a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the Contracting Agency shall Award the Contract based on the following order of precedence:

(a) The Contracting Agency shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon.

(b) If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, the Contracting Agency shall Award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(c) If the Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, then the Contracting Agency shall award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(2) Determining if Offers are Identical. A Contracting Agency shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services, or both, or Personal Services, described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Offers received in response to a Special Procurement conducted under ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Contracting Agency determines, in Writing, that two or more Offers are equally advantageous to the Contracting Agency.

(d) Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the Contracting Agency in accordance with 279B.070(4).

(3) Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon. In applying Section 1 of this rule, Contracting Agencies shall determine whether a Contract is predominantly for Goods, Services or Personal Services and then use the predominant purpose to determine if the Goods, Services or Personal Services are manufactured, produced, or performed in Oregon. Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time the Contracting Agency determines is appropriate, any information the Contracting Agency may need to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods, Services or Personal Services are manufactured, produced, or performed in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency applies those criteria equally to each Offer.

(4) Procedure for Drawing Lots. When this rule calls for the drawing of lots, the Contracting Agency shall draw lots by a

procedure that affords each Offeror subject to the drawing a substantially equal probability of selection and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) Discretionary Preference and Award. Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than ten percent for (i) Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon or (ii) for goods or services provided by a benefit company that is incorporated, organized, formed or created under ORS 60.754 and has the majority of the benefit company's regular, full-time workforce located in this state, if the goods or services cost not more than five percent more than the goods or services available from a contractor that is not a benefit company. When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. A Contracting Agency may establish a preference percentage higher than ten percent by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage. A Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

STATUTORY/OTHER AUTHORITY: ORS 279A.065, OL 2011, ch 237

STATUTES/OTHER IMPLEMENTED: ORS 279A.065, ch 237, ORS 279A.120, ORS 279A.128