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DIVISION 1

PROCEDURAL RULES

125-001-0000

Notice of Proposed Rule

Prior to adoption, amendment or repeal of any rule, the Department of Administrative Services shall give notice of the intended action by:

(1) Publishing in the Secretary of State's Bulletin, referred to in ORS 183.360, at least 21 days prior to the effective date of the intended action.

(2) Mailing a copy of the notice to certain legislators at least 49 days before the effective date of the rule. ORS 183.335(1)(d).

(3)(a) Mailing a copy of the notice to persons or organizations on the Department's mailing list, established pursuant to ORS 183.335(7), at least 28 days prior to the effective date of the intended action.

(b) An interested person or organization may request to be placed on the Department's mailing list by submitting its request in writing to the Agency Rules Coordinator, Office of Business Administration, 155 Cottage Street NE, Salem, OR 97301 or by telephoning 503-373-7245 ext. 320.

(4) Mailing or furnishing a copy of the notice to:

- (a) The Associated Press;
- (b) State Agency Administrators; and
- (c) The Capitol Building Press Room.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

Hist.: GS 2-1978, f. & ef. 4-25-78; GS 1-1980, f. & ef. 1-11-80; GS 2-1982, f. 1-29-82, ef. 2-1-82; GS 6-1986, f. 9-3-86, ef. 10-1-86; DASII 5-1996, f. 12-31-96, cert. ef. 1-1-97; DAS 6-2003, f. & cert. ef. 10-24-03

125-001-0005

Uniform and Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Department adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act, effective October 3, 2003 to govern rulemaking and contested cases or equivalent proceedings by the Department of Administrative Services.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the agency.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

Hist.: GS 2-1978, f. & ef. 4-25-78; GS 1-1980, f. & ef. 11-11-80; GS 8-1981, f. & ef. 12-4-81; GS 2-1982, f. 1-29-82, ef. 2-1-82; GS 6-1986, f. 9-3-86, ef. 10-1-86; DASII 5-1996, f. 12-31-96, cert. ef. 1-1-97; DAS 6-2003, f. & cert. ef. 10-24-03

DIVISION 7

CRIMINAL RECORDS CHECK AND FITNESS DETERMINATION RULES

125-007-0200

Statement of Purpose and Statutory Authority

(1) **Purpose.** These rules control the Department's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, volunteer, contractor or vendor in a position covered by OAR 125-007-0220(2)(a)-(n). The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee, volunteer, contractor or vendor.

(2) **Authority.** These rules are authorized under ORS 181.534, 184.340 and 184.365.

Stat. Auth.: ORS 181.534, 184.340, 184.365

Stats. Implemented: ORS 181.534(9)

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0210

Definitions

As used in OAR chapter 125, division 007, unless the context of the rule requires otherwise, the following definitions apply:

(1) **"Approved"** means that, pursuant to a preliminary fitness determination under OAR 125-007-0240 or a final fitness determination under 125-007-0260, an authorized designee has determined that the subject individual is fit to be an employee, volunteer, contractor or vendor in a position covered by 125-007-0220(2)(a)-(n).

(2) **"Authorized Designee"** means a Department employee authorized to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

(3) **"Conviction"** means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(4) **"Criminal Offender Information"** includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(5) **"Crime Relevant to a Fitness Determination"** means a crime listed or described in OAR 125-007-0270.

(6) **"Criminal Records Check and Fitness Determination Rules"** or "These Rules" means OAR chapter 125, division 007.

(7) **"Criminal Records Check"** or "CRC" means one of three processes undertaken to check the criminal history of a subject individual:

(a) A check of criminal offender information and motor vehicle registration and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Criminal Records Check);

(b) A check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Department's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department's request (Nationwide Criminal Records Check).

(8) **"Denied"** means that, pursuant to a preliminary fitness determination under OAR 125-007-0240 or a final fitness determination under 125-007-0260, an authorized designee has determined that the subject individual is not fit to be an employee, volunteer, contractor or vendor in a position covered by 125-007-0220(2)(a)-(n).

(9) **"Department"** means the Oregon Department of Administrative Services (DAS) or any subdivision thereof.

(10) **"False Statement"** means that, in association with an activity governed by these rules, a subject individual either provided the Department with materially false information about his or her criminal history, such as materially false information about his or her identity or conviction record, or failed to provide to the Department information material to determining his or her criminal history.

(11) **"Fitness Determination"** means a determination made by an authorized designee pursuant to the process established in OAR 125-007-0240 (preliminary fitness determination) or 125-007-0260 (final fitness determination) that a subject individual is or is not fit to be a Department employee, volunteer, contractor or vendor in a position covered by 125-007-0220(2)(a)-(n).

(12) **"Other Criminal Records Information"** means any information, in addition to criminal offender information, sought or obtained by the Department about a subject individual relevant to determining the individual's criminal history.

(13) **"Related"** means that an individual has a relationship with another person described by one of the following labels: spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(14) **"Subject Individual"** means an individual identified in OAR 125-007-0220 as someone from whom the Department may require fingerprints for the purpose of conducting a criminal records check.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0220

Subject Individual

"Subject Individual" means a person from whom the Department may require fingerprints for the purpose of conducting a criminal records check because the person:

(1)(a) Is employed by or applying for employment with the Department; or

(b) Provides services or seeks to provide services to the Department as a volunteer, contractor, or vendor; and

(2) Is, or will be, working or providing services in a position:

(a) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(b) In which the person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;

(c) That has payroll functions;

(d) In which the person has responsibility for receiving, accepting or depositing money or negotiable instruments;

(e) In which the person has responsibility for billing, collections or other financial transactions;

(f) In which the person has responsibility for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

(g) That has mailroom duties as the primary duty or job function of the position;

(h) In which the person has responsibility for auditing the Department or other governmental agencies;

(i) That has personnel or human resources functions as one of the position's primary responsibilities;

(j) In which the person has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal history information;

(k) In which the person has access to chemicals or hazardous materials, to facilities in which chemicals and hazardous materials are present or to information regarding the transportation of chemical or hazardous materials;

(l) In which the person has access to property to which access is restricted in order to protect the health or safety of the public;

(m) In which the person provides security, design or construction services for government buildings, grounds or facilities; or

(n) In which the person has access to critical infrastructure or security-sensitive facilities or information.

Stat. Auth.: ORS 181.534, 184.340, 184.365

Stats. Implemented: ORS 181.534(9)

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0230

Criminal Records Check Process

(1) Disclosure of Information by Subject Individual.

(a) Preliminary to a criminal records check, a subject individual shall complete and sign the DAS Criminal Records Request form and, if requested by the Department, a fingerprint card. Both forms ask for identifying information, e.g., name, birth date, Social Security Number, physical characteristics, marital status, driver's license or identification card number and current address. The DAS Criminal Records Request form also asks for information about prior residences and for details concerning any circumstance listed in OAR 125-007-0240(3)(a)-(f).

(b) A subject individual shall complete and submit to the Department the DAS Criminal Records Request form and, if requested, a fingerprint card within three business days of receiving the forms. An authorized designee may extend the deadline for good cause.

(c) The Department shall receive a fingerprint card from a subject individual under the age of 18 years only if the subject individual also submits the written consent of a parent or guardian.

(d) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by the Department in order to resolve an issue hindering the completion of a criminal records check, e.g., providing additional proof of identity.

(2) When a Criminal Records Check is conducted. An authorized designee may conduct, or request that the Oregon Department of State Police conduct, a criminal records check when:

(a) An individual meets the definition of "subject individual," but has not been approved under these rules, unless the individual was a Department employee serving in his or her current position prior to the effective date of these rules and that position does not involve authorized designee responsibilities;

(b) An individual employed by the Department meets the definition of "subject individual" because he or she is either moving to or applying for a position that meets the criteria of OAR 125-007-0220(2)(a)-(n), if:

(A) The Department has not conducted a fitness determination on the subject individual within the previous three years;

(B) The subject individual had been previously approved under OAR 125-007-0260(3)(b); or

(C) An authorized designee determines that the new position requires greater responsibility for functions covered by OAR 125-007-0220(2)(a)-(n) than the subject individual's prior position;

(c) An authorized designee has reason to believe that a subject individual committed a crime listed in OAR 125-007-0270 and

either a fitness determination has not yet been done on the subject individual or the crime had not been identified in a prior fitness determination;

(d) An authorized designee has reason to believe that a factor relevant to a fitness determination listed in OAR 125-007-0260(2), not previously identified in a fitness determination, applies to a subject individual who had been previously approved under OAR 125-007-0260(3)(b);

(e) Required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department.

(3) Which Criminal Records Check(s) Is Conducted. When an authorized designee determines under subsection (2) of this rule that a criminal record check is needed, the authorized designee shall proceed as follows:

(a) LEDS Criminal Records Check. The authorized designee shall conduct a LEDS criminal records check as part of any fitness determination conducted in regard to a subject individual.

(b) Oregon Criminal Records Check. The authorized designee shall request that the Oregon Department of State Police conduct an Oregon criminal records check when:

(A) The authorized designee determines that an Oregon criminal records check is warranted after review of the information provided by the subject individual, the results of a LEDS criminal records check, or other criminal records information; or

(B) The authorized designee requests a nationwide criminal records check.

(c) Nationwide Criminal Records Check. The authorized designee shall request that the Oregon Department of State Police conduct a nationwide criminal records check when:

(A) A subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years;

(B) Information provided by the subject individual or the results of a LEDS or Oregon criminal records check provide reason to believe, as determined by an authorized designee, that the subject individual has a criminal history outside of Oregon;

(C) As determined by an authorized designee, there is reason to question the identity of or information provided by a subject individual because, e.g., the subject individual fails to disclose a Social Security Number, discloses a Social Security Number that appears to be invalid, or does not have an Oregon driver's license or identification card;

(D) A check is required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department;

(E) A subject individual is a DAS employee working in, moving to, or applying for a position within the State Data Center or Enterprise Security Office;

(F) The Department Director or Deputy Director seeks to serve as an authorized designee; or

(G) A subject individual is a DAS employee working in, moving to, or applying for a position within the Personnel Unit of the Department's Operations Division designated by the Department Director or the Director's designee as including the responsibilities of an authorized designee.

Stat. Auth.: ORS 181.534, 184.340, 184.365

Stats. Implemented: ORS 181.534(9)

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0240

Preliminary Fitness Determination

(1) An authorized designee may conduct a preliminary fitness determination if the Department is interested in hiring or appointing a subject individual on a preliminary basis, pending a final fitness determination.

(2) An authorized designee shall make a preliminary fitness determination about a subject individual based on information disclosed by the subject individual under OAR 125-007-0230(1) and a LEDS criminal records check.

(3) The authorized designee shall approve a subject individual as fit on a preliminary basis if the authorized designee has no

reason to believe that the subject individual has made a false statement and the information available to the authorized designee does not disclose that the subject individual:

- (a) Has been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under OAR 125-007-0270;
- (b) Within the last five years, has been arrested for or charged with a crime listed under OAR 125-007-0270;
- (c) Is being investigated for, or has an outstanding warrant for a crime listed under OAR 125-007-0270;
- (d) Is currently on probation, parole, or another form of post-prison supervision for a crime listed under OAR 125-007-0270;
- (e) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 125-007-0270; or
- (f) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 125-007-0270 if committed by an adult.

(4) If the information available to the authorized designee discloses one or more of the circumstances identified in section (3), the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the authorized designee concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(5) If a subject individual is either approved or denied on the basis of a preliminary fitness determination, an authorized designee thereafter shall conduct a fitness determination under OAR 125-007-0260.

(6) A subject individual may not appeal a preliminary fitness determination, under the process provided under OAR 125-007-0300 or otherwise.

Stat. Auth.: ORS 181.534, 184.340, 184.365
 Stats. Implemented: ORS 181.534(9)
 Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0250

Hiring or Appointing on a Preliminary Basis

(1) The Department may hire or appoint a subject individual on a preliminary basis if an authorized designee has approved the subject individual on the basis of a preliminary fitness determination under OAR 125-007-0240.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Department.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service and, if terminated prior to completion of a final fitness determination under OAR 125-007-0260, may not appeal the termination under the process provided under 125-007-0300.

(4) If a subject individual hired or appointed on a preliminary basis is denied upon completion of a final fitness determination, as provided under OAR 125-007-0260(3)(d), then the Department shall immediately terminate the subject individual's employment or appointment.

(5) A subject individual whose employment or appointment is terminated under subsection (4) of this rule may avail himself or herself of the appeal process provided under OAR 125-007-0300.

Stat. Auth.: ORS 181.534, 184.340, 184.365
 Stats. Implemented: ORS 181.534(9)
 Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0260

Final Fitness Determination

(1) An authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 125-007-0230(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, an authorized designee shall consider the factors in subsections (a)–(f) in relation to information provided by the subject individual under OAR 125-007-0230(1), any LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain other criminal records information from the subject individual or any other source, including law enforcement agencies or courts within or outside of Oregon. To acquire other criminal offender information from the subject individual, an authorized designee may request to meet with the subject individual, to receive written materials from him or her, or both. The authorized designee will use all collected information in considering:

- (a) Whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 125-007-0270;
- (b) The nature of any crime identified under subsection (a);
- (c) The facts that support the conviction, finding of guilty except for insanity, or pending indictment;
- (d) The facts that indicate the subject individual made a false statement;
- (e) The relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and
- (f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a);

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a);

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 127-007-0270;

(E) Whether a conviction identified under subsection (a) has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon;

(F) A recommendation of an employer;

(G) The disposition of a pending indictment identified under subsection (a);

(H) Whether the subject individual has been arrested for or charged with a crime listed under OAR 125-007-0270 within the last five years;

(I) Whether the subject individual is being investigated, or has an outstanding warrant, for a crime listed under OAR 125-007-0270;

(J) Whether the subject individual is currently on probation, parole or another form of post-prison supervision for a crime listed under 125-007-0270;

(K) Whether the subject individual has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 125-007-0270;

(L) Whether the subject individual has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 125-007-0270 if committed by an adult;

(M) Periods of incarceration of the subject individual;

(N) Whether the subject individual has a history of drug or alcohol abuse which relates to his or her criminal activity and the subject individual's history of treatment or rehabilitation for such abuse; and

(O) The education and work history (paid or volunteer) of the subject individual since the commission or alleged commission of a crime.

(3) Possible Outcomes of a Final Fitness Determination

(a) Automatic Approval. An authorized designee shall approve a subject individual if the information described in sections (1) and (2) shows:

(A) No credible evidence that the subject individual has been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 125-007-0270(1);

(B) No credible evidence that the subject individual had been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 125-007-0270(2) within ten years of the date that the subject individual signed the DAS Criminal Records Request form;

(C) No credible evidence that the subject individual had been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 125-007-0270(3) within five years of the date that the subject individual signed the DAS Criminal Records Request form;

(D) No credible evidence that the subject individual has a pending indictment for a crime listed in OAR 125-007-0270;

(E) No credible evidence of the subject individual having made a false statement; and

(F) No discrepancies between the criminal offender information, other criminal records information and information obtained from the subject individual.

(b) Evaluative Approval. If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)–(F) of this rule, an authorized designee may approve the subject individual only if, in evaluating the information described in sections (1) and (2), the authorized designee determines that the subject individual acting in the position for which the fitness determination is being conducted would not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(c) Restricted Approval.

(A) If an authorized designee approves a subject individual under subsection (3)(b) of this rule, the authorized designee may restrict the approval to specific activities or locations.

(B) An authorized designee shall complete a new criminal records check and fitness determination on the subject individual prior to removing a restriction.

(d) Denial.

(A) If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)–(F) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to the Department, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position.

(B) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the authorized designee shall deny the subject individual as not fit without further assessment under the fitness determination process.

(C) If a subject individual is denied as not fit, then the subject individual may not be employed by or provide services as a volunteer, contractor or vendor to the Department in a position covered by OAR 125-007-0220(2).

(4) Final Order. A completed final fitness determination becomes a final order of the Department unless the affected subject individual appeals by requesting either a contested case hearing as provided by OAR 125-007-0300(2)(a) or an alternative appeals process as provided by OAR 125-007-0300(6).

Stat. Auth.: ORS 181.534, 184.340, 184.365

Stats. Implemented: ORS 181.534(9)

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0270

Crimes Relevant to a Fitness Determination

(1) Permanent Review Crimes.

(a) ORS 162.015, Bribe giving;

(b) ORS 162.025, Bribe receiving;

(c) ORS 162.065, Perjury;

(d) ORS 162.085, Unsworn falsification;

(e) ORS 162.155, Escape II;

(f) ORS 162.165, Escape I;

(g) ORS 162.235, Obstructing governmental or judicial administration;

(h) ORS 162.265, Bribing a witness;

(i) ORS 162.275, Bribe receiving by a witness;

(j) ORS 162.305, Tampering with public records;

(k) ORS 162.325, Hindering prosecution;

(l) ORS 162.405, Official misconduct II;

(m) ORS 162.415, Official misconduct I;

(n) ORS 162.425, Misuse of confidential information;

(o) ORS 163.005, Criminal homicide;

(p) ORS 163.095, Aggravated murder;

(q) ORS 163.115, Murder;

(r) ORS 163.118, Manslaughter I;

(s) ORS 163.125, Manslaughter II;

(t) ORS 163.145, Criminally negligent homicide;

(u) ORS 163.160, Assault IV;

(v) ORS 163.165, Assault III;

(w) ORS 163.175, Assault II;

(x) ORS 163.185, Assault I;

(y) ORS 163.187, Strangulation;

(z) ORS 163.190, Menacing;

(aa) ORS 163.200, Criminal mistreatment II;

(bb) ORS 163.205, Criminal mistreatment I;

(cc) ORS 163.207, Female genital mutilation;

(dd) ORS 163.208, Assault of Public Safety Officer;

(ee) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;

(ff) ORS 163.225, Kidnapping II;

(gg) ORS 163.235, Kidnapping I;

(hh) ORS 163.257, Custodial interference I;

(ii) ORS 163.275, Coercion;

(jj) ORS 163.355, Rape III;

(kk) ORS 163.365, Rape II;

(ll) ORS 163.375, Rape I;

(mm) ORS 163.385, Sodomy III;

(nn) ORS 163.395, Sodomy II;

(oo) ORS 163.405, Sodomy I;

(pp) ORS 163.408, Unlawful Sexual penetration II;

(qq) ORS 163.411, Unlawful Sexual penetration I;

(rr) ORS 163.415, Sexual abuse III;

(ss) ORS 163.425, Sexual abuse II;

(tt) ORS 163.427, Sexual abuse I;

(uu) ORS 163.435, Contributing to the sexual delinquency of a minor;

(vv) ORS 163.452, Custodial sexual misconduct I;

(ww) ORS 163.454, Custodial sexual misconduct II;

(xx) ORS 163.465, Public indecency;

(yy) ORS 163.515, Bigamy;

(zz) ORS 163.525, Incest;

(aaa) ORS 163.535, Abandonment of a child;

(bbb) ORS 163.537, Buying or selling a person under 18 years of age;

(ccc) ORS 163.545, Child neglect II;

(ddd) ORS 163.547, Child neglect I;

(eee) ORS 163.555, Criminal nonsupport;

(fff) ORS 163.575, Endangering the welfare of a minor;

(ggg) ORS 163.670, Using child in display of sexually explicit conduct;

(hhh) ORS 163.684, Encouraging child sexual abuse I;

(iii) ORS 163.686, Encouraging child sexual abuse II;

(jjj) ORS 163.687, Encouraging child sexual abuse III;

(kkk) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;

(lll) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;

(mmm) ORS 163.693, Failure to report child pornography;

(nnn) ORS 163.732, Stalking;
 (ooo) ORS 164.057, Aggravated theft I;
 (ppp) ORS 164.075, Theft by extortion; ORS 164.085, Theft by deception;
 (qqq) ORS 164.125, Theft of services; ORS 164.162, Mail theft or receipt of stolen mail;
 (rrr) ORS 164.225, Burglary I;
 (sss) ORS 164.325, Arson I; ORS 164.377, Computer crime;
 (ttt) ORS 164.395, Robbery III;
 (uuu) ORS 164.405, Robbery II;
 (vvv) ORS 164.415, Robbery I;
 (www) ORS 165.007, Forgery II;
 (xxx) ORS 165.013, Forgery I;
 (yyy) ORS 165.017, Criminal possession of a forged instrument

II;
 I;
 (zzz) ORS 165.022, Criminal possession of a forged instrument

(aaaa) ORS 165.032, Criminal possession of a forgery device;
 (bbbb) ORS 165.042, Fraudulently obtaining a signature;
 (cccc) ORS 165.055, Fraudulent use of a credit card;
 (dddd) ORS 165.080, Falsifying business records;
 (eeee) ORS 165.095, Misapplication of entrusted property;
 (ffff) ORS 165.100, Issuing a false financial statement;
 (gggg) ORS 165.581, Cellular counterfeiting I;
 (hhhh) ORS 165.800, Identity theft;
 (iiii) ORS 166.005, Treason;
 (jjjj) ORS 166.015, Riot;
 (kkkk) ORS 166.085, Abuse of corpse II;
 (llll) ORS 166.087, Abuse of corpse I;
 (mmmm) ORS 166.155, Intimidation II;
 (nnnn) ORS 166.165, Intimidation I;
 (oooo) ORS 166.220, Unlawful use of weapon;
 (pppp) ORS 166.270, Possession of weapons by certain felons;
 (qqqq) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
 (rrrr) ORS 166.275, Possession of weapons by inmates of institutions;
 (ssss) ORS 166.429, Firearms used in felony;
 (tttt) ORS 166.720, Racketeering activity unlawful;
 (uuuu) ORS 167.012, Promoting prostitution;
 (vvvv) ORS 167.017, Compelling prostitution;
 (wwww) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;
 (xxxx) ORS 167.065, Furnishing obscene materials to minors;
 (yyyy) ORS 167.070, Sending obscene materials to minors;
 (zzzz) ORS 167.075, Exhibiting an obscene performance to a minor;
 (aaaaa) ORS 167.080, Displaying obscene materials to minors;
 (bbbbb) ORS 167.262, Adult using minor in commission of controlled substance offense;
 (ccccc) ORS 167.315, Animal abuse II;
 (dddd) ORS 167.320, Animal abuse I;
 (eeeee) ORS 167.322, Aggravated animal abuse I;
 (fffff) ORS 167.333, Sexual assault of animal;
 (ggggg) ORS 181.599, Failure to report as sex offender;
 (hhhhh) ORS 192.852/865, Prohibited obtaining or disclosing of protected information;
 (iiiiii) ORS 411.630, Unlawfully obtaining public assistance;
 (jjjjj) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);
 (kkkkk) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;
 (lllll) ORS 475.525, Sale of drug paraphernalia prohibited;
 (mmmmm) ORS 475.805, Providing hypodermic device to minor prohibited;
 (nnnnn) ORS 475.840, Prohibited acts generally (regarding drug crimes);
 (ooooo) ORS 475.846, Unlawful manufacture of heroin;
 (ppppp) ORS 475.848, Unlawful manufacture of heroin within 1,000 ft of school;

(qqqqq) ORS 475.850, Unlawful delivery of heroin;
 (rrrrr) ORS 475.852, Unlawful delivery of heroin within 1,000 ft of school;
 (sssss) ORS 475.854, Unlawful possession of heroin;
 (ttttt) ORS 475.856, Unlawful manufacture of marijuana;
 (uuuuu) ORS 475.858, Unlawful manufacture of marijuana within 1,000 ft of school;
 (vvvvv) ORS 475.860, Unlawful delivery of marijuana;
 (wwwww) ORS 475.862, Unlawful delivery of marijuana within 1,000 ft of school;
 (xxxxx) ORS 475.864, Unlawful possession of marijuana;
 (yyyyy) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine;
 (zzzzz) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 ft of school;
 (aaaaa) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;
 (bbbbb) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 ft of school;
 (ccccc) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;
 (ddddd) ORS 475.876, Unlawful manufacture of cocaine;
 (eeeeee) ORS 475.878, Unlawful manufacture of cocaine within 1,000 ft of school;
 (ffffff) ORS 475.880, Unlawful delivery of cocaine;
 (ggggg) ORS 475.882, Unlawful delivery of cocaine within 1,000 ft of school;
 (hhhhh) ORS 475.884, Unlawful possession of cocaine;
 (iiiiii) ORS 475.886, Unlawful manufacture of methamphetamine;
 (jjjjj) ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 ft of school;
 (kkkkk) ORS 475.890, Unlawful delivery of methamphetamine;
 (lllll) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 ft of school;
 (mmmmm) ORS 475.894, Unlawful possession of methamphetamine;
 (nnnnn) ORS 475.904, Penalty for manufacture or delivery of controlled substance within 1000 feet of school;
 (ooooo) ORS 475.906, Penalties for distribution to minors;
 (ppppp) ORS 475.908, Causing another person to ingest a controlled substance;
 (qqqqq) ORS 475.910, Application of controlled substance to the body of another person;
 (rrrrr) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes); ORS 475.916, Prohibited acts involving records and fraud; ORS 475.918, Falsifying drug test results;
 (sssss) ORS 475.920, Providing drug test falsification equipment
 (ttttt) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;
 (uuuuu) ORS 475.975, Unlawful possession & distribution of iodine in its elemental form;
 (vvvvv) ORS 475.976, Unlawful possession & distribution of iodine matrix;
 (wwwww) ORS 677.080, Prohibited acts (regarding the practice of medicine);
 (yyyyy) ORS 803.230, Forging, altering or unlawfully producing or using title or registration;
 (zzzzz) ORS 811.140, Reckless driving;
 (aaaaaaa) ORS 811.182, Criminal driving while suspended or revoked;
 (bbbbb) ORS 811.540, Fleeing or attempting to elude police officer;
 (cccccc) ORS 811.700, Failure to perform duties of driver when property is damaged;
 (dddddd) ORS 811.705, Failure to perform duties of driver to injured persons;

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(eeeeee) ORS 813.010, Driving under the influence of intoxicants (DUI);
(ffffff) ORS 819.300, Possession of a stolen vehicle;
(gggggg) Any federal crime;
(hhhhhh) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;
(iiiiii) Any other felony under the statutes of Oregon or any other jurisdiction not listed elsewhere in this rule that the authorized designee determines is relevant to performance of the subject individual's present or proposed position as a Department employee, contractor, vendor or volunteer;
(jjjjjj) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (1) pursuant to ORS 161.405, 161.435, or 161.450;
(kkkkkk) Any crime based on criminal liability for conduct of another pursuant to ORS 61.155, when the underlying crime is listed in this section (1);
(llllll) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section (1) as determined by the authorized designee;
(mmmmmm) Any offense that no longer constitutes a crime under Oregon law or the laws of any other jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (1) as determined by the authorized designee.
(2) Ten-Year Review Crimes.
(a) ORS 133.076, Failure to appear on criminal citation;
(b) ORS 162.075, False swearing;
(c) ORS 162.117, Public investment fraud;
(d) ORS 162.145, Escape III;
(e) ORS 162.175, Unauthorized departure;
(f) ORS 162.185, Supplying contraband;
(g) ORS 162.195, Failure to appear II;
(h) ORS 162.205, Failure to appear I;
(i) ORS 162.247, Interfering with a peace officer or parole & probation officer;
(j) ORS 162.285, Tampering with a witness;
(k) ORS 162.295, Tampering with physical evidence;
(l) ORS 162.315, Resisting arrest;
(m) ORS 162.335, Compounding;
(n) ORS 162.355, Simulating legal process;
(o) ORS 162.365, Criminal impersonation;
(p) ORS 162.367, Criminal impersonation of peace officer;
(q) ORS 162.369, Possession of false law enforcement identification card;
(r) ORS 162.375, Initiating a false report;
(s) ORS 162.385, Giving false information to police officer for a citation or arrest warrant;
(t) ORS 163.195, Recklessly endangering another person;
(u) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;
(v) ORS 163.245, Custodial interference II;
(w) ORS 163.445, Sexual misconduct;
(x) ORS 163.467, Private indecency;
(y) ORS 163.700, Invasion of personal privacy;
(z) ORS 163.750, Violating court's stalking protective order;
(aa) ORS 164.043, Theft III;
(bb) ORS 164.045, Theft II;
(cc) ORS 164.055, Theft I;
(dd) ORS 164.095, Theft by receiving;
(ee) ORS 164.135, Unauthorized use of a vehicle;
(ff) ORS 164.140, Criminal possession of rented or leased personal property;
(gg) ORS 164.215, Burglary II;
(hh) ORS 164.235, Possession of burglar's tools or theft device;
(ii) ORS 164.255, Criminal trespass I;
(jj) ORS 164.265, Criminal trespass while in possession of firearm;
(kk) ORS 164.272, Unlawful entry into motor vehicle;
(ll) ORS 164.315, Arson II;
(mm) ORS 164.335, Reckless burning;

(nn) ORS 164.354, Criminal Mischief II;
(oo) ORS 164.365, Criminal Mischief I;
(pp) ORS 165.037, Criminal simulation;
(qq) ORS 165.065, Negotiating a bad check;
(rr) ORS 165.070, Possessing fraudulent communications device;
(ss) ORS 165.074, Unlawful factoring of payment card transaction;
(tt) ORS 165.085, Sports bribery;
(uu) ORS 165.090, Sports bribe receiving;
(vv) ORS 165.102, Obtaining execution of documents by deception;
(ww) ORS 165.540, Obtaining contents of communication;
(xx) ORS 165.543, Interception of communications;
(yy) ORS 165.570, Improper use of emergency reporting system;
(zz) ORS 165.572, Interference with making a report;
(aaa) ORS 165.577, Cellular counterfeiting III;
(bbb) ORS 165.579, Cellular counterfeiting II;
(ccc) ORS 165.692, Making false claim for health care payment;
(ddd) ORS 166.023, Disorderly conduct I;
(eee) ORS 166.025, Disorderly conduct II;
(fff) ORS 166.065, Harassment;
(ggg) ORS 166.076, Abuse of a memorial to the dead;
(hhh) ORS 166.116, Interfering with public transportation;
(iii) ORS 166.180, Negligently wounding another;
(jjj) ORS 166.190, Pointing firearm at another;
(kkk) ORS 166.240, Carrying of concealed weapon;
(lll) ORS 166.250, Unlawful possession of firearms;
(mmm) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;
(nnn) ORS 166.382, Possession of destructive device prohibited;
(ooo) ORS 166.384, Unlawful manufacture of destructive device;
(ppp) ORS 166.470, Limitations and conditions for sales of firearms;
(qqq) ORS 166.480, Sale or gift of explosives to children;
(rrr) ORS 166.649, Throwing an object off an overpass II;
(sss) ORS 166.651, Throwing an object off an overpass I;
(ttt) ORS 166.660, Unlawful paramilitary activity;
(uuu) ORS 167.007, Prostitution;
(vvv) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;
(www) ORS 167.212, Tampering with drug records;
(xxx) ORS 167.222, Frequenting a place where controlled substances are used;
(yyy) ORS 167.325, Animal neglect II;
(zzz) ORS 167.330, Animal neglect I;
(aaaa) ORS 167.337, Interfering with law enforcement animal;
(bbbb) ORS 167.355, Involvement in animal fighting;
(cccc) ORS 167.365, Dogfighting;
(dddd) ORS 167.370, Participation in dogfighting;
(eeee) ORS 167.820, Concealing the birth of an infant;
(ffff) ORS 417.990, Penalty for placement of children in violation of compact;
(gggg) ORS 418.130, Unauthorized use and custody of records of temporary assistance for needy families program;
(hhhh) ORS 418.140, Sharing assistance prohibited;
(iiii) ORS 418.250, Supervision of child-caring agencies;
(jjjj) ORS 418.327, Licensing of certain schools and organizations offering residential programs;
(kkkk) ORS 433.010, Spreading disease (willfully) prohibited;
(llll) ORS 471.410, Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property;
(mmmm) ORS 475.900, Commercial drug offense;
(nnnn) ORS 475.912, Unlawful delivery of imitation controlled substance;

(oooo) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);
 (pppp) ORS 475.950, Failure to report precursor substance;
 (qqqq) ORS 475.955, Failure to report missing precursor substances;
 (rrrr) ORS 475.960, Illegally selling drug equipment;
 (ssss) ORS 475.962, Distribution of equipment, solvent, etc., with intent to manufacture controlled substance;
 (tttt) ORS 475.965, Providing false information on precursor substances report;
 (uuuu) ORS 475.979 Unlawful possession of lithium or sodium metal;
 (vvvv) ORS 657A.280, Failure to certify child care facility;
 (wwwv) ORS 807.620, Giving false information to police officer;
 (xxxx) ORS 830.475, Failure to perform the duties of an operator (boat);
 (yyyy) Any unclassified misdemeanor defined in Oregon's or any other jurisdiction's statutes and not listed elsewhere in this rule;
 (zzzz) Any other misdemeanor under the statutes of Oregon or any other jurisdiction and not listed elsewhere in this rule that the authorized designee determines is relevant to performance of the subject individual's present or proposed position as a Department employee, contractor, vendor or volunteer;
 (aaaaaa) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (2) pursuant to ORS 161.405, 161.435, or 161.450;
 (bbbbbb) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (2);
 (ccccc) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (2) as determined by the authorized designee;
 (dddddd) Any offense that no longer constitutes a crime under Oregon law or the laws of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (2) as determined by the authorized designee.
 (3) Five-Year Review Crimes.
 (a) ORS 164.245, Criminal trespass II;
 (b) ORS 164.345, Criminal mischief III;
 (c) ORS 164.882, Unlawful operation of audiovisual device;
 (d) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes;
 (e) ORS 166.075, Abuse of venerated objects;
 (f) ORS 166.090, Telephonic harassment;
 (g) ORS 166.095, Misconduct with emergency telephone calls;
 (h) ORS 167.340, Animal abandonment;
 (i) ORS 418.630, Operating uncertified foster home;
 (j) ORS 685.990, Violations pertaining to naturopathic medicine;
 (k) ORS 822.045, Crimes relating to conducting a vehicle dealer business;
 (l) ORS 830.035/990, Fleeing or attempting to allude a peace officer (small watercraft);
 (m) ORS 830.053/990, Fraudulent report of theft of boat;
 (n) ORS 830.315/990, Reckless operation of a boat;
 (o) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance;
 (p) ORS 830.730/990, False information to peace officer or State Marine Board;
 (q) ORS 830.955/990, Prohibition of installation of submersible polystyrene device;
 (r) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435 or 161.450
 (s) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (3).

(t) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (3) as determined by the authorized designee.

(u) Any offense that no longer constitutes a crime under Oregon law or the law of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (3) as determined by the authorized designee.

(4) Evaluation Based on Oregon Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

(5) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

Stat. Auth.: ORS 181.534, 184.340, 184.365

Stats. Implemented: ORS 181.534(9)

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0280

Incomplete Fitness Determination

(1) The Department will close a preliminary or final fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 125-007-0220;

(b) The subject individual does not provide materials or information under OAR 125-007-0230(1) within the timeframes established under that rule;

(c) An authorized designee cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other criminal records information under OAR 125-007-0260(2); or

(e) The Department determines that the subject individual is not eligible or not qualified for the position (of employee, contractor, vendor or volunteer) for a reason unrelated to the fitness determination process.

(2) A subject individual does not have a right to a contested case hearing under OAR 125-007-0300 to challenge the closing of an incomplete fitness determination.

Stat. Auth.: ORS 181.534, 184.340, 184.365

Stats. Implemented: ORS 181.534(9)

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0290

Notice to Subject Individual of Fitness Determination.

(1) An authorized designee shall provide, in a format approved by the Department, written notice to a subject individual upon completion of a preliminary or final fitness determination, or upon the closing a fitness determination due to incompleteness.

(a) The authorized designee shall record on the notice the date on which the fitness determination was either closed as incomplete or completed.

(b) If the notice pertains to a completed final fitness determination, it shall be accompanied by a separate notice addressing the subject individual's right to request a contested case hearing to appeal the Department's determination and containing the information required by OAR 137-003-0505.

(2) An authorized designee shall provide for hand delivery or first class mail delivery of the notice as soon as possible after completion or closure of a fitness determination, but in no case later than 14 calendar days after the date of completion or closure, to the address provided by the subject individual on the DAS Criminal Records Request form, or to an updated address as provided in writing by the subject individual.

Stat. Auth.: ORS 181.534, 184.340, 184.365

Stats. Implemented: ORS 181.534(9)

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0300

Appealing a Fitness Determination

(1) Purpose. This rule sets forth a contested case hearing process by which a subject individual may appeal a completed final fitness determination made under OAR 125-007-0260 that he or she is fit or not fit to hold a position with, or provide services to the Department as an employee, volunteer, contractor, or vendor. Section (6) of the rule identifies an alternative appeal process available only to current DAS employees.

(2) Process:

(a) A subject individual may appeal a fitness determination by submitting a written request for a contested case hearing to the address specified in the notice provided under OAR 125-007-290(1)(b), within 14 calendar days of the date appearing on the notice. The Department shall address a request received after expiration of the deadline as provided under OAR 137-003-0528.

(b) When a timely request is received by the Department under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(c) The Department shall provide the subject individual or the subject individual's legal representative with all of the information required under OAR 137-003-0510 in writing before the hearing.

(d) As provided in OAR 137-003-0510(3), if participating in a contested case hearing, the Department and the subject individual may agree to use a collaborative method of dispute resolution designed to encourage them to work together to develop a mutually agreeable solution, such as negotiation or a settlement conference.

(3) Discovery

(a) A subject individual's hearing request under section (2)(a) of this rule shall constitute a discovery request for the following records:

(A) Any records the subject individual has a right to inspect under OAR 125-007-0310(2)(e); and

(B) In accordance with the Public Records Law, any records described in OAR 125-007-0310(3)(a).

(b) The Department or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided in OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order:

(a) Proposed Order. After a hearing, the administrative law judge shall issue a proposed order. If the subject individual or subject individual's legal counsel does not file written exceptions with the Department within 14 calendar days after service of the proposed order, the proposed order shall become the final order.

(b) Exceptions. If the subject individual or the subject individual's legal counsel files timely written exceptions to the proposed order with the Department, the Department Director or the Director's designee shall consider the exceptions and serve a final order, or request a revised proposed order from the administrative law judge.

(c) Default. A completed final fitness determination made under OAR 125-007-260 shall constitute a final order without a hearing as provided under OAR 137-003-0672.

(6) Alternative Process. A subject individual currently employed by DAS may choose to appeal a fitness determination either under the process made available by this rule or through the process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of

Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(a) To challenge information identified in this section (7), a subject individual may use any process made available by the providing agency.

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the Department conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 125-007-0260 by submitting a new DAS Criminal Records Request form.

Stat. Auth.: ORS 181.534, 184.340, 184.365

Stats. Implemented: ORS 181.534(9)

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0310

Recordkeeping and Confidentiality

(1) An authorized designee shall document a preliminary or final fitness determination, or the closing of a fitness determination due to incompleteness, in writing.

(2) Records Received from the Oregon Department of State Police.

(a) Records the Department receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to LEDS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15).

(b) Within the Department, only authorized designees shall have access to records the Department receives from the Oregon Department of State Police resulting from a criminal records check.

(c) An authorized designee shall have access to records received from the Oregon Department of State Police in response to a criminal records check only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.

(d) Authorized designees shall maintain and disclose records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto (see OAR chapter 257, division 15), these rules, and any written agreement between the Department and the Oregon Department of State Police.

(e) If a fingerprint-based criminal records check was conducted with regard to a subject individual, the Department shall permit that subject individual to inspect his or her own state and federal criminal offender information, unless prohibited by federal law.

(f) If a subject individual with a right to inspect criminal offender information under subsection (e) requests, the Department shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by federal law.

(3) Other Records.

(a) The Department shall treat all records received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, including DAS Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15).

(b) Within the Department, only authorized designees shall have access to the records identified under subsection (a).

(c) An authorized designee shall have access to records identified under subsection

(a) Only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.

(d) A subject individual shall have access to records identified under subsection (a) pursuant to the terms of the Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 181.534, 184.340, 184.365

Stats. Implemented: ORS 181.534(9)

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0320

Authorized Designees

(1) Appointment.

(a) The Department Director or the Director's designee shall designate positions within the Personnel Unit of the Department's Operations Division as including the responsibilities of an authorized designee.

(b) Appointment to one of the designated positions shall be contingent upon an individual being approved under the Department's criminal records check and fitness determination process.

(c) Appointments shall be made by the Department Director or the Director's designee at his or her discretion.

(2) The Department Director and Deputy Director may also serve as authorized designees, contingent on being approved under the Department's criminal records check and fitness determination process.

(3) Conflict of Interests. An authorized designee shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:

(a) The authorized designee is related to the subject individual; or

(b) The authorized designee has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this subsection (b), the authorized designee shall consult with his or her supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist.

(4) Termination of Authorized Designee Status.

(a) When an authorized designee's employment in a designated position ends, his or her status as an authorized designee is automatically terminated.

(b) The Department shall suspend or terminate a Department employee's appointment to a designated position within the Personnel Unit of the Department's Operations Division, and thereby suspend or terminate his or her status as an authorized designee, if the employee fails to comply with OAR 125-007-0200 thru 125-007-0310 in conducting criminal records checks and fitness determinations.

(c) An authorized designee shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed in OAR 125-007-0270. Failure to make the required report is grounds for termination of the individual's appointment to a designated position within the Personnel Unit of the Department's Operations Division, and thereby termination of his or her status as an authorized designee.

(d) The Department will review and update an authorized designee's eligibility for service in a designated position within the Personnel Unit of the Department's Operations Division, during which a new criminal records check and fitness determination may be required:

(A) Every three years; or

(B) At any time the Department has reason to believe that the authorized designee has violated these rules or no longer is eligible to serve in his or her current position within the Personnel Unit of the Department's Operations Division.

(5) A denial under OAR 125-007-0260(3) related to a designated position within the Personnel Unit of the Department's Operations Division is subject to the appeal rights provided under OAR 125-007-0300.

Stat. Auth.: ORS 181.534, 184.340, 184.365

Stats. Implemented: ORS 181.534(9)

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0330

Fees

(1) The Department may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

(2) The Department may charge the fee to the subject individual on whom criminal offender information is sought, or, if the subject individual is an employee of a Department contractor or vendor and is undergoing a fitness determination in that capacity, the Department may charge the fee to the subject individual's employer.

(3) The Department shall not charge a fee if the subject individual is a Department employee, a Department volunteer, or an applicant for employment or a volunteer position with the Department.

Stat. Auth.: ORS 181.534, 184.340, 184.365

Stats. Implemented: ORS 181.534(9)

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

DIVISION 10

PUBLIC CONTRACT REVIEW SERVICES AND FEES

125-010-0005

Contract Review Board Services to Local Public Agencies

(1) The Department of Administrative Services, hereafter referred to as "Department," is authorized by ORS 190.240, 279.055 and Chapter 690 Oregon Laws 1983 to contract with Oregon public agencies to function as their contract review board. In this capacity, the Department will be responsible for adopting and administering rules governing public contracting, considering requests for exemptions from public contracting requirements, and hearing appeals from disqualification decisions of the local public agency, pursuant to ORS 279.043 and 279.045.

(2) A local public agency should direct its formal written request for services from its governing body to: Director, Department of Administrative Services, c/o Administrator, Transportation, Purchasing and Print Services Division, 1225 Ferry Street S.E., Salem, Oregon 97310.

(3) Upon receipt of such written request, the Department shall forward for signature to the local public agency an intergovernmental agreement on a form prescribed by the Department. No services shall be provided by the Department without a signed intergovernmental agreement.

(4) The provision of contract review board functions by the Department shall be subject to the total of the following charges for service:

(a) Annual Maintenance Charge — \$300 includes responding to telephone inquiries and explaining Department rules, providing copies of current administrative rules and other required forms;

(b) Individual exemption requests will be charged according to the following: The hourly rate charged to the local public agency for the Attorney General's services will be the same hourly rate charged to the Department by the Attorney General. In addition, the hourly rate charged to the local public agency by the Department for review of exemption requests will be 90% of the standard hourly rate charged by the Attorney General; and

(c) Legal expenses incurred for any investigations, appeal hearings or suits will be charged based on actual costs. Legal fees may be subject to award to the prevailing party.

Stat. Auth.: ORS 279.015 & 279.055

Stats. Implemented:

Hist.: GS 7-1983, f. & ef. 11-3-83; GS 10-1991, f. & cert. ef. 7-5-91; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

DIVISION 15

PAYROLL ADMINISTRATION

125-015-0200

Electronic Deposit and Electronic Itemized Statements of Net Salary and Wages

(1) Effective November 29, 2013 Electronic payment of net salary and wages and electronic statements of payroll deductions is the standard for all officers and employees of the state.

(2) All officers and employees paid under the state payroll system shall receive payment of net salary and wages one of three ways:

(a) through electronic payment by direct deposit via Automated Clearing House (ACH) to a checking and/or savings account(s) that is located in a financial institution in the United States; or

(b) through electronic payment by direct deposit via ACH to a reloadable state offered prepaid card; or a reloadable prepaid card provided by the officer or employee; or

(c) payment of net salary and wages by paper check.

(3) Officers and employees receiving payment of net salary and wages through electronic payment shall receive electronically each month's itemized statement of payroll deductions from the Oregon Statewide Payroll Application.

(4) Officers and employees receiving payment of net salary and wages through paper check shall receive by paper each month's itemized statements of payroll deductions from the Oregon Statewide Payroll Application.

(5) An officer or employee may receive payment of net salary and wages by paper check and a paper itemized statement of payroll deductions. To do so the officer or employee shall contact the agency in writing noting the desire to be exempt from electronic payment of wages and electronic itemized statements.

(6) Exceptions to electronic payment and electronic itemized statement may be deemed necessary when the agency employing an officer or employee determines that electronic payment of net salary and wages is:

(a) Not practicable or efficient. The criteria agencies may use in deciding whether electronic payment is practicable or efficient include, but are not limited to:

(A) An officer or employee is newly hired and the routing and transfer information is in the process of being verified;

(B) An officer or employee is changing banks, causing the need for an alternate payment method because of the verification process for routing and transfer information;

(C) An officer or employee has been hired into an appointment for a period of 3 months or less;

(D) An officer or employee has on-going leave without pay status, which could result in overpayments if electronic payment is used;

(E) An officer or employee is receiving the final payment of wages due to separation from State employment; and

(F) An officer or employee has not established an account with a bank or financial institution or has not completed the authorization for electronic payment of net salary and wages as described in (2)(a) or (b) above.

(b) Where an officer or employee is mandated by a judicial action to receive payment of net salary and wages by a non-electronic method;

(c) Or, where an agency determines that an alternate method of payment is needed because of security concerns arising from protected-class employment or other sensitive situations identified by the agency.

Stat. Auth.: ORS 184.340

Stat. Implemented: ORS 292.026, HB2207 B (OL 2013, Ch 369)

Hist.: DAS 3-2013(Temp), f. & cert. ef. 10-28-13 thru 4-25-14; DAS 1-2014, f. & cert. ef. 4-9-14

DIVISION 20

**ACCESS TO PUBLIC RECORDS
AND PHOTOCOPY(ING) CHARGES**

125-020-0010

Definitions

The following definitions shall apply to all Oregon Administrative Rules contained in OAR chapter 125, division 20, unless the context requires otherwise:

(1) "Custodian" refers to a public body mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include a public body that has custody of a public record as an agent of another public body that is the custodian, unless the public record is not otherwise available.

(2) "Department" refers to the Oregon Department of Administrative Services.

(3) "Designee" refers to any officer or employee of the Department, appointed by the Director to respond to requests for public records of the Department of Administrative Services.

(4) "Director" refers to the Director of the Department of Administrative Services.

(5) "Division" refers to an organizational component or operating unit of the Department of Administrative Services.

(6) "Duplication or Duplicating" refers to the process of reproducing a public record or writing in any format.

(7) "Person" includes any natural person, corporation, partnership, firm or association.

(8) "Photocopy(ing)" includes a photograph, microphotograph and any other reproduction on paper or film in any scale, or the process of reproducing, in the form of a photocopy, a public record or writing.

(9) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(10) "Public record or writing" includes a document, book, paper, photograph, file, sound recording, machine readable electronic record or other material regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use.

(11) "Requestor" refers to the person requesting inspection, copies, or other reproduction of a public record of the Department.

Stat. Auth.: ORS 184.340 & 192.430

Stats. Implemented: ORS 192.410 - 192.505

Hist.: BAD 2-1997, f. 6-18-97, cert. ef. 7-1-97; Renumbered from 121-020-0010 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-020-0020

Applicability of Rules

The Administrative Rules set forth in Chapter 125, Division 20 shall apply to all public records for which the Department is custodian, except as otherwise administered under OAR 105-010-0011 and 105-010-0016 of the Department's Human Resource Services Division.

Stat. Auth.: ORS 184.340 & 192.430

Stats. Implemented: ORS 192.410 - 192.505

Hist.: BAD 2-1997, f. 6-18-97, cert. ef. 7-1-97; Renumbered from 121-020-0020 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-020-0030

Access to Public Records

The Director or designee, in carrying out responsibilities of ORS 192.430, as custodian of public records:

(1) Shall allow access to and disclosure of the public records subject to ORS 192.410 to 192.505.

(2) Shall make restrictions and take precautions necessary to protect the integrity of the records and prevent interference with the regular discharge of the Department's duties; and

(3) Shall allow for inspection of the Department's public records during normal working days and hours at the location which the records reside, or any other reasonable location designated by the Director or designee.

Stat. Auth.: ORS 184.340 & 192.430

Stats. Implemented: ORS 192.410 - 192.505

Hist.: BAD 2-1997, f. 6-18-97, cert. ef. 7-1-97; Renumbered from 121-020-0030 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-020-0040

Requests to Inspect or Obtain Copies of Public Records

(1) A request to inspect or obtain copies of a public record of the Department shall be made in writing to the Director, and shall include:

- (a) The name, address and telephone number of the requestor;
- (b) Identification of the records from which information is requested, if known.
- (c) The time period the records were produced and officials involved in producing the records or other relevant information, if known;
- (d) The format in which the information is needed (i.e. photocopies, audio or video cassette, machine readable, or electronic format, etc.);
- (e) The number of copies needed, if copies are requested; and
- (f) Instruction to the Department to certify copies, if necessary.

(2) The Director or designee may waive the requirement, under paragraph (1) of this rule, for a request to be in writing, if it is determined that effective administration is aided by the waiver.

(3) A review of the requested records will be conducted by the Department as necessary to determine whether the records are exempt from disclosure, in accordance with ORS 192.410 to 192.505 and any other references establishing an exemption to disclosure of public records.

(4) The Director or designee will advise the requestor, within a reasonable amount of time, whether the records may be disclosed, the date, time, and place they may be inspected or obtain copies of the records, and the estimated cost of inspection, duplication, and other related fees as described in OAR 125-020-0050.

(5) If the requested records contain information exempt from disclosure, the requestor will be furnished a copy of the record with the exempt material removed.

(6) The Director or designee may require and designate a Department employee to supervise the inspection of requested records.

Stat. Auth.: ORS 184.340 & 192.430

Stats. Implemented: ORS 192.410 - 192.505

Hist.: BAD 2-1997, f. 6-18-97, cert. ef. 7-1-97; Renumbered from 121-020-0040 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-020-0050

Fees for Public Records and Other Services

(1) The Department will establish fees and miscellaneous charges, for providing access to or copies of public records in paper, electronic, or other format, based on the Department's actual costs of preparing and providing the records. Costs associated with a request for public records may include per page copy and facsimile fees, postage when applicable, staff time to locate, review, remove information exempt from disclosure, and/or transfer the material to a requested electronic or other necessary format appropriate for releasing the public record(s).

(2) No additional fee will be charged for providing records in an alternative format when required by the Americans with Disabilities Act.

(3) The Director or designee may reduce or waive fees when:

- (a) Time spent making the records available for inspection or preparation for photocopying was negligible; or
- (b) Supplying the requested records is within the normal scope of Department activity; or
- (c) Payment would cause extreme or undue financial hardship upon the requestor; or

(d) Making the record available primarily benefits the general public.

(4) All fees and charges must be paid in advance of releasing the requested public records for inspection or before photocopies are provided. Payments must be made by check or money order and made payable to the Department of Administrative Services.

(5) Consistent with ORS 279.550, to conserve and protect the State's resources, photocopies will be produced on recycled paper in double-sided print format whenever feasible to reduce costs and paper waste.

(6) Due to the threat of computer virus, the Department will not permit requestors to provide diskettes for electronic reproduction of computer records. Requests for other electronic reproduction will be evaluated at the time of the request and a determination made as to the feasibility and accessibility of the requested electronic format. The Department may require the requestor to provide the electronic media to which the record(s) will be copied.

(7) A request for public records requiring the Department to access the State's mainframe computer system, may include but not be limited to fees for computer usage time, data transfer costs, disk work space costs, programming, and fixed portion costs for printing and/or tape drive usage. Any fees charged the requestor as a result of accessing the State's mainframe computer system would be included in subsection (9)(h) of this rule.

(8) The Department limits the transmission of facsimile copies for public record requests to 30 pages.

(9) Fees:

- (a) Photocopies (single or double-sided): 25 cents per page;
- (b) Facsimile: \$5 1st page, \$1 per page thereafter;
- (c) Diskette — 3 1/2 in.: \$1 ea.;
- (d) Audio Cassette — 90 min.: \$1 ea.;
- (e) Video Cassette — 2 hrs.: \$2 ea.;
- (f) Postage/Freight: First Class or Bulk rate based on weight;
- (g) Staff Time: Calculated based on employee(s) hourly rate of pay;
- (h) Indirect Costs/Third Party Charges: Based on actual/invoiced fees;
- (i) Publications: Fees for specific publications will be based on actual costs of development, printing and distribution, and determined by the Division distributing or releasing the publication.

(j) Certification of Public Record: \$5

Stat. Auth.: ORS 184.340 & 192.430

Stats. Implemented: ORS 192.410 - 192.505

Hist.: BAD 2-1997, f. 6-18-97, cert. ef. 7-1-97; Renumbered from 121-020-0050 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

DIVISION 30

ANNUAL CHARITABLE FUND DRIVE PROGRAM

125-030-0006

Annual Charitable Fund Drive Program

(1) The purpose of the Annual Charitable Fund Drive Program is to:

- (a) Provide a wide range of choices for state employees and retirees from state service who wish to give to charitable organizations and support Oregon communities;
- (b) Encourage volunteer leadership;
- (c) Consolidate charitable solicitation and minimize workplace disruption;
- (d) Minimize cost to government and charitable organizations in charitable solicitation efforts;
- (e) Ensure funds are solicited by qualified funds or federations;
- (f) Ensure solicitation is conducted in a voluntary atmosphere.

(2) No organized charitable solicitations of state employees in state offices, facilities or other places of employment shall be permitted without prior approval of the Director of the Department of Administrative Services.

(3) All solicitations by charitable organizations that are approved in accordance with this rule shall be made in one

combined annual fund drive for cash contributions or payroll deductions that shall be conducted on dates established by order of the Director of the Department of Administrative Services.

(4) OAR chapter 125, division 30, does not apply to the Governor's Annual Food Drive, the annual Christmas Toys for Joy Program or the Campaign for Equal Justice.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043, 292.045

Hist.: EX 2-1988(Temp), f. & ef. 7-27-88; EX 1-1989, f. & ef. 1-27-89; EX 1-1990, f. & cert. ef. 5-8-90; EX 3-1990(Temp), f. & cert. ef. 8-3-90; EX 1-1991, f. & cert. ef. 1-28-91; EX 1-1993(Temp), f. & cert. ef. 4-13-93; ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 2-2002, f. & cert. ef. 7-30-02; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0000 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-030-0016

Definitions

As used in OAR 125-030-0000 through 125-030-0090:

(1) "Charitable Organization" means either:

(a) A nonprofit organization that is recognized as a 501(c)(3) organization under the Internal Revenue Code and is registered as a charitable organization with the Attorney General as required by ORS 128.610 to 128.995; or

(b) A state-created nonprofit fund that receives donations, which may be deducted from taxable income as "charitable contributions" under Section 170(a) and (c) of the Internal Revenue Code.

(2) "Fund" means an entity that disburses charitable contributions to ten or more charitable organizations.

(3) "Federation" means an entity that serves as the agent for a group of at least ten charitable organizations.

(4) "Local Presence" means a demonstrated presence in the State of Oregon as evidenced by the provision of direct and substantial charitable services or activities benefiting Oregonians in Oregon throughout the previous calendar year.

(5) "Charitable Fund Drive Management Organization" means the person or organization selected to administer the annual Charitable Fund Drive on behalf of all participating funds and federations.

(6) "Charitable Fund Drive Committee" or "Committee" means the committee appointed to set policies and implement the Charitable Fund Drive Program for state employees.

(7) A "conflict of interest," whether actual or potential, means any action, decision or recommendation, the effect of which would be or could be to the pecuniary benefit or detriment of a fund, federation or associated charitable organization.

(8) "Department" means the Department of Administrative Services.

(9) "Director" means the Director of the Department of Administrative Services.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043, 292.045

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0010 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-030-0021

Charitable Fund Drive Committee

(1) The Charitable Fund Drive Committee shall be composed of seven members, all of whom must be employees of the State of Oregon.

(2) The Director shall appoint members who:

(a) Reflect the diversity of employees including, but not limited to, geography, race, gender, age, chosen profession, disability, and agency affiliation;

(b) Have skills in the following areas:

(A) Marketing;

(B) Fundraising;

(C) Organizational skills;

(D) Accounting; and

(E) Payroll.

(3) The Director will appoint members to serve a term of one to three years.

(4) No member may serve more than two consecutive terms.

(5) No member shall take any action that creates a conflict of interest with respect to any fund, federation, or affiliated charitable organization that the member is associated with in a leadership capacity.

(6) The Director will appoint one member as chair. The Governor shall be the honorary chair.

(7) The responsibilities of the Committee are to:

(a) Implement OAR 125-030-0000 to 125-030-0090 and propose changes for adoption by the Director as necessary;

(b) Establish and enforce policies and procedures for managing the Charitable Fund Drive, recommending any rules for the Director's adoption;

(c) Prescribe, review and approve initial and renewal applications of funds and federations;

(d) Select, supervise, and establish guidelines for the Charitable Fund Drive Management Organization;

(e) Ensure the funds and federations have equal access to state resources;

(f) Provide and communicate fund drive information to state agencies and fund drive participants;

(g) Ensure the fund drive is free from coercion and unfair or misleading conduct;

(h) Approve budget and costs and ensure funds are properly accounted for;

(i) Hear grievances of funds and federations; and

(j) Prepare and distribute requests for proposals to be used in evaluating and selecting the Charitable Fund Drive Management Organization and make a final recommendation to the Director.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 184.340, 292.045 & 184.345

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 1-1998(Temp), f. & cert. ef. 6-25-98 thru 8-31-98; BAD 2-1998, f. 12-17-98, cert. ef. 12-24-98; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0020 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-030-0031

Quorum

A majority of the members of the Charitable Fund Drive Committee constitutes a quorum for the transaction of business.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043 & 292.045

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0030 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-030-0041

Participation Requirements for Charitable Organizations

(1) To participate in the Annual Charitable Fund Drive, each organization claiming to be a charitable organization must participate as a member of an eligible fund or federation and must satisfy each of the following requirements:

(a) The organization must meet the definition of "charitable organization" in OAR 125-030-0010;

(b) The organization must have a "local presence" as defined in OAR 125-030-0010;

(c) The organization must have an Internal Revenue Service determination letter or advance ruling indicating that it is an exempt organization under Internal Revenue Code Section 501(c)(3), if applicable; and;

(d) The organization must comply with the relevant provisions of ORS 128.610 to 128.995 concerning registration with and reporting to the Attorney General, if required.

(2) Any organization claiming to be a charitable organization must provide the following information to the fund(s) or federation(s) for submission to the Committee upon request:

(a) Evidence that the organization meets the definition of "charitable organization" in OAR 125-030-0010, including a copy of the Internal Revenue Service determination letter indicating that the charitable organization is an exempt organization under Internal Revenue Code Section 501(c)(3), if applicable;

(b) Evidence of the organization's local presence as defined in OAR 125-030-0010;

(c) Evidence that the organization has complied with the relevant provisions of ORS 128.610 to 128.995, concerning registration with and reporting to the attorney general, if required, or an explanation of why the organization has not registered and reported; and

(d) A copy of the charitable organization's written policy on nondiscrimination regarding race, color, religion, national origin, disability, age, sex, sexual orientation, or association with any of these protected classes, and applicable to persons served by it.

(3) Public Accountability Standards: Each charitable organization shall annually prepare and make a report available to the fund(s) and federation(s) that represent it. The report shall include a full description of the organization's activities, including types of solicitation for contributions, the names of its chief administrative personnel, and full disclosure of the source of and use of all contributions. The report shall also disclose the charitable organization's fund-raising costs and the estimated percentage of money collected that will be applied to administrative costs and to charitable activities. The funds and federations shall make this information available to state employees upon request during the annual solicitation.

(4) A charitable organization shall be denied participation in the current year's Annual Charitable Fund Drive for failure to meet the eligibility requirements set forth in OAR 125-030-0040(1) through (3). The Committee will notify the fund or federation representing the charitable organization in writing of the denial of participation.

(5) A charitable organization shall be removed from participation in the current year's Annual Charitable Fund Drive and denied participation in the Annual Charitable Fund Drive for the following two years, if the charitable organization fails to properly account for, allocate, or represent financial transactions. The Committee will notify the fund or federation representing the charitable organization in writing of the charitable organization's removal from participation from the current year's Annual Charitable Fund Drive and denial of participation in the Annual Charitable Fund Drive for the following two years within 45 days after the date a quorum of Committee members determines that a disqualifying event has occurred.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 184.340, 292.045 & 184.305

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 2-1998, f. 12-17-98, cert. ef. 12-24-98; BAD 2-2002, f. & cert. ef. 7-30-02; BAD 1-2003(Temp), f. & cert. ef. 6-11-03 thru 12-8-03; BAD 3-2003, f. & cert. ef. 11-10-03; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0040 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-030-0051

Participation Requirements for Funds and Federations

(1) To participate in the Annual Charitable Fund Drive, each fund or federation must satisfy each of the following requirements:

(a) The organization must meet the definition of "charitable organization" in OAR 125-030-0010;

(b) The organization must meet the definition of a "fund" or "federation" in OAR 125-030-0010;

(c) The organization must have a "local presence" as defined in OAR 125-030-0010;

(d) The organization must have an Internal Revenue Service determination letter or advance ruling indicating that it is an exempt organization under Internal Revenue Code Section 501(c)(3), if applicable;

(e) The organization must comply with the relevant provisions of ORS 128.610 to 128.995 concerning registration with and reporting to the Attorney General, if required;

(2) Any organization claiming to be a fund or federation must submit the following information to the Committee upon request:

(a) Evidence that the fund or federation meets the definition of "charitable organization" in OAR 125-030-0010, including a copy of the Internal Revenue Service determination letter indicating that the fund or federation is an exempt organization under Internal Revenue Code Section 501(c)(3), if applicable;

(b) Evidence that the fund or federation meets the definition of a "fund" or "federation" in OAR 125-030-0010;

(c) Evidence of the fund's or federation's local presence as defined in OAR 125-030-0010;

(d) Evidence that the fund or federation has complied with the relevant provisions of ORS 128.610 to 128.995, concerning registration with and reporting to the Attorney General, if required, or an explanation of why the organization has not registered and reported; and

(e) A copy of the organization's written policy on nondiscrimination regarding race, color, religion, national origin, disability, age, sex, sexual orientation, or association with any of these protected classes, and applicable to persons served by it.

(3) Public Accountability Standards: Each fund or federation shall annually prepare and submit to the Committee, as part of the application, a report that includes a full description of its activities, including types of solicitation for contributions, the names of its chief administrative personnel, and full disclosure of the source of and use of all contributions. The report shall also disclose the fund-raising costs and the estimated percentage of money collected that will be applied to administrative costs and to charitable activities. The funds and federations shall make this information available to state employees upon request during the annual solicitation.

(4) Each fund or federation that participates in the Annual Charitable Fund Drive, shall support and participate in the events and activities associated with the fund drive.

(5) Each fund or federation must submit an application to the Charitable Fund Drive Committee in the form prescribed by the Committee and by the date established by the Committee. At a minimum, the funds and federations shall be asked to provide the information required by OAR 125-030-0050(1) through (3) and to affirm their intention to participate as required by 125-030-0050(4). The Committee may request additional information or clarification of the information submitted with an application.

(6) Once a fund or federation has been accepted for participation in the Annual Charitable Fund Drive, the Committee may exercise discretion and accept previous application information in determining eligibility for participation in subsequent Annual Charitable Fund Drives. The Committee will notify the fund or federation in writing if it elects to exercise such discretion.

(7) A fund or federation shall be denied participation in the current year's Annual Charitable Fund Drive for:

(a) Failure to meet the eligibility requirements set forth in OAR 125-030-0050(1) through (4); or

(b) Failure to apply or renew the application to participate in the Annual Charitable Fund Drive by the deadline set by the Committee.

(8) A fund or federation shall be notified in writing of acceptance for or denial of participation in the current year's Annual Charitable Fund Drive within 45 days after the application deadline.

(9) A fund or federation shall be removed from participation in the current year's Annual Charitable Fund Drive and denied participation in the Annual Charitable Fund Drive for the following two years if the fund or federation fails:

(a) To properly account for, allocate, or represent financial transactions; or

(b) To pay the fund's or federation's allocated share of the costs of the fund drive.

(10) A fund or federation shall be notified in writing of its removal from participation from the current year's Annual Charitable Fund Drive and denial of participation in the Annual Charitable Fund Drive for the following two years within 45 days after the date a quorum of Committee members determines that a disqualifying event has occurred.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043 & 292.045

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 2-1998, f. 12-17-98, cert. ef. 12-24-98; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0050 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-030-0061

Charitable Fund Drive Management Organization

(1) The Charitable Fund Drive Committee will select a person or organization as the Charitable Fund Drive Management Organization through an open competitive process.

(2) The selection process will consider cost, experience, and ability to conduct a statewide fund drive.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043 & 292.045

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; ASD 1-1994(Temp), f. & cert. ef. 4-14-94; DAS 2-1995(Temp), f. & cert. ef. 5-19-95; BAD 1-2002(Temp), f. 1-31-02, cert. ef. 2-1-02 thru 7-30-02; BAD 2-2002, f. & cert. ef. 7-30-02; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0060 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-030-0071

Charitable Fund Drive Costs

(1) It is the responsibility of the Charitable Fund Drive Committee to allocate the costs of the fund drive to each participating fund and federation. The Charitable Fund Drive Committee will consider such factors as the contributions received by each fund and federation, the exposure of each fund and federation to the employee base, and fixed costs.

(2) Participating funds and federations shall sign a memorandum of agreement with the Charitable Fund Drive Committee and the Charitable Fund Drive Management Organization to develop a cooperative fund drive and pay all costs of the fund drive. Such costs include, but are not limited to, costs incurred for the overall management and coordination of the Annual Charitable Fund Drive; design and printing of brochures and payroll deduction forms; training provided to employee volunteers; promotional events; and any other expenditure deemed necessary and approved by the Charitable Fund Drive Committee.

(3) The Charitable Fund Drive Committee is committed to keeping administrative costs reasonable. Charitable Fund Drive costs are ideally held to less than 10% of total donations per campaign; because donations are not known at the time the campaign budget is set and because donation levels fluctuate, the total campaign budget shall not exceed 12% of the prior year's total donations.

(4) Interest accrued on employee and retiree donations may be used by the Charitable Fund Drive Committee to offset fund drive costs, including bank transaction fees.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043 & 292.045

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0070 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-030-0083

Appeals

(1) Funds and federations may appeal:

- (a) Denial of participation;
- (b) Removal from participation; and

(c) Actions of the Charitable Fund Drive Committee with respect to the Committee's policies and procedures.

(2) Any appeal by a fund or federation must be in writing and received by the Charitable Fund Drive Committee within ten business days of the mailing of the written notice of denial, removal, or Committee action. The appeal must specify the particular action that is being appealed and why.

(3) The Charitable Fund Drive Committee has 45 days from the date of the appeal letter to respond.

(4) A fund or federation that is not satisfied with the response of the Committee may appeal in writing to the Director within ten business days of the date on which the Committee mailed its response.

(5) The decision of the Director shall be final.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043 & 292.045

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0080 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

125-030-0090

Designation of Direct Recipients

Funds and federations shall allow state employees and retirees to designate any affiliated charitable organization eligible to participate in the Annual Charitable Fund Drive as the direct recipient of an employee's or retiree's contribution.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043 & 292.045

Hist.: BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0090 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

DIVISION 35

FEDERAL SURPLUS PROPERTY

125-035-0005

Authority

The Department of Administrative Services, State of Oregon, is authorized by ORS 279.820 to acquire, warehouse and distribute federal surplus property from the Government of the United States or any surplus property disposal agency thereof (all such property is hereinafter referred to as "Federal surplus property") to all eligible donees in the state and to enter into cooperative agreements pursuant to the provisions of **41 CFR Ch. 101-44.206**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0010

Designation of the State Agency

The plan, as required in **FPMR 101-44.202** shall be administered by the Transportation, Purchasing and Print Services Division, Department of Administrative Services, Surplus Property Section, hereafter referred to as the State Agency for Surplus Property (SASP). The SASP reports directly to the Administrator, Transportation, Purchasing and Print Services Division. The SASP has complete responsibility and authority to carry out the requirements of acquiring, warehousing and distributing Federal surplus property in the State of Oregon pursuant to the provisions of the **Federal Property and Administrative Services Act of 1949**, as amended. SASP's staffing, structure, and status are shown in (**Exhibit 1**); physical facilities are described in (**Exhibit 2**).

[ED. NOTE: Exhibits referenced are available from the agency]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0015

Inventory Controls and Accounting Systems

The following shall be the responsibility of the SASP when acquiring Federal surplus property for the distribution center inventory and reallocating it to donees:

(1) Inventory Controls:

(a)(A) Immediately upon receipt, Federal surplus property shall be moved into a receiving area for check in. If personnel are not immediately available, the property shall be held in a protected area until it can be received.

(B) Shipping documents and the applicable SF-123 and its attachments shall be used to check and identify the property;

(C) Overage and shortage reports, and supplemental SF-123's, shall be prepared in accordance with the requirements of **Federal Property Management Regulations (FPMR) 101-44.115** and mailed to the appropriate General Services Administration regional office. Upon verifying the description, condition, and quantity, of the Federal surplus property, a stock tag containing the following data shall be prepared and attached to each item to identify it as follows:

(i) Oregon List number;

(ii) Item number;

(iii) Unit acquisition cost;

- (iv) Description, including serial number, if applicable;
- (v) Unit of measure;
- (vi) Unit service and handling charge.

(b) Following verification of receiving information, individual stock record cards shall be prepared on all items of Federal surplus property having an individual acquisition cost of five dollars or more. All actions, including receipt, donation and inventory status shall be recorded on this card. The stock record card shall be retained on file for not less than three years after the property has been donated;

(c) A physical inventory shall be taken annually of all Federal surplus property in possession of the SASP. Shortages and overages shall be listed on the annual inventory report. This report shall be used to record inventory adjustments and must be approved by the supervisor before posting to the stock cards. Adjustments to the inventory record shall be made only when all reasonable efforts have been exhausted to determine the reason for variance. A statement explaining the variance shall be included in the corrected inventory report.

(d) After receiving approval from the GSA Regional Office, all federal surplus property retained by SASP for internal use will be recorded on separate records from donable property for control and accountability.

(2) Accounting Systems: A state approved double entry accounting system shall be used. It shall include a chart of accounts, a general ledger with accounts for all assets, liabilities, income, and expense, and journals for all original records of transactions. It shall identify and separately account for funds accumulated from service charges. Monthly and year-end reports shall be provided for management visibility and program control.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84 & ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0020

Return of Donated Property by Donee

(1) When a determination has been made that federal surplus property has not been put to use by a donee within one year from the date of receipt of the property or the donee has not used the property for one year thereafter under the terms and conditions of eligibility, and if the Federal surplus property is determined to still be usable, the donee must:

(a) Return the property at the donee's own expense to the SASP distribution center. Property returned by a donee shall be received into inventory stock control for reissuance to other donees; or

(b) Transfer the property to another eligible donee as directed by the SASP; or

(c) Make such other disposal of the property as the SASP may direct.

(2) The SASP shall periodically reemphasize this Federal surplus property utilization requirement when corresponding and meeting with donees and when surveying the utilization of donated Federal surplus property at donee facilities.

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84 & ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0025

Financing and Service Charges

(1) ORS 279.822 authorizes the use of the Department of Administrative Services Operating Fund (the Fund) to finance the acquisition and distribution of Federal surplus property. The Fund is maintained by the collection of service and handling charges from property donations to the donees of the Federal Surplus property.

(2) The service charge is based on the pro-rated expenses incurred annually by the SASP including but not limited to the following major cost areas: personnel, transportation, utilities, fuels, telephone, warehousing, storage, compliance, insurance, printing, supplies and travel. Service charges shall be assessed at a rate

designed to cover all direct and indirect costs involved in acquiring and distributing Federal surplus property.

(3) The service charges shall be fair and equitable in relation to the service performed. Emphasis shall be placed on keeping the service charge to a minimum but at the same time providing the necessary service and funds to operate the SASP on a sound financial basis. Other factors considered in applying service charges are; original acquisition cost, present value, screening cost, quantity, condition, desirability of the property, transportation cost, loading and unloading cost, packing and crating, administrative costs, repair and rehabilitation, utilization and compliance.

(4) Service charges for Federal surplus property are determined by the expenses and factors listed in sections (2) and (3) of this rule. When the Fund's balance is determined by SASP to be either insufficient or excessive, service charges shall be adjusted accordingly.

(a) The maximum service charge per item of property shall not exceed \$15,000;

(b) If a donee screens and arranges delivery of Federal surplus property, the service charge assessed to the donee shall be 4% of acquisition value for miscellaneous items, and 6% for licensed vehicles, boats, and heavy equipment, or property requiring an 18 month restriction period;

(c) If the SASP screens and arranges delivery of Federal surplus property to a donee, the service charge shall be 4% of acquisition value for miscellaneous items, and 7% for licensed vehicles, boats, and heavy equipment, or property requiring an 18 month restriction period;

(d) If the Federal surplus property is handled at SASP's distribution center, the following service charge schedule shall be used:

(A) Acquisition Cost \$0-\$5,000, Percent Charge 0-30%;

(B) Acquisition Cost \$5,001-\$20,000, Percent Charge 0-25%;

(C) Acquisition Cost Above \$20,000, Percent Charge 0-15%;

(e) Federal surplus property made available to eligible nonprofit providers of assistance to homeless individuals shall be distributed at a nominal cost for care and handling of the property.

(5) Exceptions — the following exceptions to Section 4, subsections (a)-(e) of this rule address problem areas which are frequently encountered. Special or extraordinary costs may be added to, or subtracted from the service charge as follows:

(a) Rehabilitated property — direct costs for property rehabilitation shall be added to the service charge. The SASP reserves the right to rehabilitate Federal surplus property, except when such property is received by the donee directly from the Federal holding agency.

(b) Overseas property — additional direct costs for obtaining the Federal surplus property may be added;

(c) Long-haul property — charges for major items with unusual costs may be added. Any such costs which are anticipated shall be discussed with the donee prior to shipment;

(d) Special handling — an additional charge may be made for dismantling, packing, crating, shipping, delivery and other extraordinary handling charges;

(e) Screening — Extraordinary costs incurred in screening property may be added;

(f) Condition code — when an obvious incorrect condition code has been assigned, the correct code shall be used for discount purposes.

(g) Acquisition cost — when an incorrect acquisition cost has been detected, there shall be an adjustment in service charges to reflect the correct acquisition cost. The correct acquisition cost will be determined by researching available records for similar equipment or supplies, including federal stock/pricing manuals.

(6) In event the program authorized by ORS 279.800, et seq., is abolished, any balance in the Fund which is attributable to SASP's activities shall be divided among the participating donees during the immediately preceding fiscal year, in accordance with, and except as otherwise allowed or provided in, ORS 279.822(3).

(7) Service charge payments remitted to SASP by donees shall be used to cover the direct and indirect costs of operations and,

indirectly, for the benefit of the participating donees, and for no other use or purpose. SASP's costs of operation include, as provided by state law, acquiring and/or improving offices and warehouse facilities.

(8) Service charge payments received by SASP may be used, among other purposes, to purchase necessary equipment and supplies, to repair and rehabilitate equipment, and to purchase replacement parts.

(9) Minimum service charges shall be assessed to donees in cases where the SASP provides document processing only and no other direct costs are involved. Based on an analysis of SASP expenses to facilitate the transfer of Federal surplus property, the service charge shall be discounted twenty-five percent for the donee locating and screening the property, and ten percent for direct pickup by the donee. These discounts shall be based upon the service charge that would have been assessed if the Federal surplus property had been transferred from the SASP distribution center.

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 8-1986, f. & ef. 10-10-86; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0030

Terms and Conditions on Donated Property

(1)(a) The SASP shall require each donee, as a condition of eligibility for receiving allocation(s) of Federal surplus property, to file with the SASP an application, certification and agreement form establishing the terms, conditions, reservations and restrictions under which all Federal surplus property shall be allocated by SASP to the donee. Each form must be signed by the Chief Executive Officer of the donee agreeing to such terms, conditions, reservations and restrictions prior to the allocation of any Federal surplus property to the donee. The certifications and agreements, and the terms, conditions, reservations and restrictions shall be printed on the reverse side of each SASP property issue and invoice document. The SASP shall make it an express term of all donation agreements that all donees comply with the statutory requirement that all property acquired by donees must be placed into use within one year of donation and be used for one year thereafter. The SASP property issue and invoice document is included in the attachments to this plan (**Exhibit 3**);

(b) The following periods of restriction are established by the SASP on all items of Federal surplus property with a unit acquisition cost of \$5,000 or more, and on all passenger motor vehicles:

(A) All passenger motor vehicles — 18 months from the Federal surplus date the property is placed in use by the donee.

(B) Items with a unit acquisition cost of \$5,000 or more — 18 months from the date the Federal surplus property is placed in use, except for such other items of major equipment on which the SASP and General Services Administration may designate a further period of restriction;

(C) Aircraft (except combat type) and vessels (50 feet or more in length) with a unit acquisition cost of \$5,000 or more — 60 months from the date the Federal surplus property is placed in use. Such donations shall be subject to the requirements of the Conditional Transfer Document (**Exhibits 4 and 5**);

(D) Aircraft (combat type) — restricted in perpetuity. Donation of combat type aircraft shall be subject to the requirements of a Conditional Transfer Document (**Exhibit 6**).

(E) Foreign Gifts — Ten years from the date the gift or decoration was placed in use by the donee as stated in the Donee Letter of Intent.

(c) The SASP may reduce, for good and sufficient reasons, the period of restriction on items of Federal surplus property described in subparagraphs (b)(A) and (b)(B) of this section, at the time of donation but in no event shall the period of restriction be less than 18 months from the date the Federal surplus property is placed in use by the donee (e.g., condition of the Federal surplus property, or the proposed use, secondary, cannibalization, etc.) (**Exhibit 7**);

(d) The SASP, at its discretion, and when considered appropriate, may impose such terms, conditions, reservations and restrictions as it deems reasonable on the use of donated Federal surplus property other than items with a unit acquisition cost of over \$5,000 or more, and passenger motor vehicles.

(2)(a) The SASP may amend, modify, or remove any term, condition, reservation or restriction it has imposed on the donee of Federal surplus property in accordance with the standards prescribed and in accordance with the enclosed standards (**Exhibit 7**), provided that the conditions pertinent to each situation have been demonstrated to the satisfaction of the SASP and made a matter of public record by the SASP.

(b) The SASP shall impose on the donation of any item of Federal surplus property, regardless of unit acquisition cost, such special handling or use limitations as the General Services Administration may determine necessary because of the characteristics of the property. Use restrictions imposed by General Services Administration shall not be removed by the SASP without prior General Services Administration concurrence.

(c) The SASP shall make it an express term of all donation agreements that all donees comply with the statutory requirement that all items donated must be placed into use within one year of donation and be used for one year after being placed in use. If not so used, the property shall be returned to the SASP if it is still usable, or otherwise handled in accordance with the provisions of OAR 125-035-0020 of this plan.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0035

Non-Utilized Donated Property

(1) All Federal surplus property in the possession of the SASP for 18 months, which cannot be utilized by eligible donees, shall be reported to the General Services Administration for disposal authorization in accordance with **FPMR 101-44.205**. In accordance with this regulation SASP shall:

(a) Transfer the property to another state agency or federal agency; or

(b) Sell the property by public sale; or

(c) Abandon or destroy the property.

(2) In the event of disposal by transfer to another agency or by public sale, the SASP may seek such reimbursement as is authorized in accordance with **FPMR 101-44.205**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0040

Fair and Equitable Distribution

The SASP shall make Federal surplus property available to eligible donees in the state on a fair and equitable basis.

(1)(a) The distribution of Federal surplus property shall be based on the SASP's determination of relative needs, resources and ability to utilize the property. Factors to be considered in determining relative needs of the donee program:

(A) Size and type of program conducted by each prospective donee;

(B) Contemplated use and frequency of use by each prospective donee;

(C) Economic condition of the prospective donee activity or institution;

(D) The prospective donee's critical or urgent need for the property;

(E) Interest in and expression of need for the available property by the donee;

(b) Ability to utilize:

(A) Length of time in contemplated usage and frequency of use;

(B) When the item can be put to use;

(C) Availability of funds to repair or maintain property;

(D) Ability of the donee to select and remove property from the federal activity of distribution center on a timely basis;

(E) Type and quantity of property received by the donee to date.

(2)(a) The SASP operates a distribution center to service the eligible donees in the distribution of available Federal surplus property. To insure that eligible donees located a greater distance from the distribution center are treated equitably, a "Want List" system shall be maintained that aims for direct shipment of allocated items from the Federal holding agencies to the donee's intended place of use. Donees are encouraged to submit a list of major items needed such as vehicles, construction equipment, materials handling equipment, machine tools, generators, air compressors, business machines, boats, aircraft, large electronic and scientific type items, etc. SASP employees shall be guided by these requests in their search and selection of allocable Federal surplus property. Items listed on a "Want List" shall be distributed to eligible donees on the basis of need, resources and ability to utilize the property as outlined in section (1) of this rule. Small miscellaneous items shall be available from the distribution center which shall be open seven hours per day five days a week;

(b) Miscellaneous items shall be available on a supermarket plan, with quantity limited to any one donee depending upon the total quantity on hand.

(3) The SASP shall recommend to General Services Administration the certification of donee screeners as are qualified and needed in accordance with **FPMR 101-44.116**. The SASP shall, insofar as practical, select that Federal surplus property requested by the donees and arrange for direct pickup or shipment of the property to the donee, if requested to do so.

(4) Donees which suffer or experience a local disaster and/or loss of donee property due to fire, flood, tornado, or other casualty, shall be given a temporary priority for all requested items of Federal surplus property. Special efforts will be made by the SASP to locate and distribute property needed by donees which have suffered casualty losses.

(5) Where competing requests are received for Federal surplus property items, SASP shall make a determination as to the donee based on the evaluation of the criteria in section (1) of this rule.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0045

Eligibility

(1)(a) The SASP shall contact and instruct all known potential donees in the state on the procedures to follow in establishing their eligibility to participate in the Federal surplus property program;

(b) In establishing a list of the potential donees, the SASP shall use the standards and guidelines set forth in **FPMR 101-44.207** as well as the following sources:

(A) Public Agencies:

(i) Listings of cities and towns;

(ii) Listings of counties, state departments, divisions, councils, commissions, institutions, including the legislative and judicial branches of state government, etc.;

(iii) Listings of local departments, divisions, commissions, councils, etc.

(B) Non-profit, Tax-exempt Units:

(i) State departments and others for listing of all local units approved or licensed by them;

(ii) Existing listings of units now eligible to participate in the Federal surplus property program;

(iii) Inquiries, letters, telephone calls, etc., received relative to eligibility.

(2) Contacts shall be made by letter, telephone, general meetings, and conferences with the groups listed above, supplemented as necessary by news releases, informational bulletins, attendance at conferences and meetings, to discuss the Federal surplus property program.

(3) As a condition of eligibility each potential donee shall be required to file with the SASP:

(a) An application certification and agreement form signed by the chief executive officer accepting and agreeing to be bound by the terms and conditions under which Federal surplus property shall be transferred. (**Exhibit 8**);

(b) A written authorization signed by the chief administrative officer or executive head of the applicant or a resolution of the governing board designating one or more representatives to act for the applicant, obligate any necessary funds, and execute issue and invoice documents. (**Exhibit 9**);

(c) Assurance of compliance indicating acceptance of Civil Rights laws and Non-Discrimination on the basis of race, color, national origin, gender, age or disability in accordance with General Services Administration regulations and requirements. (**Exhibit 10**);

(d) The legal name of applicant, address and telephone number and its status as a public agency or non-profit, tax-exempt, educational or public health activity, provider of assistance to homeless, and/or a program for older Americans;

(e) Details and scope of the applicant's program, including its different activities and functions;

(f) A list of the types and kinds of equipment, vehicles, machines, or other items needed by the applicant;

(g) Financial information, as requested by SASP, to help in evaluating the applicant's relative needs and resources;

(h) Proof of the applicant's tax-exempt status under **Section 501 of the Internal Revenue Code of 1954** (for non-profit activities only); and

(i) Proof that the applicant is approved, accredited or licensed in accordance with **FPMR 101-44.207**.

(4) All approvals of eligibility shall be reviewed and updated every three years, except for skilled nursing homes, intermediate care facilities, alcohol and drug abuse centers, programs for older individuals and any other programs that are certified, approved and/or licensed, which must be reviewed and updated each year.

[ED. NOTE: Exhibits referenced are available from the agency]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0050

Compliance and Utilization

(1) Separate warehouse property issue and invoice documents shall be prepared for each item of Federal surplus property with an acquisition cost of \$5,000 or more and for all passenger motor vehicles. An additional statement, establishing property utilization standards, shall be printed on the face of the property issue and invoice document advising the donee that this item of Federal surplus property must be placed in use within one year of acquisition and used continuously for a period of 18 months thereafter.

(2) Passenger motor vehicles, and other motor vehicles required to be licensed by the Oregon Department of Transportation's Driver and Motor Vehicle Services shall be licensed, and filed with the SASP shown as the security interest holder. When the vehicle has been utilized in accordance with the terms and conditions of transfer, and when 18 months of use have expired, the SASP shall release the title to the donee.

(3) At least once during the period of restriction, SASP personnel, or a designated representative, shall review all passenger motor vehicles and issued items with an original acquisition value of \$5,000 or more to determine that these items are being utilized in accordance with the purpose for which acquired. Review shall consist of a minimum of 5% on site physical inspections and written certification of property utilization by donee.

(4) During the physical review, a SASP representative shall ascertain whether the donee is complying with any special handling conditions or use limitations imposed on items of property by General Services Administration in accordance with **FPMR 101-44.108**. The review shall include a survey of donee compliance

with the statutory requirements that all items of property acquired by the donee have been placed into use within one year of acquisition and used for one year thereafter. Written reports on utilization and compliance reviews shall be made and placed on file.

(5) Whenever there is any indication of misuse, noncompliance, or alleged fraud, the SASP shall initiate the appropriate level of investigation of the allegations, including a report to the FBI when appropriate. The General Services Administration shall be notified of all cases including misuse, noncompliance, or alleged fraud. The State Agency for Surplus Property shall take necessary actions to assist General Services Administration and other Federal and State agencies in investigating such cases.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0055

Consultation with Advisory Bodies and Private Groups

The State Agency for Surplus Property shall establish an Advisory Board that represents both public and non-profit donee agencies, institutions, and organizations and that is comprised of donee representatives from various geographic locations throughout the state. The manager of the Federal Surplus Property Program shall act as chairperson. The Board shall meet annually or at the discretion of the chairperson. The membership may fluctuate to fully meet the interests of eligible donees in the state. The minutes of the meeting shall be used to report on the donation program to the groups concerned, and the board shall solicit expressions of need and interest from eligible donees so that the SASP and General Services Administration may be advised of such requirements, including requirements for special items of property.

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0060

Audit

(1) A Secretary of State's Audit Division review shall be performed in accordance with the external audit requirements of the Office of Management and Budget Circular No. A-128 "Audits of State and Local Governments." Two copies of this audit report made pursuant to this Circular shall be provided to the appropriate General Services Administration regional office. This review shall cover the conformance of the state agency with the state plan of operation and the requirements of **41 CFR 101-44**.

(2) General Services Administration representatives may review SASP operations periodically, and may for appropriate reasons, conduct their own audit of the SASP following due notice to the Governor of the reasons for such audit. Financial records and all other books and records of the SASP shall be made available to all authorized Federal activities.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0065

Cooperative Agreements

(1) The Oregon Department of Administrative Services is authorized, pursuant to statute, to enter into cooperative agreements with the Administrator of General Services Administration for the use of property, facilities, personnel and services. Such agreements may or may not require payment or reimbursement for use by the SASP of any surplus personal property in its possession, subject to conditions imposed by the General Services Administration. It is the desire of the SASP to continue, renew, or enter into such agreements authorized under **Section 203(n) of the Act, 40 USC para 471, et seq.**

(2) Periodically, internal audits shall be performed on the operations and financial affairs of the SASP. External audits will meet the requirements of the Office of Management and Budget Circular A-128 "Audits of State and Local Governments." The state and SASP will provide GSA two copies of any audit report

made pursuant to the circular, or with copies of the sections pertaining to the Federal Donation Program. An outline of the necessary corrective action the SASP will take to comply with scheduled completion dates shall be submitted with the audit report. General Services Administration may conduct their own audit of the SASP following due notice to the chief executive officer of the state of the reasons for such audit. Financial records and all other books and records shall be made available by the SASP for inspection by General Services Administration, the General Accounting Office or other authorized Federal activities.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0070

Liquidation

Should a determination be made to abolish or liquidate the SASP, advance notice shall be given to General Services Administration, in accordance with the specific requirements of **FPMR 101-44.202(c)(14)**, with the reason for abolition or liquidation; schedule of time to effect the closure; and report to General Services Administration of the Federal surplus property on hand for retransfer, destruction or sale. Physical assets shall be converted to cash, and all cash assets shall be returned to the participating donees in accordance with, and except as otherwise provided or allowed in, ORS 279.822(3). Records and accounting information shall be retained for two years after closure.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0075

Records

Copies of SF-123 allocations, warehouse property issue and invoice documents, log books, and all other official records of the SASP shall be maintained for not less than three years. Documents concerning items of Federal surplus property subject to restriction for more than two years shall be maintained for one year beyond the expiration of the restriction period. Whenever Federal surplus property is in noncompliance status, records shall be maintained for one year after the case is closed.

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

DIVISION 40

MAIL/DELIVERY SERVICES

125-040-0001

Definitions

As used in this chapter unless the context requires otherwise:

(1) "Department" means the Oregon Department of Administrative Services.

(2) "Interagency Mail" means:

(a) Mail that is not legally required to bear United States Postage; and

(b) Originates from persons employed in some capacity by a state agency; and

(c) Concerns official business of a state agency; and

(d) Is addressed between state offices, facilities, or agencies.

(3) "Regular Interagency Mail" includes standard letter and manila envelopes weighing up to three pounds. Interagency parcels means items deliverable between state agencies and not exceeding 102 inches in length and girth combined nor weighing more than 50 pounds.

(4) "U.S. Mail" means items which carry U.S. Postal Service postage paid in full on each piece according to its class and weight category.

Stat. Auth.: ORS 283

Stats. Implemented:

Hist.: GS-6-1988, f. 12-1-88, cert. ef. 1-1-89

125-040-0005

Mail Services

(1) Customers. The Department of Administrative Services provides pick up and delivery of U.S. mail, and interagency mail and parcels for state agencies, as defined in ORS 291.002. These services may be extended to local governments by intergovernmental agreement. Private persons and organizations may not use interagency mail and parcel delivery services.

(2) Private mail:

(a) In compliance with U.S. Postal Service regulations, the department will not accept and deliver mail from private persons and organizations unless the mail carries cancelled U.S. Postal Service postage;

(b) Private mail that does not have cancelled U.S. postage will be stamped "Return for Postage" and sent to the United States Post Office. For example, mail delivered by a professional association for direct distribution to state agency employees will be refused without cancelled U.S. postage;

(c) Items submitted for interagency mail service may be opened and inspected except for sealed letters. The department reserves the right to refuse any item submitted to the state mail system. Items which may be refused include hazardous toxins, biomedical material, disease germs, explosives, personal mail, negotiable instruments such as bonds, cash, bank deposits or bearer instruments, and mail generated by private organizations without indication of cancelled U.S. postage;

(d) Notice of the department's interagency mail practices will be posted in state mail rooms and pick up and delivery points. Posters are available from the Department of Administrative Services, Services Division, State Mail Operations, 550 Airport Road S.E., Salem, OR 97310-1543. Telephone 378-4708.

Stat. Auth.: ORS 283

Stats. Implemented:

Hist.: GS 6-1988, f. 12-1-88, cert. ef. 1-1-89

125-040-0010

Delivery Disclaimer

The department is not responsible for timely delivery of time critical mail. Mail senders assume all risk of delay, loss or destruction of mail submitted to the state mail system.

Stat. Auth.: ORS 283

Stats. Implemented:

Hist.: GS 6-1988, f. 12-1-88, cert. ef. 1-1-89

DIVISION 45

**DISPOSITION AND ACQUISITION OF
REAL PROPERTY INTERESTS**

125-045-0200

Purpose

These rules are adopted under the authority of ORS 184.340, 270.015 and 270.100 and establish the procedures that must be followed by Agencies to acquire and to sell, transfer, exchange or otherwise dispose of interests in real property. These rules also establish procedures for the operation of the Public Lands Advisory Committee (PLAC); collection of funds for the support of the Statewide Lands Inventory Program and PLAC; and the management and operation of the Statewide Lands Inventory Program.

Stat. Auth.: ORS 184.340, 270.015 & 270.100

Stats. Implemented: ORS 244.010 & 270.010

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06

125-045-0205

Definitions

The following definitions apply to the rules in this Division 045:

(1) "Acquiring Agency" means an Agency that proposes to acquire a Real Property Interest and is not an Exempt Acquiring Agency.

(2) "Acquisition" means obtaining rights of ownership in a Real Property Interest by an Agency through a purchase, exchange, conveyance or other transfer of that Real Property Interest.

(3) "Administrator" means the Administrator of the Department's Facilities Division.

(4) "Agency" means any board, commission, department or agency of the State of Oregon, whose costs are paid from funds held in the State Treasury and that are authorized to acquire or dispose of Real Property Interests.

(5) "Appraisal" means a written report by a licensed and experienced real estate appraiser estimating the fair market value of a Real Property Interest prepared in accordance with OAR 125-045-0215.

(6) "Appraised Fair Market Value" means the fair market value of a Real Property Interest as determined by an Appraisal.

(7) "Clearing House Process" means the notification process whereby agencies notify the Department of terminal dispositions or acquisitions of State Real Property Interests and Department notifies other state agencies and political subdivisions under OAR 125-045-0220 and 125-045-0225.

(8) "Department" means the Oregon Department of Administrative Services.

(9) "Directed Appraisal" means a written report by a licensed and experienced real estate appraiser estimating the fair market value of a Real Property Interest with restrictions or for a particular use, zone or conditional use in accordance with OAR 125-045-0215.

(10) "Director" means the Director of the Department.

(11) "Disposing Agency" means an Agency that proposes to dispose of a Real Property Interest.

(12) "Division" means the Facilities Division of the Department.

(13) "Exempt Acquiring Agency" means an Agency that is not required by law to report to the Department its intentions to acquire a Real Property Interest. At the time of the adoption of these rules the Exempt Acquiring Agencies are:

(a) The Department of Transportation, if acquiring a highway right of way;

(b) The Oregon University System, if acquiring real property within the approved projected campus boundaries of institutions subject to its authority; and

(c) The Parks and Recreation Department, if acquiring park properties.

(14) "Exempt Disposing Agency" means an Agency that is exempt by law from the requirement that it obtain Department approval prior to the Terminal Disposition of a Real Property Interest, unless the Terminal Disposition will be for less than the Appraised Fair Market Value. At the time of the adoption of these rules, the Exempt Disposing Agencies are:

(a) The Department of Fish and Wildlife;

(b) The Department of Forestry, if disposing of State forestlands;

(c) The Department of State Lands;

(d) The Department of Transportation;

(e) The Oregon University System;

(f) The Parks and Recreation Department; and

(g) Any legislative or judicial branch of the State.

(15) "Governing Body" means a board or commission with constitutional or statutory governing authority to approve the Acquisition or Terminal Disposition of a Real Property Interest. The term "Governing Body" includes but is not limited to the following bodies:

(a) The Oregon Board of Forestry;

(b) The Oregon Board of Higher Education;

(c) The Oregon Fish and Wildlife Commission;

(d) The Oregon Parks and Recreation Commission;

(e) The Oregon Transportation Commission; and

(f) The State Land Board.

(16) "Improvements" means any and all structures on or attachments to Real Property Interests but excluding public improvements as defined in ORS 279A.010.

(17) "In Reserve" as used in the Statewide Lands Inventory means an Agency-owned Real Property Interest that is not currently being used by the Agency, but that the Agency intends to use to

fulfill an anticipated future requirement, need or benefit related to the mission of the Agency.

(18) “In Use” as used in the Statewide Lands Inventory means a State Real Property Interest that is actively being used to serve the mission of the Agency.

(19) “Long Term Lease” means any lease, which the State does not have the right of termination for convenience, to another Agency, Political Subdivision, private or public party, having a term, including options of twenty years or more.

(20) “Office Quarters” means office space, office buildings and associated services, storage and parking facilities for Agencies. Office space may include factory-built modular or portable units but excludes stand alone storages and parking facilities.

(21) “Political Subdivision” means a local governmental unit, including a county, city, town, port, dock, commission or district, that exists under the laws of Oregon and that has the power to levy taxes.

(22) “Property Restrictions” means any restrictions placed on a Real Property Interest or on the sale proceeds from the Terminal Disposition of the Real Property Interest including deed reversion clauses or constitutional or statutory requirements to deposit all or a portion of the sale proceeds into specified funds other than the general fund.

(23) “Proposal” means a written offer to purchase a State Real Property Interest submitted in response to a Request for Proposals.

(24) “Proposer” means an individual or entity that submits a Proposal in response to a Request for Proposals.

(25) “Public Lands Advisory Committee” (PLAC) means the advisory committee established under ORS 270.120.

(26) “Real Property Interest” means any legal or equitable interest in land, or an option to acquire, or a leasehold interest with a term, including options to renew or extension provisions that contemplate a total period of occupancy of more than 20 years, together with all Improvements. For the purposes of these rules, a Real Property Interest does not include:

(a) An Office Quarters lease, regardless of the term;

(b) An easement, unless the easement has an Appraised Fair Market Value of \$100,000 or greater; or

(c) Mineral or geothermal resources, as defined in ORS 273.755, the sale or other disposition of which is governed by ORS 273.775 to 273.790 or other provisions of law governing these resources.

(27) “Request for Proposals” means a solicitation of offers to acquire a State Real Property Interest made pursuant to OAR 125-045-0235.

(28) “Right of First Refusal” means a conditional privilege that the Disposing Agency, in the exercise of its discretion, may grant to a qualified Proposer by OAR 125-045-0230 to match the best Proposal for the purchase of a State Real Property Interest.

(29) “State” means the State of Oregon.

(30) “State Real Property Interest” means any Real Property Interest that is owned in the name of the State of Oregon.

(31) “Statewide Lands Inventory” means the inventory of State Real Property Interests maintained by the Department on a computer database.

(32) “Surplus” as used in the Statewide Lands Inventory means a State Real Property Interest that is not currently used or is not needed or desirable to support a future need, use or function of the Agency.

(33) “Terminal Disposition” means the alienation of a State Real Property Interest through a sale, exchange, conveyance, donation, lease or other transfer of that interest.

Stat. Auth.: ORS 270.015(2) & 270.100(1)(d)

Stats. Implemented: ORS 244.010, 270.010, 270.100, 270.105, 270.110, 270.120, 270.130 & 270.135

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 8-2009, f. & cert. ef. 7-21-09

125-045-0210

Alternative Rules for Acquisitions and Terminal Dispositions by State Agencies

(1) These rules apply to all Agencies seeking the Acquisition or Terminal Disposition of a Real Property Interest, with the exception of:

(a) The Department of Veterans’ Affairs in any transaction for the acquisition or sale, or both, by the Director of Veterans’ Affairs of a home or farm under ORS 88.720, 273.388, 406.050, 407.135, 407.145, 407.375 and 407.377; and

(b) Any other Agency subject to constitutional or statutory authority that supersedes all or some of these rules.

(2) Any Agency subject to a Governing Body may adopt rules for the Acquisition and Terminal Disposition of Real Property Interests. Rules adopted by an Agency will not supersede these rules, however, unless the Agency’s rules have been certified by the Division pursuant to this rule.

(3) If an Agency believes that it is exempt from all or a part of these rules due to superseding constitutional or statutory authority, the Agency shall, at least 30 days prior to the Acquisition or Terminal Disposition, provide notice to the Division. The notice shall include the following information:

(a) The specific requirements of these rules from which the Agency claims to be exempt;

(b) The constitutional or statutory authority that the Agency believes supersedes these rule(s); and

(c) Identification of the Agency’s rules and the date they were filed with the Secretary of State.

(4) The Division shall determine whether the Agency’s rules are consistent with ORS 270.005 to 270.140. If the Agency’s rules are determined to be consistent, the Division shall certify the Agency’s rules and shall notify the Agency that it may use Agency rules in lieu of these rules.

(5) Upon obtaining certification by the Division and after obtaining approval by the Agency’s Governing Body, the Agency may acquire and dispose of Real Property Interests in accordance with its certified rules.

(6) The Division will maintain a master file of all Agencies whose rules are certified exempt from all or a part of these rules. This master file will include the Agency’s request for exempt certification, identification of the filed rules that the Agency will be using and a copy of the Division’s written determination.

(7) Once certified exempt, an Agency may not use amended rules filed for the Acquisition and Terminal Disposition of Real Property Interests in lieu of these rules until the Agency’s restructured rules have again been certified exempt by the Division.

(8) Notwithstanding OAR 125-045-0210, the Division may, upon 30 days prior notice to the Agency, withdraw its certification of an Agency’s rules as a result of a reexamination Department rules, policies and certifications or an Agency’s compliance with its certified rules. In such event, the Agency shall thereafter comply with 125-045-0210 through 125-045-0245 until new or revised rules have been certified by the Division.

Stat. Auth.: ORS 270.100(1)(d)

Stats. Implemented: ORS 270.015, 270.100, 270.105 & 270.110

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 10-2009, f. & cert. ef. 11-19-09

125-045-0215

Appraisal and Determination of Value of Real Property Interests

(1) Prior to Acquisition from or Terminal Disposition to a party other than an Agency of a Real Property Interest, the Acquiring or Disposing Agency shall obtain an Appraisal of the Real Property Interest.

(2) For dispositions and acquisitions with an estimated fair market value of less than \$100,000, a letter of opinion from a licensed real estate professional constitutes an Appraisal.

(3) If the estimated fair market value of the Real Property Interest is \$100,000 or greater, the Administrator:

(a) Shall either select or approve the selection of an appraiser by the Disposing Agency;

(b) Must approve of the form and substance of the written Appraisal and the final determination of Appraised Fair Market Value by the appraiser; and

(c) May require that more than one Appraisal be obtained to establish the Appraised Fair Market Value.

(4) Upon written request by an Agency, the Administrator may preapprove the Agency's appraisal process provided the process is consistent with this rule.

(5) Upon written request by an Agency, the Administrator may preapprove the Agency's use of a directed appraisal for a particular use.

(6) Except for transfers from one Agency to another, an Agency shall not sell or dispose of any State Real Property Interest for less than its Appraised Fair Market Value without complying with OAR 125-045-0245.

(7) Prior to Terminal Disposition of a State Real Property Interest to other than an Agency, and regardless of the Appraised Fair Market Value of the State Real Property Interest, the Disposing Agency shall consider all the values of the State Real Property Interest to the people of the State, including values for fish and wildlife habitat and public access to other real property. If the Appraised Fair Market Price of the State Real Property Interest is greater than \$100,000, the public will be invited to comment on the value of the State Real Property Interest. The Agency will solicit public comment in the manner defined in OAR 125-045-0235 or in a method the Division approves.

Stat. Auth.: ORS 270.015(2) & 270.100(1)(d)

Stats. Implemented: ORS 270.100 & 270.105

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 10-2009, f. & cert. ef. 11-19-09

125-045-0220

Acquisition of Real Property Interests

(1) Except for Exempt Acquiring Agencies, before an Agency offers to acquire a Real Property Interest, it shall first declare to the Division in writing its intent to acquire the Interest. The written declaration must include the following information:

(a) A detailed description of the Real Property Interest sought to be acquired, including its approximate size in square feet or acreage;

(b) Any particular requirements of the Agency that the Interest must satisfy;

(c) A description of the general or specific location where the Agency desires to acquire the Real Property Interest, including a map if possible;

(d) The reason for the Acquisition;

(e) A completed notice using a form provided by the Division; and

(f) Any other information the Division may request.

(2) After receiving the declaration described in this rule and before an Acquiring Agency other than an Exempt Acquiring Agency may unconditionally offer to acquire any Real Property Interest, the Division shall provide written notice of the intended Acquisition to all other Agencies authorized by statute to own State Real Property Interests. In addition to any other information the Administrator or Agency determines is desirable, written notice must include the following:

(a) The information provided by the Acquiring Agency defined in OAR 125-045-0220(1);

(b) A request that the Agency give the Division written notice if the Agency controls a State Real Property Interest that the Agency no longer needs and the State Real Property Interest may match the needs of the Acquiring Agency;

(c) The deadline for the Agency to respond to the Division, which may not be less than 30 days from the date of the Division's notice, unless the Administrator determines that a shorter period is in the State's interest; and

(d) Any other information the Acquiring Agency and the Division elect to include in the notice.

(3) The Division may dispense with notice to Agencies if the Administrator adopts written findings that in the reasoned judgment of the Division, it is unlikely that a State Real Property Interest

could satisfy the Acquiring Agency's needs and that as a result, notice would be a futile act.

(4) If an Agency responds timely to the written notice described in this rule, the Agency shall thereafter negotiate with the Acquiring Agency for a sale or transfer of the Agency's State Real Property Interest. The Acquiring Agency may not reject, without Division approval, a bona fide offer by another Agency to transfer to the Acquiring Agency a State Real Property Interest that satisfies the Acquiring Agency's acquisition criteria.

(5) The Acquiring Agency may proceed with an Acquisition of a Real Property Interest from a source other than an Agency after satisfying the requirements of OAR 125-045-0215 and this rule, provided the Acquisition is consistent with other applicable provisions of law.

Stat. Auth.: ORS 270.015(2) & 270.100(1)(d)

Stats. Implemented:

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06

125-045-0225

Terminal Disposition of State Real Property Interests (Notices to Department, State Agencies and Political Subdivisions — Clearing House Process)

(1) Prior to the Terminal Disposition by an Agency of a State Real Property Interest, the Agency shall first declare in writing to the Division its intent to dispose of the Interest. The written declaration must include the following:

(a) A detailed description of the State Real Property Interest to be transferred, including its approximate size in square feet or acreage and its legal description;

(b) A map showing the location of the State Real Property Interest;

(c) An explanation of the reason for disposal;

(d) A completed notice using a form provided by the Division; and

(e) Any other information the Division may request.

(2) To ensure that the Terminal Disposition best serves the interests of the State and the Disposing Agency, the Disposing Agency is encouraged to create a disposition strategy for the property. The Disposing Agency's disposition strategy should consider:

(a) The highest and best use of the Real Property Interest, consistent with the local planning goals;

(b) How the Real Property Interest might be marketed most effectively, given the nature of the Interest and likely potential purchasers; and

(c) How the economic return to the State might be maximized.

(3) After receipt of a declaration to dispose of a State Real Property Interest, and before a Disposing Agency may unconditionally offer to dispose of the State Real Property Interest, the Division shall provide notice of the intended Terminal Disposition to all Agencies authorized by law to acquire Real Property Interests. Written notice to agencies must include the following:

(a) A request that any Agency with an interest in acquiring the State Real Property Interest notify the Division in writing of its interest;

(b) The information required to be provided under OAR 125-045-0225(1);

(c) The deadline for the Agency to provide written notice to the Division of its interest in acquiring the State Real Property Interest, which may not be less than 30 days from the date the Division issues the notice, unless the Administrator determines that a shorter period is in the State's interest; and

(d) Any other information the Division or the Disposing Agency elects to include in the notice.

(4) Notification by the Clearing House Process, will be given to agencies by at least one of the following methods:

(a) Mailed notice;

(b) Electronic mail notice;

(c) Posting notice of the intended Terminal Disposition on the Division's website; or

(d) Newspaper publication meeting the requirements defined in OAR 125-045-0235(3).

(5) The Division may dispense with notice to Agencies if the Administrator adopts written findings that in the reasoned judgment of the Division it is unlikely that transfer of the State Real Property Interest to another Agency could satisfy the Disposing Agency's needs and that as a result, notice would be a futile act.

(6) If one or more Agencies responds timely to the written notice described in this rule, the responding Agency or Agencies shall negotiate with the Disposing Agency to determine if a sale, assignment, lease or other transfer can be completed. The Disposing Agency may not reject another Agency's bona fide offer to acquire the State Real Property Interest without Division approval.

(7) If two or more Agencies make bona fide offers to acquire the State Real Property Interest, the Disposing Agency shall determine, in its reasonable discretion, which, if any, offer is most advantageous to the State and the Disposing Agency. Prior to making this determination, the Division may solicit the advice of the PLAC. A Disposing Agency need not use a competitive bidding process in connection with the Terminal Disposition of a State Real Property Interest to another Agency.

(8) Before a Disposing Agency may dispose of a State Real Property Interest to other than another Agency, the Division shall provide notice of the intended Terminal Disposition to Political Subdivisions. Written notice will be given to each city, county, and school district within whose boundaries the State Real Property Interest is located. Notification by the Clearing House Process, will be given to all other Political Subdivisions by at least one of the following methods:

- (a) Mailed notice;
- (b) Electronic mail notice;

(c) Posting notice of the intended Terminal Disposition on the Division's website; or

(d) Newspaper publication meeting the requirements defined in OAR 125-045-0235(3).

(9) The Division may provide notice to Political Subdivisions at the same time as it provides notice to Agencies. The Division may dispense with notice to Political Subdivisions if the Administrator adopts written findings that in its reasoned judgment it is unlikely that transfer of the State Real Property Interest to a Political Subdivisions could satisfy the Disposing Agency's needs and that as a result, notice would be a futile act.

(10) All notices to Political Subdivisions must include the following:

(a) A request that any Political Subdivision with an interest in acquiring the State Real Property Interest notify the Division in writing of its interest;

(b) The information required to be provided under OAR 125-045-0225(1);

(c) The deadline for the Political Subdivision to provide written notice to the Division of its interest in acquiring the State Real Property Interest, which may not be less than 30 days from the date of the Division's notice unless the Administrator determines that a shorter period is in the State's interest;

(d) A reservation of the right of the Disposing Agency to reject any offers;

(e) Notice that a Political Subdivision's right to acquire the State Real Property Interest is subject and subordinate to the right of Agencies to acquire the State Real Property Interest (required only if notice to Political Subdivisions is made concurrently with notice to Agencies); and

(f) Any other information the Division or the Disposing Agency elects to include in the notice.

(11) If no Agency indicates an interest in acquiring the State Real Property Interest, or if a sale or other transfer to another Agency cannot be finalized, any Political Subdivision that has made a timely response to the notice may negotiate with the Disposing Agency to determine if a sale or other transfer can be completed.

(12) The Disposing Agency shall consider any bona fide offer submitted by a Political Subdivision but shall not be obliged to sell or otherwise transfer the State Real Property Interest to the Political Subdivision.

(13) No Terminal Disposition of a State Real Property Interest to a Political Subdivision for less than the Appraised Fair Market Value may occur without the written approval of the Administrator or Director in accordance with OAR 125-045-0245.

(14) If two or more Political Subdivisions make bona fide offers to acquire the State Real Property Interest, the Disposing Agency shall determine, in its reasonable discretion, which, if any, offer is acceptable to the State.

(15) The Disposing Agency may place any conditions on the transfer of a State Real Property Interest to a Political Subdivision it deems advisable, including but not limited to requirements that:

(a) Any State Real Property Interest sold or transferred to a Political Subdivision be subject to a deed restriction that the property be used solely for a public purpose or benefit; and

(b) Such State Real Property Interest not be resold to a private purchaser without the consent of the State.

(16) The Disposing Agency need not use a competitive bidding process in connection with the Terminal Disposition of a State Real Property Interest to a Political Subdivision.

Stat. Auth.: ORS 270.015(2), 270.100(1)

Stat. Implemented: ORS 270.100, 270.120

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 8-2009, f. & cert. ef. 7-21-09; DAS 10-2009, f. & cert. ef. 11-19-09

125-045-0230

Right of First Refusal Determination

(1) The State of Oregon may offer a Right of First Refusal to the parties described in ORS 270.010(2) in the unlikely event the grant of such a right is consistent with applicable trust responsibilities.

(2) Prior to proceeding with the public notice and solicitation procedures described in this rule, the Disposing Agency shall determine, with the advice of the Division, whether any party is entitled to a Right of First Refusal. The Disposing Agency's determination is final and conclusive.

(3) If a Right of First Refusal is granted, the Disposing Agency shall attempt to locate and notify each party or parties granted the Right.

(4) The Disposing Agency may place any conditions on the Right of First Refusal that it elects, provided that any conditions are reviewed and approved by the Attorney General's Office. In addition, unless waived by the Agency in its notice, no Right of First Refusal may be exercised unless the holder of the Right submits a timely and responsive offer to acquire the State Real Property Interest for an amount not less than the minimum asking price.

(5) If more than one Right of First Refusal is granted, the holder of the Right that submits the highest offer shall be given the first opportunity to acquire the Real Property Interest. If there is a tie between high bidders, the first to file its offer shall be given the first opportunity. Once a party exercises a Right of First Refusal, all other Rights of First Refusal are extinguished.

(6) A grant of a Right of First Refusal may be withdrawn if the Disposing Agency discovers facts and circumstances that lead it to conclude that offering the right is not in the best interest of the state.

Stat. Auth.: ORS 270.015(2), 270.100(1)(d)

Stats. Implemented: ORS 270.010, 270.110, 270.135, 270.140

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06

125-045-0235

Terminal Dispositions of State Real Property Interests (Offers to Other Individuals or Entities)

(1) This rule applies to sales and leases of State Real Property Interests only.

(2) If a Disposing Agency does not sell or transfer a State Real Property Interest to either an Agency or a Political Subdivision or to a party that has been granted a Right of First Refusal, then the Disposing Agency may dispose of the State Real Property Interest to any other party subject to the rules and procedures described in this rule.

(3) The Disposing Agency shall publish notice of the proposed Terminal Disposition of the State Real Property Interest. The

notice must be published not less than once a week for three successive weeks in one or more newspapers of general circulation in the county or counties in which the State Real Property Interest is located. In addition, the Disposing Agency may provide notice on its website. The published notice must include the following:

(a) A general description of the State Real Property Interest, including a legal description, if any;

(b) The asking price;

(c) The name and address of the person to contact to obtain any additional information concerning the State Real Property Interest;

(d) A Request for Proposals, including the address to which the Proposal must be delivered and the date and time the Proposal is due, which may not be less than 30 days from the date of the first notice;

(e) If applicable, a notice that the Terminal Disposition of the State Real Property Interest may be subject to a Right of First Refusal;

(f) If not previously published, an invitation for public comment on the State Real Property Interest values defined in OAR 125-045-0215(7) if the Appraised Fair Market Value is more than \$100,000;

(g) A reservation of the right of the Disposing Agency or the Division to accept or reject any Proposal; and

(h) Any other information the Disposing Agency elects to include.

(4) The Disposing Agency may use a multi-stage process, which may include, but need not be limited to, a Solicitation of Interest (SOI), a Request for Qualifications (RFQ), a Request for Proposals (RFP), a straight offer to purchase, or a combination of these. These documents must describe the process by which the Disposing Agency shall market the property, and may direct interested parties to the Disposing Agency's website for information.

(5) The Division may post the current status of Surplus State Real Property Interests available for Terminal Disposition on its website.

(6) All Proposals submitted in response to the published notice described in this rule must be in writing and signed by a person authorized to enter into a real estate transaction on behalf of the purchaser and be received by the close of the proposal period. A proposing entity is expected to enter into a Pre-purchase Agreement or Memorandum of Understanding within 60 days of acceptance of proposal.

(7) Each Proposal must clearly identify the amount offered for the purchase of the State Real Property Interest, and must include the following additional information:

(a) Any conditions upon the Proposer's offer to acquire the State Real Property Interest;

(b) A detailed statement explaining the Proposer's proposed use for the State Real Property Interest; and

(c) Any other information the Proposer believes is relevant to its Proposal.

(8) After the date and time for submitting Proposals has passed, the Disposing Agency shall open all Proposals that have been timely delivered. The Disposing Agency shall evaluate all responsive Proposals to determine the Proposal most advantageous to the State. The determination of the most advantageous Proposal will be final and conclusive and is not subject to review by any court.

(9) The Disposing Agency shall notify the apparent successful Proposer and shall negotiate to determine if the transfer can be consummated and a final agreement reached. If negotiations are unsuccessful, the Disposing Agency may:

(a) Notify the next highest ranking acceptable Proposal and shall similarly attempt to negotiate the Terminal Disposition of the State Real Property Interest; and

(b) Continue the negotiation process until the Disposing Agency has exhausted the field of all Proposers; or

(c) Reject remaining Proposals.

(10) If the Disposing Agency and a Proposer reach a final agreement on the Terminal Disposition of the State Real Property

Interest and this agreement, where required, is approved by the Attorney General pursuant to ORS 291.047, the Disposing Agency must transfer the State Real Property Interest to the successful Proposer in accordance with the terms of the agreement.

(11) The Disposing Agency, in its sole discretion, may reject any or all Proposals.

(12) If all Proposals are rejected, the Disposing Agency may market and sell the Real Property Interest in any manner the Disposing Agency deems appropriate, including but not limited to auction, direct negotiation with potential buyers, announcing a new RFQ or RFP process, and acting through a real estate licensee, provided that:

(a) If required by ORS 291.047, any resulting agreement of sale must be approved by the Attorney General;

(b) If no agreement of sale is executed within 18 months of the publication of the first public notice of sale described in this rule, no agreement of sale may be accepted without again first publishing a public notice of sale and complying with the provisions of this rule; and

(c) The Disposing Agency shall publish the process selected in this subsection on its website.

Stat. Auth.: ORS 270.015(2), 270.100(1)(d)

Stats. Implemented: ORS 270.010, 270.110, 270.130, 270.135, 270.140

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 2-2009(Temp), f. & cert. ef. 1-23-09 thru 7-17-09; DAS 8-2009, f. & cert. ef. 7-21-09; DAS 5-2013, f. 12-24-13, cert. ef. 1-1-14

125-045-0240

Transfer of Property with Deed Restrictions

If the State's title to a State Real Property Interest is limited, qualified or restricted, whether by dedication or otherwise, to use as a burial ground, cemetery, or for the purpose of interring the remains of deceased persons, the Disposing Agency shall follow the procedures defined in ORS 270.110(2) prior to transfer of the State Real Property Interest.

Stat. Auth.: ORS 270.015(2)

Stats. Implemented: ORS 270.110

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06

125-045-0245

Department Approval

(1) Prior to any Terminal Disposition of a State Real Property Interest at or above the Appraised Fair Market Value, all Disposing Agencies, other than Exempt Disposing Agencies, shall obtain the written consent of:

(a) The Administrator if the Appraised Fair Market Value is less than \$1,000,000; or

(b) The Director if the Appraised Fair Market Value is \$1,000,000 or more.

(2) Prior to any Terminal Disposition of a State Real Property Interest for less than the Appraised Fair Market Value, all Disposing Agencies, including Exempt Disposing Agencies, shall obtain the written consent of:

(a) The Administrator if the Appraised Fair Market Value is less than \$1,000,000; or

(b) The Director if:

(A) The Appraised Fair Market Value is \$500,000 or greater and the Real Property Interest is proposed to be transferred for 80% or less of the Appraised Fair Market Value; or

(B) The Appraised Fair Market Value is \$1,000,000 or more.

(3) Notwithstanding OAR 125-045-0245(2), a Disposing Agency need not obtain the consent of the Administrator or Director, as the case may be, prior to the Terminal Disposition of a State Real Property Interest for less than the Appraised Fair Market Value if the Governing Body of the Disposing Agency has expressly approved the Terminal Disposition for less than the Appraised Fair Market Value.

(4) An Agency disposing of a State Real Property Interest pursuant to OAR 125-045-0245(3) shall provide the following information to the Administrator within 30 days following Terminal Disposition:

(a) The identify of the State Real Property Interest disposed of;

- (b) The Appraised Fair Market Value of the Interest;
 - (c) The value received for the Interest; and
 - (d) Any other information requested by the Administrator.
- Stat. Auth.: ORS 270.100(1)(d)
 Stats. Implemented: ORS 270.100
 Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06

125-045-0250

Public Lands Advisory Committee

(1) In exercising its real property management and transaction functions under ORS 184.634, 270.005 to 270.015, 270.100 to 270.190, 273.416, 273.426 to 273.436 and 273.551, the Department shall receive advice from the Public Lands Advisory Committee (PLAC).

(2) The PLAC shall consist of two members of the Legislative Assembly, two persons who serve in the executive branch of state government, one real estate agent licensed under ORS 696.020, one qualified land use planner, and one person qualified as a real estate management expert. Members of the PLAC shall appoint the Chair of the Committee.

(3) The PLAC shall meet quarterly or as often as the majority of its members determine. The Department may request that the PLAC meet for the purpose of considering real property transactions, evaluate reports to the legislature, or to review Agency reports on the status of the Statewide Lands Inventory.

(4) The PLAC may request that the Department and other Agencies controlling State Real Property Interests update the PLAC on their individual land inventories and processes for evaluating whether property is needed to support an Agency's mission.

(5) PLAC meetings shall be held in Salem. The Division, unless otherwise arranged by PLAC, will determine the meeting location. The Division shall:

- (a) Schedule and announce meeting dates and times;
- (b) Prepare and distribute meeting agendas;
- (c) Arrange times for Agency presentations; review and edit Agency material prior to meetings;
- (d) Coordinate with Agencies in response to information requests from PLAC; and
- (e) Prepare and distribute meeting minutes.

(6) The PLAC is advisory to the Department and is not a governing body as defined by ORS 192.610. Meetings of the PLAC shall be treated as public meetings and shall follow the notification and other procedures described in the Attorneys General Public Records and Meetings Manual.

(7) The PLAC shall not make a recommendation on a transaction or other documents reviewed without a majority of its members present. If a duly scheduled and noticed meeting does not have a majority of the members present, those present will be considered to be a subcommittee of the PLAC. The subcommittee shall report its findings and recommendations to the next scheduled PLAC meeting when a majority is present and formal action may be taken at that time.

(8) Members of the PLAC who are not members of the Legislative Assembly are entitled to compensation under ORS 292.495. Members of the PLAC who are members of the Legislative Assembly shall be paid compensation and shall be reimbursed for expenses as provided in ORS 171.072, payable from funds appropriated to the Legislative Assembly. Expenses of the PLAC shall be paid from Department funds that shall be recovered from Agencies pursuant to OAR 125-045-0270.

(9) The PLAC may hold meetings or portions of meetings in non-public Executive Session to discuss specific, confidential deal points and negotiation strategies for particular property transactions.

Stat. Auth.: ORS 270.015(2), 270.100(1)(d)
 Stats. Implemented:
 Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06

125-045-0255

Procedure for Submitting Property Transactions and Inventory Information for PLAC Review

(1) The PLAC shall advise the Department on all Acquisitions and Terminal Dispositions valued at \$100,000 or more. The

Division and the Agency shall consider, but are not required to follow, the advice of the PLAC.

(2) Prior to each PLAC meeting, the Division shall provide reports to each member of the PLAC containing key information on each Acquisition and Terminal Disposition to be reviewed by the PLAC, including:

- (a) A brief summary of the proposed transaction;
- (b) The reason for the PLAC review;
- (c) Background summary information and a list of topics for consideration; and
- (d) Any supporting documents, maps or photos.

(3) The PLAC may request information from Agencies controlling State Real Property Interests related to Agency land inventories and the Agency's processes for identifying, acquiring and disposing of excess real property.

(a) If a request for Agency information is made, prior to submission, the Division will schedule a meeting with the Agency to collect and review the documentation.

(b) At the conclusion of its evaluation, the Division will copy and distribute the documentation to the PLAC members at least two weeks in advance of the PLAC scheduled meeting.

(4) The Division shall prepare draft meeting minutes after every PLAC meeting and distribute them to PLAC members for review and comment. The Division shall revise the minutes following receipt of comments from the PLAC and shall distribute revised minutes to the PLAC for approval at the beginning of the next scheduled PLAC meeting.

(5) By November 1st of each even numbered year, the Division shall prepare a summary report of the Statewide Lands Inventory Program, available Surplus State Real Property Interests, and State Real Property Interests sold during the current biennium for the PLAC to review. By January 1st of every odd numbered year, the Division, with PLAC oversight, shall also prepare a summary report for Legislative review.

Stat. Auth.: ORS 270.015(2), 270.100(1)(d)
 Stats. Implemented:
 Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06

125-045-0260

Procedure for PLAC Review

(1) The PLAC shall receive written material for its review at least two weeks in advance of a scheduled PLAC meeting. In addition, the Department or the Agency will make a brief presentation during the meeting on specific agenda items.

(2) Following each presentation, the PLAC may ask questions and discuss issues with other PLAC members as needed.

(3) At the end of the discussion, the PLAC Chair shall ask members for advice or recommendations. The PLAC may pose further questions to the Department or Agency, may comment on the proposed transaction or agenda item, or may determine additional information is required and postpone comment.

Stat. Auth.: ORS 270.015(2) & 270.100(1)(d)
 Stats. Implemented:
 Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06

125-045-0265

Statewide Inventory and Property Management

(1) The Division shall maintain a computer Statewide Lands Inventory database. This database will catalog the size, location, current use and value of all State Real Property Interests, as well as, identify Surplus State Real Property Interests. The Division will use this data to respond to questions from the public, Agencies, the Legislature and executive branch concerning Statewide Lands.

(2) The Division shall work with Agencies to establish appropriate categories of real property for cataloguing State Real Property Interests. Agencies shall cooperate with the Division by providing State Real Property Interests' data, which is accurate, up-to-date and complete. The Statewide Lands Inventory categories shall include information on location, size, current use, value, and whether the Real Property Interest is in operational use, reserve, or surplus. Value may be shown as a range within a list of categories: Forest \$80-\$180/acre; Range Land \$50-\$150/acre; Commercial Office Land (Urban) \$2-\$5/per square foot. Agencies shall identify

whether the State Real Property Interest is within an urban growth boundary and, if the Real Property Interest is declared Surplus and sold, whether there are restrictions on the use of proceeds.

(3) To the extent reasonably possible, the Division shall identify Real Property Interests in the Statewide Lands Inventory by:

(a) The property identification numbers or characters used by the controlling Agency, and

(b) The property identifiers assigned by the county assessor, including applicable tax map lot numbers, street addresses, GIS coordinates, latitude and longitude, section, township and range information.

(4) The Division shall post a quarterly report on the Department's website listing, by Agency, all State Real Property Interests currently for sale. The Division shall forward questions that it receives relating to specific State Real Property Interests to the appropriate Agency for response.

(5) In order to process Acquisitions and Terminal Dispositions of State Real Property Interests, as defined in OAR 125-045-0220 and 125-045-0225, Agencies controlling State Real Property Interests shall provide the Department property status information.

(6) On or before October 1st of each even numbered year, all Agencies controlling State Real Property Interests shall submit a revised and updated inventory of any Surplus State Real Property Interests that it controls to the Division. The inventory shall list separately any Surplus State Real Property Interest located within an urban growth boundary. Each Agency that controls a State Real Property Interest shall also provide to the Division an interactive link to the Agency's lands database to allow real time updates.

Stat. Auth.: ORS 270.015(2) & 270.100(1)(d)

Stats. Implemented:

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06

125-045-0270

Statewide Lands Inventory Program Costs

(1) The Division shall project the biennial cost of the Statewide Lands Inventory. After deducting reserves for long-term program upgrades and improvements, any fund balance remaining from the previous biennium will be subtracted from the projected biennial cost. The final projected biennial cost will then be apportioned to Agencies as described in this rule.

(2) To contribute to the cost of maintaining the Inventory, the Division shall charge each Agency that controls a State Real Property Interest an annual maintenance fee equal to the Agency's proportionate share of the total annual cost incurred by the Division. Each Agency's proportionate share of the maintenance fee will be calculated by dividing:

(a) The number of State Real Property Interests in the Inventory that are controlled by the Agency; by

(b) The total number of all State Real Property Interests listed in the Inventory as of June 30 each year.

(3) Maintenance fees will be billed annually in advance, on or before June 30 of each year. Maintenance fees are payable within 30 calendar days of the date of billing. Late payments will incur a late fee charge of 8% per annum of the amount due, with interest accruing from June 30.

(4) The Division may, at its discretion, waive an Agency's maintenance fee for any one year when the Division determines that the cost of collection may exceed the amount of the annual fee, or otherwise represents a cost inefficiency to the Division. Any fee so waived may be apportioned among the remaining Agencies for that year.

(5) Payments received by the Division under this rule are continuously appropriated to the Division to reimburse it for the costs incurred by the Division in maintaining the Statewide Lands Inventory Program.

Stat. Auth.: ORS 270.100, 270.180(3) & 270.180(4), 270.180(5)

Stats. Implemented:

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06

DIVISION 50

STATE SURPLUS PROPERTY

125-050-0100

State Surplus Property Definitions

In addition to the definitions contained in ORS 279A.250 and OAR 125-246-0110, the following definitions apply to these Rules on State Surplus Property:

(1) "Bid" means a competitive Offer to purchase advertised Surplus Property at a price specified by the bidder.

(2) "Cash" includes U.S. currency, cashier's checks, certified checks, traveler's checks, money orders made payable to the State of Oregon, or approved credit cards.

(3) "Direct Labor" includes all Work required for preparation, production, processing and packing, but does not include supervision, administration, inspection and shipping.

(4) "Employee's Household" means all persons residing with employee.

(5) "Employee's Immediate Family" means the children, step-children, parents, step-parents, grandparents and spouse of employee, separately or in any combination thereof.

(6) "Invitation to Bid" means a competitive Offer to bid on Surplus Property available for public sale and is also known as a bid advertisement.

(7) "Not-for-profit organization" is defined in ORS 279A.250(2) and means a nonprofit corporation as defined in ORS 307.130.

(8) "Photographic Identification" means a document that shows the bearer's current name, address, and photographic portrait.

(9) "Political Subdivision" includes divisions or units of Oregon local government having separate autonomy such as Oregon counties, cities, municipalities or other public corporate entities having local governing authority.

(10) "Private Not-for-Profit Agencies" means those Agencies meeting the criteria specified in the Oregon Administrative Rules.

(11) "Property" is defined in ORS 279A.250(3) and means personal property.

(12) "State agency" is defined in ORS 279A.250(4) and means every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid wholly or in part from funds held in the State Treasury, and includes the Legislative Assembly and the courts, including the officers and committees of both, and the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(13) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and private not-for-profit organizations or the general public or any combination thereof.

Stat. Auth.: ORS 283.060, 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.250

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; Renumbered from 125-246-0700, DAS 2-2008, f. 2-27-08, cert. ef. 2-29-08

125-050-0200

Disposition and Accounting of State Owned Property

State Agencies shall follow Oregon Accounting Manual Policy 15.55.00.PO or other state policy when removing, transferring, recycling, scrapping or otherwise disposing of Property in their possession that was purchased with state funds.

Stat. Auth.: ORS 279A.260(f), 279A.070

Stats. Implemented: ORS 279A.260

Hist.: DAS 2-2008, f. 2-27-08, cert. ef. 2-29-08

125-050-0300

Eligibility of State Agencies, Political Subdivisions and Non-Profit Organizations

Prior to offering Surplus Property for public sale, the State Surplus Property Program must make Surplus Property available to the following:

- (1) State Agencies;
- (2) Political subdivisions of the State; and
- (3) Any non-profit organization qualified to acquire federal donation property pursuant to OAR 125-035-0045 or determined by the Department to be eligible under criteria established by the Department.

Stat. Auth.: ORS 283.060, 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.260

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; Renumbered from 125-246-0710, DAS 2-2008, f. 2-27-08, cert. ef. 2-29-08

125-050-0310

State Surplus Property Acquisition

(1) Recipients of state Surplus Property must have funds available at the time property is acquired, and pay all costs and charges incidental to the acquisition within thirty (30) calendar Days from the date of invoice. Invoices outstanding in excess of ninety (90) Days may result in suspension of purchasing privileges until such invoices have been paid in full.

(2) Surplus state property must be available for warehouse floor sale or direct transfer to state Agencies, political subdivisions and qualified non-profit organizations prior to public sale. Non-qualifying private entities and private citizens, separately or combined, must not be eligible to acquire surplus state property except at public sales.

(3) State Surplus Property acquired by state agencies, political subdivisions, or qualified not-for-profit organizations through warehouse floor sales or direct transfers must be used only in the conduct of their official public programs. State Surplus Property must not be acquired through warehouse floor sales or direct transfer for any use or purpose other than conduct of their official public programs, and not for resale or distribution unless otherwise pre-approved by the Department.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.260, 279A.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; Renumbered from 125-246-0720, DAS 2-2008, f. 2-27-08, cert. ef. 2-29-08

125-050-0400

Public Sales for Disposal of State Surplus Personal Property

(1) Conduct. The Department must conduct public sales for the disposal of state Surplus Property. Methods of disposal may include, but not be limited to: internet auctions, oral auctions, sealed bid sales and fixed price retail sales, separately or in any combination thereof.

(2) Eligibility. Members of the general public may participate as buyers at public sales. No employee whether full-time, part-time, temporary or unpaid volunteer, of the Department, member of the employee's household, the employee's immediate family, or any person acting on the employee's behalf may participate in public sales if the employee has had any role in declaring the item surplus, processing the item or related paperwork, or offering it for sale. No employee of the Property Distribution Center's programs, or members of the employee's immediate family, or any person acting on the employee's behalf, may purchase items offered through any public sales regardless of whether such employee had a role in declaring the item surplus, in processing the item, or in offering it for sale.

(3) Public Sales:

(a) Auctions: The Department may offer Surplus Property for public sale through an Internet auction provider, by public outcry auctions and by sealed bid auctions.

(A) Internet Auctions:

(i) Public bidding terminals may be made available during posted public hours at the Department's Property Distribution Center. The public may inspect Property offered for sale at the time and place specified in the public Invitation to Bid;

(ii) The Department reserves the right to reject any and all bids regarded as not in the best interests of the State;

(iii) All items must be sold to the highest bidder.

(B) Public Outcry and Sealed Bid Auctions:

(i) The Department must advertise the date, time and location of public auction or sealed bid sales. A public Invitation to Bid must be available at the Property Distribution Center or auction site one week before an auction or sealed bid sale. The public may inspect property offered for sale at the time and place specified in the public Invitation to Bid;

(ii) The Department reserves the right to reject any and all bids regarded as not in the best interests of the State;

(iii) All items must be sold to the highest bidder;

(C) Terms and Conditions Regarding Advertisement of Auction Property;

(i) Except as set forth in paragraph (v)(I) and (v)(II) of this section (3), all Property must be offered "As-Is" and "Where-Is" with no warranty or other guarantee as to its condition or fitness for any use or purpose;

(ii) Items purchased that were originally offered as "Working Condition Unknown" shall not be refunded except as described in paragraph (v)(I) and (v)(II) of this section.

(iii) Terms and conditions of the sale must be made a part of the Internet posting or auction advertisement. By bidding, a potential purchaser is confirming their acceptance of the terms and conditions as set forth and published in the posting.

(iv) A purchaser or disappointed bidder must have no recourse against the Department, Agency or any of their respective officers, employees or agents.

(v) Except as set forth in (I) and (II) of this section, all sales must be final.

(I) The Department may offer to warranty items as to the accuracy of the item description as stated in the bid offering. The Department Surplus Property Manager may grant dispensation from completing the transaction before payment is made or offer full or partial refund if payment has been received. Any dispensation or refunds granted shall be at the sole discretion of the Department Surplus Property Manager.

(II) The Department may establish a return or refund policy for items where the buyer does not wish to retain or pick up items which have been fully paid for. The Department may establish a restocking fee equal to a percentage of the original purchase price of the item and/or a flat fee. Fees and limits will be set by the Department Surplus Property Manager, published in Department Surplus Property Program policy, published on the program's Website and shall be determined in correlation with sales expenses.

(b) Fixed Price Public Sales: The Department may establish sales of personal property directly to the public at a fixed price. Every effort must be made to ensure direct sales are fair and equitable.

(4) Payment:

(a) For Internet Auctions, full payment must be made within the time specified in the public Invitation to Bid or otherwise established in program policy.

(b) For Public Outcry and Sealed Bid Auctions, the time limit for making full payment, and the place where payment must be made will be specified in the Invitation to Bid;

(c) The Department reserves the right, in its absolute discretion, to refuse any tender of payment by personal check and, further, the right to require that payment be made by designated credit cards, cash, cashier's check, bank wire transfer or money order;

(d) The Department reserves the right to collect and retain the name, address and phone number of the buyer as a condition for completion of the sales transaction. The Department may require the buyer to sign the bill of sale as acceptance of the terms and conditions for the sale as set forth in the bid offering and published policies. The Department shall not sell or otherwise disperse sale information beyond fulfillment of a duly submitted public records request under ORS 192. All record of sales, including the buyer's name, address and phone number shall be secured and destroyed according to established record retention guidelines and policies.

(5) Claiming Items Purchased:

(a) Items not paid in full by the time specified in the sales terms and conditions must be canceled;

(b) Property paid for, but not claimed within the time specified in the sales terms and conditions shall be considered abandoned and ownership shall default to the State unless prior written approval is obtained by the purchaser is obtained from the Department;

(c) Title to Property sold must be transferred to the purchaser when full and final payment is made, unless otherwise specified by the Department. For vehicles, receipt of payment of the sale price and delivery of key to the purchaser constitutes delivery and possession. Titles to vehicles must be transferred upon receipt of full payment. The Department rejects any liability once a purchaser takes possession of a vehicle;

(d) Motor Vehicles Division trip permits are required to drive unlicensed motor vehicles within the state of Oregon and must be available at the Property Distribution Center. A purchaser of a vehicle must certify that the driver of the vehicle has a valid driver's license and is insured as required by Oregon law before a trip permit can be issued. A representative of the program shall explain the requirements for trip permits and facilitate the purchasing of a trip permit to all vehicle purchasers. Should the vehicle purchaser refuse, the Department may require the purchaser sign a waiver documenting the offer and refusal.

(6) Failure to Comply. The Department may establish criteria to debar participants from auctions and other state sales pursuant to this Rule. Such criteria must be based on:

(a) Conviction of fraud;

(b) Unsatisfactory Internet auction service ratings;

(c) Failure to claim purchases; or

(d) Other documented activities determined by the Department to warrant debarment. Based upon these criteria, the Department may debar participants from auctions and participation in other state sales.

(d) The Department may, at its sole discretion, reinstate disbarred participants. The Department may charge a reinstatement fee to recover revenues lost due to the disbarred participant's prior actions.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; Renumbered from 125-246-0730, DAS 2-2008, f. 2-27-08, cert. ef. 2-29-08

DIVISION 55

STATE PURCHASING

125-055-0005

Definitions

As used in OAR 125-055-0005 to 125-055-0045:

(1) "Agency" means a public agency, as defined in ORS 279.835(4).

(2) "Community Rehabilitation Program" (CRP) means a nonprofit agency for individuals with disabilities providing or facilitating one or more of the following services to individuals with disabilities, enabling them to maximize their opportunities for employment:

(a) Medical, psychiatric, psychological, social, and vocational services;

(b) Physical, occupational and recreational therapy;

(c) Speech, language, and hearing therapy;

(d) Assessment for determining eligibility and vocational rehabilitation needs;

(e) Job development, placement, and retention services;

(f) Psychosocial rehabilitation services;

(g) Supported employment services;

(h) Services to family members, if necessary, to enable the applicant or eligible individual to achieve an employment outcome; and

(i) Personal assistance services.

(3) "Competitive Employment" means work performed by an individual in the competitive labor market on a full-time basis with no more than reasonable accommodation (as required by the Americans with Disabilities Act, 42 USC §§12101 to 12213) for which the individual is compensated within the range of customary wages and levels of benefits paid in the community for the same or similar work performed by individuals who are not disabled.

(4) "Department" means the Oregon Department of Administrative Services.

(5) "Individual with a Disability," as defined in ORS 279.835(3), means a person who has a physical or mental impairment (a residual, limiting condition resulting from an injury, disease or congenital defect) that so limits the person's functional capabilities (such as mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is not able to engage in normal competitive employment over an extended period of time and, as a result, must rely on the provision of specialized employment opportunities.

(6) "Price" means the cost to Agencies of the products and services procured through the QRF Program, as determined under OAR 125-055-0030.

(7) "Procurement List" means a listing of those QRFs currently qualified under OAR 125-055-0015 to participate in the QRF Program and includes, as required by ORS 279.850(1), a list of the products and services offered by QRFs and determined by the Department, under OAR 125-055-0020, to be suitable for purchase by Agencies.

(8) "Qualified Rehabilitation Facility (QRF)" means a nonprofit corporation operating as a CRP:

(a) Organized under the laws of the United States or of this state and operated in the interest of Individuals with a Disability, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(b) That complies with any applicable occupational health and safety standard required by the laws of the United States or of this state; and

(c) That in the manufacture of products and in the provision of services, whether or not the products or services are procured under the QRF Program, during the fiscal year employs Individuals with a Disability for not less than 75 percent of the total work hours of direct labor required for the manufacture or provision of the products or services.

(9) "QRF Program" means the program created by ORS 279.835 to 279.855.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05; DAS 3-2010, f. & cert. ef. 10-8-10

125-055-0010

Policy

(1) As required by ORS 279.850(1), Agencies that intend to procure a product or service that is listed on the Procurement List must procure that product or service, at the Price determined by the Department, from a QRF if the product or service is of specifications appropriate to the Agency's procurement needs and is available within the time required by the Agency.

(2) It is the policy of the Department to assist QRFs by administering a program to:

(a) Identify contracting opportunities in the public sector for QRFs;

(b) Ensure that QRFs meet the standards set forth in the QRF Program; and

(c) Assist and facilitate Agencies in entering into contracts with QRFs for the provision of products and services.

(3) In administering the QRF Program, the Department, Agencies and QRFs must keep in mind the purpose of the law: to encourage and assist Individuals with a Disability to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for QRF products and services.

(4) In promoting the policy of this section and ORS 279.850(2), the Department's Chief Procurement Officer (CPO) may appoint uncompensated volunteer members to serve on an advisory council to make recommendations to the CPO concerning the facilitation and administration of the QRF Program. The CPO's authority to appoint advisory council members includes the authority to remove and replace members in the CPO's sole discretion. Meetings of the advisory council are not subject to the public meetings law (ORS 192.610 to 192.710). However, the Department will post notice of the times and places of meetings of the advisory council on a website maintained by the Department. The Department reserves the right to change the meeting time and place after the posting of the meeting notice.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05; DAS 3-2010, f. & cert. ef. 10-8-10

125-055-0015

Application for QRF Participation

(1) A CRP that seeks to participate in the QRF Program must submit a complete application to the Department on a Department-prescribed form. Exhibits submitted with the application must include:

- (a) IRS 501(c)(3) letter;
- (b) Articles of Incorporation;
- (c) Bylaws;
- (d) Mission Statement;
- (e) A description of how the applicant is operating as a CRP;

and

(f) A written plan for the applicant's compliance with the direct labor requirement of ORS 279.835(5).

(2) The Department reserves the right to require applicants to provide additional information.

(3) If the Department determines that the applicant is qualified, it will send the applicant notice of QRF status. If the Department does not find the applicant qualified, it will reject the application and notify the applicant in writing of the criteria not satisfied.

(4) The applicant may submit a written appeal to the Department within ten (10) calendar days of the date of the rejection notice. The appeal must state the error in the Department's decision. If the applicant does not appeal the Department's decision, the decision is final.

(5) On appeal, if the Department determines the applicant is then qualified, it will send written notice to the applicant of QRF status. If the Department finds no error in its determination, it will provide the applicant a written notice confirming the decision. The Department's written notice under this subsection constitutes a final order under ORS 183.484.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05; DAS 3-2010, f. & cert. ef. 10-8-10

125-055-0016

QRF Status and Annual Reporting

(1) A QRF is required, during the QRF's fiscal year, to employ Individuals with a Disability for not less than 75 percent of the total work hours of direct labor required for the manufacture or provision of all products or services produced by the QRF. The 75 percent direct labor requirement need not be met with respect to each product or service provided by the QRF, or with respect to each contract the QRF enters into under the QRF Program.

(2) All participating QRFs must submit, on a Department-prescribed form, information from their preceding fiscal year. The Department will evaluate this information to determine compliance with ORS 279.835(5).

(3) The QRF must submit its annual report to the Department within 120 calendar days after the close of the QRF's fiscal year.

(4) A QRF may request an extension in writing prior to the 120-day deadline. The request must state the reason for the extension and the anticipated date of submission.

(5) The Department will evaluate the annual report for accuracy and compliance with ORS 279.835(5). If the Department determines that the QRF meets the requirements, it will send written notice of qualification to the QRF.

(6) If the Department determines that a QRF is noncompliant with any requirements of ORS 279.835(5), the Department will issue a written notice to the QRF. The written notice will state the reasons the QRF is not compliant and provide potential remedies.

(a) A QRF receiving notice of noncompliance under this subsection must respond to the Department within thirty (30) calendar days of the date of the Department's notice. The QRF's response must acknowledge receipt of the notice and describe a corrective action plan.

(b) If the QRF does not respond within thirty (30) calendar days from the date of the written notice, the Department will issue to the QRF written notice of the proposed termination of the QRF's participation in the QRF Program. The Department's written decision under this subsection constitutes a final order under ORS 183.484.

(c) The Department may require the QRF, as part of the required cure, to submit to the Department quarterly audit reports concerning the direct labor requirement of ORS 279.835(5). The Department may require the quarterly audits to be conducted and reported by a CPA in accordance with OAR 125-055-0035.

(7) If the QRF fails to achieve compliance within the time prescribed by the Department, the QRF will receive a written notice of termination.

(a) The QRF may submit a written appeal to the Department within ten (10) calendar days of the date of the termination notice. The appeal must state the QRF's grounds for appealing the decision. If the QRF does not appeal the Department's decision, the termination of the QRF's participation in the QRF Program is final.

(b) On appeal, if the Department determines the QRF is then qualified, it will send the QRF notice of qualification. If the Department does not find the QRF qualified, it will provide the QRF a written decision that states the reasons for that determination. The Department's written decision under this subsection constitutes a final order under ORS 183.484.

(8) After any termination of a QRF's participation in the QRF Program, the QRF may not enter into or renew any contracts under the QRF Program. Termination of QRF status also constitutes sufficient grounds for an Agency to terminate any contract procured under the QRF Program. The Department will post notice of the termination of a QRF's participation in the QRF Program on the website or other accessible online posting address administered through the Department. The QRF may re-apply no earlier than one year from the date the termination became final.

(9) Nothing in this rule may be construed as prohibiting the Department and the QRF from resorting to informal dispute resolution measures such as non-binding arbitration or mediation.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 3-2010, f. & cert. ef. 10-8-10

125-055-0017

Record Keeping

(1) All participating QRFs must maintain current records for each Individual with a Disability employed by the organization. The records must contain the disability documentation source and when required, a Competitive Employment statement. A Competitive Employment statement is not required for Individuals with a Disability qualified by the Social Security Administration due to their disability.

(a) Competitive Employment Statement. The Competitive Employment statement is a Department form signed by the QRF executive and prepared by a person qualified by training and experience to evaluate the work potential, interests, aptitudes and abilities of Individuals with a Disability.

(b) Acceptable Disability Documentation Sources:

(A) A letter on United States Veterans Administration letterhead stating that the individual has been determined eligible for vocational services due to his or her disability;

(B) A letter on Social Security Administration letterhead stating the individual is eligible for benefits due to his or her disability;

(C) Documentation from the Oregon Department of Human Services (DHS) or a DHS-designated Community Developmental Disability Program that the individual has an existing disability. "Community Developmental Disability Program" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities operated by or under a contract with the DHS, Seniors and People with Disabilities Division or a local mental health authority;

(D) Documentation from the Oregon Commission for the Blind that the individual has been determined to have a disability;

(E) Documentation from a Qualified Mental Health Professional that the individual is determined to have mental illness. A "Qualified Mental Health Professional" means any person meeting the following minimum qualifications as defined in OAR 309-114-0005:

- (i) Graduate degree in psychology;
- (ii) Bachelor's or graduate degree in nursing and licensed in the State of Oregon;
- (iii) Graduate degree in social work or counseling;
- (iv) Graduate degree in a behavioral science field;
- (v) Graduate degree in recreational art, or music therapy;
- (vi) Bachelor's degree in occupational therapist and licensed by the State of Oregon; or
- (vii) Bachelor's or graduate degree in a relevant area.

(F) Documentation on the Department's "Documentation of Disability" form signed by a medical professional. "Medical Professional" means an individual licensed by:

- (i) The Oregon Medical Board;
 - (ii) The Oregon Board of Naturopathic Medicine;
 - (iii) The Oregon State Board of Nursing as a Nurse Practitioner;
- or
- (iv) The State Board of Psychologist Examiners.

(2) To the full extent permitted by law, a QRF must make its records available for inspection by the Department, the Office of the Oregon Secretary of State and their officers and representatives.

(3) If a QRF, its officers, employees or agents, knowingly make any false, fraudulent or untrue statement or representation in any application, certification or record required or authorized to be created, maintained or submitted under OAR 125, chapter 055, the Department may invoke the procedures authorized by OAR 125-055-0016(6) and (7) to secure appropriate action, including but not limited to requiring the correction or cure of the violation or the termination of the QRF's participation in the QRF Program. In determining the sanction, the Department may consider the magnitude, number, and impact of the false statements or representations.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 3-2010, f. & cert. ef. 10-8-10

125-055-0020

Determination of Suitability of Product or Service

(1) The Department will publish and maintain a Procurement List that identifies the products and services of QRFs suitable for procurement by Agencies. No Agency or QRF may enter into or renew a contract under the QRF Program for products or services not on the Procurement List. QRF products and services determined suitable will remain listed, subject to the Department's examination of the QRF's annual report and compliance with subsection (2).

(2) For a product or service to be suitable for addition to the Procurement List, each of the following criteria must be satisfied:

(a) QRF Status. The organization's QRF status must be current.

(b) Ownership. A QRF must own the product or directly provide the service the QRF proposes to provide to Agencies through the QRF Program. For example, a product or service will not be suitable for procurement by Agencies where the QRF

operates merely as a broker, distributor, licensor or sales agent for another person or entity in providing a product to an Agency.

(c) Tied Products. A QRF's contract to provide a service cannot obligate an Agency to buy a product tied to that service unless the product is incidental to, or consumed in, the performance of the service.

(d) No Excessive Prices. The price proposed by the QRF must not be excessive. When proposed pricing is determined by the Department to be excessive, the Department may require the QRF to demonstrate that the proposed pricing is not excessive.

(e) Purpose. The QRF must demonstrate capacity to address the policy of the law as stated in ORS 279.840. To ensure that a QRF achieves this goal, the QRF must disclose to the Department:

(A) The projected employment potential for Individuals with a Disability in connection with the proposed product or service; and

(B) That appreciable value will be added to the products or services by Individuals with a Disability. The term "appreciable value" means a measurable addition of value, or an objectively observable improvement, enhancement or change, to the final product or service. No product or service may be suitable where the process of the manufacture, assembly or production of the product or the rendition of the service contains or is affected by any procedure, device or artifice under which the work of individuals with disabilities does not contribute, in a substantial, economically meaningful manner, to the value of the product or to the performance of the service, or under which the work of Individuals with a Disability is not a logical element of the chain of production.

(f) Compensation. Individuals with a Disability must be compensated for their work at a rate of pay that is consistent with the applicable legal requirements of the state and federal governments.

(g) Subcontractor Disclosure. Direct labor performed by subcontractors in the manufacture of a product or provision of a service to an Agency must be disclosed in the QRF's direct labor ratios reported to the Department as required by OAR 125-055-0016(1). The QRF must disclose subcontractor utilization, partnerships or planned joint ventures, including:

- (A) the portion of the labor to be performed;
- (B) the equipment to be used or supplied by; and
- (C) the location of work performed by any subcontractor, partner or joint venturer (collectively, "subcontractor").

(h) Quality Standards and Delivery Schedules. The QRF must demonstrate the capability to meet the applicable specifications and to make the product or service available within the time required by the procuring Agency.

(i) Additional Information. The Department reserves the right to request additional information such as start-up costs and estimated cost recovery, market research conducted by the QRF, and physical location of business space dedicated to the product or service. The Department may conduct on-site investigations of the QRF's work sites and production processes.

(3) If the Department determines the product or service satisfies the criteria in subsection (2), it will notify the QRF of its decision. If the Department determines that the product or service does not satisfy the criteria in subsection (2), it will notify the QRF in writing of the criteria not satisfied.

(4) The QRF may appeal the decision by submitting a written appeal to the Department within ten (10) calendar days from the date of the Department's notice. The appeal must state the QRF's grounds for appealing the decision. On appeal, if the Department determines the product or service satisfies the criteria of subsection (2), it will notify the QRF of its decision. If on appeal, the Department does not find the product or service satisfies the criteria, it will provide the QRF a written decision stating the reasons for the determination. The Department's written decision under this subsection will constitute a final order under ORS 183.484.

(5) The Department will post the suitability determination on the Department's website and e-procurement system for thirty (30) calendar days. A person or entity who will be adversely affected by the listing in its ability to compete for public contracts for the proposed product or service may submit a written protest to the

Department before the listing is effective. The protest must describe how the listing will adversely affect the person's or entity's ability to compete for public contracts for the proposed product or service and must demonstrate how the product or service fails to satisfy the criteria stated in subsection (2). The listing will become effective on the thirty-first day.

(6) If the Department receives a written protest concerning the proposed listing, the Department will consider the protest and issue a written response to the protesting party. The Department will only consider protests made in writing and received before the close of business on the thirtieth day. In considering a timely protest, the Department may request further information from the protesting party and the QRF.

(a) The Department's response to the protest will confirm, modify, or withdraw the proposed listing of the product or service. The Department will make its written determination available, by mail or by electronic means, to the protesting party and to the QRF.

(b) A protesting party or QRF who is adversely affected or aggrieved by the Department's response under this subsection may request that the Department institute contested case proceedings under ORS 183.411 to 183.470. A written request for a contested case must be received by the Department within fourteen (14) calendar days of the date of the Department's response. The request for a contested case must describe how the requesting party is adversely affected or aggrieved by the response and how the Department erred in its decision. The Department may grant or deny the request. If the Department grants the request, the contested case will be limited to the issues raised before the Department in the protest.

(7) At any time during the suitability determination process, the Department, QRF and protesting party may agree to informal dispute resolution measures such as non-binding arbitration or mediation in addition to the appeal procedures prescribed by subsections (4) through (6).

(8) Existing Contractor. The placement of a product or service on the Procurement List will not operate to displace a contractor under an existing contract with an Agency.

(9) Amending an Existing Suitability Determination. The QRF may submit a written request to the Department for modification of an existing suitability determination. The request must satisfy the criteria in subsection (2).

(a) If the Department determines the information provided by the QRF satisfies the criteria in subsection (2), it will record an amendment to the existing suitability determination. The Department will follow the posting requirements of subsection (5).

(b) If the Department determines the information provided by the QRF does not satisfy the criteria of subsection (2), it will send notice to the QRF. The QRF may appeal the Department's decision under the process described in subsections (4) and (7).

Stat. Auth.: ORS 279.845(1) & 184.340
Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855
Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05; DAS 3-2010, f. & cert. ef. 10-8-10

125-055-0025

Review of Suitability Determinations

(1) The Department reserves the right to review suitability determinations as changes in rules, laws, market conditions and QRF contractor performance occur. Information that was not available to the Department during the initial determination that negatively impacts the suitability of the product or service may also cause a review. The review may result in removal of the product or service from the Procurement List. A QRF may appeal a decision to remove a product or service from the Procurement List in the manner provided in OAR 125-055-0020(4).

(2) An Agency and a QRF may not alter the character or scope of the product or service so that it no longer is essentially the same product or service that was the subject of the suitability determination. In cases where such a change is sought, the Agency or the QRF must first request and receive from the Department a new or amended determination that the product or service, as changed, is

suitable under OAR 125-055-0020(2). In cases where the change in specifications or amendment appears to affect the Price of a product or service as determined under OAR 125-055-0030, the Department also may conduct a new Price determination in response to the request.

Stat. Auth.: ORS 279.845(1) & 184.340
Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855
Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05; DAS 3-2010, f. & cert. ef. 10-8-10

125-055-0030

Determination of Price

(1) Under ORS 279.845(1)(a), the Department will determine the Price of QRF products and services placed on the Procurement List.

(2) The Price determined by the Department will be a reasonable and adequate Price that will recover for the QRF the cost of:

(a) Raw materials;

(b) Labor;

(c) Overhead that can be allocated to the particular product or service for which the Price determination is being made, including the actual, reasonable costs of complying with the independent audit requirements of OAR 125-055-0035;

(d) Delivery costs, which include the transportation of a product to the site designated by the Agency or the transportation of workers to and from a site at which they will perform services for a customer; and

(e) An amount held in reserve for inventory and equipment replacement.

(3) The QRF must submit its proposed Price to the Department based on the volume or scope of the work and specifications acceptable to the Agency. The Department reserves the right to review and amend a Price determination in light of reductions in or additions to the number of Agencies served under a multiple agency contract.

(a) In submitting its proposed Price, the QRF must make full disclosure of known costs. The disclosure must include documentation on a form prescribed by the Department. The Department may require additional information. The disclosed costs must reflect a Price that will permit the QRF to recover the amounts prescribed in subsection (2) and ORS 279.845(1)(a).

(b) If the QRF and the Agency agree on the terms and conditions of a proposed contract and the Price for the products or services to be provided under the proposed contract, the QRF and the Agency must present the proposed contract (including the agreed Price) to the Department for review and a determination of the Price.

(4) Based on the volume or proposed scope of work and the costs disclosed by the QRF under subsection (3), the Department will determine a Price for the products or services offered under the proposed contract. Based on the disclosed costs, the Department will determine a Price to be reasonable and adequate to permit the QRF to recover the amounts prescribed in subsection (2). The Department will notify the QRF and the Agency of the Price.

(5) In determining a reasonable and adequate Price of a product or service, the Department may consider:

(a) Prices of similar products or services purchased in comparable quantities by federal agencies under the Javits-Wagner-O'Day Act, 41 USC §§ 46 to 48c;

(b) Prices of products or services of similar specifications and quantities previously purchased by Agencies from responsible contractors engaged in the business of selling similar products or services;

(c) Prices that private businesses pay for similar products or services in similar quantities of comparable scope and specifications if purchasing from a reputable vendor engaged in the business of selling similar products or services; and

(d) Prices of products or services of similar specifications and quantities purchased by Agencies from other QRFs.

(6) QRFs and Agencies may not execute or implement any contract under the QRF Program until the Department has transmitted its notice of the Price determination.

(7) Re-determination of Price. The Department may re-determine a Price at the request of a QRF, an Agency or at the discretion of the Department. Until the Department approves a new Price, the QRF must continue to provide the service or product at the existing Price. The Agency may not pay or agree to pay the QRF any amount other than the Price approved by the Department. The Department reserves the right to suspend the Price and set an interim Price. This re-determination may trigger a review of the suitability determination for the affected product or service under OAR 125-055-0025.

(a) In re-determining Price, the Department may consider the factors in subsections (2) and (3). The Department also may take into consideration changes that have taken place since the last Price determination that are pertinent to re-determining Price.

(b) Each re-determination of Price shall be based on changes in the scope of work, changes in the costs of producing the product or performing the service, or both. If the proposed re-determination is based on changes in QRF cost factors, the QRF must submit to the Department and the Agency a request for a Price change showing a breakdown of cost changes with appropriate documentation, as requested by the Department or Agency.

(c) Agencies and QRFs may not make material changes to the specifications of a contract entered into under the QRF Program unless the changes are in writing and have been submitted to the Department for a re-determination of Price.

(d) The Agency and QRF, in order to assist the Department in Price re-determinations, must submit to the Department the specific changes in the scope of work or other conditions which will be required during the contract period.

(e) The QRF must submit a Price recommendation to the Agency and the Department for review and re-determination of Price as described in subsection (3).

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279.015(1)(b) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05; DAS 3-2010, f. & cert. ef. 10-8-10

125-055-0035

Direct Labor Audits

(1) If a QRF's gross revenues generated under the QRF Program exceed \$100,000 annually, the QRF must conduct an independent audit of direct labor to maintain qualifications and listing on the Procurement List. Independent audits must be conducted every other year as scheduled by the Department to determine compliance with ORS 279.835(5)(c). The audit must be conducted by an independent certified public accountant (CPA) in accordance with generally accepted auditing principles. The QRF must submit a letter of attestation and the compilation worksheet to the Department 120 calendar days after the close of the QRF's fiscal year. A QRF may request an extension in writing prior to the 120-day deadline. The request must state the reason for the extension and the anticipated date of submission.

(2) For purposes of subsection (3):

(a) "Direct labor" means all work required for the manufacture, preparation, processing and packing of products produced by a QRF and all work performed in rendition of services by a QRF. Direct labor does not include supervision, administration, shipping, or client-type services provided by a QRF to Individuals with a Disability served by the QRF, such as job training and therapeutic services.

(b) "Supervision" means the direction, assignment, instruction and oversight of individuals performing direct labor and inspection of work performed or products for quality assurance.

(c) "Administration" means the management activities of a QRF that include acquisition of equipment, parts, supplies and inventory, handling of the entity's payroll, personnel and accounting activities, executive decision-making and other business activities,

generally of a centralized nature, that do not entail the "hands-on" production of a product or the performance of a service.

(d) "Shipping" means the transportation of a product to the site designated by the acquirer of the product or the transportation of workers to and from the site at which they will perform services for a customer.

(3) The examination and resulting audit report must be based on the following records and information:

(a) A listing of all products and services provided by the entity in the QRF's fiscal year, including those products and services procured by Agencies under the QRF Program and those procured outside the QRF Program;

(b) A list of all individuals covered by the audit scope employed by the QRF that are Individuals with a Disability who provided direct labor for the production of products or the performance of services during the fiscal year that is the subject of the audit examination, including employee name, unique employee identification number, job description and disability status;

(c) A list of all individuals covered by the audit scope employed by the QRF, whether paid or unpaid, who are not Individuals with a Disability and provided direct labor required for the production of products or the performance of services during the fiscal year that is the subject of the audit examination, including employee name, unique employee identification number and job description;

(d) A compilation of the total hours of direct labor performed by the QRF during the fiscal year;

(e) Payroll reports for all individuals covered by the audit scope employed by the QRF during the fiscal year, including employee name, work hours paid, vacation hours, sick leave hours and training hours. Hours worked must be segregated from hours paid but not worked;

(f) Time and billing records showing direct hours worked by each employee in the manufacture of goods or provision of services;

(g) The QRF must have documentation of disability on file for each employee who is claimed to be an Individual with a Disability. The acceptable forms of disability documentation are defined in OAR 125-055-0017(1)(b); and

(h) A Competitive Employment statement must be on file for each employee who is claimed to be an Individual with a Disability, except as described in OAR 125-055-0017(1).

(4) The audit report must address the following elements:

(a) A determination whether the QRF's time, billing and payroll records are sufficiently complete and reliable to demonstrate compliance with the 75 percent direct labor requirement of ORS 279.835(5)(c). The records must permit segregation of direct labor hours from other hours worked and paid, and allow for the assessment of direct hours worked by employees with disabilities, as well as by employees without disabilities;

(b) If the CPA finds the records to be sufficiently complete and reliable, the CPA must test the QRF's calculations of total direct labor hours worked by employees with disabilities for the entire applicable fiscal year. Only direct labor hours worked may be included in the calculations. Vacation, sick leave, holiday, training hours and any other hours paid but not worked by the employee must be excluded from the calculation;

(c) The CPA must apply sufficient statistical sampling techniques to obtain an 80 percent level of confidence that:

(A) The direct labor by Individuals with a Disability during the QRF's fiscal year satisfied the 75 percent direct labor requirement under ORS 279.835(5)(c); and

(B) The hours reported as worked by Individuals with a Disability were worked by individuals whose disabilities were documented under subsection (3)(g).

(d) A determination whether adequate actions have been taken to resolve any prior adverse audit report findings or recommendations; and

(e) The CPA that conducted the direct labor audit must sign an attestation that the QRF complied or did not comply with the 75 percent direct labor requirement of ORS 279.835(5)(c) during the

applicable fiscal year. If the CPA attests that the QRF did not comply with the requirement of ORS 279.835(5)(c), the report must include a concise description of the nature and extent of the noncompliance.

(5) The letter of attestation must be signed and dated by the CPA and by an officer of the QRF's board of directors.

(6) Failure to comply with the requirements of ORS 279.835(5)(c) by a QRF constitutes sufficient grounds to terminate the QRF's participation in the QRF Program and constitutes sufficient grounds for an Agency to terminate, or to suspend performance of the work under, a contract with the QRF.

(7) The cost of the audit required by this rule is an overhead expense that the QRF may recover and which must be taken into account in determining the Price under OAR 125-055-0030.

(8) If the Department determines that a QRF is in material noncompliance with any requirement imposed on it by this rule, including the direct labor requirement of ORS 279.835(5)(c), the Department will issue to the non-complying QRF a written notice to cure the noncompliance. The written notice will state the reasons that the QRF is not in compliance and provide potential remedies.

(a) A QRF receiving notice of noncompliance under this subsection must respond to the Department within thirty (30) calendar days of the date of the Department's notice. The QRF's response must acknowledge receipt of the notice and describe a corrective action plan.

(b) If the QRF does not submit a written response within thirty (30) calendar days from the date of the written notice or such additional time as may be permitted by the Department, the Department may issue, to the QRF, written notice of the proposed termination of participation in the QRF Program.

(c) The Department reserves the right to require a QRF to submit to the Department quarterly audit reports concerning the QRF's compliance with the direct labor requirement of ORS 279.835(5)(c). The Department may require, at its discretion, that the quarterly audits be conducted and reported by a CPA in accordance with subsection (5). If a QRF subject to this requirement satisfies the direct labor requirement in the first two consecutive quarterly audits, the Department may waive the quarterly audit requirement for that QRF.

(d) If the QRF fails to achieve compliance within the time prescribed in the Department's written notice, the Department may terminate the QRF's participation in the QRF Program. The Department will issue to the QRF a written notice of termination.

(e) After termination of QRF status, the QRF may not enter into or renew any contracts under the QRF Program. Termination of the QRF's participation in the QRF Program constitutes sufficient grounds for any Agency to terminate any contract with the QRF.

(f) One year after the effective date of termination of QRF status, a CRP may re-apply for QRF status under OAR 125-055-0015 and listing on the Procurement List under OAR 125-055-0020.

(9) If a QRF fails the direct labor requirement of ORS 279.835(5)(c), that QRF will be required to submit an independent audit report the following year. If the subsequent annual audit discloses that the QRF failed to satisfy the direct labor requirement, the Department will issue a notice of termination to the QRF.

(10) The QRF may submit a written appeal to the Department within ten (10) calendar days from the date of the notice of termination issued under subsection (8)(d). The appeal must state the QRF's grounds for appealing the decision. If the QRF does not appeal the Department's decision, termination of participation in the QRF Program is final.

(11) On appeal, if the Department determines that the QRF complied with the direct labor requirement of ORS 279.835(5)(c), it will notify the QRF of its decision. If on appeal, the Department determines that the QRF failed to comply with the direct labor requirement of ORS 279.835(5)(c), it will provide the QRF a written decision stating the reasons for the determination. The Department's written decision under this subsection constitutes a final order under ORS 183.484.

Stat. Auth.: ORS 279.845(1) & 183.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05; DAS 3-2010, f. & cert. ef. 10-8-10

125-055-0040

General Provisions

(1) Contracting Authority. The Department and other Agencies must contract directly with a QRF for a contract to qualify for the exception from the competitive procurement requirement in ORS 279A.025 for contracts under the QRF Program. Contracts between multiple Agencies and a QRF satisfy this requirement that the Agencies must contract directly with a QRF.

(2) Contract Disputes. Contract performance issues and disputes arising out of contracts entered into under the QRF Program, such as disputes concerning timely delivery of products or performance of services or compliance with specifications, must be resolved exclusively between the QRF and the Agency that is a party to the contract, and will not be resolved by the Department (except where the Department is a party to the contract with the QRF).

(3) Temporary Services for State Agencies. In each contract for the provision of temporary services entered into by a state agency under the QRF Program, the QRF must monitor the prior and current work assignments of its employees who work under the contract to ensure that no employee performs services for the state in excess of a total of 1,040 hours in a 12-month period. A QRF temporary service provider must obtain a written statement from the employee attesting to the total hours worked as a temporary employee for any state agency during the last 12 months. A state Agency filling behind an employee on approved leave may continue beyond 1,040 hours in a 12-month period only when the temporary employee replaces a single employee on approved leave. The temporary appointment may not exceed the period of the approved leave.

(4) Competitive Public Contract Bidding by a QRF. If a QRF submits, to any Agency, a competitive bid, proposal, quote or other offer in a competitive procurement for a public contract, then regardless of whether the offer was accepted, that QRF may not, at any time during the initial term of the contract for which the QRF submitted a competitive offer, make any claim to the Agency that instituted the procurement for the public contract that the product or service that was the subject of the offer should have been subject to the requirements of the QRF Program.

(5) A QRF must not enter into a public contract with an Agency under the QRF Program unless the contract complies with OAR 125-055-0005 to 125-055-0040 and the products or services that are the subject of the contract are listed on the Procurement List. Any liabilities or expenses that may arise from the establishment of a contract that violates this subsection will be those exclusively of the QRF and Agency.

(6) Application of these Rules. OAR 125-055-0005 through 125-055-0040, as amended effective October 5, 2010, apply to applicants and participants in the QRF Program after October 5, 2010.

(a) Existing disability documentation for Individuals with a Disability participating in the QRF Program prior to October 1, 2010 will meet the requirements of OAR 125-055-0017(1)(b).

(b) The implementation of the Competitive Employment statement, as required by OAR 125-055-0017(1), will commence with the reporting of the fiscal year ending October 2011.

(c) The revised audit requirements will be implemented as follows:

(A) Direct labor audits for fiscal years ending October and December 2010, and June 2011 are waived.

(B) Direct labor audits will be required for fiscal years ending October and December 2011, and June 2012, for all QRFs with gross revenues exceeding \$100,000 annually under the QRF Program.

(C) Starting October 2012, direct labor audits will be required every other year as determined by the Department in accordance with OAR 125-055-0035(1).

(d) The amendments to OAR 125-055-0005 to 125-055-0045, effective October 5, 2010, shall not affect the validity of any of the following determinations the Department made prior to the effective date of the amendments:

(A) Any determination that a QRF was qualified for participation in the QRF Program;

(B) Any determination that a product or service was suitable for addition to the Procurement List; or

(C) Any determination of Price.

(7) The Department reserves the right to extend any deadline or time within which a QRF or a party to any proceedings under OAR 125-055-0015 to 125-055-0040 must take any action under those rules if the affected party applies in writing for relief to the Department and demonstrates in writing that special circumstances warrant the grant of such relief. For the purpose of this subsection, special circumstances that warrant the grant of relief include emergencies that reasonably can be regarded as imposing an obstacle to the QRF's or party's ability to meet the deadline or achieve the correction of a violation of rules. Special circumstances are circumstances beyond the reasonable control of the individual or organization including, but not limited to, the illness or other incapacity of key officers of the organization seeking relief, emergency reorganizations or replacements of the corporate structure, board of directors or executive officers of the organization, acts of God and comparable practical impediments to an individual's or organization's ability to meet a deadline or achieve the correction of a violation of rules. The grant or denial of relief under this subsection must be determined by the Department official specifically delegated that task. The Department also reserves the right to waive or to permit the correction of minor or technical violations of OAR 125-055-0015 to 125-055-0040.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05; DAS 3-2010, f. & cert. ef. 10-8-10

125-055-0045

Purchases under ORS 279.855

(1) QRFs, residential programs and public benefit corporations recognized by ORS 279.855 may acquire equipment, materials, supplies and services under the same conditions as state agencies that, under ORS 279A.040, are not subject to the requirement that the Department provide for their acquisition of such items. Accordingly, QRFs, residential programs and public benefit corporations must enter into an agreement with the Department in order to participate in the Oregon Cooperative Procurement Program (ORCPP). The agreement must have substantially the same form, content and obligations as the standard agreement prescribed by the Department that state agencies must execute in order to participate. In addition, QRFs, residential programs and public benefit corporations must comply with the applicable subsections of this rule to acquire equipment, materials, supplies or services under ORS 279.855.

(2) QRFs that currently are approved under OAR 125-055-0015 may purchase equipment, materials, supplies and services through the Department in the same manner as state agencies, as provided in ORS 279A.140 to 279A.155 and 279A.250 to 279A.290.

(3) A residential program seeking to purchase equipment, materials, supplies or services through the Department under ORS 279.855 must make a written request to the Department to which is attached a true and correct copy of its currently effective contract with the Department of Human Services to provide services to youth in the custody of the state. In addition, the residential program must submit a letter from the Oregon Department of Human Services, on the letterhead of that department or of a division of that department, that contains the following information:

(a) The services the residential program must provide, including the scope of those services, under the currently effective contract with the Department of Human Services;

(b) The Department of Human Services contract number;

(c) The starting date and expiration date of the contract; and

(d) The name, original signature, mailing address and telephone number of the Department of Human Services' Contract Administrator for the contract.

(4) A public benefit corporation seeking to purchase equipment, materials, supplies or services through the Department under ORS 279.855 must make a written request to the Department to which is attached:

(a) A certification by an authorized officer of the public benefit corporation that the applicant qualifies as a public benefit corporation under ORS 65.001;

(b) A true and correct copy of documentation, which may include the corporation's currently effective articles of incorporation, that demonstrates that the corporation is tax exempt under 501(c)(3) of the Internal Revenue Code and that the corporation is not a religious corporation as defined in ORS 65.001;

(c) A true and correct copy of at least one currently effective contract between the public benefit corporation and a state agency or unit of local government by which the corporation's contract performance is funded at least in part with state funds; and

(d) A letter from the state agency or unit of local government that confirms the existence and effectiveness of the contract submitted under subsection (4)(c), on the letterhead of the state agency or unit of local government, that contains the following information:

(A) The services the public benefit corporation must provide, including the scope of those services, under the contract submitted under subsection (4)(c);

(B) The contract number;

(C) The starting date and expiration date of the contract; and

(D) The name, original signature, mailing address and telephone number of the state agency or unit of local government's Contract Administrator for the contract.

(5) Neither the Department nor the State of Oregon will be liable for any obligation or debt entered into on behalf of a QRF, a residential program or a public benefit corporation, and likewise will not be liable for any obligation or debt incurred by a QRF, a residential program or a public benefit corporation, in making purchases.

(6) Each residential program and public benefit corporation that makes any purchase of equipment, materials, supplies or services through the Department under ORS 279.855 must notify the Department in writing whenever a contract that is necessary for the organization to qualify under ORS 279.855 expires, is terminated, or is not renewed, and whenever the organization otherwise ceases to qualify under ORS 279.855 or this rule.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05; DAS 3-2010, f. & cert. ef. 10-8-10

125-055-0100

Purpose — HIPAA Privacy and Security Rule Implementation; HITECH Act Implementation.

(1) The purpose of these rules is to set forth the requirements that a contractor who is a Business Associate of an Agency must abide by in order to comply with the Business Associate provisions of HIPAA and the implementing Privacy Rule and Security Rule and of the HITECH Act. The Privacy Rule and Security Rule, as amended by the HITECH Act, require an Agency, to obtain certain written assurances from a Business Associate, that the Business Associate will comply with the Business Associate requirements set forth in 45 CFR 164.502(e) and 164.504(e). The Privacy Rule requires that a Covered Entity obtain certain written assurances before the Business Associate may create, receive, maintain or transmit Protected Health Information. The requirements contained in this Rule apply both to Contracts for trade services and personal services, as defined in OAR 125-246-0110.

(2) This Rule will be interpreted as broadly as necessary to implement and comply with HIPAA, the Privacy Rule and the Security Rule, and the HITECH Act. Any ambiguity in this Rule shall be resolved in favor of a meaning that complies and is consistent with the purpose of these rules.

tent with HIPAA, the Privacy Rule and the Security Rule, and the HITECH Act.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140
 Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264
 Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05; DAS 2-2010(Temp), f. & cert. ef. 7-26-10 thru 1-17-11; DAS 4-2010, f. & cert. ef. 11-15-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-055-0105

Definitions

For purposes of rules 125-055-0100 through 125-055-0130 the following terms shall have the meanings set forth below. Capitalized terms not defined herein shall have the same meaning as those terms in the Privacy Rule and the Security Rule and the HITECH Act, including, but not limited to, 42 USC Section 17938 and 45 CFR Section 160.103.

(1) "Agency" means an agency of the State of Oregon subject to the procurement authority of DAS pursuant to ORS 279A.140 and that is:

- (a) A Covered Entity; or
- (b) A Business Associate of an Agency that is a Covered entity.

(2) "Business Associate" has the meaning given that term in 45 CFR 160.103.

(3) "Contract" means the written agreement between an Agency and a Contractor setting forth the rights and obligations of the parties.

(4) "Covered Entity" has the meaning given that term in 45 CFR 160.103.

(5) "Electronic Media" means:

- (a) Electronic storage media; and
- (b) Transmission media used to exchange information already in electronic storage media.

(6) "Electronic Protected Health Information" has the meaning given that term in 45 CFR 160.103.

(7) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d – 1320d-8, Public Law 104-191, sec. 262 and sec. 264.

(8) "HITECH Act" means the Health Information Technology for Economic and Clinical Health ("HITECH") Act, Title XIII of division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("ARRA"), Public Law 111-5, including any implementing regulations.

(9) "Health Care Provider" means the persons or entities that furnish, bill for or are paid for Health Care in the normal course of business, as more fully defined in ORS 192.519.

(10) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(11) "Protected Health Information" has the meaning given that term in 45 CFR 160.103.

(12) "Required by Law" has the meaning given that term in 45 CFR section 164.103.

(13) "Rule" means this Oregon Administrative rule 125-055-0100 through 125-055-0130.

(14) "Secretary" means the Secretary of Health and Human Services (HHS) or any other officer or employee of HHS to whom the authority involved has been delegated.

(15) "Security Rule" means the security standards for Electronic Protected Health Information found at 45 CFR Parts 160, 162, and 164.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140
 Stats. Implemented: ORS 192.519; ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264
 Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05; DAS 2-2010(Temp), f. & cert. ef. 7-26-10 thru 1-17-11; DAS 4-2010, f. & cert. ef. 11-15-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-055-0115

Business Associate Contract Provisions

(1) A Contractor that is a Business Associate of an Agency must:

(a) Not use or disclose Protected Health Information or Electronic Protected Health Information other than as permitted or required by this Rule and the Contract, or as Required By Law.

(b) Use appropriate safeguards to prevent use or disclosure of the Protected Health Information and Electronic Protected Health Information other than as provided for by this Rule and the Contract.

(c) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information or Electronic Protected Health Information by Business Associate in violation of the requirements of this Rule and the Contract.

(d) Report to Agency, as promptly as possible, any use or disclosure of the Protected Health Information or Electronic Protected Health Information not provided for by this Rule and the Contract of which it becomes aware.

(e) Ensure that any agent, including a subcontractor, to whom it provides Protected Health Information or Electronic Protected Health Information created, received, maintained or transmitted by it on behalf of Agency agrees to the same restrictions and conditions that apply through this Rule and the Contract to Business Associate with respect to such information.

(f) Provide access, at the request of Agency, and in the time and manner designated by Agency, to Protected Health Information or Electronic Protected Health Information in a Designated Record Set, to Agency or, as directed by Agency, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) Make any amendment(s) to Protected Health Information or Electronic Protected Health Information in a Designated Record Set that the Agency directs or agrees to pursuant to 45 CFR 164.526 at the request of Agency or an Individual, and in the time and manner designated by Agency.

(h) Make internal practices, books, and records, including policies and procedures relating to the use and disclosure of Protected Health Information and Electronic Protected Health Information created, received, maintained or transmitted by Business Associate on behalf of, Agency available to Agency and to the Secretary, in a time and manner designated by Agency or the Secretary, for purposes of the Secretary determining Agency's compliance with the Privacy Rule or Security Rule.

(i) Document disclosures of Protected Health Information and Electronic Protected Health Information and information related to such disclosures as would be required for Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and Electronic Protected Health Information in accordance with 45 CFR 164.528.

(j) Provide to Agency or an Individual, in a time and manner to be designated by Agency, information collected in accordance with subsection (i) of this section to permit Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and Electronic Protected Health Information in accordance with 45 CFR 164.528.

(2) A Contractor that is a Business Associate of an Agency may, except as otherwise limited or prohibited by this Rule:

(a) Use or disclose Protected Health Information and Electronic Protected Health Information to perform functions, activities, or services for, or on behalf of, Agency as specified in the Contract and this Rule, provided that such use or disclosure would not violate the Privacy Rule, Security Rule, the HITECH Act, or other applicable federal or state laws or regulations if done by Agency or the minimum necessary policies and procedures of the Agency. All other uses of Protected Health Information and Electronic Protected Health Information are prohibited.

(b) Use Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Disclose Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law.

(d) Disclose Protected Health Information and Electronic Protected Health Information to a subcontractor if the Business Associate enters into a business associate agreement with that subcontractor that complies with this Rule.

(e) Use Protected Health Information and Electronic Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

(3) A Contractor that is a Business Associate of an Agency may not aggregate or compile Agency's Protected Health Information or Electronic Protected Health Information with the Protected Health Information or Electronic Protected Health Information of other Covered Entities unless the Contract permits Business Associate to perform Data Aggregation services. If the Contract permits Business Associate to provide Data Aggregation services, Business Associate may use Protected Health Information to provide Data Aggregation services requested by Agency as permitted by 45 CFR 164.504(e)(2)(i)(B) and subject to any limitations contained in this Rule. If Data Aggregation services are requested by Agency, Business Associate is authorized to aggregate Agency's Protected Health Information with Protected Health Information of other Covered Entities that the Business Associate has in its possession through its capacity as a business associate to such other Covered Entities provided that the purpose of such aggregation is to provide Agency with data analysis relating to the Health Care Operations of Agency. Under no circumstances may Business Associate disclose Protected Health Information of Agency to another Covered Entity absent the express authorization of Agency.

(4) Obligations of Agency:

(a) An Agency that has entered into a Contract with a Business Associate shall notify Business Associate of any:

(A) Limitation(s) in its notice of privacy practices of Agency in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information and Electronic Protected Health Information. Agency may satisfy this obligation by providing Business Associate with Agency's most current Notice of Privacy Practices.

(B) Changes in, or revocation of, permission by Individual to use or disclose Protected Health Information or Electronic Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information and Electronic Protected Health Information.

(C) Restriction to the use or disclosure of Protected Health Information or Electronic Protected Health Information that Agency has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information or Electronic Protected Health Information.

(b) Agency shall not request Business Associate to use or disclose Protected Health Information or Electronic Protected Health Information in any manner that would not be permissible under the Privacy Rule or Security Rule if done by Agency, except as permitted by section (1)(b)(B) above.

(5) Security Requirements. A Business Associate of an Agency is subject to the Security Rule's Business Associate requirements for Electronic Protected Health Information and must comply with both the Privacy Rule and the Security Rule requirements applicable to a Business Associate. In addition to the Privacy Rule requirements set forth in this Rule, the Contractor must:

(a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Agency, and develop and enforce related policies, procedure, and documentation standards (including designation of a security official).

(b) Ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it by entering into a business associate agreement; and

(6) Breach.

(a) In the event of Discovery of a Breach of Unsecured Protected Health Information a Business Associate of an Agency must:

(A) Notify the Agency of such Breach. The notification of a Breach to the Agency must be made as soon as possible and Business Associate shall confer with the Agency as soon as practicable thereafter, but in no event, shall notification to the Agency be later than 30 calendar days after the Discovery of a Breach. Notification shall include identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired or disclosed during such Breach and any other information as may be reasonably required by the Agency necessary for the Agency to meet its notification obligations;

(B) Confer with the Agency as to the preparation and issuance of an appropriate notice to each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired or disclosed as a result of such Breach;

(C) Where the Breach involves more than 500 individuals, confer with the Agency as to the preparation and issuance of an appropriate notice to prominent media outlets within the State or as appropriate, local jurisdictions; and,

(D) Confer with the Agency as to the preparation and issuance of an appropriate notice to the Secretary of Unsecured Protected Health Information that has been acquired or disclosed in a Breach. If the Breach was with respect to 500 or more individuals, such notice to the Secretary must be provided immediately. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log must be provided to the Secretary annually documenting such Breaches occurring during the year involved.

(b) Except as set forth in (c) below, notifications required by this section must be made without unreasonable delay and in no case later than 60 calendar days after the Discovery of a Breach. Any notice must be provided in the manner and content required by the HITECH Act, sections 13402(e) and (f), and 45 CFR 164.404–164.410.

(c) Any notification required by this section may be delayed by a law enforcement official in accordance with the HITECH Act, section 13402(g).

(d) For purposes of this section, the terms "Breach" and "Unsecured Protected Health Information" have the meaning set forth in 45 CFR 164.402. A Breach will be considered as "Discovered" in accordance with the HITECH Act, section 13402(c), 45 CFR 164.404(a)(2), and 45 CFR 164.410(a)(2).

(7) Violations of this Rule.

(a) Upon Agency's knowledge of a material breach by Business Associate of the requirements of this Rule, Agency shall:

(A) Notify Business Associate of the breach and specify a reasonable opportunity in the notice for Business Associate to cure the breach or end the violation, and terminate the Contract if Business Associate does not cure the breach of the requirements of this Rule or end the violation within the time specified by Agency;

(B) Immediately terminate the Contract if Business Associate has breached a material term of this Rule and cure is not possible in Agency's reasonable judgment; or

(C) If neither termination nor cure is feasible, Agency shall report the violation to the Secretary.

(b) The rights and remedies provided in this Rule are in addition to the rights and remedies provided in the Contract.

(c) Effect of Termination.

(A) Except as provided in subsection (c)(B) below upon termination of the Contract, for any reason, Business Associate shall, at Agency's option, return or destroy all Protected Health Information and Electronic Protected Health Information received from

Agency, or created or received by Business Associate on behalf of Agency. This provision shall apply to Protected Health Information and Electronic Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information and Electronic Protected Health Information.

(B) In the event that Business Associate determines that returning or destroying the Protected Health Information or Electronic Protected Health Information is infeasible, Business Associate shall provide to Agency notification of the conditions that make return or destruction infeasible. Upon Agency's written acknowledgment that return or destruction of Protected Health Information or Electronic Protected Health Information is infeasible, Business Associate shall extend the protections of this Rule to such Protected Health Information and Electronic Protected Health Information and limit further uses and disclosures of such Protected Health Information and Electronic Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information and Electronic Protected Health Information.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05; DAS 2-2010(Temp), f. & cert. ef. 7-26-10 thru 1-17-11; DAS 4-2010, f. & cert. ef. 11-15-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-055-0120

Order of Precedence

In the event of a conflict between this Rule and the provisions of the Contract, this Rule shall control. In the event of a conflict between this Rule and the Privacy Rule or the Security Rule or the HITECH Act, or the provisions of the Contract and the Privacy Rule or the Security Rule or the HITECH Act, the Privacy Rule and the Security Rule and the HITECH Act shall control. The requirements set forth in this Rule are in addition to any other provisions of law applicable to the Contract. Provided, however, this Rule shall not supercede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA and the HITECH Act preempt those laws or regulations. Any ambiguity in the Contract shall be resolved to permit Agency and Business Associate to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05; DAS 2-2010(Temp), f. & cert. ef. 7-26-10 thru 1-17-11; DAS 4-2010, f. & cert. ef. 11-15-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-055-0125

Methods of Compliance

In addition to referencing compliance with this Rule in a Contract with a Business Associate, Agency may comply with this Rule in any of the following ways:

(1) Memorandum of Understanding. If a Business Associate is a government entity, the parties may comply with the requirements of this Rule by entering into a memorandum of understanding that accomplishes the objectives of this Rule and meets the Business Associate requirements of the Privacy Rule and the Security Rule.

(2) Amendment. Agency may comply with the requirements of this Rule by executing an amendment or rider that amends Agency's Contract and that contains the contract provisions required by this Rule.

(3) Required by Law. If a Business Associate is Required by Law to perform a function or activity on behalf of an Agency or to provide a service described in the definition of Business Associate

to an Agency, such Agency may disclose Protected Health Information to the Business Associate to the extent necessary to comply with the legal mandate without meeting the requirements of this Rule, provided that the Agency attempts in good faith to obtain satisfactory assurances required by OAR 125-055-0115, and, if such attempt fails, documents the attempt and the reasons that such assurances cannot be obtained.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05; DAS 2-2010(Temp), f. & cert. ef. 7-26-10 thru 1-17-11; DAS 4-2010, f. & cert. ef. 11-15-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-055-0130

Standards in Individual Contracts

(1) Agency and Business Associate may enter into a Contract that contains more stringent standards than those set forth in this Rule as long as such standards do not violate the requirements of the Privacy Rule or the Security Rule or the HITECH Act.

(2) Agencies shall use one of the forms provided or approved by the Department of Administrative Services when entering into personal services contracts as defined in OAR 125-246-0110. For revised forms up to a cumulative value of \$150,000 and before an Agency may use a revised form, it must obtain its Designated Procurement Officer's approval of any revisions to the form's terms and conditions. For revised forms exceeding a cumulative value of \$150,000 and before an Agency may use a revised form, it must obtain Department of Justice approval of any revisions to the revised form's terms and conditions.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05; DAS 2-2010(Temp), f. & cert. ef. 7-26-10 thru 1-17-11; DAS 4-2010, f. & cert. ef. 11-15-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

DIVISION 60

HOUSING AND RENTALS

125-060-0000

State Agency Housing Provided to State Officers or Employees

(1) As required by ORS 182.415 to 182.425, every state agency that provides housing for its officers or employees shall collect a rental for such housing. An exception is allowed in cases where employment contracts, signed prior to December 1, 1977, provide for free housing, until such original contracts expire or the incumbent leaves the position; or where express statutory authority exists which provides exemptions from ORS 182.425.

(2) Definitions: As used in this rule, unless the context requires otherwise:

(a) "Furnishings" includes furniture usually used in connection with occupancy of a household but does not include rugs, draperies, range, refrigerator, washer, dryer or any item of furnishings received by the state or one of its agencies as a gift, nor does it include any furniture purchased for the state-owned residence required in relation to the official duties of an institutional executive or the Chancellor of the Department of Higher Education prior to September 9, 1971;

(b) "Housing" includes single and multiple family dwellings, apartments, and mobile homes and mobile home pads, available for tenancy on a monthly or other basis but does not include guard stations maintained by the State Forestry Department or dormitory facilities at any state institution or at any state institution of higher education;

(c) "Dormitory" includes any facility which houses students and those facilities used primarily for sleeping purposes by the employees of the Mental Health Division;

(d) "State Agency" means every state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held in the State Treasury, except the Legislative Assembly, the courts and their officers and committees, and except the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices;

(e) "Utilities and Services" include heat, electricity, gas, oil, telephone, water, sewer, garbage, lawn care, laundry, linens, bedding, and towels used for any state agency provided housing.

(3) Every state agency that provides housing for its officers or employees shall:

(a) Examine and periodically re-examine the fair market rental value as determined by a qualified appraiser certified under ORS 308.010, when the agency determines that market conditions have changed to require it, but not less frequently than once every five years. In determining the fair market rental value, the appraisal shall consider all market factors unique to each housing unit including the value of utilities and services if provided or paid for by the owning agency;

(b) Collect a rental for such housing based on the fair market rental value, subject to any applicable rental reductions authorized under the schedule provided in this rule;

(c) Deposit such rental collected to the agency's account;

(d) Review the net rental rate annually and make such adjustment, if any, as may be determined from changes in the local rental housing market conditions;

(e) Provide no furnishings as a part of any housing provided by the agency;

(f) Determine whether or to what extent the agency will provide utilities and services for each housing unit.

(4) Whenever a state agency provides housing to anyone of its officers or employees, it shall notify the Facilities Division, Department of Administrative Services, on the appropriate form, of these arrangements, including the basis for rental charge and such rental rate reductions as may be applicable. Thereafter, annually on July 1, the agency shall report to the Facilities Division the following information:

(a) A listing of all housing provided by the agency to its officers and employees;

(b) A copy of the most recent rental appraisal report for each housing unit if a new appraisal has been made subsequent to the last annual report;

(c) The rental reductions, if any, applied to determine the net rental charge. Each rent reduction made under subsection (a) or (b) in sections (7) to (9) and under section (10) of this rule requires a justification;

(d) The net rental rate to be charged by the agency.

(5)(a) Each agency providing housing to its officers or employees shall employ an independent auditor selected by the Department of Administrative Services to determine the agency's compliance with this rule. The expense of such review shall be paid by the state agency being audited;

(b) Such audit shall be conducted at least once every three years. The written report of the independent auditor shall be filed by the agency with the Department of Administrative Services within 45 days of agency receipt of the report, together with an indication of actions taken or expected to be taken by the agency to correct any deficiencies cited in the auditor's report. Also, each agency shall implement any supplemental corrective actions which may be ordered by the Department of Administrative Services to comply with this rule.

(6) In determining whether reductions are necessary, each state agency that provides housing for its officers or employees shall consider factors such as isolation, invasion of the officer or employee's privacy, the agency's justifiable need for having its officers or employees occupy the housing in a specific location and inequities between the fair rental value as determined under ORS

182.425(1) and the salary of the officer or employee occupying the housing. The extent of rental reductions for each housing may be determined by the agency by applying the schedule of reductions provided under sections (7) to (10) of this rule, and records shall be kept which will indicate reasons or justifications for any rental reductions applied.

(7) Reduction for the state agency need to have its officers or employees occupy such housing at such locations as it exists may not be more than 50 percent of the fair rental value, and the specific amount by which the rent is to be reduced shall be determined by the state agency providing such housing by applying the following standards:

(a) Residence in such housing is a part of the job requirement as evidenced by contract or position description, and not offered as an incentive or a fringe benefit to the resident state employee — 50 percent reduction;

(b) Residence in such housing is not a job-related requirement but is a distinct advantage to the agency by having the officer or employee live close to the job in case of an emergency, and for a general protection to the public property in the area — 20 percent reduction;

(c) Residence in such housing is not a job requirement. The only advantage to the agency is for the residence to be occupied to reduce the chance of vandalism and deterioration — 10 percent reduction;

(d) Residence in such housing is not a job requirement, nor is it for the benefit of the agency. It is solely for the convenience or by choice of the occupant — no reduction.

(8) Reduction for invasion of privacy of the resident of such housing shall be not more than 30 percent from the fair rental value, and the specific amount by which the rent is to be reduced shall be determined by the state agency providing such housing by applying the following standards:

(a) The housing or a significant part of it is used for a public office or public business, including such official functions as frequent receptions, dinners or other entertainment functions for the agency related guests; or is so located that invasion of privacy is considered the expected or the invited affair by the public or the state institutional residents — 30 percent reduction. "Frequent" here means at least once per week on a yearly average;

(b) Public is not invited and invasion is not the usual occurrence, but the residence's location or the architecture plainly indicates its state ownership with little or no restriction on public or the state institutional client traffic — 20 percent reduction;

(c) Invasion of privacy is an occasional or seasonal occurrence, and some restriction to public traffic is applied — 10 percent reduction;

(d) Invasion of privacy is no more than that which would be expected for an average privately owned residence — no reduction.

(9) Reduction for isolation of the resident shall be not more than 20 percent of fair rental value. Such reduction may be in addition to any rental value adjustment which may have been considered in the appraisal determined under subsection (3)(a) of this rule. To evaluate the isolation factor, the state agency may consider factors such as distance from the nearest full-service community, difficult road conditions or services, a public presence so substantial that the resident's family is forced to retreat within the walls of their home, or conditions that make friends and neighbors reluctant to socialize and visit because of institutional inmate activities, or the stigma attached to a state institution. A rent reduction may be allowed for such isolation according to the following standards:

(a) The housing is located in an isolated area, which is defined as being more than 50 miles or 90 minutes travel by automobile, one way, from the nearest full-service community, or the travel conditions are usually severe or hazardous. A full-service community is to be defined as one complete with supermarket, department store, medical doctor, dentist, church, school, etc.; or if the resident employee's family is isolated socially by public pressure or by the institutional atmosphere to the point where the family is primarily confined within the walls of the home, or friends refuse to come to such housing to socialize — 20 percent reduction;

(b) The housing is located 30 to 50 miles or 60 to 90 minutes travel time, one way, from the nearest full-service community, or the travel conditions are seasonally severe or hazardous, or location or institutional atmosphere tends to reduce the residents' freedom of socialization with neighbors — 15 percent reduction;

(c) The housing is located about 10 to 30 miles or 30 to 60 minutes travel time, one way, from the nearest full-service community, the travel conditions are seldom severe or hazardous, and there is little or no restriction on socialization — 10 percent reduction;

(d) The housing is located within ten miles and not over 30 minutes travel one way from the nearest full-service community, and there is no restraint on socialization from any institutional activity or atmosphere — no reduction.

(10) When the officer or employee is required by the agency to occupy state provided housing as a condition of employment, agencies may apply a rental reduction for unique conditions not previously discussed in sections (7) through (9) of this rule according to the following standards:

(a) As a unique condition, when a reduction from the fair market rental value is needed by the agency to establish a uniform rental schedule for like houses provided in different locations by a single agency to enable intra-agency geographical transfers of employees — reduction to the extent necessary and reasonable to establish a uniform rental schedule;

(b) As a unique condition, when a reduction from the fair market rental value is needed to correct inequities between the fair market rental value of housing and the salary of the officer or employee occupying the residence — reduction to the extent necessary and reasonable;

(c) As a unique condition, when a reduction from the fair market rental value is needed because of unique conditions in the state's title to the property such as when housing is received by the state or one of its agencies as a gift for the free use of a specified state officer or employee and where a valid right of reverter exists — for the use by the state officer or employee, a reduction up to 100 percent of the fair market rental value;

(d) Other factors not previously considered in the reduction schedule may be considered unique conditions when necessary and justifiable for the agency's effective program management — a reduction up to 20 percent. (Factors reflecting only employee convenience or comfort, without a corresponding impact on the agency's program management, shall not be considered unique conditions).

(11) The rental reductions authorized in sections (6) through (10) of this rule, when combined, may be up to 100 percent of the fair market rental value, when justified.

Stat. Auth.: ORS 182 & 283

Stats. Implemented:

Hist.: GS 46, f. & ef. 12-1-77; GS 5-1983, f. 4-29-83, ef. 5-2-83; GS 8-1983, f. & ef. 12-2-83

125-060-0005

Management of the Capitol Mall Housing Units

(1) Pursuant to ORS 276.028 and 276.046, the Department may purchase or acquire by agreement or donation, for development as a part of the Capitol area, the land lying in the area of the City of Salem bordered by Capitol and Winter Streets on the east and west and by Court Street on the south to D Street on the north.

(2)(a) The Department may operate housing units acquired under section (1) of this rule as state office quarters, or as rental properties for any appropriate private commercial use or as rental houses and apartments;

(b) For any Mall housing units leased to private persons for use as private residences or for housing any lawful commercial enterprise and the housing unit designated as the Governor's residence, the Department's rules OAR 125-075-0005, 125-075-0010 and 125-075-0015 shall not apply and the use access thereto shall be totally at the control of the persons leasing or residing in such housing units.

(3) For each Mall housing unit used as a rental housing or as a private commercial rental unit, the Department may:

(a) Set rental rates, security deposits and fees at par with the prevailing comparable market rates, and apply such rate schedule for the year with some adjustments allowed taking into consideration the prevailing market conditions or the condition of repairs of the rental unit;

(b) Enter into a written rental agreement with tenants on a month-to-month tenancy basis or a longer term lease, when appropriate;

(c) Conduct periodical inspections to ensure the tenant performance of the responsibilities under the rental agreement;

(d) At any time during the tenancy the Department may order the tenant to repair or correct the conditions listed below to be performed within a reasonable period of time specified, or in case the tenant does not apply, the Department may undertake the repair or the corrective action required, and charge the tenant for the costs. The conditions for such action shall include, but not be limited to, any damage to the premises above and beyond normal wear and tear, excessively unclean and unkept conditions which present health or fire hazards requiring a major cleaning work or a disposal of garbage and rubbish, any apparent pet damages, and any seriously neglected maintenance of the lawn and landscape.

(4) For Mall housing units used as state office quarters, the Department may manage the units in accordance with other appropriate policies of the Department.

(5)(a) For minor repairs and improvements on any rental Mall housing unit used as a residential unit, when the tenant offers to do such work for free of charge which the Rental Housing Coordinator recognizes such work as being needed and as being within the tenant's capability, the Department may furnish to the tenant the necessary materials to complete the work;

(b) Tenants of Mall housing units shall not be compensated for any work in the form of rent reduction.

(6) For all residential rental agreements, the Department may charge appropriate amounts for security deposits and special fees at the time such agreements are signed. Such deposits and special fees are refundable at the end of tenancy, less the amount sufficient to correct any deficiencies which are the responsibility of the tenant. When the deposit amount is not sufficient to correct the deficiencies, the Department may pursue appropriate methods to collect the additional amount from the tenant or former tenant.

(7) The procedures relative to this rule are as follows:

(a) Tenants or Applicants:

(A) Contact the Rental Housing Coordinator, Facilities Division, Department of Administrative Services at 1225 Ferry Street SE, Salem, OR 97310 to arrange for tenancy in any Mall housing units;

(B) Complete an application form of the Department providing references, social security number, former addresses and such other information as the Department may require;

(C) Complies with the terms of the rental agreement.

(b) Rental Housing Coordinator, Facilities Division — Action:

(A) Makes selections of tenants for the Mall housing units following the normal practices of the private rental housing industry, and signs rental agreements;

(B) Annually for each rental housing unit, establishes the rental rate and the amounts to be charged for deposits and fees to be applicable in renting during the year, and applies such rental-deposit-fee schedule with some adjustments allowed taking into consideration the prevailing market conditions or the condition of repairs of the rental unit;

(C) Conducts periodic inspections of the Mall housing rental units during and at the end of each tenancy, and determines the amount to be billed to the tenant or to be charged against the deposits and fees. The chargeable items include the following: Damages above and beyond normal wear and tear, cleaning, garbage disposal, lawn and landscape maintenance, disposal of any rubbish, pet damage, loss of keys and lock changes, as needed, and final rent due, if any;

(D) Within 30 days, prepares and transmits an itemized accounting of any deficiencies, an estimated cost to correct the deficiencies and the amount to be refunded to the former tenant;

(E) When claims against the security deposit exceed the amount of the deposit, pursues appropriate methods to collect the remaining claim amount from the tenant or former tenant.

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

Hist.: GS 3-1983, f. & ef. 1-19-83

DIVISION 70

GIFTS AND DONATIONS

125-070-0000

Gifts and Donations for the Benefit of the Programs of the Real Property Division

(1) As authorized under ORS 276.005(3), the Department may accept on behalf of the State of Oregon any gifts, grants and donations from public and private sources for the purposes set out in ORS 276.005(1). Any prospective donor may contact the Facilities Division Administrator or the Director of the Department to consult or to propose making gifts, grants or donations of any value stipulating conditions or limitations, if any. Such proposals may be addressed to: Director, Department of Administrative Services, 155 Cottage Street N.E., Salem, OR 97310.

(2) Gifts, grants and donations approved under section (1) of this rule will be received by the Director or a designee. Funds will be deposited by the Department in appropriate separate trust accounts to be used for the purposes for which the gifts, grants or donations are made. When no specific designations are made by the donor, the Department shall deposit such amounts in the Capital Projects Account established under ORS 273.004(2), subject to any limitations imposed by the donor. When the Department determines that any stipulation or limitation imposed by the donor will result in violation of any applicable law or is contrary to any rules or policies of the state, the Department shall decline acceptance of such donation or gift. All donations or gifts, except landscape donations, must be approved by the Director before such an offer can be accepted by the Department.

(3) All proposed landscape donations are subject to review and approval by the Administrator of the Facilities Division or the Administrator's designee. Proposed donations may be incorporated into the landscape or the facilities only if the following criteria are satisfied:

(a) Compatibility with the Department's master plans or, in areas not covered by such plans, compatibility with existing facilities;

(b) Compatibility with the local conditions;

(c) Age and the anticipated general condition of the donation;

(d) Anticipated maintenance requirements.

(4) Memorial or donation plaques associated with any landscape donation are discouraged by the Department in order to simplify the environment and minimize maintenance. However, in case any such plaque is stipulated by the donor and approved by the Department, the donor shall provide the cost for the purchase of such plaque. The size and type of such plaque shall be determined by the Department. The Department may provide the mounting post and the necessary labor for the installation.

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

Hist.: GS 3-1983, f. & ef. 1-19-83

DIVISION 75

USE OF BUILDINGS, GROUNDS, PARKING AREAS (STRUCTURES, FACILITIES, LOTS) AND PREMISES UNDER DEPARTMENT CONTROL

125-075-0000

Restrictions on the Use of Capitol Mall Heliport

(1) The Capitol Mall Heliport, located at the open recessed area between the State Library Building and the Public Service Building, is a non-public, restricted use facility registered with the State of Oregon Aeronautics Division and the Federal Aviation

Administration. No one may use this Heliport without first receiving permission to use it from the Department of Administrative Services. The use of this Heliport is restricted and permission for use is given only for official state business or emergencies in following instances:

(a) Official state business use by the Governor, the President of the Senate, the Speaker of the House or the Chief Justice of the Supreme Court;

(b) Emergencies (e.g., air ambulance, catastrophes, etc.) to be so defined and approved by the Manager, Operations & Maintenance Section, Facilities Division, Department of Administrative Services.

(2) All requests for the Heliport use, with no exception, must be directed to and approved by: Manager, Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone: 378-2865.

(3) All users of the Heliport must inform the Department in advance of the estimated time of landing and lift-off so that the Department can notify the Capitol Mall Area Security personnel to clear the Heliport area to ensure safety.

(4) All Capitol Mall Heliport air traffic shall contact the Salem Airport FAA Control Tower to receive advisories in approaching or departing the Heliport.

(5) Any unauthorized use of the Heliport shall be reported to the State of Oregon Aeronautics Division and may be prosecuted under ORS 276.990 and other applicable provisions of law.

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

Hist.: GS 3-1983, f. & ef. 1-19-83

125-075-0005

Use of the Capitol Mall Area Parks and Grounds

(1) The State Capitol grounds including Willson Park, Capitol Park, and other parks and grounds in the Capitol area as defined in ORS 276.010, save and except that property used for residential purposes located in the northern portion of the Capitol area, are open to the public for use, subject to restrictions specified in this rule.

(2) The restrictions specified in the **City of Salem Code 94.010**, as adopted by Salem City Council on October 25, 1955, are hereby adopted by the Department of Administrative Services and, except for the modifications set forth in section (5) of this rule, are made a part of this rule governing the use of the State Capitol area parks and grounds.

(3) Any request for information, applications for permits or reservations for a park or a portion thereof for use should be sent to: Manager, Operations and Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310.

(4) Any use of the Capitol area parks and grounds for the following activities shall require use authorization by the Department:

(a) Sales and solicitations, as provided under the **City of Salem Code 94.100**;

(b) Public demonstration, as provided under the **City of Salem Code 94.090**;

(c) Any organized or group activity, as referenced in the **City of Salem Code 94.200**.

(5) Enforcement of this rule shall be carried out by the Department's Capitol area security personnel in cooperation with the City of Salem Police Department with the following stipulations modifying the **City of Salem Codes 94.010 to 94.990** for the purposes of this rule:

(a) For the purposes of **City Code 94.070** on throwing objects, frisbees are exempted from the prohibited category of "other missile";

(b) For the purposes of **City Code 94.100** on sales and solicitations, the Department may follow the Department's rule OAR 125-080-0000 and 125-080-0010 for granting permits;

(c) For the purposes of **City Code 94.110**, no bathing, wading or swimming shall be allowed in fountains, water displays or systems, with the exception of the Wall of Water Fountain on the

Capitol Mall Plaza, in front of the Capitol Building, where wading is allowed;

(d) For the purposes of **City Codes 94.160 to 94.180** relative to use of motor vehicles and parking, the Department may follow the Department rules OAR 125-095-0000 through 125-095-0065;

(e) For the purposes of **City Code 94.190**, the Department shall not permit any overnight use of the parks and grounds subject to this rule;

(f) For the purposes of **City Code 94.195** on the use of alcoholic beverages, the Department shall follow the Department's rule OAR 125-075-0015(2), and prohibits use of any illegal drugs or controlled substances by law in addition to any alcoholic beverages;

(g) For the purposes of **City Code 94.200**, the Department may choose not to set or post any signs for public information on opening and closing hours of the Capitol grounds. However, as provided under section (4) of this rule, the Department will regulate organized activities to minimize traffic congestion in the Capitol Mall area, disruption of state business by noise, such as by high amplification equipment, and informal use of the parks;

(h) No posters or placards may be placed on public grounds except those authorized by the Facilities Division for the conduct of public business;

(i) The State Capitol Building and the Supreme Court Building including their respective entrance areas are outside the jurisdiction of the Department. For any proposed use thereof, inquiries should be directed to the Administrative Services, Legislative Administration Committee, S401 State Capitol, Salem, OR 97310; or the office of State Court Administrator, Supreme Court Building, Salem, OR 97310, respectively.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

Hist.: GS 3-1983, f. & ef. 1-19-83; GS 14-1992(Temp), f. & cert. ef. 7-1-92; GS 19-1992, f. 11-23-92, cert. ef. 1-1-93

125-075-0010

Public Use of Meeting Rooms in State Buildings Under the Department of Administrative Services' Control

(1) Pursuant to ORS 276.440 and other related provisions of ORS Chapter 276, the Department may permit and schedule the occasional use of certain meeting rooms in the Department-controlled state office buildings by the public on space available basis, subject to restrictions and payment of fees where applicable under this rule. Any interested person or organization may call or write to the Department for information on available meeting rooms or to make reservations. The address and the phone number are as follows: Meeting Room Reservations, Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone: 378-2865.

(2)(a) The Department shall refuse to permit the use of such meeting rooms when it determines that doing so is contrary to any applicable law or policies of the state, or disrupt the operations of the building or the working of the state government;

(b) The use of the meeting rooms shall not be permitted under this rule for the following types of activities:

(A) Activities which generally produce excessive noise, such as music performances with high amplification;

(B) Activities which will tend to create traffic congestions in the Capitol Mall area in Salem;

(C) Activities considered by the Department as likely to endanger public safety or property;

(D) Activities at which alcoholic beverages are served or used.

(3) Fees for the use of meeting rooms shall be set by the Department. Where applicable, the minimum space rental shall be \$15. In addition, a service fee will be charged for any use after 5:00 p.m. on weekdays, and any time on weekends and holidays for security, clean up and other support needs. Whenever special custodial services are required, a fee therefor shall be for not less than two hours.

(4) State agency tenants in Department-owned or controlled office buildings are exempted from the space rental charges. When tenant agency use requires special custodial services, an applicable service fee will be charged. All other users will be charged a space rental charge, and a service fee when applicable.

(5) All non-state users must reserve meeting rooms early, at least seven days in advance and pay all applicable use fees in advance of the dates or times reserved. Any cancellation must be made as soon in advance as possible to allow rescheduling. When a scheduled user fails to cancel the reservation at least three business days in advance, the scheduled user may forfeit charges for the period reserved for use.

(6) Scheduling of such meeting rooms will be done in order of priority first to state agencies, second to other public agencies, and third to private citizens or organizations.

(7) The Division reserves the right to cancel or alter any scheduled or reserved use of any meeting room when it considers necessary for public safety under emergencies.

(8) All users of meeting rooms shall leave the rooms in a reasonably clean condition after each use. In case an excessive clean up by the Department's personnel is necessary, the user may be billed for the additional custodial services for the cleanup.

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

Hist.: GS 3-1983, f. & ef. 1-19-83

125-075-0015

Possession or Use of Firearms, Alcoholic Beverages and Illegal Substances on the Grounds, Parking Areas (Structures, Facilities, Lots) and Premises of Buildings Under Department Control

(1)(a) Possession or use of firearms or other weapons of any kind, including any explosives, air guns, or slingshots on the grounds, parking areas (structures, facilities, lots) and premises of buildings under Department control is governed by federal and state laws.

(b) The provisions of this section do not apply to firearms in the possession of or stored for official public business authorized by statute for peace officers or for members of any state or national military organization.

(2)(a) The sale, possession and consumption of alcoholic beverages are governed by federal and state laws, local ordinances, and regulations in compliance with a permit. Visitors to any grounds, parking areas (structures, facilities, lots) and premises of buildings under Department control must comply with any directives given to them by law enforcement authorities and employees specifically designated by the Department to investigate observed or reported violations and to issue oral or written warnings or citations to enforce Department rules.

(b) Wine is permitted when stored or used for official public business by the Department of Agriculture under ORS Chapter 576;

(c) Alcoholic beverages are permitted if stored legally in any private vehicle in transit through or while legally parked on the grounds, parking areas (structures, facilities, lots) and premises of buildings under Department control.

(3)(a) It is unlawful for any person to possess illegal drugs on the grounds, parking areas (structures, facilities, lots) and premises of buildings under Department control.

(b) Illegal drug activities are subject to federal and state laws; local ordinances and regulations; and State Policy 50.000.01 Drug-Free Workplace. Any person who uses, possesses, or distributes illegal drugs on the grounds, parking areas (structures, facilities, lots) and premises of buildings under Department control is subject to criminal prosecution by state and federal authorities.

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

Hist.: GS 3-1983, f. & ef. 1-19-83; DAS 1-2009, f. & cert. ef. 1-6-09

DIVISION 80

SALES OR SOLICITATION

125-080-0000

Vending Facilities in State Buildings or Grounds Under the Department of Administrative Services' Control

(1) No person, firm or state agency may place any vending facility in any Department of Administrative Services controlled state office buildings and grounds without specific authorization from the Department. Any inquiry concerning placement of such vending facility should be directed to: Manager, Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone 378-2865.

(2) For the purpose of this rule, the term:

(a) "Department of Administrative Services controlled state office buildings and grounds" means any state office buildings and grounds owned or managed by the Department of Administrative Services, including all such properties specified under ORS 276.004(1) and all Department leased office facilities operated by the Department;

(b) "Vending facility" means any facility used for vending merchandise such as any shelter, counter, shelving, mobile cart food vendor, display case and wall case approved by the Department, including any such refrigerating apparatus and other appropriate auxiliary equipment as are necessary or customarily used for vending merchandise; any manual or coin-operated vending machine or similar device for vending merchandise; and any cafeteria or snack bar for dispensing of food and beverages;

(c) "Commission for the Blind" means the state agency established under ORS 346.130 to 346.140.

(3) Management policies and procedures of the Department for cafeterias and snack bars are specified in the Department's OAR 125-080-0005.

(4) All locations, types and number of vending facilities to be permitted are determined by the Department, and all commodities and articles to be sold at any vending facility placed in the Department controlled premises shall be subject to approval by the Department.

(5) The Department may determine fees for each class of vending facilities which will, at the minimum, pay for the costs of space, utilities and administration. Such fee schedule may be changed by the Department as needed.

(6) Authorizations issued by the Department for placement of vending facilities may be in the form of a permit or a contract which will specify terms and conditions governing the operation of vending facilities.

(7) For all available vending facility locations, the Commission for the Blind shall be given the first right of refusal on the contract based on the terms and conditions set by the Department, pursuant to ORS 346.520 and 346.530.

(8) Any vending facility or such prospective locations not contracted with the Commission for the Blind may be permitted or leased to other applicants that may be selected by competitive bids when appropriate.

(9) The Department of Administrative Services reserves the right to reject any and all bids or proposals, and contracts awards will be based on appropriate qualification standards, contract terms and considerations offered to the Department by vendors.

(10) All permits issued by the Department for mobile cart food vendors shall be on condition that such vending facility complies with all the applicable laws of the state and ordinances of the local government jurisdictions pertaining to the vending of foods.

Stat. Auth: ORS 276 & 283

Stats. Implemented:

Hist.: GS 3-1983, f. & ef. 1-19-83

125-080-0005

Cafeterias in State Office Buildings Under the Department of Administrative Services' Control

(1) Pursuant to ORS 276.431(2), the Department of Administrative Services may lease any suitable space in state office buildings owned or leased by the Department to restaurateurs to establish and operate cafeterias or snack bars for a term not to exceed five years.

(2) No person, firm or state agency may establish or operate any cafeteria or snack bar in any state office building owned or leased by the Department without a specific authorization from the Department or by a contract with the Department. Any inquiry therefore should be addressed to: Manager, Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone 378-2865.

(3) Determinations as to whether to establish or to continue operating any cafeteria or snack bar in any Department controlled building shall be within the discretion of the Department, and terms and conditions for operating such facility shall be specified in a written contract made between the restaurateur and the Department. The Department may furnish such facility to the extent necessary or to the extent customarily provided for such facility, subject to negotiation with the restaurateur, and may set a rental rate for such facility at par with prevailing commercial rates for nearby comparable facilities used for similar purposes.

(4)(a) For any available opportunity to enter into a new contract with a restaurateur such as when opening a new cafeteria or snack bar or when a contract for an existing facility is due to expire or being terminated, the Department will inform in writing the Commission for the Blind about the available opportunity and offer to the Commission the right of first refusal to contract on the terms and conditions set forth by the Department;

(b) The Commission for the Blind shall respond in writing within 30 days to accept or to decline the offer made by the Department under subsection (a) of this section, and the Commission may commence negotiating with the Department for a contract should the Commission decide to accept the offer, subject to conditions stipulated under section (5) of this rule;

(c) In case the Commission for the Blind fails to respond within the 30 days specified under subsection (b) of this section, or declines to accept the Department's offer, the Department may proceed to select other restaurateurs either by an open competitive bid or by negotiating with one or more restaurateurs without competitive bid under certain circumstances, subject to any applicable provision of law.

(5) The Department reserves the right to reject any and all bids and proposals. The Department's decision in awarding all contracts will be based upon any or all of the following conditions:

(a) Restaurateur's experience and competence in managing and operating food service facilities of the similar nature;

(b) The proposed menu, food prices and service levels;

(c) The quality of food and service at other establishments owned or managed by the restaurateur;

(d) Terms of contract and considerations offered to the Department.

(6) No alcoholic beverages shall be allowed in any cafeteria or snack bar in any state buildings under the Department's control.

(7) The Department reserves the right to make periodic inspections of any contracted facility to insure the lessee-restaurateur performance of the terms and conditions of the contract.

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

Hist.: GS 3-1983, f. & ef. 1-19-83

125-080-0010

Sales or Solicitations in State Office Buildings Under the Department of Administrative Services' Control

(1)(a) In any state office building premises under the jurisdiction of the Department of Administrative Services, any temporary walk-in sales activity or solicitations by any person who is not a state employee shall be restricted and require permits issued by the Department of Administrative Services;

(b) Such temporary sales or solicitation activities restricted under this rule shall include, but not be limited to, hawking, peddling, vending or selling goods, wares, merchandise, foods, beverages or services; soliciting donations or signatures; or distributing handbills or posting posters on any wall space designated for such purposes by the agency leasing the space;

(c) Any wall space designated for posting information on bulletin boards are for state business and related purposes only.

(2) Permits for any restricted activity under section (1) of this rule may be issued by the Department provided a written request for a permit is received by the Department at least seven days in advance, and such proposed activity is determined by the Department as not likely to interfere with the normal operation of the building or working conditions of the building residents. No sales or solicitations shall be permitted at workstations of the building residents.

(3) All permit applicants shall specify in the application or request for permission the time, place, type of activity being proposed and state the organizational affiliations, if any.

(4) The Department may issue permits under this rule for the following activities specifying the time and place where the permitted activity may be conducted:

(a) Sales of products or other activities which are in the judgment of the Department to be of some significant benefit or relevance to the residents of the state office building in conducting their official business, or in the general public interest; *and*; in addition;

(b) When such sales of products or other activities referred to under subsection (a) of this section are conducted by members of and on behalf of any nonprofit organization whose primary mission is for services for youth, charitable organizations or services for the public.

(5) State employees shall not engage in any sales or solicitation activities in any Department controlled premises, except when so authorized by their own employing agency.

(6) Any inquiry or permit applications under this rule should be addressed to: Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone 378-2865.

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

Hist.: GS 3-1983, f. & ef. 1-19-83

DIVISION 85

RECYCLING

125-085-0000

State Recycling Program

(1) The Department of Administrative Services shall operate the state agencies recycling program established under ORS 279.560 by contracting with persons or firms for the collection, processing, and marketing of such recyclable products. Terms and conditions of such contract may include provisions for the following specifications:

(a) The acceptable waste paper products for the collection may include:

- (A) White ledger or bond paper;
- (B) Stationery and letterheads;
- (C) Plain bond machine copies;
- (D) Computer printouts;
- (E) Envelopes;
- (F) Colored paper;
- (G) Newspapers;
- (H) Cardboard;

(b) Other acceptable products for collection may include but are not limited to, plastic, glass and metal, as determined for acceptability by the Department's recycling program;

(c) The collection schedule and the method of accounting for quantities collected;

(d) The rates and the payment schedule.

(2) In selecting contractors under section (1) of this rule, the Department may, under ORS 279.015, and 279.835 to 279.855, give preference to nonprofit organizations which provide opportunity to persons with disabilities who reside in the State of Oregon, but awarding of contracts will be based on contractor's experience, capability and payment arrangements offered to the Department.

(3) All inquiries concerning the Department's recycling program for state agencies and all collection accounting reports or other contact from contractors should be addressed to: State Recycling Coordinator, State Recycling Program, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, Oregon 97310.

Stat. Auth.: ORS 276, 279 & 283

Stats. Implemented: ORS 279.545, 279.550 & 279.560

Hist.: GS 3-1983, f. & ef. 1-19-83; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95;

DAS 2-2013, f. 10-28-13, cert. ef. 11-1-13

DIVISION 90

PARKING FACILITIES

125-090-0000

Definitions

As used in this chapter 125, division 90 ("these rules"), unless the context requires otherwise:

(1) "Applicant" means any person applying to DAS for authorization to use a Parking Facility for motor vehicle or bicycle parking or other transportation use identified in these rules or authorization to participate in an alternative transportation modes program.

(2) "Alternative transportation modes" has the meaning given that term in OAR 125-090-0160(2)(a)(B).

(3) "Capitol Mall Parking Area" means that area within the City of Salem bounded by Church Street on the west, D Street on the north, Mill Street on the south and 13th Street on the east.

(4) "Commercial Parking" means parking made available by a private or public concern for which a use fee is charged.

(5) "DAS" means the Department of Administrative Services, Facilities Division, Parking and Commuting Services. The DAS address and web site information is published in Exhibit 1 to these rules.

(6) "Director" means the director of the Oregon Department of Administrative Services.

(7) "Hire Date" means the date of a State Employee's initial hire to State service as recorded in the official personnel file for that employee.

(8) "Lease" means to charge or to pay a charge for the use of portions of the facilities and grounds in a Parking Facility for the parking of motor vehicles and other transportation uses.

(9) "Manager" means the manager of the Parking and Commuting Services, Facilities Division, Department of Administrative Services, or the Manager's designee.

(10) "Official Work Station" means the building, office, assembly point or other similar location to which a State Employee is:

(a) Permanently assigned; or

(b) Scheduled to report for work for five or more consecutive business days, if a State Employee is not permanently assigned.

(11) "Park" means to stop, or to cause or allow to remain stopped, any vehicle or combination of vehicles, or any portion thereof, on any street, off-street-parking facility, or other public right of way including sidewalks, except such stops as are made in response to legal controls or requirements, conditions created by other traffic, emergencies related to the operation of the vehicle during the actual period of such emergency, or momentary stops for the expeditious loading or unloading of passengers.

(12) "Parking Facility" means any lot, grounds, parking structure, or facility owned, managed, controlled or administered by DAS and used or available for the parking of motor vehicles and bicycles and other transportation uses, including but not limited to those grounds and parking structures and facilities described in ORS 276.594 and those parking structures and facilities at the State

office buildings in Eugene and Portland. Parking Facility also includes any additional grounds and parking structures or facilities designated by State Agencies to be managed, controlled or administered by DAS.

(13) "Permit" means an authorization issued in accordance with these rules to park a motor vehicle or a bicycle in compliance with the conditions specified in the authorization and these rules. It may also mean the placard or decal issued to identify a vehicle exercising the authorization.

(14) "Schedule of Base Rates and Charges" means the schedule of base rates and charges in OAR 125-090-0140, which rates and charges are adopted by DAS pursuant to 125-090-0005 and 125-090-0020 for the use of portions of the facilities and grounds in Parking Facilities for the parking of motor vehicles and bicycles and other transportation uses.

(15) "Service Vehicle" means a motor vehicle used primarily for the transport of goods or services from a business to State Agency premises.

(16) "State" means the State of Oregon.

(17) "State Agency" means any elected or appointed officer, board, commission, department, institution, branch or other unit of the state government.

(18) "State Employee" means any employee, officer, board or commission member, contractor, or volunteer worker of the State or, for the period of the assignment, any individual assigned to a State Agency by the individual's regular employer.

(19) "State Employee with a Disability" means a State Employee who has been issued a disabled person parking permit by the Oregon Department of Transportation (ODOT) under ORS 811.602.

(20) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, or made in electronic form such as e-mail and facsimile, and intended to represent or convey particular ideas or meanings.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 190.240, 276.591 - 276.601, 283.100 & 283.110

Stats. Implemented ORS 98.805, 190.240, 276.591 & 283.110

Hist.: GS 3-1981(Temp), f. 8-28-81, ef. 10-1-81; GS 7-1981, f. 11-23-81, ef. 1-1-82; GS 1-1992, f. 1-28-92, cert. ef. 2-1-92; GS 13-1992(Temp), f. 6-22-92, cert. ef. 7-1-92; GS 17-1992, f. & cert. ef. 8-27-92; DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009; f. & cert. ef. 7-1-09

125-090-0002

Purpose

(1) DAS establishes these rules to regulate the use of Parking Facilities for parking of motor vehicles and bicycles and to provide for other transportation uses consistent with the policies stated in ORS 276.591.

(2) DAS, through the Director and other administrative officers designated by the Director, is authorized to implement and to provide for the enforcement of these rules.

(3) The Director of DAS delegates to the Manager the authority and responsibility for the implementation, administration and enforcement of these rules.

(4) The Manager is authorized to render written and oral interpretations and to adopt procedures necessary for the proper administration and enforcement of these rules. The Manager's authority includes but is not limited to determining:

(a) Priorities for uses of Parking Facilities and management of space assignments;

(b) Incentives and other methods to encourage use of alternative transportation modes;

(c) The number and types of parking and other permits, and permit sizes, forms and content;

(d) Conditions under which grounds and parking structures or facilities may be used; and

(e) Eligibility and application procedure for the parking and other permits, the uses granted by each type of permit, and the circumstances when a permit must be displayed.

(5) DAS may install traffic control devices and use other appropriate signs to post notice of these rules at Parking Facilities. DAS may issue parking prohibitions and use restrictions at each

Parking Facility that govern the use and operation of such facility; DAS shall give notice of such prohibitions or restrictions by posting appropriate signs in plain view.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 190.240, 276.591 - 276.601, 283.100 & 283.110

Stats. Implemented: ORS 98.805, 190.240, 276.591 & 283.110

Hist.: DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0005

Rates for Parking Facility Uses; Time of Review; Notice

(1) This rule provides for establishing and reviewing and revising rates and charges for the use of Parking Facilities.

(2) DAS shall conduct an annual review of the rates and charges to be imposed for parking and other transportation uses in the various Parking Facilities and may alter any rates or charges if DAS determines a current consideration of the factors listed in OAR 125-090-0020 justifies the change.

(3) In addition to establishment and review of rates and charges described in sections (1) and (2) of this rule, DAS may alter rates and charges periodically or for periods DAS determines appropriate when Parking Facility occupancy exceeds expected levels. Such rate and charge changes may be temporary or long-term and may be used to adjust revenue levels to those levels required considering those factors identified in OAR 125-090-0020.

(4) Each time DAS changes rates and charges, it shall adopt and publish a Schedule of Base Rates and Charges. The new published Schedule of Base Rates and Charges supersedes all previously published Schedules and the rates and charges originally established in OAR 125-090-0140.

(a) The Schedule of Base Rates and Charges must include:

(A) Any revised long-term rate or charge changes; and

(B) The size and the proposed duration of any temporary rate or charge change.

(b) DAS shall publish the revised rates and charges prior to the effective date of the new Schedule of Base Rates and Charges by posting the revised rates and charges on the DAS web site listed in Exhibit 1 to these rules and by distributing notice of the revised rates and charges, in writing, to:

(A) All individuals who lease parking subject to the rate or charge change at the individual's last e-mail or physical address on file with DAS;

(B) All State Agencies which lease, or have employees who lease, parking subject to the rate or charge change; and

(C) All State Agencies which occupy quarters located in the Capitol Mall Parking Area, or elsewhere in the City of Salem, the Portland State Office Building and the Eugene State Office Building.

(5) A permit holder is solely responsible for immediately notifying DAS of any change in address, e-mail, place of employment, and vehicle license number.

Stat. Auth.: ORS 98.805 - 98.818, 184.340 & 276.591 - 276.601

Stats. Implemented ORS 98.805, 276.591 & 276.601

Hist.: GS 2-1983(Temp), f. & ef. 1-7-83; GS 4-1983, f. & ef. 3-1-83; GS 4-1988, f. & cert. ef. 6-23-88; DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0010

Parking Facilities Subject to DAS Management and Control

A current list of Parking Facilities subject to these rules is published in Exhibit 2 to these rules.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0020

Base Rates for Parking; Adjustments; Special Rates for Other Uses

(1) Under ORS 276.594, DAS has authority to establish rates and charges for parking motor vehicles and for other transportation uses in Parking Facilities. DAS declares that there is a market for Commercial Parking available within five blocks of the Parking Facilities in each of the cities of Salem, Portland and Eugene.

(2) DAS shall establish charges for use of Parking Facilities consistent with the policies stated in ORS 276.591, including charges for parking motor vehicles, charges for parking bicycles in secure parking areas in Parking Facilities and in bicycle lockers, and other charges identified in these rules for Parking Facilities.

(3) DAS shall calculate the charges for using Parking Facilities upon a base rate for uncovered unreserved parking for motor vehicles that considers the following factors:

(a) DAS's actual and anticipated expenses for administration of motor vehicle parking in Parking Facilities;

(b) Local market conditions and prevailing charges for Commercial Parking; and

(c) DAS's actual and anticipated expenses undertaken to operate, maintain and improve Parking Facilities, including debt service, depreciation, ad valorem property taxes as required by ORS 276.592, and reasonable capital development funds, and revenue recovery adequate to offset any amounts lost by DAS through the provision of Carpool incentive rates under 276.601 and through encouragement of the use of alternative transportation modes.

(4) Notwithstanding subsection (3), DAS may:

(a) Establish charges at less than the base rate under section (3) for the parking of motorcycles in Parking Facilities.

(b) Provide open bicycle racks at unsecured Parking Facilities at no charge for the use of the racks, and establish charges at less than the base rate for the parking of bicycles in bicycle lockers and secured areas in Parking Facilities. In setting bicycle parking rates, DAS shall consider the administrative cost of bicycle registration and the other Parking Facility expenses listed in subsection (3) above that are related to bicycle registration and parking.

(c) Encourage the use of Carpools and offer Carpool incentive reductions to the base rate based upon the number of participating riders.

(d) Furnish parking spaces free or at rates reduced from the base rate in designated areas where conditions show no or a reduced market for Commercial Parking, and for those State Employees participating in a program that encourages the use of parking spaces in noncongested areas.

(e) Establish charges less than the base rate where DAS determines that community hardship or significant reduction in demand for the parking in Parking Facilities is likely to occur;

(f) Establish charges in excess of the base rates, and for each Parking Facility, to recognize the following conditions:

(A) Reserved parking;

(B) Improved parking (including charging stations for electric cars);

(C) Covered parking (fully covered parking);

(D) Secured parking (limited public access);

(E) Local market conditions and prevailing charges for Commercial Parking;

(F) Parking that is made available to persons who are not State Employees;

(G) Administrative costs arising from use of Parking Facilities in violation of these rules.

(g) Negotiate a unique rent or charge structure based on the uses provided by a special use agreement to benefit the general public, the local community or the State. DAS shall determine all rates and charges applicable to special use agreements through an analysis of similar activities, rates and charges at comparable Parking Facilities and consideration of overall benefit to the general public and the State.

(5) In establishing the base rate for parking at each of the Parking Facilities, DAS may evaluate the demand and practicality of charging for nighttime and weekend use of such parking. Where the demand and estimated revenues are deemed sufficient to warrant the additional administrative expense, DAS may make certain of its Parking Facilities available to State Employees and others for parking and other transportation uses between the hours of 7 p.m. and 7 a.m. on weekdays, and anytime on weekends. Rates established for such nighttime and weekend parking use must reflect local market conditions for Commercial Parking. In those Parking Facilities where charges for evening or weekend parking

are established by DAS, DAS shall provide night and weekend parking at no additional charge to persons who have registered for parking with DAS and have paid the appropriate daytime charge for a Parking Facility. DAS shall charge all other persons for nighttime or weekend parking at the amounts specified in the Schedule of Base Rates and Charges.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.004, 276.385, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0030

Carpool Incentives

(1) When capitalized in these rules:

(a) "Carpool" means a registered group of an eligible State Employee and one or more employed others who use a ride-sharing arrangement to commute to work in a Carpool area no fewer than two-thirds of the working days in each calendar month.

(b) "Carpool Area" means any one of these qualifying Carpool areas:

(A) "Downtown Eugene Area" means that qualifying Carpool area within the City of Eugene bounded by Third Street on the north, Fairmount Street on the east, 24th Street on the south and Washington Street on the west.

(B) "Downtown Portland Area" means that qualifying Carpool area within the City of Portland bounded by Hoyt Street on the north, the Willamette River on the east and I-405 on the south and west.

(C) "Lloyd District Area" means that qualifying Carpool area within the City of Portland bounded by Broadway on the north, N.E. 16th on the east, I-84 on the south and Martin Luther King Jr. Blvd. on the west.

(D) "Salem Area" means that qualifying Carpool area within the City of Salem bounded by Market Street on the north, 17th Street on the east, Mission Street on the south and the Willamette River on the west. The Capitol Mall Parking Area is in the Salem Area.

(c) "Participant" means a registered member of a Carpool.

(d) "Primary Participant" means the State Employee Participant with responsibility for certifying Participant membership in a Carpool and paying the charge for the monthly permit for the Carpool.

(2) To encourage participation in Carpools, DAS may offer priority parking space assignments and Carpool reductions to the base rate established in the Schedule of Base Rates and Charges. Such incentive reductions will be based upon the number of Participants in each Carpool.

(3) A State Employee must complete an application and a State payroll deduction authorization for the applicable amount stated in 125-090-0140 to obtain a monthly permit at a Carpool rate.

(a) In addition to providing any information required in the application form prescribed by DAS, an Applicant shall provide the make, year and model of all vehicles participating in the Carpool, and provide all of the following information for each Participant:

(A) Name;

(B) Work e-mail, phone number and address.

(b) All Participants must sign the application and semi-annual recertification. While in a Carpool, a Participant may not be registered concurrently in any other Carpool or Smart Commuter Program, nor may a Participant lease concurrently a parking space in any other public or private parking facility.

(c) DAS will issue only one permit number per Carpool, which number is transferable among the Participant vehicles. This permit must be conspicuously displayed in a Carpool vehicle parked at a Parking Facility. The monthly permit authorizes Carpool parking in an assigned space or an unreserved space in an assigned Parking Facility.

(d) Carpool certifications under this section expire on the last day of each semi-annual period. DAS may not renew a monthly

permit with a Carpool incentive reduction until DAS receives the required recertification.

(4) In order to qualify for an incentive reduction, each Carpool must:

(a) Include at a minimum two employees, at least one of which must be a State Employee in the State payroll system, and all of which must work within the Salem Area, the Downtown Eugene Area, the Lloyd District, or the Downtown Portland Area; and

(b) Certify semi-annually in writing to DAS the composition of the Carpool, and that all Participants ride in the Carpool no fewer than two-thirds of the working days in each calendar month. DAS will notify the Primary Participant when recertification is required.

(5) DAS will register the Carpool in the name of the Primary Participant who will receive a Carpool incentive reduction on the monthly permit.

(6) The Primary Participant is responsible to report to DAS in writing immediately any changes in Participants and vehicles in the Carpool. Participants added or removed from the Carpool before the fifteenth of the month will affect the Carpool rate for that month. Participants added or removed from the Carpool after the fifteenth of the month will affect the Carpool rate for the following month.

(7) A Carpool or parking space assignment may be transferred within the Carpool from the Primary Participant to another State Employee Participant who has been a member of the Carpool for a minimum of six months, so long as the group continues to meet the conditions outlined in section (4) of this rule. The new Primary Participant must submit in writing to DAS the composition of the Carpool membership at the time the parking permit or parking space assignment is transferred. The Participants must complete the process in section (3) of this rule.

(8) A permit for a Carpool authorizes parking for only one vehicle in the Carpool Area at any time. A permit for a Carpool is valid only in the vehicle where it is displayed and only for the vehicles registered to the Carpool. Both vehicles violate this rule if more than one vehicle uses or attempts to use the same permit in the qualifying Carpool Area at the same time. DAS limits to six, in any thirty-day period, the number of times a Carpool may call in to be authorized by vehicle license to park without displaying the permit. An oral authorization by DAS to park without displaying a permit is invalid if the numbered permit for the Carpool is found displayed at the same time in another vehicle in the Carpool Area.

(9)(a) Subject to the discretion of DAS, which considers such factors as the wait list, a Parking Facility assignment or a reserved parking space assigned to a Primary Participant in a Carpool may be retained by or transferred to an individual State Employee Participant of the Carpool at the non-Carpool rate if that Participant has been a member of the Carpool for at least the two immediately preceding years, and no other transfer of the Parking Facility assignment or assigned reserved parking space is requested by any other Participant of the Carpool.

(b) DAS will give priority among two or more requesting eligible Participants in the following order to the Participant who:

(A) Was the current Primary Participant of the Carpool;

(B) Has been a continuous member of the Carpool for the longest time; or

(C) Holds the earliest Hire Date.

(10) DAS shall review the incentives available for Carpools from time to time, and DAS may adjust the incentives and provide additional incentives to encourage the use of Carpools. The Carpool incentive reductions are in the Schedule of Base Rates and Charges.

(11) DAS may deny renewal of Carpool parking authorization for violation of this rule. Under OAR 125-090-0130, DAS may cite and prosecute each Participant for any violation of these rules.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0060

Terms Under Which Parking Facilities Are Leased

(1) Parking Facilities are for the parking of motor vehicles and bicycles and other transportation uses as DAS determines are appropriate. In determining the use of Parking Facilities DAS shall first give priority to the needs of State Agencies and State Employees for the transaction of state business. DAS permits parking of State Employee, visitor, service, and State-owned vehicles at Parking Facilities for transacting business in State offices only, unless expressly otherwise authorized by DAS. DAS may authorize the general public to use those parking spaces not required by such Agency and State Employee vehicles.

(2) DAS may determine the classes and availability of parking spaces in Parking Facilities (reserved, unreserved, metered, or other), and the method for charging users for the parking uses (monthly, daily, metered or other), and where and if display of a permit is necessary in order to lawfully exercise parking authorization. Parking by all persons is subject to availability of parking spaces and these rules.

(3) The State, DAS, and its employees are not responsible for any damage to or loss of a vehicle or its contents or injury to any person arising from the use of Parking Facilities.

(4) DAS conditions all authorization to use Parking Facilities on the requirement that the user comply with these rules and all applicable State and local laws and ordinances.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0070

Payment for Monthly Use of Parking Facilities

(1) State Employees, who are in the State payroll system, shall pay for monthly use of Parking Facilities by payroll deduction. The deduction must be authorized in writing by the State Employee on the form prescribed by DAS as part of the parking application process. This authorization shall remain in force until the parking permit is terminated or the employee terminates State employment or is otherwise ineligible for the parking assignment. Monthly payroll deductions are made automatically in arrears and are made from a State Employee's final payroll check for parking charges incurred for any part of a final month. A State Employee requesting a payroll deduction for parking charges is solely responsible for the content of the payroll deduction request and for verifying the accuracy of the amount of a payroll deduction. A State Employee shall notify the manager of any disputed payroll deduction for parking charges not later than 15 days after the date of the deduction.

(2) State Agencies shall pay DAS in arrears for monthly parking charges monthly or as otherwise authorized by DAS in the parking application process.

(3) Other eligible Parking Facility users not included in subsections (1) and (2) may pay for monthly parking charges by check, money order, or debit/credit card for the exact amount due. Payment by this method is due in advance by the first calendar day of each month. If payment is not received by the fifth calendar day of the month, the parking permit is void and the parking assignment is immediately cancelled. Such payment must be made in person or by mail or, when available, on line to the Parking and Commuting Services Office at the address listed in Exhibit 1 to these rules.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0080

Payment for Daily Use of Parking Facilities

(1) Parking Facility users may obtain single daily parking permits or booklets from DAS at the address listed in Exhibit 1 to these rules. Payment may be made in advance, in person, in cash or by check, money order or debit/credit card, or on-line, when available. The permit is valid when properly displayed on the date

stated on the permit or when properly completed and displayed if purchased in booklets. A valid daily permit authorizes the bearer to park as specified on the back of the permit, or as otherwise authorized by DAS at issue of the permit or on the date of completion.

(2) Users of Parking Facilities equipped with permit vending machines (pay-and-display) may obtain daily and part-day parking permits from the machines using a debit/credit card. The permit is valid when properly displayed on the date stated on the permit.

(3) Parking Facility users may pay for daily parking at metered spaces with a cash key or the proper deposit of coin. Cash keys are available at the Parking and Commuting Services office.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 6-2001, f. & cert. ef. 11-1-01; DAS 2-2002, f. & cert. ef. 7-30-02; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0090

Permit Cancellation; Refunds; Replacement Permits

(1) A permit holder may cancel a monthly permit at any time for any reason, by providing notice in writing to Parking and Commuting Services and returning any permit or placard issued by DAS. The notice must specify the DAS assigned permit number to be cancelled and the effective date of the cancellation. The permit holder is obligated to pay for the permit until notice of cancellation is received by DAS.

(2) DAS will refund payment only for any unused time on monthly permits as follows:

(a) DAS shall prorate to the nearest dollar any refund due the individual surrendering a monthly permit, based upon the number of days unused on the day the permit is received in the Parking and Commuting Services office.

(b) DAS will not prorate charges or refund payment for any other permit.

(c) DAS shall refuse to consider any dispute about a parking charge presented more than 15 days after the payment.

(3) A permit holder canceling a permit to use any of the secured facilities, rooms or lockers for bicycle parking is not entitled to any refund of the current year's annual charge. Any key issued to a permit holder for bicycle parking in a Parking Facility is DAS property. The permit holder must return the key to DAS when the permit expires or is cancelled. Upon receipt of the key DAS will refund any key deposit paid.

(4) A monthly permit issued to a State Employee is cancelled effective the date the permit holder's employment or other agreement for services to the State ends.

(5) Placards and decals issued by DAS are the property of DAS and must be removed from the vehicle and returned to the Parking and Commuting Services Office with any application for a refund. Refunds are computed from the date the permit is returned or DAS deems it lost or stolen.

(6) DAS may provide replacement permits to monthly parking permit holders at the charge stated in OAR 125-090-0140. Permit holders making a request for replacement permits for:

(a) Newly acquired vehicles or to replace damaged permits are required to remove the existing permit and return it to the Parking and Commuting Services Office. DAS may not make a replacement under this subsection if holder is unable to produce evidence of the damaged permit.

(b) To replace lost or stolen permits, permit holders are required to sign a statement attesting to the circumstances of the loss or theft. Permit holders are required to contact the Parking and Commuting Services Office immediately upon discovery of the loss or theft of a permit. A replacement permit will be issued only for the vehicle from which the permit has been stolen, unless the vehicle was stolen.

(7) DAS reserves the right to terminate immediately upon notice to the permit holder, or at such later date as DAS may establish in such notice, a monthly or reserved permit when it is in the best interest of the State to do so.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0100

Other Parking and Transportation Uses Provided; Visitor with Disabilities

Notwithstanding OAR 125-090-0010 through 125-090-0090, DAS may provide the following types of parking and other transportation uses in Parking Facilities:

(1) Reserved or unreserved free parking designated for temporary use by persons with disabilities visiting State offices. Vehicles occupying such spaces shall bear a valid and properly placed parking decal or placard issued by ODOT. Visitors with disabilities who need special access to parking to transact business at State offices and State Employees with disabilities who need special access to parking when visiting a State facility not the State Employee's Official Work Station may ask DAS in advance of the visit or in person at the time of the visit for reasonable accommodation. The DAS address and web site information is published in Exhibit 1 of these rules.

(2) Designated reserved or unreserved free daily or monthly parking for those statewide elected officials who park in Parking Facilities.

(3) Time-limited metered or free spaces for use by persons transacting business in state offices not the person's Official Work Station.

(4) Free parking spaces designated for the exclusive use of vehicles during the loading and unloading of passengers or cargo, and reserved for the exclusive use of Service Vehicles.

(5) Spaces designated by special use agreement for parking and other Parking Facility uses to benefit the general public, the local community or the State. DAS may make special use permits available if the issuance of the special use permit does not displace a paid permit holder. Parking availability is the decision of the Manager or designated staff. For some uses, DAS may require a written agreement with regard to permit distribution, charges, and related considerations.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0110

Priority of Assignment; Reassignment; Waiting Lists

DAS finds that there is more demand for motor vehicle parking than space available in Parking Facilities. Subject to subsection (11) of this rule, DAS shall reasonably attempt to observe the descending order of Applicant priority in Sections (1) through (9) for assigning vacant monthly motor vehicle parking spaces in Parking Facilities. The Manager may, in the Manager's sole discretion determine whether or not a parking space is vacant or available for assignment under this rule.

(1) State Employees with a Disability (see OAR 125-090-0120);

(2) State-owned motor vehicle that receives daily or frequent use, or is regularly used by volunteers or field office personnel;

(3) State Employees whose State Agency certifies that the State Employee must have a vehicle at the work site (only at the request of the director of the State Agency and with the approval of the Manager);

(4) State Employee who:

(a) Requests to return to a parking assignment after leaving the assignment to use alternative modes of transportation for a maximum of three months test period. After three months absence, priority "4" status is removed.

(b) Is currently parking in a Parking Facility and has moved from an Official Work Station at one location to an Official Work Station at another location within the Capitol Mall Parking Area, the Eugene State Office Building or the Portland State Office Building;

(c) Is currently parking in a Parking Facility and has transferred from one State Agency to another within the Capitol Mall Parking Area, the Eugene State Office Building or the Portland State Office Building;

(d) Returns from leave from DAS authorized parking within less than one year (or within the period of active service plus 30 days if absent from state employment more than a year by reasons of service in the uniformed services as defined in the USERRA (38 U.S.C. 4301-4333)). For purposes of this rule, a State Employee on leave without pay from State employment for one or more pay periods is on leave from DAS authorized parking until returned to the State payroll system; or

(e) Is currently parking in a Parking Facility and asks for reassignment to a reserved space within the same Parking Facility.

(5) Carpool vehicles — Primary Participant with three or more other Participants;

(6) Carpool vehicles — Primary Participant with two other Participants;

(7) Carpool vehicles — Primary Participant with one other Participant;

(8) State Employee single occupant vehicle;

(9) A single occupant vehicle with no State Employee.

(10) DAS may maintain a waiting list for persons interested in parking at a Parking Facility and at a particular reserved space within a Parking Facility. DAS will consider the priority level of the Applicant and Applicant's position on the waiting list based on the date of the request when making a parking assignment. Manager may, by policy, limit the number of waiting list positions that one person may hold simultaneously.

(11) DAS has the exclusive power to assign and reassign use of space in Parking Facilities. DAS reserves the right to limit the use of a Parking Facility at or near a State Agency office to the parking needs of the nearby State Agency and the State Agency's employees. The Manager may temporarily or permanently reassign reserved spaces, at any time upon notice to permit holder, when the Manager determines reassignment is in the best interest of the State. Reassignment may include a different space and a different Parking Facility.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 6-2001, f. & cert. ef. 11-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0120

General Rules; Parking for State Employees with Disabilities and Other Particular Rules

(1) Persons operating vehicles in Parking Facilities shall be familiar with and follow these rules. Copies of these rules are available at the address listed in Exhibit 1.

(2) Users of all Parking Facilities shall observe the following general rules:

(a) A person may not stop or park a motor vehicle in a Parking Facility at a time or in an area not specifically designated for parking motor vehicles. Unattended vehicles are permitted only in designated parking spaces.

(b) The basic speed rule (ORS 811.100) applies to use of all vehicles in all Parking Facilities.

(c) Pedestrian traffic has the right of way over vehicular traffic in any place in the Parking Facilities.

(d) The maximum speed is ten miles per hour unless otherwise posted at a lower speed.

(e) Users shall obey all directional arrows, signs, traffic control devices and other posted instructions.

(f) Motor vehicle maintenance and repair is prohibited in Parking Facilities without the prior approval of DAS.

(g) A person may not use Parking Facility property for the purpose of storing an inoperable motor vehicle or other personal property, including bicycles. Vehicles that have broken down in a Parking Facility and that cannot be removed must be reported at once to DAS. Inoperable vehicles must be removed from the Parking Facility within 24 hours, or will be subject to removal at the owner's expense. Bicycles stored in violation of this section are

subject to the process in OAR 125-090-0150. Other personal property stored at a Parking Facility longer than five consecutive days will be considered unclaimed property under State law and subject to removal at the owner's expense.

(h) Persons may park in designated loading zones only while loading and unloading people and goods, not to exceed 15 minutes unless otherwise posted.

(i) Use of skateboards, roller blades, roller skates, in-line skates or similar devices is prohibited in Parking Facilities. DAS may allow an exception to this rule for State-sponsored and supervised classes, programs and events.

(j) Each Parking Facility user is individually responsible to secure that user's vehicle and its contents from theft.

(k) Except as authorized in advance by DAS, a person may not use Parking Facilities premises, including utility connections, for any purpose other than vehicle parking.

(l) Vandalism is prohibited at all times.

(m) Any person who trespasses in a Parking Facility may be subject to arrest for criminal trespass under ORS 164.243 or 164.245 or applicable local law or ordinance.

(n) A person issued a permit shall display it according to the instructions DAS provides with the permit.

(o) A person shall not display a forged or altered permit, or display a permit reported lost or stolen.

(p) Except as DAS authorizes for statewide elected officials and for persons engaged in official DAS business and as authorized under OAR 125-090-0160(2), no State Employee may park a motor vehicle for free at any unmetered Parking Facility space in the Capitol Mall Parking Area.

(q) State Employees may use metered visitor spaces at the employee's Official Work Station with proper payment.

(3) Users of the following types of Parking Facilities and permits shall observe these additional rules:

(a) Parking for State Employees with Disabilities.

(A) On request from a State Employee with a Disability otherwise eligible to park in a Parking Facility, DAS will provide a parking space in the Parking Facility as close as reasonably possible to the building entrance of the person's Official Work Station. DAS may temporarily assign a State Employee with a Disability to a visitors' disabled accessible space or metered space at the monthly charge appropriate for the space assigned.

(B) In order to receive a State Employee with a Disability parking assignment under this rule or priority assignment under OAR 125-090-0110(1), a State Employee must hold a valid disabled person parking permit issued by ODOT under ORS 811.602.

(C) A State Employee with a Disability is prohibited from using an ODOT disabled person parking placard or decal at a Parking Facility within three blocks of the State Employee's Official Work Station unless expressly otherwise authorized by DAS.

(b) Reserved Parking Space.

(A) A reserved space in a Parking Facility is reserved to the permit holder for parking only on weekdays, unless otherwise posted.

(B) A permit holder or the holder's designee named in writing at DAS may contact Parking and Commuting Services to report an unauthorized vehicle in the permit holder's reserved space. When a reserved space is occupied by an unauthorized vehicle, DAS will authorize the displaced vehicle to park at a nearby Parking Facility and will cite the unauthorized vehicle.

(c) Unreserved Unmetered Parking Facilities.

(A) All persons parking in unreserved unmetered spaces in Parking Facilities must display a valid permit for the Parking Facility where the vehicle is parked. Parking permits for unreserved spaces in Parking Facilities are valid only when displayed as instructed by DAS and clearly visible at all times.

(B) A holder of a permit to an unreserved Parking Facility that is full may park in an available space in another unreserved Parking Facility with a call or voice mail message to DAS. The call or message must include the permit holder's name, permit number,

vehicle license number, time of the call or message, which Parking Facility is full, and where the vehicle is parked.

(d) Metered Spaces.

(A) Except as otherwise authorized by DAS, a person may park at a parking meter only with proper payment.

(B) Meters are enforced at the times and days posted on the individual meters.

(C) Vehicles must be parked head-in at metered parking except at parallel parking spaces.

(e) Motorcycle permits allow motorcycles, power scooters and mopeds to be parked at any time in areas designated as "Motorcycle Parking" in any Parking Facility. Motorcycle, power scooter, and moped parking is prohibited in spaces designated for bicycle parking.

(f) Service Vehicles identified with the name of the company on the vehicle may park in designated service spaces for the posted time limits while providing services to State Agencies. Unmarked Service Vehicles must display a valid DAS permit to park at a designated service space. No Service Vehicle, marked or unmarked, is permitted to park for free at any other space or metered area.

(g) Visitors may park at any metered space with proper payment. Visitor parking spaces are provided in some Parking Facilities and in posted spaces. Visitor permit holders shall not park in reserved or otherwise use-limited spaces, loading zones, fire lanes, or no-parking zones.

(h) Bicycles.

(A) A person shall not park a bicycle in any Parking Facility except in those areas specifically designated by the presence of racks or other devices for the parking of bicycles or by the posting of signs designating the space or area as a "bicycle parking area."

(B) Bicyclists shall secure their bicycles from theft through the use of locks or chain devices.

(C) Bicycles may be parked with a paid permit in secure Parking Facilities and bicycle rooms and lockers. Bicycles may be parked without displaying a paid permit at racks located in the public parking areas in Parking Facilities.

(D) Bicycles parked in any area designated for motor vehicle parking, or chained to signposts, stairwells, trees or other structures not designated for bicycle parking are subject to being removed at the owner's expense, without notice and impounded according to OAR 125-090-0150.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0130 Enforcement

(1) The Department shall investigate and administer the application of these rules in the designated Parking Facilities, with its own personnel or it may enter into agreements with other State Agencies, public jurisdictions or private concerns to provide such services.

(2) The Department may enter into agreements with local jurisdictions to adjudicate parking citations issued in accordance with these rules.

(a) Such an agreement exists with the City of Salem to cover the Parking Facilities in the City of Salem, in accordance with Salem Revised Code, Chapter 102. Citations shall be processed and prosecuted in the Municipal Court of the City of Salem.

(b) Such an agreement exists with Multnomah County to cover the Parking Facilities at the Portland State Office Building. Citations shall be processed and prosecuted in the District Court of the State of Oregon for Multnomah County.

(c) Such an agreement exists with the City of Eugene to cover the Parking Facilities within the City of Eugene. Citations shall be processed and prosecuted in the Municipal Court of the City of Eugene.

(3) Parking Facilities shall be subject to all local parking and traffic ordinances. Such ordinances are adopted and made a part of this rule.

(4) Bails and penalties shall be as indicated on the citation.

(5) Vehicles found to be in violation of these rules may be impounded in place or towed away. If, within three days after a vehicle has been impounded, no person has appeared to claim and establish ownership or right to possession thereof, the Department shall research the name and address of the person entitled to possession of such vehicle and send notice to such person by mail at his or her last known address. The notice will indicate the location of the impounded vehicle, the amount of the delinquent parking fees, fines, bail costs, penalties, impoundment costs and other accrued charges against the same, and shall ask if the owner wishes to regain possession of the vehicle by paying such costs. Release of the vehicle will be made only upon receipt of such payment. Unclaimed vehicles will be disposed of in accordance with law.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0135

Refusal to Issue or Renew; Appeal Process

(1) DAS may refuse to authorize parking to, and may refuse to renew the authorization of, any person who in the previous six months:

(a) Made a material misrepresentation or false statement in the application or certification for a permit,

(b) Failed to comply with a condition of a permit,

(c) Displayed a forged or altered permit or a permit reported lost or stolen,

(d) Failed to pay the appropriate charges for Parking Facilities use,

(e) Caused damage to Parking Facilities property, or

(f) Failed to comply with the recertification requirements of a permit.

(2) DAS may refuse to issue or to renew authorization for any of the reasons stated in this rule only after giving notice and opportunity for a hearing. DAS shall send a notice to Applicant by certified mail and by e-mail, when available, of DAS's intent to refuse to issue or renew authorization to park. DAS shall send the notice to the mail and e-mail addresses in the refused application or last address on file with DAS.

(3) The Manager shall provide an opportunity for a hearing of disputed refusals to issue or renew if requested in writing by the appealing party. The request for hearing on a refusal to issue or renew must be received by the Department within 14 days of the notice. The Manager shall conduct such hearing without formal rules of evidence and shall provide an opportunity for presentation of circumstances surrounding the disputed decision. The Manager shall issue a decision in writing after the hearing. The Manager is not required to make findings of fact and conclusions of law. The Manager's decision is final.

(4) When DAS has refused to renew a parking permit, a permit holder shall immediately return all permits and placards to DAS.

(5) A person whose authorization to use Parking Facilities is refused or not renewed under this section is not eligible to apply for use of Parking Facilities for a period to be determined by Manager based on the facts of the circumstances of the refusal or non-renewal and whether the person has previously been the subject of refusal or non-renewal by DAS.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented: ORS 98.805, 184.340 & 276.594

Hist.: DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0140

Schedule of Base Rates and Charges for Parking Facilities

Exhibit 3 contains the Schedule of Base Rates and Charges for Parking Facilities adopted by DAS pursuant to OAR 125-090-0005 and 125-090-0020. Unless otherwise specified in the Schedule, the rates published in the Schedule supersede all previously published schedules for parking and other Parking Facility uses subject to these rules.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 6-2001, f. & cert. ef. 11-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0150

Authority to Remove or Impound Bicycles

(1) DAS may impound any bicycle parked in violation of OAR 125-090-0120(3)(h)(D) or causing a safety hazard in a Parking Facility or any bicycle abandoned in a Parking Facility by locking it at the Parking Facility or removing it to an impounded storage area. A bicycle left overnight longer than seven consecutive days without authorization from DAS Parking is considered stored in violation of these rules. Bicycles stored at a Parking Facility in violation of these rules and bicycles not removed from a secure space for more than thirty days after a bicycle permit expires will be considered abandoned.

(2) DAS shall reasonably attempt to leave a notice with DAS contact information at a bicycle locked at the Parking Facility and at a site from which DAS removed a bicycle. DAS shall send notice of impoundment as soon as practical and whenever reasonably possible to the owners of all bicycles impounded under this rule.

(3) DAS shall use the State law for the disposition of unclaimed property to dispose of bicycles unclaimed after impound, and those bicycles left abandoned thirty days or more after a bicycle permit expires.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100
Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601
Hist.: DAS 7-2009, f. & cert. ef. 7-1-09

125-090-0160

Alternative Transportation Modes Incentive Programs

(1) DAS may provide incentive programs to encourage the use of alternative modes of transportation. The goals of these programs are to reduce traffic volume and parking demand, improve air quality, and reward the efforts of State Employees who leave their cars at home.

(a) DAS may provide these incentives from Parking Facility receipts. The program incentives are subject to available funding. DAS may increase or reduce incentives provided and the number of program participants.

(b) To receive the incentives an Applicant must meet the applicable program requirements, complete the application process, and pay any applicable charge.

(2) DAS administers the following incentive program for State Employees: The Smart Commuter Program is available to State Employees. Smart Commuter Program participants receive Smart Commuter Parking Passes and other incentives as DAS may provide.

(a) To be eligible to participate in the Smart Commuter Program, an Applicant must meet all of the following requirements each year:

(A) Be a State Employee whose Official Work Station is in the Capitol Mall Parking Area or the Portland State Office Building.

(B) Use an alternative mode of transportation to commute to the Official Work Station more than half of the Applicant's working days each month. Any one or combination of the following alternative transportation modes qualifies (motorcycle and Carpool transportation is not an alternative transportation mode): public transit, rail, van pool, commuter bus, bicycle, or walk from home or from a park and ride lot; and

(C) Complete the certification in the application form and annually thereafter; and

(D) Agree to abide by the Smart Commuter Program rules.

(b) State Employees who lease parking in a private or public lot or who are Participants in a Carpool or participate in a carpool with assigned parking in a City of Salem Carpool Area are not eligible for the Smart Commuter Program.

(c) All of the following apply to the incentive given to Smart Commuter Program participants:

(A) Program incentives include Smart Commuter Parking Passes for use on not more than two business days per month when validated.

(B) A participant in the Smart Commuter Program may use each Pass to park a motor vehicle for a work day in Parking Facilities designated in Exhibit 2 for unreserved parking, and at two-hour metered areas in the Capitol Mall Parking Structure, and as otherwise specified by DAS on the Pass.

(C) The Pass must be validated by marking the date it is used. There is no carryover of unused days from one month to the next.

(D) A Pass is not transferable and is not replaceable, if lost or stolen.

(E) A Smart Commuter Program participant must notify DAS in writing when the individual changes agency employment or is no longer eligible for the Smart Commuter Program. Passes expire when the State Employee ceases to be eligible to participate. Expired Passes are invalid and users may be cited.

(F) Smart Commuter Program participants must recertify eligibility each June for renewed participation for the next twelve months.

Stat. Auth.: ORS 184.340, 276.591 - 276.601 & 283.100
Stats. Implemented ORS 276.591, 276.594 & 276.601
Hist.: DAS 7-2009, f. & cert. ef. 7-1-09

DIVISION 110

LAND USE COORDINATION

125-110-0001

Land Use Program Coordination Rules

(1) This division is applicable to the approval of projects under the following Department programs. These programs are:

(a) Capital Construction and Improvement Program;

(b) State Office Facility Leasing Program;

(c) Surplus Public Service Land Management Program;

(d) Conservation of Department-Owned Historic Real Property Program; and

(e) Any other Department program subsequently determined to affect land use pursuant to OAR 660-030.

(2) In order to approve or undertake a project under a program listed in subsections (1)(a)–(e) of this rule, the Department shall find that the project complies with the Statewide Planning Goals and is compatible with acknowledged city and county comprehensive plans and land use regulations. To make its goal compliance and plan compatibility findings, the Department shall comply with sections (2)–(6) of this rule and shall also adhere to the procedures in the Department's state agency coordination program which is hereby adopted by reference.

(3) The Department shall satisfy its goal compliance and plan compatibility findings for a project approved under the Capital Construction Program in the Salem metropolitan area and subject to the jurisdiction of the Capitol Planning Commission (CPC) by adhering to the CPC's land use coordination rules in OAR 110, division 10, and the procedures contained in the CPC's certified State Agency Coordination Program.

(4) The Department shall make its goal compliance and plan compatibility findings for each project approved under the State Office Facility Leasing Program based on information provided to the Department by the project's lessor or developer.

(5) A Lessor or developer seeking approval of a project under the State Office Facility Leasing Program shall provide the Department information documenting the project's compliance with the statewide planning goals and compatibility with applicable acknowledged comprehensive plans and land use regulations. Such documentation shall include one or more of the following:

(a) A copy of the local land use permit, building permit or occupancy permit from the city or county planning agency, building department or governing body that the project has received the jurisdiction's approval; or

(b) A copy of a letter from the local planning agency, building department or governing body stating that the project in question is permitted under the jurisdiction's comprehensive plan, land use regulations and development codes, but does not require specific approval by the jurisdiction; or

(c) A copy of the lessor's covenant in the project's lease agreement that attests to the fact that the proposed use of the leased

premises as a state office facility complies with all applicable federal, state and local statutes, regulations, ordinances and codes, including the acknowledged comprehensive plan and land use regulations of the city or county in which the leased facility is located; or

(d) Other information and documentation provided to the Department equivalent to subsection (5)(a), (b) or (c) of this rule including, but not limited to, written testimony presented to the Department from an authorized representative from the affected city or county.

(6) The Department shall make goal compliance and plan compatibility findings for each project approved under the Surplus Public Service Land Management Program and the Conservation of Department-Owned Historic Real Property Program. Such findings shall be based on information and documentation from one or more of the following:

(a) A copy of the local land use permit from the city or county planning agency or the local governing body that the project has received land use approval; or

(b) A copy of a letter from the local planning agency or governing body stating that the project in question is permitted under the jurisdiction's comprehensive plan and land use regulations, but does not require specific approval by the jurisdiction;

(c) Other information and documentation provided to the Department equivalent to subsection (6)(a) or (b) of this rule, including, but not limited to, written testimony presented to the Department from an authorized representative from the affected city or county.

Stat. Auth.: ORS 283.060

Stats. Implemented:

Hist.: GS 3-1989, f. 8-11-89, cert. ef. 9-1-89

DIVISION 120

RENTING OR LEASING OFFICE QUARTERS

125-120-0000

Definitions

For the purposes of OAR 125-120-0000 through 125-120-0200, to be referred to as the "Leasing Rules", the term:

(1) "Administrator" means the Administrator of the Enterprise Asset Management Division of the Department of Administrative Services.

(2) "Agency" or "state agency" means any state officer, board, commission, department, institution, branch, or agency of the state government.

(3) "Department" means the Department of Administrative Services.

(4) "Director" means the Director of the Department of Administrative Services.

(5) "Facilities Division" or "Division" means the Real Estate Services Program, Enterprise Asset Management Division of the Department of Administrative Services.

(6) "Lease" means a lease for office quarters between an agency and a lessor other than the Department, including interagency and intergovernmental lease or sublease.

(7) "Office quarters" means office space, office buildings and associated service, storage and parking facilities for state agencies, and may include factory-built, modular, or portable units, but excludes stand-alone storage and parking facilities.

(8) "Significant Lease" means office space, office buildings and associated service, storage and parking facilities for state agencies, and may include factory-built, modular, or portable units, but excludes stand-alone storage and parking facilities.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.420, 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97; DAS 1-2015, f. 4-2-15, cert. ef. 4-5-15

125-120-0010

Exemptions

Notwithstanding OAR 125-120-0000(2), the Legislative Assembly, the courts and their officers and committees, and the

Secretary of State and the State Treasurer in the performance of the duties of their constitutional officers are exempted from complying with OAR 125-120-0000 through 125-120-0200 (the leasing rules), unless any of these exempted parties chooses to request services of the Department for any office space assignments or for leasing services for acquiring privately owned office quarters; in which cases all applicable provisions of the leasing rules shall be followed.

Stat. Auth.: ORS 276.428 & 283.060

Stats. Implemented:

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

125-120-0020

Assignment of Office Quarters

(1) When an agency requires an assignment of office space or leased office quarters, the agency shall first estimate the space requirements, in accordance with the Department's Office Space Standards, DAS Policy 125-6-100, and submit a completed Space Assignment Request form to the Division.

(2) Facilities Division shall review and approve Space Assignment Requests and shall allocate office quarters in the following order of priority: first, office quarters owned or managed by the Department, when available and feasible; second, other state-owned or state-leased office quarters when available and feasible; third, and only if neither of the foregoing office quarters is available and feasible will the Department consider approving any lease for office quarters. The State Capitol and the Supreme Court Building are not subject to space assignment by the Department.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.410

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0030

Allotment of Space in Office Quarters (ORS 270.410)

Allotment of space in all leased office quarters shall be guided by the Department's Office Space Standards (Policy #125-6-100).

Stat. Auth.: ORS 276.428 & 283.060

Stats. Implemented:

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

125-120-0040

Measuring Office Quarters

The Division will use the standards of the American National Standards Institute (ANSI) as adopted by the Building Owners and Managers Association (BOMA) as a guide in measuring office space.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.410

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0050

Space Allocation/Rental Agreement

(1) Agencies occupying Department-owned office quarters shall sign and comply with the Department's Space Assignment/Rental Agreement.

(2) The Division may charge and collect from any agency violating the terms of such Agreement, the cost of correcting the damages resulting from the agency's violations.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0060

Complying With Local Policies

All facility siting shall comply with local land use plans, and if possible, community development policies, pursuant to Department of Administrative Services' OAR 125-110-0001 (the Land Use Coordination Rule).

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0070

Leasing Authority

(1) The Department, acting through its Facilities Division, shall supervise and conduct negotiations for all leases, rental agreements and related site selections for office quarters, unless otherwise authorized by the Division in writing.

(2) No lease or rental agreement shall be binding upon the state or any agency unless such lease or rental agreement has been approved by the Division in accordance with ORS 276.428.

(3) The tenant agency Representative, as identified by the Division to the lessor, may communicate with build-to-suit lessors during construction, and with other lessors during remodeling or renovations of office quarters. The tenant agency representative shall not communicate changes in the scope or specifications of lessor's work directly with lessor's contractor(s), unless so authorized by the lessor. In any case, all change orders must be processed through Facilities Division.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0075

Technical Assistance and Leasing Services for Non Office Quarters

(1) Leases for facilities other than office quarters (such as prisons, medical clinics, dormitories, laboratories) are not subject to the Department's supervision and approval and are exempted from complying with OAR 125-120-0000 through 125-120-0200 (the Leasing Rules).

(2) Upon written request from an agency, the Facilities Division may provide leasing services and technical assistance in any manner it deems appropriate to best serve the interests of the state.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0080

Subleases by an Agency

(1) Facilities Division must review and approve all subleases by or for all agencies subject to the Leasing Rules.

(2) Any agency that has office space that is not needed for agency purposes, which the agency believes it is feasible to backfill, shall inform the Division. The Division will provide assistance to the agency in back filling the surplus space.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0090

Leasing or Renting Involvement of a Requesting Agency

(1) When the Division determines it to be in the best interests of the state, the Division may delegate to a requesting agency, in writing, certain aspects of the leasing process under the guidance and supervision of the Division.

(2) An agency may seek rental market information, but an agency shall not make commitments to lease or negotiate a lease unless authorized in writing by the Division.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0100

Lease Renewal

(1) Approximately eighteen months before an agency's lease expires, Division will notify the agency in writing and request the agency's plans for office quarters upon expiration of its lease.

(2) The agency shall respond within thirty days of receipt of the notice and inform Division of its plans for office quarters.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97; DAS 1-2015, f. 4-2-15, cert. ef. 4-5-15

125-120-0110

Agency Commitment

(1) Before Facilities Division approves an agency's request for office quarters, the head of the requesting agency, or designee, shall certify that legislatively approved funds are available to meet the obligations under the proposed lease for the current biennium and that the Agency intends to request funding to continue the lease for the full term of the lease. Facilities Division will assist the requesting Agency to compile a cost estimate for suitable office quarters.

(2) Facilities Division may charge and collect for leasing services provided to an Agency if the agency withdraws its' request for office quarters during any stage of the leasing process, except when such withdrawal is due to unanticipated causes beyond the Agency's control.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.429

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0120

Locating Office Quarters

Division has the statutory authority to search, select and negotiate for office quarters to rent or lease in any manner necessary to best serve the interests of the state. Division also reserves the right to reject, in the best interest of the state, any and all offers received while conducting solicitation for offers on leasable properties or facilities. Unless exempted by the Administrator, Division will search for available office space in a manner consistent with applicable executive orders, policies and in the best judgment of Division.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.426

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97; DAS 1-2015, f. 4-2-15, cert. ef. 4-5-15

125-120-0130

Determining a Lease Search Area

Agencies will determine the geographical boundaries for a lease search area based upon its business need and state siting mandates. Division will assist the agency in further narrowing siting criteria in any geographic area by considering:

(1) The requesting agency's special needs;

(2) The state's policy of promoting economy, efficiency and convenience to the public by centralizing and consolidating state office quarters within a community whenever feasible;

(3) The availability and cost of necessary services including state services such as telephone, data, communication and mail services;

(4) Proper zoning and compatibility with local government comprehensive land use plans; and

(5) Applicable directives of the State of Oregon such as the Governor's Executive Order 94-07, or of the local government pertaining to locating state office facilities.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.426 & 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97; DAS 1-2015, f. 4-2-15, cert. ef. 4-5-15

125-120-0140

Leasing Directly

(1) Before leasing or renting office quarters smaller than 10,000 usable square feet, Facilities Division may refer to and, when feasible, select for direct negotiations, leasable properties on file at Facilities Division which have been submitted by property owners and real estate professionals interested in developing and leasing office quarters for occupancy by the state. Alternatively, Facilities Division may advertise publicly or conduct a search for a

leasable facility, and negotiate directly with the owner or owner's representative for the lease.

(2) To solicit offers of leasable properties, Facilities Division may publish its leasing requirements, or inform those on the Division's trade list of property owners, developers and real estate professionals who have expressed interest in developing and leasing office quarters to the state.

(3) A property owner, developer or real estate professional may be added to Facilities Division's trade list by contacting Facilities Division.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0150

Giving Notice of Intent to Lease

(1) When the geographic search area for siting office quarters for a significant lease has been established or when leasable properties have been identified, Division shall contact the community or communities which Division determines are likely to be affected by the requesting agency's proposed location. Agency and Division may also opt to give said notice to any lease siting situation at its discretion. Division will issue public notice at the agency's request for any leasing action to:

- (a) The mayor and/or city manager;
- (b) The chair of the county commissioners;
- (c) The chair of the planning commission;
- (d) The local state representative;
- (e) The local state senator;
- (f) Affected local business associations, as identified and determined by Division; and
- (g) Affected local neighborhood associations, as identified and determined by Division.

(2) A reasonable response period for notified parties will be specified in the notification letter.

(3) The Division and the requesting agency shall attempt to address the concerns of notified parties. The Division may hold a public meeting when it is considered necessary to address such concerns. For any controversial cases, the Administrator shall make the final determination as to whether or not to proceed with the proposed geographic siting location.

(4) The notification requirement under subsection (1) above is waived in the following cases:

- (a) Emergency need;
- (b) Lease renewals with no significant change in the use or amount of space;
- (c) Interagency rental agreements for established state facilities housing agencies with similar state functions;
- (d) Leases with other political subdivisions; or
- (e) Storage space or other non-office space.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97; DAS 1-2015, f. 4-2-15, cert. ef. 4-5-15

125-120-0170

Tenant Improvements

(1) All build-to-suit leases or major remodeling of leased facilities shall comply with Facilities Division's "Leased Facilities Construction Standards," and with all applicable law and rules, including those requirements for making leased state office quarters accessible to and usable by disabled persons, to the extent required by law.

(2) Before having any tenant improvement work performed on leased premises, the tenant Agency shall consult with the Facilities Division for appropriate procedures.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

DIVISION 125

STATEWIDE FACILITY PLANNING PROCESS

125-125-0048

Notice of Proposed Rulemaking

Prior to adoption, amendment or repeal of any rule, the Commission shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days before the effective date of the intended action;

(2) By mailing a copy of the notice to persons on the Commission's mailing list established pursuant to ORS 183.335(7);

(3) By mailing or furnishing a copy of the notice to:

- (a) United Press International;
- (b) Associated Press;
- (c) Statesman Journal Newspaper;
- (d) Salem Neighborhoods, Inc.;
- (e) Any Salem Neighborhood Association which has, in writing, requested notice;
- (f) Any governing body and planning commission of any city or county that may be affected by a proposed rule.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 4-1981(Temp), f. & ef. 10-14-81; CPC 5-1981, f. & ef. 12-1-81; Renumbered from 110-001-0000 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0049

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Capitol Planning Commission adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended and effective November 17, 1981.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: CPC 3-1981, f. & ef. 10-14-81; CPC 3-1982, f. & ef. 4-6-82; Renumbered from 110-001-0010 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0050

Purpose, Application, and Authority

These rules are adopted under ORS 276.227. They set forth the statewide facility planning process for state agencies and the duties of the Board, which assists the Department with the planning process. State agencies other than institutions of higher education are required to provide information about their facilities and projects to the Department. Additionally, they implement a planning and review process for facilities and projects within the area described in ORS 276.028.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0100

Definitions

As used in these rules, the following terms have the meanings indicated, unless the context requires otherwise:

(1) "Area Plan" means a plan for development in one of the specified geographical areas described in ORS 276.028.

(2) "Biennial Leasing Plan" means a summary of all continuing leases or changes in leasing activity proposed for the coming biennium. This will summarize agency leasing activities or requests and provide a context for individual leasing plans.

(3) "Board" means the Capital Projects Advisory Board appointed under ORS 276.227(3), which is advisory to the Director of the Department.

(4) "Building Maintenance Plan" means a plan to be completed by an agency that owns a building valued at \$1 million or greater.

(5) "Committee" means the Capitol Mall Project Review Committee, which reviews projects on the Capitol Mall for compliance with the Capitol Mall Area Plan standards and policy.

(6) "Department" means the Department of Administrative Services.

(7) "Director" means the Director of the Department of Administrative Services.

(8) "Leasing Project Plan" means a proposed new lease, business case and cost benefit analysis completed by state agencies that lease or plan to lease a site with 10,000 or more square feet of conditioned space for a term of ten years or more.

(9) "Construction Project Plan" means a plan to be completed for each major capital construction project of \$500,000 or more that a state agency is anticipating within the next three biennia which is either new construction or adds area to an existing facility.

(10) "Space Needs Plan" means a plan to be completed by state agencies that own or plan to build or buy a building with 10,000 or more square feet; lease or plan to lease a site with 10,000 or more square feet of conditioned space for a term of ten years or more; plan to seek any legislative or Emergency Board approval for a major construction, acquisition or leasing project; or plan to seek planning funds for a project that is anticipated to cost more than \$500,000 over the next three biennia. The Space Needs Plan includes the Biennial Leasing Plan.

(11) "Statewide Program" means a program of the Facilities Division of the Department of Administrative Services that implements OAR 125-125-0050 to 125-125-0600.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0150

Statewide Facility Planning Process

(1) The statewide facility planning process provides a means of evaluating if state facilities are planned, financed, acquired, constructed, managed, and maintained in a manner that maximizes and protects this investment.

(2) The described budget review process program does not apply to institutions of higher education, community colleges, Oregon Health Sciences University, SAIF Corporation, Lottery, Secretary of State, Treasurer's Office, or to the Legislative or Judicial branches.

(3) The Department shall implement and maintain a planning process. This process shall coordinate state facilities' data, standards, maintenance planning, leasing planning, capital project planning, Salem Area Projects planning and Capitol Mall Area Projects Planning. The Department shall use the Board to assist in the review of agency plans and other associated documents and to advise the Director.

(4) The Statewide Facilities Program shall develop the State Facilities Planning Process Manual. The manual shall provide definitions, examples, and detailed descriptions of required reports to aid agencies in supplying information to the Statewide Program. The manual shall be reviewed biennially before the budget process begins and updated, if needed.

(5) Following the guidelines contained in the State Facilities Planning Process Manual, Agencies shall submit a State Facility Plan through the statewide facilities coordinator if it meets one or more of the following criteria:

(a) The agency owns buildings or plans to build or buy a building of 10,000 or more square feet;

(b) The agency plans a major re-organization;

(c) The agency proposes to enter into a lease of 10,000 or more square feet of conditioned space for a period of ten years or more;

(d) The agency proposes to request a budget to construct a major capital project;

(e) The agency plans to seek a legislative or Emergency Board approval for a major construction or acquisition project;

(f) The agency plans to seek planning funds for a major construction or acquisition project for which the total cost will be \$500,000 or more.

(6) To best coordinate and distribute the facilities data, the Statewide Program shall maintain a State Facility Inventory. The inventory shall be a database of state agency facilities covered

under this rule and valued over \$1 million, which shall be updated biennially by agencies. The inventory shall include basic information on these buildings, such as the age, roof replacement schedule, deferred maintenance plan, etc. The data shall be used to make effective decisions on capital projects, space needs, and maintenance of the buildings.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0200

Capital Projects Advisory Board

(1) CPAB shall assist the Department in the review of agency plans. It shall be comprised of seven members. Five members shall be public members knowledgeable about construction, facilities management, and maintenance issues. One member shall be from the City of Salem Community Development Department and one member from the City of Salem Public Works Department. The Director shall appoint the chairperson of the Board.

(2) The term of each member of the Board is determined by the Director.

(3) The Board shall meet monthly or at times deemed advisable by the majority of its members. In addition, the Director may call the Board to meet for the purpose of considering agency reports.

(4) The Board members shall serve without compensation from the Department for travel or per diem.

(5) The Board is advisory to the Director of the Department and is not a governing body of a public body under ORS 192.610. Meetings of the Board shall be treated as public meetings and shall generally follow the notification and other procedures described in the Attorney General's Public Records and Meetings Manual. The Department shall send notice of upcoming meetings to an established and iterative mailing list of interested parties, using electronic methods, where practical. The Department shall also provide information regarding meetings on the Department's website.

(6) The Board shall provide a place on the agenda for public comment. Public comment should be limited to the review process criteria listed in ORS 276.227(3)(d). The Board will accept public comment only on the review items listed on the meeting agenda. The Board shall acknowledge any public comment and include it in the formal review record.

(7) The Board will not make a recommendation on a plan or other document reviewed without a majority of its members present. If a duly scheduled and noticed meeting does not have a majority of the members present, those present will be considered to be a subcommittee of the Board. The subcommittee will report to the next scheduled Board meeting when a majority is present, and formal action may be taken at that time.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06

125-125-0250

Procedure for Submitting Reports for Review

(1) Each state agency shall report to the Board by July 31 of even-numbered years long-range facility plans and funding strategies that reflect changes in technology and priorities. The reports shall include a Space Needs Plan (including the Biennial Leasing Plan), a Construction or Lease Project Plan, and a Building Maintenance Needs Plan, if applicable.

(2) The Board shall review the information submitted and presented under section (1) of this rule and make recommendations to the Director by September 1 of even-number years related to long-range plans, the condition of facilities, maintenance schedules, funding strategies and options for new facilities.

(3) The statewide facilities coordinator shall request updated plans from agencies biennially and establish a submittal schedule.

This schedule shall include the report due dates and presentation date for each agency to appear before the Board.

(4) The Agency shall provide one electronic copy to the statewide facilities coordinator no later than the due date stated for the agency on the CPAB Reporting schedule.

(5) If an Agency has project(s) that require review under OAR 125-125-0350 Salem Area Project Review, then a supplemental listing and description of those projects should be prepared and submitted with the other required materials.

(6) The statewide facilities coordinator will provide a substantive analysis of the plans, including review for completeness and responsiveness to issues and provide the information to the Board. The coordinator may return a list of questions to the agency or recommended changes.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0300

Procedure for Board Review

(1) Following review of the information by the Department, the agency shall present its plans before the Board, for the purpose of determining if the projects are compatible with the criteria established in the State Facilities Planning Process Manual. The Board may pose further questions to the agency or determine if additional action is required and postpone acceptance or comment on the plans.

(2) In order to grant acceptance or favorable comment on the plans, the Board must find the project is compatible with the criteria listed in the State Facilities Planning Process Manual and the Budget Instructions.

(3) No agency subject to this rule shall seek Legislative or Emergency Board approval of projects meeting the criteria of 125-125-0150 without first having obtained review of the project by the Board.

(4) The Board shall accept the report after consideration of agency submissions, testimony, and public testimony, if any. Their comments shall be kept in the formal meeting minutes and provided to the Director and budget analysts for inclusion in the agency's budget package

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0350

Salem Area Project Review

(1) The Department shall conduct a special review process for projects on state-owned property, located within the boundaries of the city of Salem.

(2) This review process applies to any state officer, board, commission or department authorized by law to engage in capital construction or improvement projects in the areas described by ORS 276.028.

(3) The Department shall use the Board to assist with this review for major projects or those requiring public input. Reviews will be based upon the development standards and policies contained in the Area Plans previously developed by the Capitol Planning Commission or as modified by the Department after review by the Board.

(4) Area Plans cover the following state properties: Capitol Mall Area; Airport Road Area; Hillcrest Area; Southeast Salem Area (formerly known as Oregon State Corrections Area); State Fair and Exposition Center Area; Oregon State Hospital and Penitentiary Properties Area; Oregon School for the Blind Area; and, Oregon School for the Deaf Area.

(5) For the purposes of the review required under this section, project means expenditures for capital construction or for capital improvement. A project does not include the following:

(a) Interior remodeling that does not substantially change the existing use of space to another use (e.g., office space, or space used by the public);

(b) Repair or maintenance that does not substantially change the existing use of space, that does not add additional square footage to a building, and that does not change exterior building design;

(c) Individual plantings within an established landscape plan that do not alter the overall plan concept.

(6) A minor improvement to the building or grounds means an improvement that does not fall within the exceptions under OAR 125-125-0350 and impacts the appearance of the building grounds or exterior.

(7) A major improvement to the building or grounds, addition, or new construction means a total rework of the building exterior or landscaping, an addition to the building, or construction of a new building.

(8) No state agency may expend funds for any project subject to the requirements of this section unless the project has been reviewed and approved through the described review process. An agency is not precluded by this rule from collecting management data for the preparation of a project proposal.

(9) An agency seeking project review will submit a written request to the Statewide Facilities Program not less than 21 days before the next scheduled meeting of the Board. The Department shall provide a standard form for agencies to use to request project review. The Department may waive the notification period for good cause. The requesting agency shall provide 10 copies of materials submitted.

(10) Projects for minor improvements to the building or grounds shall include:

(a) A completed project application form;

(b) A written description of the project;

(c) Site, architectural, and landscaping plans (if applicable) for the project;

(d) Sufficient information to demonstrate compliance with the applicable Area Plan; and

(e) Sufficient information to demonstrate compliance with local zoning and other applicable standards.

(11) Projects for major improvements to buildings or grounds, additions, or new construction shall include an initial submittal including:

(a) A completed project application form;

(b) A written description of the project;

(c) Preliminary site, architectural, and landscaping plans (if applicable) for the project;

(d) A description of the process planned to be used to ensure compliance with the Area Plan and local zoning and other applicable standards; and

(e) A description of any planned meetings with neighborhood groups or other interested members of the public.

(12) Once the design of the major project is completed, the state agency shall make a final project submittal, which shall include:

(a) Site, architectural, and landscaping plans (if applicable) at a design development stage or later;

(b) Sufficient information to demonstrate compliance with the applicable Area Plan;

(c) Sufficient information to demonstrate compliance with local zoning and other applicable standards; and

(d) A record of meetings with neighborhood groups or other interested members of the public.

(13) For new construction projects, facility siting review will be required before starting design and making the required submittals under OAR 125-125-0350(11). For siting review, the following shall be provided:

(a) A completed site need and description form;

(b) A written description of the proposed improvements that will be constructed;

(c) A vicinity map showing the proposed site and its proximity to major streets and surrounding functions;

(d) A topographic map of the proposed site indicating the boundaries for proposed improvements, prominent features, surrounding buildings, and other related information to provide a context for the project;

(e) Preliminary information about whether sewer, water, streets, and other infrastructure is available to service the proposed use;

(f) A preliminary assessment of any wetland, flood plain, environmental, or archeological issues on the site and whether development would likely impact them;

(g) Sufficient information to demonstrate compliance with local zoning, comprehensive plan, and other related land use standards.

(h) If the proposed site is on state-owned property, sufficient information to demonstrate that the proposed use is in compliance with the applicable Area Plan; and

(i) If the proposed site is to be acquired, an assessment of what state-owned properties were considered and why none were acceptable, plus information required by the Facility Siting Policy 125-6-115.

(14) If the project is within the areas included in the Capitol Mall Area Plan, the required submittals shall also include the conclusions from the Capitol Mall Project Review Committee according to the requirements of OAR 125-125-0450.

(15) The Board shall review the material submitted by the agency and acknowledge if the applicable requirements were met. The Board shall also provide an opportunity for interested members of the public to comment about the project's compliance with the Area Plan. The Board will then pass the record of the project review to the agency and the Director.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0400

Area Plan Update Responsibilities

(1) Each agency owning property in the Salem area shall be responsible for helping maintain an Area Plan for property it owns.

(2) The Department shall develop a standard template for Area Plans, which shall structure any modifications to existing plans and include content areas specified under OAR 110-010-0034. The Department shall also develop and maintain a coordination plan that addresses the interrelationship among the different Area Plans and the state's presence in the City of Salem.

(3) The Department shall develop and maintain a review schedule for the Area Plans and a process for coordinating any required changes with the affected agencies and the City of Salem. If outside assistance is required to update the plan, it shall be at the expense of the property owning agency or agencies.

(4) The review schedule shall result in each Area Plan being reviewed before the Board at least once every five years and updated as may be required. At the time of the review, the Board shall provide an opportunity for public comment on any proposed revisions to the plan.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0450

Capitol Mall Area Project Review

(1) The Department shall investigate, review and make recommendations on all proposals of state agencies to add to, reduce or otherwise change a building or grounds in the areas described in ORS 276.028.

(2) The Department shall create and maintain a special Capitol Mall Project Review Committee to provide an additional level of design review for Capitol Mall projects. The committee will be comprised of the following members: the manager of the Facilities Division Statewide Program; a representative from the

Legislative Assembly; a representative from the City of Salem; and a private design practitioner.

(3) This review process applies to any state office, board, commission or department authorized by law to engage in capital construction or improvement projects in the areas described by ORS 276.010.

(4) In addition to the procedures described for Salem Area projects, any projects covered by the Capitol Mall Area Plan shall have these additional requirements:

(a) Before submitting the materials for Salem Area Project Review, the agency shall submit the material to the Capitol Mall Project Review Committee.

(b) The Committee will determine if the proposed project is consistent with the policies and design standards for the Capitol Mall.

(c) The Committee will pass its conclusions to the Board.

(d) For major projects, both the initial submittal and final design submittal will require review by both the Capitol Mall Project Review Committee and the Capital Projects Advisory Board.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06

125-125-0500

Area Plan Review, Adoption, Amendment, and Repeal Process

(1) The Capital Projects Advisory Board (CPAB) will hold at least one public hearing pursuant to ORS 183.360 to review the draft area plan prior to forwarding its recommendations to the DAS Director.

(a) Public hearing notice will be provided at least 20 days preceding the hearing by placing notice in a local newspaper of general circulation. Additional notice may be provided to known stakeholders and anyone who requests it in writing by whatever method the Department deems necessary or desirable.

(b) A recommendation for approval requires the affirmative vote of not less than a majority of the total membership of the Board.

(c) The Board may recommend approval, conditional approval, or substantial revision. This recommendation will be forwarded to the DAS Director, along with statements from DAS staff and the landowning agencies indicating agreement or disagreement with the area plan and with the CPAB recommendation.

(d) Once the hearing(s) have been completed, the DAS Director will approve, conditionally approve, or deny the area plan. Any conditions of approval should be made an integral part of the area plan prior to its adoption. If the plan is to be approved with a substantial modification not previously considered by the CPAB, the plan must be referred back to the Board for their reconsideration and recommendation.

(2) Adoption. Adoption of an area plan is accomplished by Administrative Rule, following the accepted Permanent Rulemaking Process. Rulemaking hearings regarding area plan adoptions will be held by the CPAB. Adoptions are listed under Oregon Administrative Rules, Chapter 110.

(3) Amendment and Repeal. An area plan is repealed in the same manner that it is amended, by Administrative Rule. Similar to the adoption, the CPAB must hold at least one public hearing prior to taking action.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0520

Definitions for Development Standards Contained in Area Plans

As used in OAR Chapter 110, the following terms have the meanings indicated, unless the context requires otherwise:

(1) "Agency" means any state officer, board, commission or department, or any division thereof, authorized by law to engage in

capital construction or improvement projects in the areas described by ORS 276.028.

(2) "Area Plan" means a plan setting policies and standards to guide development of a specific geographical area within the city of Salem.

(3) "CPAB" means the Capital Projects Advisory Board.

(4) "DAS Director" means the Director of the Department of Administrative Services or his/her designee.

(5) "Department" means the Department of Administrative Services.

(6) "Project" means expenditures for capital construction or for capital improvement and adoption or approval of area plans in the area described by ORS 276.028, and within the following limitations:

(a) Capital Construction includes expenditures related to construction or remodeling of physical facilities with a project cost of \$500,000 or more;

(b) Capital Improvement includes expenditures related to construction or remodeling of physical facilities with a project cost of more than \$5,000, but less than \$500,000;

(c) A project does not include:

(A) Interior remodeling that does not substantially change the existing use of space to another use (e.g., office space, or space used by the public);

(B) Repair or maintenance which does not substantially change the existing use of space, which does not add additional square footage to a building, and which does not change exterior building design;

(C) Individual plantings within an established landscape plan that do not alter the overall plan concept.

(7) Notwithstanding the provisions of subsection (6)(c) of this rule, capital improvement or capital construction which includes interior remodeling or repair for the purpose of converting an existing use to a use relating to the housing of Correctional or Forensic Psychiatric Inmates shall be a "project" and shall require DAS Director review and approval.

Stat. Auth.: ORS 183, 197 & 276

Stats. Implemented:

Hist.: CPC 5-1981, f. & ef. 12-1-81; CPC 1-1983, f. & ef. 11-29-83; COC 2-1988, f. & cert. ef. 6-23-88; CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; CPC 3-2008, f. & cert. ef. 6-17-08; Renumbered from 110-010-0030 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0522

Development Standards Contained in Area Plans

Development standards applicable to new projects specific to each area plan shall be included in the area plans, while development standards common to all properties subject to area plans shall be included within the Salem Area Coordination Plan. Development standards shall address, but not be limited to:

(1) Setback requirements;

(2) Height, bulk, and lot coverage limitations;

(3) Landscaping requirements; and

(4) Requirements for the protection of the surrounding community environment.

Stat. Auth.: ORS 276.098

Stats. Implemented:

Hist.: CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; CPC 3-2008, f. & cert. ef. 6-17-08; Renumbered from 110-010-0034 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0524

Criteria and Authority to Permit Divergence

The CPAB may recommend and the DAS Director may permit a divergence from the provisions contained in the Design Standards contained in the adopted Area Plan if:

(1) The property and proposed improvements are challenged by unusual topographic, environmental, functional, or aesthetic circumstances; or

(2) The proposed alternative achieves the purposes of the Design Standards contained in the Area Plan as well or better than a compliant alternative.

(3) Permitting a divergence will not, under the circumstances of the particular case, create material adverse aesthetic, function, or health and welfare effects on neighboring owners or others coming to or passing by the Property.

(4) Each divergence request shall be considered solely on its own merits; permitting of a divergence in one situation shall not change the Design Standards contained in the Area Plan or compel the DAS Director to permit any further divergence.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; CPC 3-2008, f. & cert. ef. 6-17-08; Renumbered from 110-010-0039 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0525

Definitions for Master Plan for Development of the Capitol Mall Area

As used in OAR chapter 110, division 20, the following terms have the meanings indicated, unless the context requires otherwise:

(1) "Building Envelope" means the building space created by the setback and height limitations imposed under OAR 110-020-0015.

(2) "Capitol Mall" means the area consisting of the Formal Mall, the Central Mall, the North Mall, and shall include the area known as the General Services complex, east of 12th Street and the Employment Building Annex.

(3) "Central Mall" means the area bounded by Union Street on the North, Center Street on the South, Winter Street on the West and Capitol Street on the East.

(4) "Formal Mall" means the area bounded by Center Street on the North, Court Street on the South, Winter Street on the West, and Capitol Street on the East, together with the area bounded by Court Street on the North, State Street on the South, Church Street on the West and 12th Street on the East, together with the Commerce Building on the East side of 12th Street.

(5) "North Mall" means the area bounded by D Street on the North, Union Street on the South, Winter Street on the West, and Capitol Street on the East.

(6) "Subsurface Parking" means an enclosed vehicular parking facility located below ground level, provided that the facility may be located above ground level to the extent required by high water table or similar construction problems making a below ground level facility impractical.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 5-1981, f. & ef. 12-1-81; Renumbered from 110-020-0005 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0526

Master Plan for Development of the Capitol Mall Area

The Master Plan for Development of the Capitol Mall Area, 1976, as amended on the effective date of this rule, is hereby adopted by reference.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 276

Stats. Implemented: ORS 276.034

Hist.: CPC 5-1981, f. & ef. 12-1-81; CPC 1-1986, f. & ef. 1-29-86; CPC 1-1988, f. & cert. ef. 6-10-88; CPC 1-1993, f. & cert. ef. 1-27-93; CPC 1-1997, f. & cert. ef. 2-12-97; Renumbered from 110-020-0010 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0527

Standards for Development of the Capitol Mall Area

The following standards for development shall apply to projects in the Capitol Mall area:

(1) Setback requirements for buildings located in the Capitol Mall Area are as follows:

(a) From a Street — A minimum depth of 20 feet for the Central Mall area. For the Formal Mall and the North Mall areas, setback shall be 20 feet plus one additional for each one foot of height of the building in excess of 35 feet;

(b) From Other Buildings — As required by the **Oregon State Structural Specialty Code** and **Fire and Life Safety Code**;

(c) From the Mill Creek — The greater of a minimum of 50 feet, or not less than 1.4 times the height of the building measured south from the top of the creek bank to the exterior wall of the building, such that the building shall not cast its shadow on the creek bank at 35° (degree) of noon sun angle.

(2) No building or other structure in the Capitol Mall area shall exceed 70 feet in height, except for the area of the North Mall north of Mill Creek, where no building or other structure shall exceed 35 feet in height. Mechanical penthouses shall not be included in calculating building or structure height if the height (h) of the penthouse, measured from the top of the parapet of the exterior wall of the building or structure to the top of the penthouse, is less than the distance (d) from the parapet to the exterior wall of the penthouse, so that $(h) < (d)$, and if the building or structure height, including penthouse, meets the applicable height requirements under the Salem GI Capitol District Zoning Ordinance or a variance from those height requirements has been granted by the city.

(3) The maximum lot coverages for buildings in the Capitol Mall Area are as follows:

- (a) For the Formal Mall, 33 percent of the lot;
- (b) For the Central Mall, 50 percent of the lot;
- (c) For the North Mall, 45 percent of the lot. Minimum lot size shall be as required by the Salem City Zoning Ordinance for GI Capitol District.

(4) Maximum building envelope utilization for the Capitol Mall area is as follows:

- (a) For the Formal Mall, 100 percent;
- (b) For the Central Mall, 100 percent;
- (c) For the North Mall, 70 percent.

(5) Subsurface parking is required for all new buildings constructed in the Capitol Mall area. Supplemental surface parking may be approved by the Commission for use between phases of construction on a building site. Approval of such supplemental parking shall not be considered approval of permanent surface parking for a site.

(6) Development within the Capitol Mall area shall comply with the following landscaping requirements:

(a) Area to be landscaped shall include all of the designated site not occupied by the building or structure, by surface parking, if approved, and by pedestrian walkways, driveways, service areas and plazas;

(b) A landscaped area shall consist of lawn, trees, and shrubs. Ornamental flower beds may also be provided. All lawn and planting areas shall be provided with automatic lawn irrigation systems.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183 & 276
Stats. Implemented:
Hist.: CPC 5-1981, f. & ef. 12-1-81; Renumbered from 110-020-0015 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0528

Criteria and Authority to Grant Variance

The Commission may grant the degree of variance from the provisions contained in OAR 110-030-0015 imposed on a particular subject property under this rule which is reasonably necessary to permit development of an otherwise lawful use upon the finding that each of the following criteria is met:

(1) There are special conditions applying to the land, buildings, or use referred to in the application, which do not apply generally to land, buildings, or uses in the same area, and which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance. The purely economic interests of the agency shall not in itself constitute such special conditions. The potential for economic development of the subject property itself may, however, be considered among the factors specified in this section.

(2) Granting a variance will not be unreasonably detrimental to the public welfare or to the property or improvements in the neighborhood of the subject property.

(3) Granting a variance will not, under the circumstances of the particular case, unreasonably affect the health or safety of persons working, residing or visiting in the neighborhood of the subject property.

(4) Granting a variance will be consistent with the Area Plan.
Stat. Auth.: ORS 183 & 276
Stats. Implemented:
Hist.: CPC 1-1985, f. & ef. 1-30-85; Renumbered from 110-020-0020 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0530

Airport Road Area Plan

The Airport Road Area Plan, 1985 is hereby adopted by reference.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183 & 276
Stats. Implemented:
Hist.: CPC 4-1982, f. & ef. 4-6-82; CPC 3-1985, f. & ef. 10-22-85; Renumbered from 110-030-0010 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0531

Standards for Development in the Airport Road Area

The following standards for development shall apply to projects in the Airport Road Area:

(1) Setback requirements for buildings located in the Airport Road area are as follows:

- (a) From arterial streets — A minimum of 50 feet;
- (b) From on-site access streets — A minimum of 25 feet;
- (c) From side and rear property lines abutting adjacent properties — A minimum of 20 feet;
- (d) From front, side or rear property line abutting open space or parkways — A minimum of 25 feet;
- (e) From other buildings — As required by the **Oregon State Structural Specialty Code and Fire and Life Safety Code**.

(2) No building or other structure in the Airport Road Area shall exceed 50 feet in height.

(3) The maximum building coverage in Airport Road Area is 40 percent of the land area not including paved areas for storage or parking of vehicles, equipment and materials.

(4) Development within the Airport Road Area shall be landscaped in a manner protective of the surrounding community environment.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183 & 276
Stats. Implemented:
Hist.: CPC 4-1982, f. & ef. 4-6-82; CPC 3-1985, f. & ef. 10-22-85; Renumbered from 110-030-0015 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0532

Criteria and Authority to Grant Variance

The Commission may grant the degree of variance from the provisions contained in OAR 110-030-0015 imposed on a particular subject property under this rule which is reasonably necessary to permit development of an otherwise lawful use upon the finding that each of the following criteria is met:

(1) There are special conditions applying to the land, buildings, or use referred to in the application, which do not apply generally to land, buildings, or uses in the same area, and which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance. The purely economic interests of the agency shall not in itself constitute such special conditions. The potential for economic development of the subject property itself may, however, be considered among the factors specified in this section.

(2) Granting a variance will not be unreasonably detrimental to the public welfare or to the property or improvements in the neighborhood of the subject property.

(3) Granting a variance will not, under the circumstances of the particular case, unreasonably affect the health or safety of persons working, residing or visiting in the neighborhood of the subject property.

(4) Granting a variance will be consistent with the Area Plan.
Stat. Auth.: ORS 183 & 276
Stats. Implemented:

Hist.: CPC 1-1985, f. & ef. 1-30-85; Renumbered from 110-030-0020 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0535

Southeast Salem Area Plan

The Southeast Salem Area Plan, 2008 is hereby adopted by reference. This Area Plan replaces the Oregon State Corrections Area Plan, 1985.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 2-1985, f. & ef. 5-13-85; CPC 2-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; CPC 4-2008, f. & cert. ef. 6-17-08; Renumbered from 110-040-0012 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0540

Hillcrest Area Plan

The Hillcrest Area Plan, 2008, is hereby adopted by reference. This Area Plan replaces the Fairview/Hillcrest Area Plan, 1985.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 2-1985, f. & ef. 5-13-85; CPC 2-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; CPC 4-2008, f. & cert. ef. 6-17-08; Renumbered from 110-040-0014 by DAS 8-2008, f. & cert. ef. 11-4-08; DAS 6-2009, f. & cert. ef. 5-11-09

125-125-0545

MacLaren School Area Plan

The MacLaren School Area Plan, 1984 is hereby adopted by reference.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 4-1982, f. & ef. 4-6-82; CPC 2-1984, f. & ef. 4-2-84; Renumbered from 110-050-0010 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0546

Standards for Development in the MacLaren School Area

The following standards for development shall apply to projects in the MacLaren School Area:

(1) Set back requirements for buildings located in MacLaren School Area are as follows:

(a) From a street — A minimum of 20 feet;

(b) From other buildings — As required by the **Oregon State Structural Specialty Code and Fire and Life Safety Code.**

(2) No building or other structure in the MacLaren School Area shall exceed 35 feet in height.

(3) The maximum building coverage in the MacLaren School Area is 50 percent of the land area.

(4) Development within the MacLaren School Area shall be landscaped in a manner protective of the surrounding community environment.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 4-1982, f. & ef. 4-6-82; Renumbered from 110-050-0015 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0547

Criteria and Authority to Grant Variance

The Commission may grant the degree of variance from the provisions contained in OAR 110-050-0015 imposed on a particular subject property under this rule which is reasonably necessary to permit development of an otherwise lawful use upon the finding that each of the following criteria is met:

(1) There are special conditions applying to the land, buildings, or use referred to in the application, which do not apply generally to land, buildings, or uses in the same area, and which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance. The purely economic interests of the agency shall not in itself constitute such special conditions. The potential for economic development of the subject property itself may, however, be considered among the factors specified in this section.

(2) Granting a variance will not be unreasonably detrimental

to the public welfare or to the property or improvements in the neighborhood of the subject property.

(3) Granting a variance will not, under the circumstances of

the particular case, unreasonably affect the health or safety of

persons working, residing or visiting in the neighborhood of the

subject property.

(4) Granting a variance will be consistent with the Area Plan.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 1-1985, f. & ef. 1-30-85; Renumbered from 110-050-0020 by DAS 8-

2008, f. & cert. ef. 11-4-08

125-125-0550

Oregon State Fair and Exposition Center Master Plan

The *Oregon State Fair and Exposition Center Area Plan,*

2003, is hereby adopted by reference.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.341 & 276.028 - 276.043

Stats. Implemented: ORS 276.034(1)

Hist.: CPC 1-1982(Temp), f. & ef. 1-5-82; CPC 4-1982, f. & ef. 4-6-82; CPC 1-

2003(Temp), f. & cert. ef. 3-19-03 thru 9-14-03; CPC 2-2003, f. & cert. ef. 5-22-

03; Renumbered from 110-060-0010 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0551

Standards for Development in the Oregon State Fair and Exposition Center Area

The following standards for development shall apply to projects in the Oregon State Fair and Exposition Center Area:

(1) Set back requirements for buildings located in the Oregon State Fair and Exposition Center Area are as follows:

- (a) From a street — A minimum depth of 20 feet;
- (b) From other buildings — As required by the Oregon Structural Specialty Code and Fire and Life Safety Code.

(2) No building or other structure in the Oregon State Fair and Exposition Center Area shall exceed 70 feet in height.

(3) The maximum building coverage in the Oregon State Fair and Exposition Center area is 50 percent of the land area.

(4) Development within the Oregon State Fair and Exposition Center Area shall be landscaped in a manner protective of the surrounding community environment.

(5) Consistency with the *Oregon State Fair and Exposition Center Area Plan 2003*.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.341 & 276.028 - 276.043

Stats. Implemented: ORS 276.034(1)

Hist.: CPC 1-1982(Temp), f. & ef. 1-5-82; CPC 4-1982, f. & ef. 4-6-82; CPC 1-2003(Temp), f. & cert. ef. 3-19-03 thru 9-14-03; CPC 2-2003, f. & cert. ef. 5-22-03; Renumbered from 110-060-0015 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0552

Criteria and Authority to Grant Variance

The Commission may grant the degree of variance from the provisions contained in OAR 110-060-0015 imposed on a particular subject property under this rule which is reasonably necessary to permit development of an otherwise lawful use upon the finding that each of the following criteria is met:

(1) There are special conditions applying to the land, buildings, or use referred to in the application, which do not apply generally to land, buildings, or uses in the same area, and which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance. The purely economic interests of the agency shall not in itself constitute such special conditions. The potential for economic development of the subject property itself may, however, be considered among the factors specified in this section.

(2) Granting a variance will not be unreasonably detrimental to the public welfare or to the property or improvements in the neighborhood of the subject property.

(3) Granting a variance will not, under the circumstances of the particular case, unreasonably affect the health or safety of persons working, residing or visiting in the neighborhood of the subject property.

(4) Granting a variance will be consistent with the Area Plan.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 1-1985, f. & ef. 1-30-85; Renumbered from 110-060-0020 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0555

Oregon State Hospital and Penitentiary Properties Area Plan

The *Oregon State Hospital and Penitentiary Properties Area Plan, June 2008* is hereby adopted by reference. This Area Plan replaces the Oregon State Hospital and Penitentiary Properties Land Use Plan, 1976, as amended 1983.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 4-1982, f. & ef. 4-6-82; CPC 1-1983, f. & ef. 11-29-83; CPC 1-1986, f. & ef. 1-29-86; CPC 5-2008(Temp), f. & cert. ef. 7-17-08 thru 12-31-08; CPC 6-2008, f. 10-9-08, cert. ef. 10-11-08; Renumbered from 110-070-0010 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0560

Oregon State School for the Blind Area Plan

The *Oregon State School for the Blind Area Plan, 1984*, is hereby adopted by reference.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 4-1982, f. & ef. 4-6-82; CPC 3-1984, f. & ef. 10-3-84; Renumbered from 110-080-0010 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0561

Standards for Development in the Oregon State School for the Blind Area

The following standards for development shall apply to projects in the Oregon State School for the Blind Area:

(1) Set back requirements for buildings located in the Oregon State School for the Blind Area are as follows:

- (a) From a street — A minimum of 20 feet, plus one additional foot for each one foot of height of building in excess of 35 feet;
- (b) From other buildings — As required by the **Oregon State Structural Specialty Code and Fire and Life Safety Code**.

(2) No building or other structure in the Oregon State School for the Blind Area shall exceed 70 feet in height;

(3) The maximum building coverage in the Oregon State School for the Blind Area is 50 percent of the land area. (Review for compliance with the City of Salem Ordinances.);

(4) Development within the Oregon State School for the Blind Area shall be landscaped in a manner protective of the surrounding community environment.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 4-1982, f. & ef. 4-6-82; Renumbered from 110-080-0015 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0562

Criteria and Authority to Grant Variance

The Commission may grant the degree of variance from the provisions contained in OAR 110-080-0015 imposed on a particular subject property under this rule which is reasonably necessary to permit development of an otherwise lawful use upon the finding that each of the following criteria is met:

(1) There are special conditions applying to the land, buildings, or use referred to in the application, which do not apply generally to land, buildings, or uses in the same area, and which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance. The purely economic interests of the agency shall not in itself constitute such special conditions. The potential for economic development of the subject property itself may, however, be considered among the factors specified in this section.

(2) Granting a variance will not be unreasonably detrimental to the public welfare or to the property or improvements in the neighborhood of the subject property.

(3) Granting a variance will not, under the circumstances of the particular case, unreasonably affect the health or safety of persons working, residing or visiting in the neighborhood of the subject property.

(4) Granting a variance will be consistent with the Area Plan.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 1-1985, f. & ef. 1-30-85; Renumbered from 110-080-0020 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0565

Oregon State School for the Deaf Area Plan

The *Oregon State School for the Deaf Area Plan, 1984* is hereby adopted by reference.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 4-1982, f. & ef. 4-6-82; CPC 1-1984, f. & ef. 4-2-84; Renumbered from 110-090-0010 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0566

Standards for Development in the Oregon State School for the Deaf Area

The following standards for development shall apply to projects in the Oregon State School for the Deaf Area:

(1) Set back requirements for buildings located in the Oregon State School for the Deaf Area are as follows:

(a) From a street — A minimum depth of 20 feet, plus one additional foot for each one foot of height of the building in excess of 35 feet;

(b) From other buildings — As required by the **Oregon State Structural Specialty Code** and **Fire and Life Safety Code**.

(2) No building or other structure in the Oregon State School for the Deaf Area shall exceed 70 feet in height.

(3) The maximum building coverage in the Oregon State School for the Deaf Area is 50 percent of the land area. (Review for compliance with the City of Salem Ordinances.)

(4) Development within the Oregon State School for the Deaf Area shall be landscaped in a manner protective of the surrounding community environment.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 4-1982, f. & ef. 4-6-82; Renumbered from 110-090-0015 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0567

Criteria and Authority to Grant Variance

The Commission may grant the degree of variance from the provisions contained in OAR 110-090-0015 imposed on a particular subject property under this rule which is reasonably necessary to permit development of an otherwise lawful use upon the finding that each of the following criteria is met:

(1) There are special conditions applying to the land, buildings, or use referred to in the application, which do not apply generally to land, buildings, or uses in the same area, and which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance. The purely economic interests of the agency shall not in itself constitute such special conditions. The potential for economic development of the subject property itself may, however, be considered among the factors specified in this section.

(2) Granting a variance will not be unreasonably detrimental to the public welfare or to the property or improvements in the neighborhood of the subject property.

(3) Granting a variance will not, under the circumstances of the particular case, unreasonably affect the health or safety of persons working, residing or visiting in the neighborhood of the subject property.

(4) Granting a variance will be consistent with the Area Plan.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 1-1985, f. & ef. 1-30-85; Renumbered from 110-090-0020 by DAS 8-2008, f. & cert. ef. 11-4-08

125-125-0600

Copies of Records

(1) Copies of tape recordings of CPAB proceedings, when available, may be purchased at a cost of \$10 per tape cassette. The person or agency requesting copies must identify the date of the proceeding. Copies will be available only for the entire proceeding; copies of specified portions of proceedings will not be available for purchase.

(2) Copies of printed records reproduced by the CPAB, when available, may be purchased at a cost of ten cents per page/side for the first five pages/sides and four cents per page/side for additional pages/sides. Copies of records larger than 8-1/2" x 14", when available, may be purchased at the actual cost incurred by the Department in making such copies available.

Stat. Auth.: ORS 183, 276

Stats. Implemented:

Hist.: DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0700

Adoption of the DAS-Salem Coordination Plan

The DAS-Salem Coordination Plan Development and Management Policies September 19, 2008 is hereby adopted by reference.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 276

Stat. Implemented:

Hist.: DAS 4-2009, f. & cert. ef. 1-26-09

DIVISION 140

CONFIDENTIALITY AND INADMISSIBILITY OF MEDIATION COMMUNICATIONS

125-140-0010

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondisclosable and inadmissible. If the mediator is the employee of and acting on

behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal

any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Director or designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 36.224 & 184.340

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: DAS 1-1999, f. 4-30-99, cert. ef. 5-1-99

125-140-0020**Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications**

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) **Exceptions to Confidentiality and Inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.230(4)

Hist.: DAS 2-1999, f. 5-25-99, cert. ef. 5-26-99

DIVISION 150**RISK MANAGEMENT****125-150-0000****Claims Against the State Liability Fund**

(1) The Department of Administrative Services, Risk Management Division, administers the Liability Fund established by ORS 278.100 to cover the tort liability of the state and its officers, employees, or agents acting within the scope of their employment under ORS 30.260 to 30.300.

(2) An individual intending to make a claim against the Liability Fund must follow the notice requirements under ORS 30.275, as amended by Chapter 350, Oregon Laws 1981.

(3) Under ORS 30.275, formal notice of a claim against a state officer, employee, or agent may be given by mail or personal delivery to the Director of the Department of Administrative Services. By this policy, the Director delegates responsibility for receipt of liability claims to the Risk Management Division, Department of Administrative Services.

(4) A claimant or representative may file a claim in the following manner:

(a) Send or deliver a *written* statement to the Risk Management Division, including the following information:

(A) A statement that a claim for damages will be asserted against a *named* state agency, officer, employee, or agent;

(B) A description of the time, place and circumstances giving rise to the claim;

(C) The name of the claimant and the mailing address to which correspondence concerning the claim may be sent. Send or present the notice to: Claims Section, Risk Management Division, Department of Administrative Services, 155 Cottage Street N.E., Salem, OR 97310.

(b) To give actual notice of a claim as provided under ORS 30.275, provide the same information as required above for formal notice, orally to: Claims Section, Risk Management Division, (503) 373-7475.

Stat. Auth.: ORS 278 & 283

Stats. Implemented:

Hist.: GS 1-1982, f. 1-29-82, ef. 2-1-82

125-150-0005

Selection of Insurance Agent of Record

(1) The Department of Administrative Services may appoint an Agent of Record to assist in the procurement of commercial insurance.

(2) Selection of an Agent(s) of Record will follow guidelines established by the Public Contract Review Board in OAR 127-010-0140.

(3) Prior to the selection of an Agent of Record, the Department shall make reasonable efforts to inform known insurance agents in the competitive market area of its intent to choose an Agent of Record.

(4) The Agent of Record will be selected according to the following procedure:

(a) Risk Management Division:

(A) Establishes bid specifications for Agent of Record;

(B) Places public advertisement in at least one local newspaper of general circulation and trade periodical soliciting open bids;

(C) Through Transportation, Purchasing & Print Services Division, distributes bid specifications to insurance agents requesting copies in competitive market area of applicable coverages.

(b) Commercial Insurance Agencies:

(A) Review bid specifications and prepare sealed bid presentation in accordance with bid procedure guidelines;

(B) Submits bid to Department of Administrative Services, Transportation, Purchasing & Print Services Division, in accordance with bid specifications.

(c) Risk Management Division:

(A) Review bids at time stipulated in bid notice;

(B) May invite acceptable bid applicants for oral presentation of proposal;

(C) Evaluates written bids and oral presentations, grading bid proposals upon standards previously established in bid specifications;

(D) Makes final selection of Agent of Record;

(E) Informs all applicants (bidders) of successful awarding of contract for Agent of Record selection;

(F) Prepares and issues Agent of Record contract;

(G) Retains information for Public Contract Review Board on: Agent of Record selected; names of agents submitting bids; summary of evaluations of each applicant.

Stat. Auth.: ORS 283

Stats. Implemented:

Hist.: GS 5-1982, f. & ef. 5-3-82

125-150-0010

Purchase of Professional Services

(1) The Department is authorized under ORS 278.130 to purchase necessary technical and professional services.

(2) Examples of services that may be required include, but are not limited to, claims adjusting, property appraisal and Risk Management and actuarial audits to augment services provided by the Risk Management Division.

(3) Services will be acquired by one of the following methods:

(a) Services valued over \$5,000:

(A) Service requirements that are continuous or for which the amount of the contract is over \$5,000, shall be open for competitive bids according to procedures outlined by the Public Contract Review Board (PCRB);

(B) OAR 125-150-0005, Agent of Record, provides specific guidelines for the purchase of commercial insurance and related services;

(C) The Risk Management Division will make a reasonable effort to notify all independent contractors known by the Division to be qualified to provide the required services. The Division shall also place at least one public advertisement in a west coast insurance trade publication;

(D) Contractors interested in submitting a proposal should request a copy of the bid specifications from the Division;

(E) The Risk Management Division will evaluate the proposals of all respondents. Selection will be based on the experience and qualifications of contractor and scope, completeness and schedule of work plan. Among equally qualified contractors and work plans, selection will be based on the lowest cost;

(F) The Risk Management Division reserves the right to reject any and all proposals.

(b) Services valued under \$5,000:

(A) One-time or emergency services will be secured as situations require. A minimum of two independent contractors, known by the Risk Management Division to be qualified and available to offer such services, will be contacted and asked to quote a fee for the required services either by a written letter or telephone conversation;

(B) A record of contractors contacted, service requirements, and corresponding quotes will be retained on file by the Risk Management Division, open to public inspection during regular business hours, 8 a.m. to 5 p.m., Monday through Friday;

(C) Of those independent contractors participating, selection will be based on experience, professional qualifications, work plan and time schedule. Among equally qualified contractors and work plans, selection will be based on the lowest cost;

(D) The Risk Management Division reserves the right to reject any and all proposals.

(4) The following procedure should be followed:

(a) Risk Management Division:

(A) Recognizes need for additional technical or professional expertise;

(B) Composes bid specifications or obtains at least two estimates;

(C) Notifies appropriate technical and/or professional vendors of intention to secure proposals or estimates.

(b) Independent Contractors: Prepare and submit proposals according to established procedure of Department;

(c) Risk Management Division: Awards contract to selected independent contractor according to rules specified by Department of Administrative Services, Transportation, Purchasing & Print Services Division and Public Contract Review Board.

Stat. Auth.: ORS 283

Stats. Implemented:

Hist.: GS 5-1982, f. & ef. 5-3-82

DIVISION 155

STATE VEHICLE USE AND ACCESS

125-155-0000

Purpose

These rules set standards for use, operation and access to state vehicles, including private vehicles in use for state business.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0010

Definitions

As used in this chapter, unless the context requires otherwise, the following words, phrases, and abbreviations have the meanings listed:

(1) "DAS" means Department of Administrative Services.

(2) "DAS-RMD" means Risk Management Division of DAS.

(3) "DAS-TPPSD" means Transportation, Purchasing, and Print Services Division of DAS.

(4) "ODOT-DMV" means Driver and Motor Vehicle Services, Department of Transportation or, if the context requires, its equivalent in another jurisdiction.

(5) "OSSHE" means Oregon State System of Higher Education.

(6) "Agency" means an agency, board, commission, or branch of the State of Oregon that is subject to ORS Chapter 283 or 278.

(7) "Agent" means a person or legal entity that is appointed in writing by a state agency to perform specified work. An agent is not an independent contractor. Agents, paid or unpaid, are subject to the direction and control of the Agency. An Agency may not call people agents for the primary purpose of justifying their transportation in a state vehicle.

(8) "Duty station" means the location designated in writing by the Agency from which an employee normally carries out his or her duties.

(9) "Employee" means any person employed by the state to do state business for whom the state withholds income tax, provides workers' compensation coverage, and pays the workers' compensation hour-tax. Under this definition, the following are not employees: workers provided by a temporary employment services agency, Department of Corrections inmates, and OSSHE students unless the student meets the terms of this definition.

(10) "Official state business" or "state business" means any activity conducted in conformance to these rules and directed and controlled by a state agency to advance the lawful policies and purposes of the agency. State law requires a narrow interpretation of this term. Therefore, agencies' policies and purposes are only those that are official, in writing, and within statutory authority. These may be written in statutes, orders, rules, policy manuals, procedural guides, and position descriptions. They may be written in official statements of agency missions, goals, objectives, and performance measurement plans. They may be written in Oregon Benchmarks and OSSHE rules defining its officially sanctioned programs.

(11) "Private vehicle" means a motor vehicle that is owned, rented, borrowed, leased, or otherwise lawfully in the possession and control of any private person or any entity other than the state. A commercial rental vehicle is a private vehicle if it is rented or used for a mix of private and state uses. Private vehicles, while in use for state business, are treated as state vehicles in these rules unless the context clearly requires otherwise. While any motor vehicle is being used to transport family or for any other personal purpose, it is not on state business. An independent contractor's vehicle being used for contract services is on the contractor's business, not on state business. "Private off-road vehicle" means a private motor vehicle that is unlicensed or not designed for use on public roads. It includes unenclosed vehicles designed for just one or two riders, all-terrain recreational vehicles, two or three wheeled vehicles.

(12) "Private specialty vehicle" means a private vehicle that is a motorcycle or other two or three wheeled vehicle designed for one or two riders.

(13) "Satisfactory agency record" means an agency has annual rates of risk markers that are normal, compared to statewide rates. Risk markers include rates per mile of collisions, of related losses, of citizen reported dangerous driving, and of bodily injuries. Rates, norms, and deviations shall be as calculated by RMD. An agency may conclude that its record is satisfactory until notified otherwise in writing by RMD.

(14) "Spouse" means the husband or wife of the authorized driver.

(15) "State vehicle" means a motor vehicle owned, rented, borrowed, leased, or otherwise under the possession and control of the state. It is licensed for highway use. A rental vehicle is a state vehicle if it is rented by a duly authorized employee at the cost of the state, solely for official state business. A vehicle, owned by DAS and lawfully rented to a local government or other non-state entity, is not a state vehicle for purposes of these rules. Unless the context clearly requires otherwise, "state vehicle" refers to private vehicles while in use for official state business.

(16) "Volunteer" means an unpaid person appointed by a state agency to work on its behalf. Volunteers are appointed in writing to do state business under agency direction and control. They receive no remuneration. An agency may not call people volunteers for the primary purpose of justifying their transportation in a state vehicle. Volunteer and agent may be used interchangeably unless the context requires otherwise.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0020

Policy and Principle

(1) It is state policy that all vehicles in use for state business shall be used legally, courteously, and safely.

(2) The basic principle of these rules can be summarized for most drivers as follows: **If you have a valid driver license and you are acting at the direction and control of a state agency, you may drive in any way or for any purpose that is lawful and necessary to carry out the official business of your agency. Whenever you do otherwise, you are personally liable for all driving costs and related risks.** The remainder of these rules apply this principle in detail to the hundreds of varied situations the state, its agencies, officers, employees, and agents may encounter.

(3) When the legal status of a driver license or driving record is in doubt, the agency shall ask the Oregon State Police or ODOT-DMV to evaluate the questioned item under applicable law and without regard to these rules. DAS-RMD shall determine issues that remain unresolved.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0100

Minimum Driver Requirements

(1) To drive any motor vehicle on state business, a driver must:

(a) Be 18 years or older, legally responsible for his or her actions and contracts, and subject to an agency's direction and control;

(b) Hold a driver license acceptable under these rules;

(c) Qualify to drive under these rules and any rules or policies of the driver's agency and of the agency owning the vehicle; and

(d) Have permission from the driver's agency to drive.

(2) An acceptable driver license is a regular, temporary, or commercial license that is lawful, current, and valid. It must be issued by the state or country where the employee actually resides. It must be legal to use in the jurisdiction where the driver is driving. It must be the kind or class or be endorsed as required by law for the kind of driving to be done.

(3) An international license is an acceptable license if the following conditions are met:

(a) The driver's agency shall agree in writing to accept the license.

(b) The license shall be acceptable for one period of no more than ninety days.

(c) Before allowing the driver to drive on state business, the agency shall furnish him or her a copy of the Oregon driving manual and a briefing on state driving law and rules.

(4) A hardship or probationary permit is a limited use driving permit granted by ODOT-DMV to a person whose license is suspended. The permit is acceptable under these conditions:

(a) The driver must be a state employee other than a temporary employee. See the definition of employee.

(b) Before deciding to accept the permit, the agency shall review the driver's full driving record. The agency may attach conditions to its acceptance of the permit.

(c) The agency shall give the driver counseling on its expectations for safe and legal driving. The agency shall give the driver a copy of these rules and any agency rules, policies, or conditions agency attaches to its acceptance of the hardship or probationary permit.

(d) The driver must complete, or have completed in the preceding 12 months, a safe driving training course.

(e) A letter from the agency head or designee shall be given to DAS-RMD that requests DAS-RMD to certify state self-insurance coverage to ODOT-DMV. No one else shall have authority to certify state coverage.

(f) The employee shall drive only within the restrictions of the permit.

(g) DAS-RMD approval is required for a permit from an out-of-state DMV.

(5) A driver license or permit is not acceptable if it:

(a) Is legally invalid or unlawful due to changed residence or any other reason;

(b) Lacks a legally required endorsement or class; or

(c) Is issued with restrictions, except when used within those restrictions.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0200

Voluntary and Compulsory Driver Standards

(1) Agencies that maintain a satisfactory agency record may develop their own standards for training and driving records. Alternatively they may use the standards that are compulsory for agencies on trial status. Agencies may apply their standards to any reasonable class: new drivers, problem drivers, passenger carriers, high risk driving, or all drivers.

(2) DAS-RMD may place on trial status an agency that fails to maintain a satisfactory agency record. During trial status, the following minimum standards are compulsory:

(a) Within 12 months of notice of its trial status, an agency shall assure that its drivers have at least the driving records and training described in this section. The agency shall continue to do so until DAS-RMD gives notice that it has held a satisfactory record for two fiscal years.

(b) The trial status agency shall verify driver's license, training, and driving record upon learning of a driver's moving-vehicle traffic citation, vehicular collision on state business, request for a hardship permit, or request for exception or extension of any of these rules.

(3) An agency on trial status may find a driver's record acceptable if the driver has not forfeited bail or been convicted for any of the following, or reasonably similar, driving violations. The listed periods begin at the later date of violation, forfeiture, or conviction. The following kinds of driving records shall be unacceptable:

(a) A major traffic offense in the last 24 months. This includes reckless driving, driving under the influence of intoxicants, failing to perform the duties of a driver, criminal driving while suspended or revoked, fleeing or attempting to elude a police officer, and others;

(b) Felony revocation of driving privileges or felony or misdemeanor driver license suspension within the last 24 months;

(c) More than three moving traffic violations in the last 12 months;

(d) A careless driving conviction in the last 12 months; or

(e) A Class A moving traffic infraction in the last 12 months.

(4) An agency on trial status may consider its driver training acceptable if:

(a) All new drivers complete safe driver training before driving a state-owned vehicle.

(b) All drivers complete a safe driver training course at least once in every five years.

(c) The agency accepts verified training previously taken by a driver.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0300

Verifying Driver Qualifications

(1) Agencies shall not knowingly allow anyone to drive on state business who does not conform to these rules. An agency may verify drivers' qualifications at any reasonable schedule or time and by any reasonable means. Means might include direct checks, review of copies of records supplied by the driver, or accepting drivers' signed statements.

(2) All drivers shall verify for themselves that they meet all driver qualifications, including requirements of law, rule, and employing and vehicle-owning agencies. Drivers shall present evidence of meeting qualifications to any affected agency upon request. Drivers shall promptly report to their supervisor a loss of acceptable driver license status or other requirement.

(3) An agency shall verify its driver meets its standards whenever it learns of the driver's involvement in an accident, traffic citation, or a major traffic offense.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0400

Authorized Drivers

(1) Only the following are authorized to drive motor vehicles on state business. They are only authorized while driving in conformance to these rules:

(a) Adults under the direction and control of a state agency; and

(b) Anyone specifically authorized by state statute, including ORS 283.305; and

(c) Anyone authorized by this OAR 125-155-0400.

(2) OSSHE students may drive state vehicles under these rules, provided that OSSHE adopts, in conjunction with DAS-RMD, the rules required by ORS 283.310, identifying officially sanctioned programs and setting vehicle operation standards and training for safety of all employees, students, and volunteers. These rules shall then apply to students driving vehicles owned by agencies other than OSSHE.

(3) A person shall not drive any motor vehicle on state business simply because he or she is related or known to an authorized driver.

(4) Under state rules, agencies may contract to reimburse their contractors' mileage. Therefore, an agency shall not furnish a vehicle to any contractor who is not its agent. An agency shall not furnish a vehicle to a contractor who is its agent unless:

(a) It is clearly necessary or beneficial to the agency;

(b) The agency has the consent of the vehicle owner, if other than the agency;

(c) The contract requires the contractor to comply with these rules and to furnish adequate primary vehicle liability and property insurance; and

(d) The contract states the allowed uses of the vehicle, states the exchange of value for use of the vehicle, and holds the contractor liable for its safe use and return.

(5) To the extent required for state business, an agency may allow its driver or working passenger to employ a private chauffeur, paid or unpaid. The agency may allow its driver or passenger to employ one adult to accompany and assist him or her in any reasonable way, paid or unpaid. The following conditions shall apply:

(a) The state driver or passenger shall be liable to the state and hold the state harmless for the actions of his or her aide or chauffeur. The aide or chauffeur shall hold the state harmless for any actions of his or her principal or employer, the state driver or passenger.

(b) The state driver or passenger shall furnish proof, acceptable to the agency, of primary auto liability insurance covering the driving of the chauffeur in a state vehicle.

(c) The state driver or passenger shall assure that the aide or chauffeur complies with all state vehicle laws, rules, and policies.

(d) Nothing in these rules empowers or prohibits an agency from paying any expense. However, except as expressly provided by written agreement with the agency, the aide or chauffeur shall have no right to any compensation, benefit, insurance coverage, indemnification, or reimbursement of any kind from the state. By virtue of the state permitting an employee to have an aide or chauffeur, the aide or chauffeur shall not become an employee, agent, or volunteer of the state.

(e) Agencies may permit the spouse of a driver to accompany him or her. The spouse shall constitute the driver's aide and shall be subject to these rules and conditions affecting aides. A spouse shall not drive unless allowed by the agency as a necessary chauffeur under these rules.

(f) Agencies may set additional conditions. These conditions for aides and chauffeurs do not apply to an aide or chauffeur retained at agency expense and under the direct supervision and control of the agency.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0410

Authorized Driver Summary

The following table summarizes many issues from these rules dealing with who may drive for the state at whose risk. Private vehicles on private business are not subject to these rules. See the remainder of OAR 125, division 155 for details. Chief Condition:

(1) Employee or Volunteer:

(a) State Direction/Control:

(A) State vehicle or state rental:

(i) Control: State;

(ii) At Risk/Liable: Primarily state.

(B) Private vehicle on state business:

(i) Control: State;

(ii) At Risk/Liable: Secondly state.

(b) Any Private Use — Any vehicle:

(A) Control: Employee;

(B) At Risk/Liable: Employee.

(2) Agent on Contract:

(a) State Direction/Control — Contract Terms:

(A) State vehicle and state rental for agency need or benefit:

(i) Control: State;

(ii) At Risk/Liable: Primarily state.

(B) Private vehicle on state business:

(i) Control: State;

(ii) At Risk/Liable: Secondly state.

(b) Any Private Use — Any vehicle:

(A) Control: Agent;

(B) At Risk/Liable: Agent.

(3) Non-Agent Contractor: Contract Terms — Any vehicle (State vehicles prohibited.)

(a) Control: Contractor;

(b) At Risk/Liable: Contractor.

(4) Client: Only as Specified by Law and Agency Agreement:

(a) State vehicle:

(A) Control: Client;

(B) At Risk/Liable: Varies.

(b) Any private vehicle or rental:

(A) Control: Client;

(B) At Risk/Liable: Client.

(5) OSSHE Student: OSSHE Adopts Rules and Controls Use — Any vehicle allowed by OSSHE or owning agency:

(a) Control: OSSHE, owner;

(b) At Risk/Liable: Same as for Agent.

(6) SPOUSE: Prohibited, as Spouse — Vehicle: None on state business:

(a) Control: Spouse;

(b) At Risk/Liable: Spouse/employee.

(7) Chauffeur: Need and Agency Approval — Any vehicle on state business:

(a) Control: Employee;

(b) At Risk/Liable: Employee.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95; Administrative Reformatting 11-29-97

125-155-0420

Passengers

(1) Agencies may permit drivers to transport people, animals, or things to the extent needed to accomplish state business.

(2) No driver may give a ride in a state-owned vehicle to anyone except as permitted by these rules or necessary to accomplish official state business. Hitch hikers shall not be allowed in any state vehicles or private vehicles on state business.

(3) All passengers shall follow these rules and all reasonable directions of their drivers.

(4) Drivers shall obtain prior agency approval and conditions for the following passengers:

(a) Guests of the government. These include official visitors from any entities in which the state has any interest. They include local government officials traveling to the same area or near the route of the state driver. Guests may be cost-sharing or courtesy passengers.

(b) Observers or ride-a-longs;

(c) Driver's or passenger's aides; or

(d) Minors and others who are not legally liable for themselves and their agreements.

(5) The following drivers shall obtain prior agency approval to transport any passengers on state business: any authorized driver whose license is a hardship permit and all agents, volunteers, temporary employees, students, and inmates. Agencies may impose conditions.

(6) Family members, friends, and pets of drivers and working passengers shall not ride in state vehicles or in private vehicles on state business except under the following conditions and requirements:

(a) Friends, family, and pets may not ride in state vehicles or in private vehicles on state business except as permitted by these rules and then only with prior agency permission. Agencies may impose any conditions.

(b) Medical aid animals may be taken along as necessary without advance permission, but remain subject to reasonable agency conditions.

(c) Their children under age 18 may ride with them only with advance agency approval and a DAS order allowing children to ride for special occasions. Friends under the age of 18 are prohibited.

(d) Family members, whether riding with agency permission or without and whether in compliance with these rules or not, shall ride at their own risk or at the personal risk of the driver, employee, or person to whom they relate. The state shall not insure or indemnify friends or family nor insure or indemnify the employee against any claims brought by friends or family.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0430

Passengers Summary

The following table summarizes many issues from these rules dealing with who may ride in a state vehicle or a vehicle on state business and at whose risk. Private vehicles on private business are not subject to these rules. See the remainder of OAR 125, division 155 for details. Chief Condition:

(1) **Generally:** Needed to Accomplish State Business:

(a) State Vehicle and State Rental — Control/At Risk:

Primarily state;

(b) Private on State Business — Control/At Risk: Secondarily

state.

(2) **State Guest, Observer, Minor or Non-Competent:** Prior

Agency Permission — Vehicle: Same — Control/At Risk: Same.

(3) **Employee's Aide:** Prior Agency Permission — Any

vehicle on state business — Control/At Risk: Aide or Employee.

(4) **Employee's Child:** Agency Permission and DAS Order

— Any vehicle on state business — Control/At Risk: Employee-parent.

(5) **Employee's Spouse:** Only as Employee's Aide — Any

vehicle on state business — Control/At Risk: Spouse or employee.

(6) **Hitchiker:** Prohibited — Any vehicle on state business —

Control/At Risk: Employee.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95; Administrative Reforming

11-29-97

125-155-0500

General Use of Vehicles

(1) By law, state vehicles shall be used only for official state business and not for any personal purposes. This applies to state owned vehicles. It also applies to private or rental vehicles while being used for state business or at state cost or risk. Vehicle uses contrary to the law or these rules shall mean the driver is acting outside the definition of official state business, is not an authorized driver, and is acting outside the course and scope of his or her employment or duties. "Contrary to these rules" includes making prohibited uses of a state vehicle or a private vehicle purportedly on state business, carrying prohibited passengers or materials, and allowing an unauthorized person to drive. When a private or rental vehicle is used contrary to these rules the driver and vehicle shall not be covered by state insurance or self-insurance coverages. When a state vehicle is used contrary to these rules, the vehicle and its use shall be the personal liability of the driver. The driver shall be personally liable for any damage to the state vehicle or harm to any other parties or property. State tort liability indemnification or self-insurance shall not apply.

(2) The law requires that "official state business" be narrowly construed. No diversion from state use to serve a personal purpose is permitted. However, a necessary state business use may coincide with a personal purpose. Stopping for meals or breaks enroute is an example where state and personal uses are both served.

(3) A state vehicle may not be used by an employee to the private financial benefit of the employee or any member of his or her household. No one has authority to permit anyone to make personal or family use of a state vehicle or any vehicle driven at state risk.

(4) It is the responsibility of all agencies and drivers to assure that the requirements of the law and these rules are followed in all situations.

(5) Drivers of state vehicles and private vehicles on state business shall comply with the following safe use requirements:

(a) Drivers shall transport material that is dangerously explosive, flammable, radioactive, or extremely toxic only within the precautions required by law. Passengers shall be transported with the material only with their informed consent.

(b) Drivers shall require appropriate safety restraints to be worn. They shall require children to ride in any legally required car seats. Animals shall be in secured carriers. Agencies may approve any lawful exceptions.

(c) Drivers shall not consume alcohol in vehicles nor operate a vehicle under the influence of intoxicants. They shall not transport alcohol in state vehicles unless required by their agency to do so for official state business and then only as permitted by law.

(d) Drivers shall not transport illegal drugs or contraband of any kind in vehicles except as necessary to carry out their assigned duties of official state business.

(e) Drivers shall not transport firearms in vehicles unless required to do so by their agency under its authorization by state law. An agency may permit the transport of unloaded, packaged firearms as necessary for official state business. Officially sanctioned programs of OSSHE may transport unloaded firearms only under written conditions set by OSSHE.

(f) Drivers shall not allow smoking in state vehicles designated for no smoking.

(g) Private specialty vehicles and private off-road vehicles shall not be used for state business except to the extent that an agency determines that necessary state business cannot reasonably be accomplished without the use of the particular private vehicle.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0510

Day Use

(1) "Day-use" means the driver of a state vehicle is not staying away overnight due to state business. During day-use, drivers may travel for any state business and no personal business.

(2) The state's vehicle, during day-use away from the duty station, shall not be used to reach personal recreational activities,

personal appointments, grooming or fitness facilities, or personal visits; or for transportation of, or errands for, friends or relatives. Drivers may stop for food or breaks at sites reasonably near to their direct business route.

(3) The state's vehicle shall not be taken to or from the duty station for any personal day-use purposes. This prohibits personal travel between home and the driver's official duty station. It prohibits travel from the duty station to go eat, attend a personal appointment, recreate, assist friends or family, visit, or get laundry or grooming done. These are not state business.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0520

Overnight and Full-time Use

(1) "Overnight use" means the driver is traveling in the state's vehicle overnight for state business. In that working situation, state business includes allowing for employees' daily necessities. The minimum necessary use of the state's vehicle is permitted to meet drivers' and passengers' normal daily needs. Private vehicles are always free to be used for these purposes and shall be deemed to be engaged in personal and private business, not state business for these uses. A driver on overnight use may make negligible and prudent use of the state's vehicle as follows. Within the local vicinity of the direct travel route or of the overnight assignment and during reasonable hours, the driver may travel to:

- (a) Restaurants, stores, and the like for meals, breaks, and personal needs;
- (b) Grooming, medical, fitness, or laundry facilities; or
- (c) Recreational activities, such as theaters, parks, or friends or relatives homes.

(2) "Full time use" means the driver is assigned virtually all day and every day to day-use of a state vehicle for field work away from home and office. During full time use, drivers are permitted to use the state's vehicle to attend medical appointments for injury covered by workers' compensation. The appointment shall be within the period of their assigned duties and on or near their direct or assigned route.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0530

Emergency Use

(1) A roadside emergency is an obvious accident or breakdown within the borders of this state that leaves a vehicle's occupants dangerously stranded. Someone just hitch-hiking or asking for a ride or someone in a city with a mechanical breakdown are not roadside emergencies. A state driver and passengers may use the state's vehicle and equipment to render reasonable emergency aid under the following conditions and provisions:

(a) Those giving emergency aid shall only be state employees on duty on official state business in an official, state-owned vehicle.

(b) An agency may, in writing, countermand this roadside emergency provision for any or all of its drivers. Employee's shall not give emergency aid under these rules if their agency has instructed its drivers not to render roadside aid.

(c) In giving emergency aid as provided in these rules, state employees shall be deemed to be acting within the course and duties of their state employment for purposes of all state insurance and self-insurance coverages.

(d) The assisting employee shall not be held personally liable by the state for any unintended damage to state-owned property, used for the kind of task for which it was reasonably designed. For example, pushing or pulling another car requires a state vehicle designed and specially equipped to do that task.

(e) Reasonable aid includes using state cellular phones and radios to call for aid. If necessary, the state vehicle may be used to transport someone to the nearest telephone, shelter, repair service or emergency medical provider. State fire extinguishers, first aid kits, and blankets may be used.

(f) Rendering aid shall be purely voluntary in every case. Employees are not urged or expected to render aid. An employee should do only what he or she is willing and trained or experienced to do.

(g) Anyone who renders aid other than in compliance with these rules, does so as a private person, entirely at his or her own risk and cost, and not as state business or duties.

(2) When circumstances require it, a state vehicle may be used to transport an injured employee or client to emergency medical care for an immediate work-related injury. Traffic laws shall be obeyed. A state vehicle shall not be used for transport unnecessarily or when appropriate professional emergency services are available.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0540

Vehicle Use Summary

Following is a summary table. It lists some examples of uses or activities that may or may not be made of a vehicle, depending on the vehicle's type and travel status. See the remainder of OAR 125, division 155 for details. **Each listed use is allowed during the state travel status shown below or it is prohibited or constitutes a private use, also, as shown below.**

(1) Ordinary state business:

- (a) State vehicle: On any travel status;
- (b) State rental: On any travel status;
- (c) Private vehicle status: On any travel status.

(2) Non-urgent on the job injury:

- (a) State vehicle: Overnight, full-time;
- (b) State rental: Overnight;
- (c) Private vehicle status: Private use, cost, risk.

(3) Medical, personal:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Private use, cost, risk;
- (c) Private vehicle status: Private use, cost, risk.

(4) Personal grooming:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Overnight travel status;
- (c) Private vehicle status: Private use, cost, risk.

(5) Personal recreation:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Private use, cost, risk;
- (c) Private vehicle status: Private use, cost, risk.

(6) Personal laundry:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Overnight travel status;
- (c) Private vehicle status: Private use, cost, risk.

(7) Personal necessity shopping:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Overnight travel status;
- (c) Private vehicle status: Private use, cost, risk.

(8) Family needs:

- (a) State vehicle: Prohibited;
- (b) State rental: Prohibited;
- (c) Private vehicle status: Private use, cost, risk.

(9) Food/Break enroute:

- (a) State vehicle: On any travel status;
- (b) State rental: On any travel status;
- (c) Private vehicle status: On any travel status.

(10) Emergency roadside aid:

- (a) State vehicle: On any travel status;
- (b) State rental: Private use, cost, risk;
- (c) Private vehicle status: Private use, cost, risk.

(11) **Emergency on the job injury:** On any travel status if necessary and emergency services are not available.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95; Administrative Reformatting 11-29-97

125-155-0600

Storing State Vehicles

(1) The state's vehicles shall be stored at sites owned, leased, or controlled by the state except during travel or the conditions listed in these rules. When practical, a state vehicle at a home, hotel, or motel shall be parked off the public street in a reasonably secure setting.

(2) An agency may allow a state vehicle to be parked at home when a task or trip requires a driver to depart so early or return so late that it is impractical to pick up or return the vehicle to state parking on the same day. For long-term assignment of a vehicle to home, the agency must do a cost-benefit analysis. The analysis must consider the costs and risks of daily travel to the home, the frequency of call-outs, parking risks, any salary savings, and other factors. The analysis should weigh reasonable alternatives such as the cost of reimbursing private vehicle mileage. An agency may allow an employee to park a state vehicle at home when one of the following conditions requires and it is to the benefit of the state to provide its vehicle.

(a) Assigned, normal duties require the driver to frequently travel to urgent, unscheduled field work after hours. The mere possibility of being called-out is not sufficient. Call-outs must actually occur with justifiable frequency.

(b) The driver's home is his or her official duty station from which he or she engages in virtually full-time field work away from the office or motorpool.

(c) It will clearly reduce state paid time to permit a driver to park a state vehicle at home while on temporary assignment away from the duty station.

(d) Other circumstances caused by state business in which home garaging will clearly reduce direct costs of the agency.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0700

Insurance and Collisions

(1) Coverages for the state's vehicles and drivers and loss reporting requirements are found in DAS-RMD self insurance policies, in ORS 30.260–30.300 and in ORS Chapter 278.

(2) Drivers are responsible to provide their own proof of legally adequate insurance for all uses they make of private vehicles and vehicles they rent for any mixture of state and personal uses. DAS-RMD provides certificates of self-insurance coverage for rental vehicles that are used exclusively for official state business.

(3) The state's self-insured coverage has been accepted by jurisdictions in the United States, its possessions and territories, and Canada. Drivers must contact DAS-RMD to arrange coverage for any state vehicles in other locales. Lack of proper coverage in some countries could result in a driver being personally liable for criminal fine and imprisonment, criminal defense costs, and payment to the state for the confiscation of its vehicle.

(4) Mileage reimbursement is the only amount that the state or its agencies shall pay to any employee for use of his or her private vehicle on state business. The state may not pay an employee for damage to his or her vehicle or for deductibles or increased insurance rates due to an accident occurring while on state business. Mileage reimbursement details are found in DAS State Controller's Division Oregon Accounting Manual and ORS Chapter 283.

(5) Drivers shall report to their agency and to DAS-RMD all collisions or accidents occurring to any vehicle while on state business. Agencies shall review each collision or accident involving any vehicle in use on state business. The review shall determine whether the collision or accident was preventable by reasonable safe driving techniques and recommend action to prevent recurrences. Agencies may use any objective panel for this purpose.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0800

Rules Enforcement

(1) For purposes of all state insurances or self-insurance coverages, while transporting prohibited passengers or material in a private vehicle or otherwise using a private vehicle contrary to these rules, the driver shall be deemed in all respects to be driving on personal business; not official state business. The private car driver shall not be subject to discipline for making personal use of his or her vehicle unless the driver is acting in violation of his or her agency's policies or supervisory directives.

(2) For purposes of all state insurances or self-insurance coverages, while transporting prohibited passengers or material in the state's vehicle or otherwise using a state vehicle contrary to these rules, the driver shall be deemed in all respects to be driving on personal business; not official state business. The driver shall be liable to the state for the value of the use of the vehicle and for any damage to the vehicle arising out of the misuse. The driver may also be subject to any other discipline or penalty of any kind provided by law or contract.

(3) These rules shall have no effect on a driver's qualifying for salary, employment benefits, or state reimbursement of mileage, meals, lodging, or expenses for which the driver otherwise qualifies.

(4) The agency employing a driver shall apply and enforce these rules. The agency owning the state vehicle may enforce these rules as they relate to its vehicles. Nothing in these rules shall limit an agency's ability to apply any kind of personnel or disciplinary action or to exercise any of its specific rights or duties under existing contracts with vendors and agents. Agencies may make additional provisions.

(5) Regardless of any agency actions, any violation of these rules may result in DAS exercising any of its rights and authorities. These may include:

(a) Imposing fines and withholding pay as provided in ORS 291.990; or

(b) Conditionally restricting a driver or agency from any or all access to or from certain uses of DAS Fleet vehicles.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0900

Extensions and Exemptions

(1) State and federal law shall supersede any provision of these rules to the extent that complying with the provision would violate the law.

(2) Agencies that are not subject to ORS Chapter 283.310 shall notify DAS-RMD in writing if they elect that these rules shall not apply to their own vehicles and personnel. Otherwise, these rules shall apply to them by virtue of ORS 278.405. Their notice shall be delivered to DAS-RMD within 120 days following the effective date of these rules. Thereafter, notice that the agency wishes to cease being covered by these rules shall be delivered 120 days before the agency's election shall take effect. The agency shall provide DAS-RMD with its notice, a copy of the rule or policy it will use in place of these rules. Regardless of election, these rules shall apply to any state use of any vehicle owned by an agency that is subject to these rules.

(3) These rules shall not apply to a state-owned vehicle used by federal, local, other state government, or other entities when that vehicle is furnished and used under the terms of an intergovernmental agreement, instate or intergovernmental compact, or similar agreement.

(4) If an officer or employee fails to meet any new driving records requirement on the day it takes effect, the agency shall grant the minimum time necessary to meet the new requirement. Agencies shall not extend time to anyone who made materially false statements to the agency about his or her related driving record or qualifications.

(5) An agency that is notified it is on trial status may propose, for DAS-RMD approval, a plan of action as an alternative to the compulsory standards set by these rules.

(6) If an agency finds it is reasonable and necessary for essential state business, it may permit an employee to drive temporarily after he or she ceases to meet training or records standards. The agency shall impose in writing appropriate restrictions and a plan to achieve driver qualifications in minimum time. Restrictions shall be designed to reduce risk to the agency, passengers, and the public. A temporary permission under this rule shall not be renewed or extended. No agency shall extend time or in any way excuse any driver from any driver license requirements or any requirement imposed by law.

(7) Vehicle sales and repair contractors may drive state vehicles, at their own risk and as necessary, for pick-up, delivery, and test drives.

(8) To the extent noted here, state agencies may permit:

(a) Their criminal law enforcement employees and emergency public safety drivers to disregard provisions of these rules to the extent necessary to prevent interference with law enforcement and emergency duties;

(b) Detection dog handlers to use specially equipped detection dog vehicles for home to work travel as necessary for work involving the dog or for the benefit of the dog; or

(c) Undercover criminal investigators to disregard provisions of these rules as necessary to carry out lawful undercover assignments, protect identities, and assure personal security.

(9) The Governor, the Director of the Department of Corrections, the Adjutant General of the Military Department, and the Superintendent of State Police may use specially equipped vehicles at all times and places. These state officers are on duty at all times. The safety, security, and welfare of the public depend on their personal safety, security, and accessibility. What constitutes appropriate use of those vehicles within the law shall be determined by each of them in their own discretion.

(10) An agency may apply to the Director of DAS for a variance from any of these rules. The request shall be submitted by the agency, not by an affected driver or passenger, to DAS-RMD. The RMD administrator shall review the request and submit it to the director with a recommendation. DAS-RMD shall then convey the director's decision to the agency. Requests shall be made at least 30 days in advance of the needed effective date.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

DIVISION 156

SALE OF COMPRESSED NATURAL GAS

125-156-0000

Sale of Compressed Natural Gas to Private Entities

(1) The Department of Administrative Services (DAS) may sell Compressed Natural Gas (CNG) for vehicle fueling purposes to members of the public or private entities until a CNG fueling vendor is established within fifty miles of the DAS owned fueling site(s).

(2) DAS will charge a rate sufficient to recover the cost of the fuel and any incidental administrative costs to provide the service.

Stat. Auth.: ORS 283.310; Other Auth.: 2010 OL Ch. 30, Sections 13 & 14

Stats. Implemented: ORS 283.327

Hist.: DAS 1-2012, f. 7-27-12, cert. ef. 8-1-12

DIVISION 160

ADMINISTRATION AND BENEFITS OF THE INMATE INJURY SYSTEM

125-160-0000

Purpose, Applicability, and Effective Date

(1) Section 41, Article 1 of the Oregon Constitution provides that injury or disease from inmate work shall be covered by a corrections system inmate injury fund rather than workers compensation law. These rules set procedures and benefits. They are patterned generally after accidental death and disability insurance.

(2) These rules apply to injuries to inmates in authorized work or training assignments of the Oregon Department of Corrections.

(3) These rules apply to injuries occurring on and after June 30, 1995.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0010

Definitions

As used in chapter 125, division 160, unless the context requires otherwise:

(1) "Awards" or "benefits" include one or more of the following types:

(a) "Death benefit" means the monthly amount of disability award the person deceased from a covered death would have received at a disability rating of 100 percent. Death benefit also includes any payment to the claimant's estate of burial expenses.

(b) "Final benefit or award" means the Department's final notice of all benefits due to claimant. It is normally issued upon claimant's request for reaffirmation or modification of the initial estimate. Benefits do not increase after final award appeal rights are exhausted.

(c) "Initial estimate" means the Department's notice to a claimant that the injury qualifies for permanent disability benefits. It includes the estimate of disability rating and benefits.

(d) "Medical services" means those medications, medical procedures, rehabilitation services, physical aids, and prosthetics that are duly prescribed by the attending physician. Medical Services must be of proven therapeutic value. They must be medically necessary to the process of recovery from the covered injury. They permanently cease when a claimant is medically stationary.

(e) "Permanent disability benefit or award" means the Department's estimated and final calculations of the benefit for a permanent disability from a covered injury.

(f) "Prosthetics benefit" means an amount paid, reserved, or added to permanent disability benefits for the repair or replacement of prosthetics. The cause of repair or replacement must be normal wear and tear or medical need caused by the covered injury and no other cause. The award shall be the Department's estimate of current replacement cost, multiplied by the probability of replacement before age 65, multiplied by the disability rating. Covered prosthetics are only those prescribed by the attending physician and not available over the counter. They must be medically necessary due to the covered injury and no other cause. No prosthetics awards shall be made for pre-existing prosthetics or for glasses, hairpieces, or dentures. Prosthetics benefits shall cease if and when permanent disability award payments cease to be paid or payable for any reason.

(g) "Rehabilitation Services" means physical restorative services prescribed by the attending physician. They must be necessary to recovery from a covered injury. They are part of medical services.

(h) "Temporary disability benefit or award" means the permanent disability award at a disability rating of 100 percent. It is paid only during temporary disability for up to six months after release.

(i) "Training benefit" means any training provided by Corrections during confinement that may improve the chances of employment.

(2) "Authorized work or training assignment" is the duties of, and travel to and from, work or occupational training assigned to the claimant by Corrections. It applies only to assignments during confinement in a facility or institution located within Oregon and operated by Corrections. An assignment begins with the first line movement going to, and ends with the last line movement leaving, the assignment.

(3) "Beneficiary" is a dependent of the claimant who may claim death benefits upon claimant's covered death. Beneficiaries shall meet the following tests:

(a) A beneficiary must, on the date of injury and on the date of covered death, be one of the following, in relationship to the deceased inmate-claimant:

(A) Legal husband or wife of the claimant.

(B) Child of the claimant. Child includes claimant's natural child, born or unborn, claimant's legally adopted child, stepchild, or other child toward whom the claimant stands in loco parentis.

(C) Father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half sister, half brother, niece or nephew of the claimant.

(b) A beneficiary must also meet the following with regard to the deceased inmate-claimant:

(A) A beneficiary shall have relied upon the claimant for the major part of beneficiary's financial support. He or she shall have done so for the twelve months preceding the date of Corrections confinement, date of injury, or date of covered death. The Department shall select from these three dates the one it deems the most reasonable indicator of dependency under the circumstances.

(B) A beneficiary who is the deceased's child shall not have attained 18 years of age or have married. He or she shall not be legally emancipated and not, since claimant's confinement, have filed for emancipation from the claimant's parenting. He or she shall not have had a court terminate the inmate's parental rights. He or she shall not, since the inmate's confinement, have filed for, or had a parent or legal guardian file for, the termination of the claimant's parental rights.

(C) A beneficiary shall not have terminated nor, since claimant's confinement, applied in any way to terminate the familial, legal relationship of the beneficiary to the claimant.

(D) A beneficiary shall not be divorced from, nor have applied for legal separation or divorce from, the claimant during the period between the claimant's Corrections' confinement and covered death. Divorce or separation shall not bar a beneficiary if the beneficiary also applied for, received, or attempted by process of law, to collect funds from the claimant for support or maintenance throughout that period.

(4) "Claim," "request," or "application" means written requests delivered to the Department claiming benefits due the claimant. Claims shall be on the forms or in the formats set from time to time by the Department. They shall be filed within the times set by these rules.

(5) "Claimant" is an inmate who has filed a claim for benefits claimed to be due to him or her under these rules. As applicable, claimant also includes beneficiaries, legal representatives of inmates' estates, and medical providers. Someone other than the inmate may be a claimant only of benefits due directly to him or her, not to benefits which the inmate may claim.

(6) "Confinement" means the claimant, inmate or beneficiary, is held in the legal and physical custody of any government penal, or other agency or institution, under court order. Confinement stops permanent disability and death benefits.

(7) "Corrections" means the State of Oregon Department of Corrections.

(8) "Corrections Medical Staff" means the physicians, nurses, and medical contractors of Corrections. It includes the medical staff of any penal institution where a claimant is confined when designated by Corrections or the Department to provide medical services under these rules.

(9) "Covered Death" means the claimant's death due, in large part, to a covered injury. A death may be a covered death only if it occurs within one year after the date of injury or if a claim for the covered injury was filed within 90 days of the date of injury and was not denied.

(10) "Covered Disease" means a disease or infection that meets all the following tests:

(a) It is caused in major part by the accidental exposure to substances in the course of authorized work or training assignment. Exposure means ingestion, absorption or inhalation of, or accidental contact with, the substance. Substances include dust, fumes, vapors, gases, radiation and the like. Substances shall only be those to which a worker who is not an inmate is not ordinarily exposed.

(b) It causes damage to physical body tissues or organs.

(c) It requires medical services.

(d) It results in temporary disability lasting at least seven consecutive days, permanent disability, or covered death.

(e) It is not an injury, illness, disease, or condition already awarded compensation by public or private funds.

(f) The Department has found it eligible for benefits under these rules.

(11) "Covered Injury" means that injury which meets all the following tests:

(a) It is accidental.

(b) It causes sudden damage to physical body tissues or organs, or accidental injury to prosthetic devices.

(c) It occurs in the course of, and is caused in major part by, an authorized work or training assignment.

(d) It requires medical services.

(e) It results in temporary disability lasting at least seven days, permanent disability, or covered death.

(f) It is not an injury, illness, disease, or condition already awarded compensation by public or private funds.

(g) The Department has found it eligible for benefits under these rules.

(h) Unless the context clearly requires otherwise, covered injury also includes covered disease.

(12) "Date of injury" means:

(a) For a covered injury, the day on which the accident occurred.

(b) For a covered disease, the earlier of the date of first medical treatment or date of diagnosis of the covered disease. Date of injury shall not be later than two years after the last exposure to the alleged disease-causing substance in the authorized work or training assignment.

(13) "Department" means Risk Management of the State Services Division of the Department of Administrative Services. It also means any contractor or agency designated by the Department to perform the Department's duties under these rules.

(14) "Disability" means the attending physician's determination of one of the following from objective medical findings:

(a) "Temporary Disability," the claimant is medically unable, for seven or more consecutive days, to perform substantially all of the customary duties of any employment. This shall be the direct result of a covered injury. Claimant shall not be medically stationary.

(b) "Permanent Disability," the claimant is medically stationary and has a disability rating from the covered injury that will be permanent.

(15) "Disability rating" means the attending physician's determination from objective medical findings of claimant's percent of permanent disability due solely to the covered injury. The rating shall conform to the following:

(a) If the claimant has no pre-existing disabilities or disability awards, the disability rating shall be the claimant's permanent impairment. It shall be found according to the **3rd Revised**, or later, edition of the **AMA Guides to the Evaluation of Permanent Impairment**. The physician shall identify the edition used. The disability rating shall be expressed as a percentage of a whole person. If more than one organ system is rated, the percentage of impairment of the whole person shall be combined using the combined values chart in the AMA Guides.

(b) If the claimant has pre-existing disabilities or disability awards, the maximum disability from all sources and causes shall not exceed 100 percent. The Department or the physician shall combine the current disability rating for the covered injury with all prior disabilities and disability awards from any source. The combined values chart in the AMA Guides shall be used. If the combined disability rating exceeds 100 percent, the disability rating for the covered injury shall be reduced to lower the total to 100 percent. The Department shall convert a disability award from any other system to an impairment rating of a whole person when necessary.

(16) "Employment" means claimant's ability, after release from confinement, to seek and perform employment. It shall include any lawful employment which pays at least the then statutory minimum wage of the State of Oregon. It shall be immaterial whether employment is obtained or exists.

(17) "Inmate" is a person committed to the physical and legal custody of Corrections.

(18) "Inmate Hourly Wage Rate," for purposes of calculating benefits under these administrative rules only, means:

(a) For inmates working in PIECP work projects, the Inmate Hourly Wage Rate is the rate established by Oregon Corrections Enterprises in accordance with the annual prevailing hourly wage rate determination completed by the Oregon Department of Employment.

(b) For other inmates, the Inmate Hourly Wage Rate is the state hourly minimum wage established under ORS 653.025.

(19) "Major part" means clearly and substantially more than half of the whole of all causes or contributing factors. Major part does not mean merely disproving factors deemed to be other possible causes.

(20) "Medically Stationary" or "Stationary" means that the attending physician finds that no further material medical improvement would reasonably be expected from medical treatment or the passage of time.

(21) "Physician" means a person licensed, in the state where he or she provides medical services, as a medical doctor, doctor of osteopathy, doctor of optometry, doctor of dentistry or nurse practitioner. All physicians may only provide medical services within the scope of their license. Physician includes one or both of the following:

(a) "Attending physician," Corrections medical staff or other physician authorized in advance by the Department. Attending physicians may diagnose and evaluate injuries and diseases. They may provide or direct medical services to claimants. They may send claimants to medically appropriate specialists for specific treatment, evaluation, advice, or consultation. They determine temporary disabilities, permanent disability ratings, and medically stationary dates.

(b) "Consulting or advisory physician," a physician selected and paid by the Department, Corrections, or the claimant to advise the attending physician. The consulting physician shall review the findings of the attending physician or evaluate the claimant to advise whether the claimant is medically stationary, temporarily or permanently disabled, and the degree of disability rating.

(22) "PIECP" means a Department of Corrections inmate work program certified under the federal Prison Industries Enhancement Certification Program (PIECP) as exempted under 18 USC 1761(c) from the federal prohibition against the transport of inmate-produced goods in interstate commerce.

(23) "PIECP Work Project" means a specific inmate work project that is part of the Prison Industry Enhancement Program.

(24) "Release" means the claimant's release from Corrections' confinement. When the context requires, release also means the date of release from any subsequent confinement.

(25) "Substantial evidence" means that all the discovered evidence, taken together, would lead a reasonable fact finder to believe the facts asserted are more probably true than false. When the weight of the evidence is equal to both sides or only slightly greater to the claimant's side, the fact finder shall find against the claimant.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96; DAS 7-2008(Temp), f. & cert. ef. 10-15-08 thru 4-11-09; DAS 3-2009, f. & cert. ef. 1-23-09

125-160-0020

Calculation of Permanent Disability Awards

A permanent disability award is calculated as two-thirds of the Inmate Hourly Wage Rate multiplied by the disability rating. The weekly amount is calculated in this manner. The Inmate Hourly

Wage Rate, in effect on the date of release, is multiplied by 40, multiplied by .667, and multiplied by the disability rating. To convert to a daily benefit, the weekly amount is divided by seven. To convert to a monthly benefit, the weekly amount is multiplied by 4.35. A prosthetics allowance may be added to the permanent disability award. During confinement, permanent disability and training benefits are entirely limited to any training provided by the Oregon Department of Corrections.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DAS 7-2008(Temp), f. & cert. ef. 10-15-08 thru 4-11-09; DAS 3-2009, f. & cert. ef. 1-23-09

125-160-0100

Benefit Limits During Temporary Disability

For purposes of temporary disability benefits, the Department shall calculate and limit benefits during temporary disability as follows:

(1) While still in confinement, temporary disability benefits shall be limited to medical services provided by or at the direction of Corrections medical staff.

(2) After the release date, any temporary disability award shall be at a disability rating of 100 percent. Temporary disability awards shall be payable for no more than the 6 months immediately following release. Medical services shall be provided only by, or at the direction of, the attending physician and only while the claimant is temporarily disabled and not stationary.

(3) After the release date, medical services shall be limited to \$5,000. No more than \$1,000 of that limit may be applied to rehabilitation services. The limit does not apply to services provided by and through Corrections medical staff while the claimant is confined.

(4) In response to the attending physician's request, Department may waive the foregoing limit on medical services payments. Waiver shall be in increments of \$5,000 not to exceed a total medical services limit of \$50,000. Any conditions that Department may deem reasonable may be attached to its waiver. Any waiver shall conform to one of the following:

(a) Corrections medical staff may request a waiver shortly before or after the date of release if these conditions are met:

(A) The initial claim shall have been promptly filed, treatment promptly sought, and Department shall have found claimant eligible for temporary disability benefits.

(B) Claimant's medical condition shall have remained medically unstationary from time of injury through time of waiver request and release.

(C) Claimant shall be reported by Corrections to be actively cooperating toward recovery.

(D) The treating physician shall give Department a written report. It shall state that the medical condition is due to the covered injury and no other cause. It shall estimate the amount by which essential medical treatment will exceed the foregoing limit on medical services. It shall include a plan of essential treatment.

(b) A post-release attending physician may request a waiver no later than 90 days after release if the foregoing conditions are met. Also, this additional condition shall be met: Due to a covered injury and from no other cause, claimant shall be in dire medical condition that directly threatens death or a permanent disability rating of 70 percent or more.

(5) Further temporary disability medical services limits after release are as follows:

(a) Prior to the first visit to any post-release physician, the claimant shall obtain the Department's written approval for that attending physician. If the Department disapproves the claimant's request, it shall provide the claimant with a list of physicians with whom the claimant may treat. The Department may require a claimant to seek medical treatment through a contract medical service or a Corrections institution's medical staff. A claimant may not change physicians without prior approval of the Department.

(b) The Department may require any physician to provide a written plan for treatment of the covered injury and any other reports, useful under these rules.

(c) Attending physicians, and any medical providers to whom the attending physician or the Department refer claimant under these rules, may bill the Department for reasonable and necessary medical expenses. They shall do so in the same manner and amounts as provided for services under ORS Chapter 656 and related rules, or as provided in any contract with the Department.

(d) The Department shall be required to pay for an examination, investigation, or report only if it is required by the Department or provided or required by the attending physician. This shall include consulting or advisory physicians examination and reports. Department may choose to pay anyone for any actual expense which it considers necessary or useful to determine a claim or to prove a subrogation claim.

(e) The cost of reasonable and necessary medications, prescriptions, physical aids, and prosthetics are medical services. Only those required solely for recovery from the covered injury and duly prescribed by the attending physician qualify. Department may require that these be obtained from the Department, its contract provider, a mail-order service, or any other means determined by the Department to be economical or reasonable.

(f) The Department may require claimants to purchase any prescribed items through a contract pharmacy or mail order supplier. The Department may, from time to time, provide claimants with any terms and conditions for reimbursement of prescription purchases that it deems reasonable. All reimbursement requests shall be submitted in a form required by the Department, with all required documentation, and within 30 days following purchase.

(g) The attending physician shall closely monitor medications. Department shall only pay for a two week supply and one refill of a two week supply. Physician must see the claimant before further refill. The physician may prescribe larger quantities under the terms of a contract with the Department or Corrections or if the medication is known to the physician to be without potential for abuse.

(6) Any and all benefits payable or potentially payable to any claimant during temporary disability may be permanently terminated by Department without notice when any of the following occur:

(a) Attending physician's estimated duration of temporary disability expires without medical findings that claimant continues to be temporarily disabled.

(b) Attending physician reports that claimant is not cooperating in claimant's own recovery.

(c) Claimant fails to appear for any appointment with the attending physician.

(d) Claimant fails to appear for any appointment with any physician designated by the Department or the attending physician for which at least 14 days notice was given to the claimant.

(e) Claimant becomes medically stationary.

(7) Temporary disability benefits may be permanently terminated by Department without notice, upon claimant commencing work or applying for, or receiving, unemployment compensation.

(8) Minor injuries, that require only first aid or that do not result in temporary or permanent disability as defined by these rules, shall qualify only for any medical services that may be provided by Corrections.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0110

Benefit Limits During Permanent Disability

(1) For purposes of initial estimates and final awards, the Department shall calculate and limit benefits for permanent disability as described in this rule.

(2) While still in confinement, all permanent disability and training benefits shall be limited to training provided by Corrections. The need for, and type of, any training shall be decided solely by Corrections. All medical services benefits are permanently terminated.

(3) Upon release all permanent disability benefits shall be limited to the permanent disability payments and prosthetics awards

approved under these rules. All medical services benefits except preparation of reports for final award or appeals are permanently terminated. No training benefit shall be provided after release except that the Department, solely upon the request and advice of Corrections, may extend a program commenced in confinement.

(4) Upon release with permanent disability, any prosthetics award may be paid in advance. It may be reserved to pay when actual need is proven. It may be converted to a periodic payment and paid as part of the permanent disability award. Department shall select the payment method it deems reasonable in its final award.

(5) Upon release with permanent disability, the permanent disability award shall be payable for limited periods. The periods start when release and medically stationary dates are both attained. Although no payment shall be made, time spent in later confinement shall count against the period in which benefits would be payable. Disability ratings and periods shall be as follows:

(a) For a rating of 10 percent or less, the permanent disability award shall be zero.

(b) For a rating of more than 10 percent through 20 percent, the permanent disability award shall be payable for a period of 24 months or to age 65, whichever occurs first.

(c) For a rating of more than 20 percent through 30 percent, the permanent disability award shall be payable for a period of 48 months or to age 65, whichever occurs first.

(d) For a rating of more than 30 percent through 40 percent, the permanent disability award shall be payable for a period of 96 months or to age 65, whichever occurs first.

(e) For a rating of more than 40 percent through 50 percent, the permanent disability award shall be payable for a period of 132 months or to age 65, whichever occurs first.

(f) For a rating more than 50 percent through 60 percent, the permanent disability award shall be payable for a period of 180 months or to age 65, whichever occurs first.

(g) For a rating of more than 60 percent through 70 percent, the permanent disability award shall be payable for a period of 240 months or to age 65, whichever occurs first.

(h) For a rating of more than 70 percent through 80 percent, the permanent disability award shall be payable for a period of 300 months or to age 65, whichever occurs first.

(i) For a rating of more than 80 percent through 90 percent, the permanent disability award shall be payable for a period of 360 months or to age 65, whichever occurs first.

(j) For a rating of more than 90 percent through 100 percent, the permanent disability award shall be payable until age 65.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0120

Death Benefit Limits

(1) Upon a covered death, the death benefit to the claimant's estate shall be limited to \$3,000 for actual and reasonable costs of transport and burial.

(2) The death benefit to beneficiaries shall be limited to the deceased's disability award. It shall be distributed in percentage shares of the monthly amount to beneficiaries qualifying under these rules. The total shall not exceed 100 percent of the monthly amount.

(3) The death benefit shall be allocated among three beneficiary groups: spouse, children, and others. If no claim is filed from any of these groups, that group's allocation shall be applied to the remaining groups.

(4) Distribution among and within the three beneficiary groups shall be as follows:

(a) Ten percent shall be divided equally among qualifying, claiming beneficiaries other than claimant's spouse or child.

(b) Forty-five percent shall go to the qualifying, claiming spouse.

(c) Forty-five percent shall be divided equally among qualifying, claiming children. Department shall not be required to do so,

but may choose to pay a child's benefit on its behalf to any custodial parent or to an annuity or trust fund in the child's name.

(5) Death benefits may commence upon covered death if it occurs after release. If covered death occurs in confinement, death benefits shall be deferred to what would have been claimant's next likely release date. However, if the deceased provided the major part of the beneficiary's financial support for the 12 months preceding the covered death, the death shall be treated as a post release death. Support shall be counted only from the deceased's authorized work assignments and any pre-confinement work.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0200

Claiming Benefits

(1) Only a person to whom a payment or benefit is directly due under these rules may claim the benefit. A potential beneficiary may not join or intervene in an inmate's claim. Only the claimant's attorney may represent a claimant. No one may intervene in any claim except the legal representative of an incompetent claimant. The Department shall not pay the costs of a claimant's legal representation.

(2) The Department may require that all claims for benefits or payments be or include:

(a) In the form or formats which the Department may from time to time prescribe. The Department may supply a form or format requirement upon request or exclusively through Corrections, as Department and Corrections may deem reasonable.

(b) Any information that Department deems likely to bear on the qualification or disqualification for benefits under these rules and related law. Department may require certified copies of any records.

(c) Claimant's signed request for release to Department of all records by all parties. Claimant shall also sign any additional request for release of records that the Department shall require. Claimant's failure to adequately request and authorize the release of any record, or to provide the record within 30 days, shall be sufficient cause for the Department to permanently deny the claim.

(d) A signed statement by the claimant attesting to the truth of all the information provided.

(3) A claim or request that does not conform to the requirements of these rules shall be invalid and have no effect whatsoever. To be valid and effective, a claim must be:

(a) Received by Department within the time limits set by these rules.

(b) On the forms or in the formats prescribed by the Department.

(c) Completely filled out and accompanied by all required attachments or information.

(d) Signed by the claimant to whom any benefit would be rendered.

(4) The following claims shall be filed within the times and conditions noted:

(a) Inmate's initial claim for a covered injury shall be received within 90 days after the date of injury.

(b) Claimant's request for reaffirmation of initial estimate shall be received between 60 days prior to release and 180 days after release. It shall identify the claim, claimant, and initial estimate. It shall provide the claimant's expected or actual release date, post-release residence and mailing addresses, and all other information requisite to the payment of benefits. Upon verifying the validity of the request, Department shall commence the payments in its initial estimate as provided by these rules. Department shall defer payments for investigation if it has reason to believe claimant is no longer disabled as estimated.

(c) Claimant's request for modification of initial estimate shall be received between 60 days prior to release and 180 days after release. A request for modification of an initial estimate is commenced when claimant notifies Department that claimant intends to seek a re-evaluation of the disability rating by the

attending physician. Department shall give its notice of approval for re-evaluation to claimant and attending physician. The physician shall then have 60 days to re-evaluate the claimant, including the review of any advisory or consulting physician's reports. The attending physician shall report to Department the extent and explanation of any change in the disability rating due to the covered injury and no other cause. Department shall treat the attending physician's current report as required by these rules, making appropriate increase or decrease from its initial estimate of permanent disability benefits and commencing payment.

(d) Claimant's request for Department approval of attending physician shall be received shortly before, or not later than two weeks after, release and before the physician's services commence. Only a claimant whom Corrections medical staff finds not to be medically stationary at time of release shall make this request.

(e) Claim for burial benefit shall be received within 90 days after claimant's covered death. It shall be made only by the legal representative of the estate.

(f) Initial claim for death benefit shall be received within 90 days after claimant's covered death. Request to start deferred death benefit payments shall be received between 60 days prior, and 180 days after, the date the benefits may start under these rules.

(g) Claim for payment from a medical provider to be paid under these rules shall be received within 90 days of the qualifying service provided.

(h) Claim for any other approval, right, award, payment, or benefit permitted under these rules shall be received within 30 days after the date that the thing claimed accrues or becomes payable or eligible to request.

(5) To reduce paperwork, the Department may combine any of the claims, responses, or steps for determining any claim, initial estimate, final award, and death benefits.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0300

Evaluating Claims

(1) No benefit shall be awarded or paid except through request and proof of eligibility as required by these rules and related law. A claim shall be approved if the claimant proves to the Department that the claim, injury, disability, and all related issues qualify and conform to these rules and related law.

(2) Department shall investigate any claim for benefits as it deems necessary to determine eligibility under these rules and the extent of any benefits. Department shall notify claimant of its denial or initial estimate of benefits in a reasonable time. When practical, Department shall issue its initial estimate in the period after claimant is stationary and before claimant is released.

(3) The attending physician shall make all medical determinations with regard to the claim. If Department finds the attending physician is not complying with these rules, Department may name a new attending physician to provide all medical services. The attending physician shall:

(a) Determine the existence and nature of the reported injury, its extent and expected duration of temporary disability.

(b) Determine the claimant's medically stationary date and any permanent disability rating.

(c) Estimate likelihood or frequency of necessary repair and replacement of prosthetics.

(d) Report to the Department. Reports shall be in sufficient detail to show that all determinations are based on medical evidence supported by objective findings as provided in ORS 655.510(2). The reports shall show due consideration of any input from advisory or consulting physicians. Reported pain or alleged limited range of motion, without objective findings, shall not meet this requirement.

(4) Department may require a claimant to be examined by any physician or physicians if Department considers such examination necessary to determine a claim.

(5) If there is a dispute among physicians as to any medical fact or issue, the attending physician shall determine the dispute. He or she shall give due consideration to the reports of consulting or advisory physicians.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0310

Evidence and Construction

The following rules of evidence and construction shall apply to all issues bearing on a claim:

(1) It shall be the claimant's burden to prove, by a preponderance of the evidence, all facts necessary to sustain a claim. Should a claimant make false statements or supply false information in the claim, in prior claims, or in letters, testimony or materials submitted to Department or hearings officer, Department or hearings officer may direct that the claimant's standard of proof shall increase to clear and convincing evidence. Department may also provide its evidence of falsehood to Corrections and the District Attorney for further action. Clear and convincing evidence shall also be required to overcome any evidence which these rules say shall be presumed true or a rebuttable presumption.

(2) These rules shall be interpreted according to their plain meaning and not construed in favor of the claimant.

(3) The attending physician's reports written and delivered to Department and containing the items required by these rules, shall be presumed true and shall suffice to prove the medical findings reported therein.

(4) The records, computer and others, of any agency shall be presumed true and shall suffice to prove the facts reported therein, as they bear on questions of fact necessary to sustain or deny a claim for benefits.

(5) Department's records shall be presumed true and shall suffice to prove all timing and procedural matters noted therein.

(6) Corrections records shall be presumed true and shall suffice to prove all dates, assignments, medical services, discipline, violations, release dates, and any other matters occurring during confinement and subject to Corrections legal control.

(7) Claimant's failure to report any covered injury to the work or training supervisor before leaving the alleged injury scene or the work or training site, shall create the rebuttable presumption that the injury was not a covered injury.

(8) Claimant's failure to apply for Corrections' medical treatment as soon as the medical need is, or should be known, shall create the rebuttable presumption that the injury is not a covered injury.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0400

Claims Denials

(1) The Department shall deny benefits for any claim upon substantial evidence that the injury was caused by or arose, in whole or in any part, out of any of the following:

(a) The claimant's intentionally self-inflicted injury, whether or not the full extent of actual injury was clearly expected. If an injury results from any act that would cause a reasonable person to conclude the actor intended or should have expected some self-injury, the whole injury shall be considered self-inflicted;

(b) The claimant's willful violation of work rules or rules regulating inmate conduct or premises security. No issues relating to the legality or nature of any Corrections work, conduct, or premises rules, shall be considered in connection with a claim;

(c) The claimant's active participation in an assault or combat. Combat shall not bar a claim if Corrections assigned the combat in writing to the inmate as an official duty he or she was required to perform. Any finding by Corrections that assault or combat occurred, shall stand unless reversed by Corrections through its appeal processes;

(d) The circumstances of the claimant being compelled to participate in any employment or training. No issues relating to the legality or nature of confinement, compulsory participation, or restrictions on inmate activities, shall be considered in connection with a claim;

(e) Disciplinary action taken by Corrections against the claimant. Correction's disciplinary records, alone, shall be dispositive of this issue. Any dispute related to disciplinary action shall be resolved under the laws and rules relating to inmate discipline, control, or confinement. No issues relating to the legality or appropriateness of any disciplinary rule or action shall be considered in connection with a claim;

(f) Any action taken by Corrections to protect the safety of anyone or to maintain order. No issues relating to the legality or appropriateness of any action taken by Corrections to protect or maintain order shall be considered in connection with a claim; or

(g) Actions of other inmates. This phrase means any injurious actions of inmates except unintentional, negligent actions done in good faith as a direct part of the duties assigned to those inmates in their authorized work or training.

(2) In any case, the Department shall deny benefits for any claim, if:

(a) The claimant has a pending application for, or claimant's medical condition or disability has been accepted or approved by, any other source of compensation for the injury. Within 60 days after the pending application for other compensation is finally rejected, claimant may request in writing that Department reconsider its claim denial under this paragraph.

(b) The only substantial evidence of when and where the claimant was injured is the report of the claimant or the report of the claimant and the testimony of one other inmate.

(c) The attending physician reasonably concludes that claimant's present or prior participation in weightlifting, other athletics, abuse of drugs or alcohol or tobacco, or manufacture of drugs or drug components could have produced the medical findings of the purported injury.

(d) The attending physician concludes that the work or training assignment cannot reasonably account for claimant's injury.

(e) The attending physician concludes that the injury or the disability would not have resulted from the event but for claimant's pre-existing injuries, diseases, medical conditions, diseases of ordinary life, natural aging processes, hypersensitivity's, mental or emotional health, or psychological reactions.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0500

Delivery of Claims, Notices, Responses

(1) The Department shall send any and all notices, letters, responses, and benefits payments by regular mail or other reasonable means to the claimant's last known residential address or to claimant's parole or probation officer's address. Department records of mailings shall be proof of mailing and shall constitute delivery.

(2) Department may refuse to mail to a post office box when it deems reasonable to do so. Department shall not mail to General Delivery, message services, drop boxes, or third party addresses. Payments and notices mailed by Department to claimant shall say "do not forward" or similar wording required by the delivery carrier to prevent forwarding of mail.

(3) Claimant shall file all claims, requests, and appeals in writing by mail. Claimant may file by electronic facsimile to department's Fax number if claimant mails the original to Department on the same day. No claim or information necessary to a claim may be delivered by claimant by means of electronic computer mail or orally in person or by telephone. Only physical receipt by Department shall constitute delivery.

(4) Department and Corrections shall have no duty to give advice or notify, warn, or remind any claimants or potential claimants of their rights or duties under these rules. This includes

the deadlines for filing requests or claims. Should Department give incorrect information, that shall not relieve the recipient of his or her duty to conform to these rules nor shall it alter any benefit to which the person may be entitled under these rules.

(5) Department may make available to Corrections and to any requesting law enforcement agency or publicly funded benefit program, any information provided to it under these rules. The requesting entity shall make its request in writing and state therein that the records are sought in connection with a valid investigation of a crime, or of a request for benefits.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0600**Delivery of Benefits**

(1) Except as these rules specify otherwise, benefits shall be paid as follows:

(a) No one may claim or place a voluntary or involuntary lien on any claimant's benefits or payments due under these rules. The Department shall not accept or pay any assignment of any part of any benefit or payment.

(b) Benefits become payable at the end of any period in which they accrue. The Department may make no advance payments.

(c) Payment of any periodic, continuing benefit shall begin on the first day of the month following the month in which these rules permit the benefit to start or resume.

(d) Benefits shall be mailed in form of a check, warrant, or draft or made by electronic transfer and deposit. No payment shall be made by messenger or over-the-counter to any party.

(e) Benefits shall be paid monthly, quarterly, semi-annually, or annually and shall be subject to change. The Department will notify the claimant if payments will be other than monthly.

(f) The Department shall try to issue all payments during the first two weeks of any month in which they are due and payable.

(2) Except as these rules specify otherwise, benefits shall be paid retroactively from the later of the following:

(a) The earliest date the benefit could have been paid under these rules; or

(b) The date the Department received the correct and complete claim for the benefit.

(3) During appeal, Department shall pay the benefit, if any, that it has found to be payable. During an appeal for modification of initial estimate, disability benefits shall be paid in accord with the initial estimate. Any increased benefits from appeal shall commence on the first of the month following the end of claimant's and department's appeal options.

(4) Any benefits, other than suspended and restored benefits, may be paid in lump sum only as follows:

(a) Department may at any time convert any permanent disability award into a single lump sum payment or a purchased annuity payable to a claimant. The lump sum shall be the present value of remaining payments using, as discount rate, the average rate that the state Treasury Department advises the Department it is then earning on Inmate Injury funds. The annuity contract shall be purchased by Department to provide an unchanged or nearly unchanged benefit level.

(b) After Department has made 48 consecutive payments of a final award, claimant shall be allowed once to request that the Department offer a lump sum settlement of the remaining value of the benefit. Whether, and in what amount such settlement will be offered, is at the sole discretion of the Department.

(5) It is intended that all claims shall be determined and paid within these rules in the manner these rules provide. The Department shall not be required to consider or respond to any offer of compromise or settlement. Settlements in compromise of a disputed claim or for settlement of any issue regarding any claim shall not be offered to claimants or approved without the review and consent of the Director of the Department of Administrative Services or the Director's designee after consultation with Corrections.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0700**Suspension and Forfeiture of Benefits**

(1) Claimants shall keep the Department informed of their current status and circumstances in all respects as they may bear on the requirements of these rules. Status, as used here, may include employment, medical condition, mailing and physical residence addresses, confinement, or any disqualifier for benefits. The Department may also require a claimant to complete and sign a written status report at any time before releasing any benefit or payment.

(2) The Department may temporarily suspend any or all payments to any claimant of any kind. Temporary suspension and the method of restoration shall not be subject to appeal. Suspension may be made for the following:

(a) As necessary due to inadequate funding for the Inmate Injury component of the state Insurance Fund.

(b) When claimant is believed by Department to be confined, to have moved without notifying Department, to have recovered from the disability that was expected to be permanent, or to have abandoned the claim.

(c) As requested by Corrections or parole or probation officers seeking claimant.

(d) When claimant does not respond to an inquiry from Department or fails to complete and return any status report requested by the Department or attending physician.

(e) When Department is notified in writing by any corrections or law enforcement agency that a warrant is outstanding for the claimant's arrest or that claimant is sought in connection with escape or a crime.

(f) When Department's inquiry or request for information is unanswered by claimant or is answered with an unsigned response or one that does not appear to be the claimant's.

(g) When it appears to Department that benefit checks or warrants are being negotiated by someone other than the payee.

(h) When an overpayment is discovered.

(i) As otherwise provided in these rules.

(3) After claimant provides satisfactory evidence that there existed and exists no cause for forfeiture or termination, Department shall restore and resume payments. Department, shall restore by lump sum, temporary increase in award, or extending the period of award as it may deem reasonable. No interest shall be paid.

(4) Though the months suspended shall count against the period for benefits, suspended payments shall be forfeited if:

(a) Claimant was confined, was not cooperating in his recovery, had recovered from the disability, or in any way ceased to be eligible for benefits under these rules.

(b) Claim was declared abandoned after final award.

(c) Claimant was in unlawful flight to avoid prosecution, was an escapee from any confinement, or was under order to appear for an outstanding felony warrant.

(d) Any payments were overpayments or were negotiated by someone other than the payee without payee immediately notifying Department.

(5) If for any reason, Department learns it has paid claimant more than is due under these rules or Department is billed for a medical service claimant did not use or attend, Department may offset the payment by benefit reductions. It may temporarily suspend and not restore payments, reduce the award, or shorten the period of payments as it may deem reasonable to recover the overpayment. Department may also exercise any other recovery right allowed it by law.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0710

Termination of Benefits

(1) Any and all benefits payable or potentially payable to a claimant shall be terminated fully and finally, without prior notice, upon the occurrence of any of the following:

(a) Claimant gives Department or Corrections any kind of false report or supplies any false information in connection with a claim.

(b) Inmate dies due, in large part, to any cause or causes other than the covered injury.

(c) Claimant, receiving permanent benefits or death benefits, attains age 65.

(d) The date is reached at which an inmate deceased from a covered death would have attained age 65.

(e) A beneficiary dies, ceases to be a beneficiary under these rules or, if a child, attains 18 years of age.

(2) Anyone who receives benefits shall return at once to Department any payment that he or she is not entitled to under these rules due to termination of benefits or any other cause.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0720

Abandonment of Benefits

(1) If benefits are abandoned, claimant forfeits all rights under these rules, except the right to give Department clear and convincing evidence that abandonment did not occur. Claimant shall provide such evidence in writing to Department within 30 days of Department's declaration of abandonment. If Department refuses to reinstate benefits after receipt of clear and convincing evidence that abandonment did not occur, claimant may appeal as provided in these rules.

(2) Benefits shall be deemed abandoned if both of the following occur:

(a) The Department sends three consecutive mailings by regular or certified mail on different dates at least one week apart and all are returned, or the Department's requests for response contained in each and all of the mailings elicit no response, or Department's checks or warrants included in each of the mailings are not negotiated.

(b) In the 90 days following the date of the last mailing, the Department receives no signed, written communication from the claimant with a valid residential mailing address.

(3) Upon the occurrence of the preceding, the Department shall declare the claim abandoned and take the following steps:

(a) Department shall record in its records that the claim is declared abandoned. Department shall not be required to make further attempt to find claimant or notify claimant or any other party.

(b) If final award has not been made, Department shall permanently terminate the claim and all prospective benefits as fully and finally abandoned.

(c) If final award has been made, Department shall suspend all benefits until the earlier of six months or claimant's proof to Department's satisfaction that claimant remains eligible for benefits. The benefits suspended shall be forfeited. Upon satisfactory proof of eligibility, suspended benefits may be resumed subject to any conditions Department may deem reasonable. Otherwise, Department shall permanently terminate all benefits as fully and finally abandoned.

(4) Any benefit check or warrant that is returned from the last known mailing address or is not negotiated within 90 days of mailing, may be canceled or voided by Department. A payment so canceled may be deemed paid. Its month shall count against any benefit period. Department shall not be required to replace it.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0800

Subrogation

Applying for and accepting benefits under these rules shall transfer to the Department all the acceptors' rights, claims, and causes of action against any third party for the covered injury or death to the extent of benefits paid or payable hereunder. Department shall be entitled to the net recovery against the third party to the extent of benefits paid or payable hereunder. Except as provided by ORS 655.510(4), if the Department does not choose to claim damages from a third party, all these rights shall revert to claimant and Department shall waive any interest it has in any recovery.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0900

Appealing Claims Decisions and Actions

(1) These shall be the rules of procedure for appeals and contested case hearings for actions under these rules. Except as noted, the administrative procedures act shall not apply.

(2) When these rules permit an action of the Department to be contested by the claimant, the Department shall give the notice required by ORS 183.415(2). The following three levels of appeal shall then apply.

(a) Claimant shall first appeal through request for review by Department:

(A) One request for review of an action by Department may be made by the affected claimant. It shall be received by the Department within 60 days after the date of Department's contested decision unless the decision includes the grant of a longer period.

(B) Claimant's written request for review shall list and explain all contested matters of fact and law in writing. It shall state the action the claimant is requesting. New supporting documents, if consistent with these rules, may be enclosed. Any revised attending physician's response or report shall be enclosed as part of the request for review. A timely request for review that conforms to these rules is a prerequisite to further appeal or hearing.

(C) Requests for review may contest allegations of omitted fact, factual error, lack of required evidence for the Department's pertinent findings and conclusions, or legal error by Department. Any medical evidence shall be submitted to the attending physician, whose report shall be provided with the request for review. Only issues subject to the jurisdiction of these rules may be raised or contested.

(D) When the Department receives a request for review, it shall consider the record it relied upon and any information contained in or attached to the request for review. If the Department finds that its action is not correct under these rules or is not supported by substantial evidence, the Department shall modify its decision. The Department shall respond to claimant's request for review by affirming, rescinding, or modifying its decision.

(b) Upon completion of the review level of appeal, claimant may request a contested case hearing as follows:

(A) Claimant may request a hearing if the Department does not acknowledge a valid and complete request for review or does not grant the relief requested.

(B) Written request for hearing shall be received by the Department no later than 30 days after the request for review is received by Department or after Department's final response to request for review, whichever is later.

(C) A request for contested case hearing shall list and explain each contested matter of fact or law. It shall state the action the claimant is requesting. A request for a contested case hearing shall raise no issues nor make any request that was not in the request for review. A timely request for contested case hearing that conforms to these rules is a prerequisite to any hearing.

(D) Hearings officers may only consider legal error by Department and the sufficiency of evidence for the Department's decision or action, as modified by any response to the request for review. Only issues raised in claimant's request for review may be considered. A claimant may not contest any issues of timeliness,

inclusion or omission, or other procedural requirements, unless claimant submitted to Department, with or before request for review, clear and convincing evidence that met the procedural requirement.

(c) Upon exhausting the review and hearings levels of appeal, claimant may appeal the final decision of the director to the Court of Appeals as provided by ORS 183.480 to 482.

(3) Only the following actions of the Department may be appealed:

(a) Partial or full claim denial based on Department's findings and conclusions.

(b) Partial or full denial of request for reaffirmation or modification of initial estimate.

(c) Refusal to pay any requested payment or benefit due to claimant under these rules.

(d) Termination, reduction, forfeiture, or denial of retroactive restoration of any benefit already awarded to claimant under these rules.

(e) Death benefit determination or denial.

(f) Denial of a provider's billing or a claimant's reimbursement request for medical services.

(4) The following actions of Department may not be appealed under these rules:

(a) Initial estimate by Department.

(b) Temporary suspension of payments.

(c) The form or procedure of benefit payment chosen by the Department, including the amount of discount in any lump sum payment, annuity, or settlement.

(d) Any medical service the attending physician orders or refuses to order.

(e) Department's decision to require that the claim must be proven by clear and convincing evidence.

(f) Denial of any request for increased or additional benefit in a claim on which claimant did not appeal final award, or exhausted appeals.

(g) Any action taken by anyone other than Department or not solely within Department's authority under these rules.

(h) Any action of Department for which these rules do not expressly provide for appeal.

(5) A claimant may appeal a Department action once. After appeal under these rules is exhausted, that issue may not be raised again.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0910

Hearings Process

(1) The Department shall designate as hearings officer any person trained in the hearings process. The hearings officer shall not have been a witness or had personal knowledge of any material, disputed fact of the case. He or she shall not have had another role in the case.

(2) The hearing shall be conducted at a time and place designated by the hearings officer and acceptable to Corrections. The hearing may be conducted by telephone or other means of communication.

(3) The hearings officer shall conduct the hearing as prescribed in ORS 183.415 except as otherwise required in these rules.

(4) Prior to commencement of hearing, the Department or hearings officer shall:

(a) Inform party(s) to the hearing of the matters specified in ORS 183.413(2).

(b) Explain issues involved in the hearing and matters parties must prove or disprove under these rules.

(5) Making the reasons a part of the record, a hearing may be postponed by the hearings officer for good cause and for reasonable periods of time, consistent with these rules. Good cause includes, but is not limited to:

(a) Preparation or scheduling needs of the Department;

(b) Illness of the claimant;

(c) Unavailability of the claimant. Upon unavailability for 90 days, the hearings officer shall cancel the hearing and issue a recommendation to the Department that its decision should stand or the claim should be permanently terminated as abandoned.

(d) Avoiding interference with ongoing police investigation or pending prosecution.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0920

Conduct of Hearings

(1) The findings of the hearings officer must be on the merits. Technical or clerical errors in the writing or processing of a contested decision shall not be grounds for modification or rescission unless there is substantial prejudice to the claimant.

(2) The standards of proof shall be those provided in these rules.

(3) Making the reasons part of the record, the hearings officer shall raise the claimant's burden of proof to clear and convincing evidence upon the occurrence of the following:

(a) The hearings officer finds the claimant provided or has a history of providing unreliable or false evidence;

(b) The contested issue is timeliness, inclusion or omission of evidence, or other procedural requirements; or

(c) As otherwise provided in these rules.

(4) The hearings officer shall consider such evidence as would be considered by reasonable persons in the conduct of their serious affairs.

(5) At hearings, claimants shall be allowed to speak in their behalf, submit evidence, and exercise rights allowed by these rules.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0930

Testimony of Witnesses

(1) The hearings officer shall direct all scheduling and taking of testimony of witnesses at the hearing. Witnesses shall be limited to people with direct personal knowledge of the essential elements of the matters on appeal. Witnesses and testimony shall only be received from those who, and whose evidence, were made known to the Department in or between the filing of the claim and the request for review. Testimony may be taken in person, by telephone or by written report or statement. Testimony shall not be required in support or explanation of any evidence that these rules say shall be presumed true or constitute a rebuttable presumption. Reports of expert witnesses shall be sufficient evidence instead of testimony.

(2) The claimant may request that the hearings officer schedule witnesses to present testimony at the hearing. The request shall:

(a) Be delivered in writing to the hearings officer not less than 7 days before the scheduled hearing;

(b) List the name and address of each witness whose testimony is desired;

(c) Show the materiality of each witness;

(d) Request that the hearings officer schedule the testimony; and

(e) If claimant is not represented by attorney, provide a list of questions the claimant wishes to be posed to each witness.

(3) The hearings officer shall arrange to receive testimony from the claimant's requested witnesses subject to the provisions of these rules.

(4) Making the reasons part of the record, the hearings officer may:

(a) Limit testimony or exclude any question that is cumulative, repetitive, or immaterial. It shall be a rebuttable presumption that all questions pertaining to the attending physician's or to the Department's procedures, practices, or actions on the subject case or other cases are immaterial.

(b) Exclude any evidence or witness or refuse to ask or permit any question upon finding that the testimony or evidence, if taken in the light most favorable to the claimant, together with the reasonable inferences to be drawn therefrom, would not substantially affect the Department's decision;

(c) Exclude any witnesses upon finding that their appearance at the hearing would present an immediate undue risk to the safe, secure, or orderly operation of corrections, specifically including the safety and security of corrections or Department employees and inmates. No Corrections or Department employee shall be required to release personal residence addresses or phone numbers nor other identifying information except name, official title and post and length of service when hearings officer finds such information pertinent.

(d) Exclude any witness upon finding that the witness' testimony would not assist the hearings officer in the resolution of the case before him or her.

(5) The hearings officer may call witnesses to testify that were not requested by the parties and may pose any pertinent questions during the hearing.

(6) Any witness may substitute a written report in place of actual testimony. If any witness resides in this state and is unwilling to appear or provide a written report in lieu of appearing, the Department may issue a subpoena as provided by ORS 183.440.

(7) The identity of any confidential informant and the verbatim statement of the informant shall be submitted to the hearings officer in writing, but shall remain confidential. The hearings officer shall only rely on the testimony of a confidential informant if accompanied by information from which the hearings officer can find that the informant is a person who can be believed or the information provided by the informant is truthful.

(8) With the permission of the Department of Justice, Department and Corrections may authorize agency representatives at any hearing.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0940

Documents and Physical Evidence

(1) The claimant may present any documents or physical evidence permitted by these rules before or during the hearing.

(2) Only the attending physician may make medical findings and submit medical reports to the hearing. Any other medical report or medical evidence from any other physician shall only be submitted to the attending physician as the opinion of an advisory or consulting physician. Reports of the attending physician shall suffice as evidence in place of testimony.

(3) The Department shall provide a copy of the records upon which it based its decision. The Department may add summaries or explanations. Department reports shall suffice as evidence in place of testimony.

(4) Making the reasons part of the record, the hearings officer may exclude evidence upon finding that it would:

(a) Not assist him or her in finding whether substantial evidence existed to support Department's decision; or

(b) Present an undue risk to the safe, secure, or orderly operation of Corrections, specifically including the safety and security of Corrections or Department employees and inmates.

(5) The hearings officer may classify documents or physical evidence as confidential upon finding that disclosure would present an undue risk to the safe, secure, or orderly operation of Corrections, specifically including the safety and security of Corrections or Department employees and inmates. The reasons for classifying documents or physical evidence as confidential shall be made a part of the record. Confidential evidence shall not be disclosed to the claimant.

(6) Claimant shall have right to examine all evidence that Department relied upon at the time of its review or submitted to the hearings officer for consideration. Department shall provide the

evidence to claimant or claimant's legal representative when it submits evidence to the hearings officer. Department may submit to the hearings officer, without copy to the claimant or legal representative, any evidence it considers confidential. Any documents the hearings officer finds to be confidential shall be furnished to claimant or legal representative upon request with any information which could identify the confidential source masked or removed.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0950

Hearings Conclusions and Record

(1) The hearing shall be held, and the hearings officer shall seek, to determine whether the Department had substantial evidence for its decision and whether its decision substantially complied with these rules. The hearings officer shall then issue a recommendation to the Department that it affirm, rescind, or modify its decision.

(2) The hearings officer shall deliver a hearing record to Department within 30 days after the hearing. The record shall include:

(a) A copy of the Department's decision;

(b) The request for administrative review or appeal;

(c) The notice of hearing and rights;

(d) The tape recording or transcribed record of the hearing;

(e) Documents and other evidence relied upon; and

(f) The hearings officer shall prepare a proposed order which includes findings of fact, conclusions of law, summary of evidence and exceptions, and the hearings officer's recommendation.

(3) A hearings officer's proposed order shall take effect 60 days after issue unless the Department's Director issues an amended decision within that period.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

DIVISION 170

ECONOMIC DEVELOPMENT FUND PROCESS

125-170-0010

Process for Allocating Available Moneys in the Administrative Services Economic Development Fund

(1) The Department of Administrative Services will distribute lottery proceeds to recipients on a quarterly basis. This allocation will be based on a plan approved by the Chief Financial Office.

(2) If, in any quarter, the moneys transferred from the State Lottery Fund to the Administrative Services Economic Development Fund are insufficient to pay for the quarterly allocations, the Department of Administrative Services shall allocate funds in the following priority order:

(a) Satisfy current debt service obligations for the Westside Light Rail (allocated in the first and fifth quarters);

(b) Satisfy all other current debt service obligations (allocated in the first and fifth quarters);

(c) Satisfy all Constitutionally mandated allocations.

(d) Satisfy all statutorily mandated allocations.

(e) Satisfy all other allocations on a proportional basis. Allocations in a particular quarter may be based on the cash flow needs of the recipients. This may require deferring allocations to a recipient in one quarter with the objective of funding the full allocation during the balance of the biennium.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)(d) & ORS 461.500 - 461.555

Stat. Implemented: 2003 HB 5076

Hist.: BAD 1-2001, f. & cert. ef. 10-1-01; BAD 4-2003, f. 12-23-03, cert. ef. 12-24-03; Renumbered from 121-040-0010 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12; DAS 3-2015, f. & cert. ef. 5-29-15

DIVISION 180

SHARED SERVICES FUND

125-180-1010

Purpose

These rules implement procedures for transferring moneys from the Shared Services Fund pursuant to ORS 285C.635 and 285C.639.

Stat. Auth.: ORS 184.340, 285C.615(7) & 285C.635(4)
 Stats. Implemented: ORS 285C.600 - 285C.626 & 285C.635
 Hist.: DAS 1-2013, f. & cert. ef. 7-31-13

125-180-1020

Definitions

(1) "Average Eligible Worker" means the average worker reported by Business Oregon as a new hire or retained employee on a Strategic Investment Program (SIP) project.

(2) "Eligible Project" is a project described in ORS 285C.600(2) for which the Oregon Business Development Commission has reported new hires or retained employees.

Stat. Auth.: ORS 184.340, 285C.615(7)
 Stats. Implemented: ORS 285C.600 - 285C.626
 Hist.: DAS 1-2013, f. & cert. ef. 7-31-13

125-180-1030

Employment Verification

(1) The Department of Administrative Services may perform a verification of employment associated with Strategic Investment Projects compiled by Business Oregon under ORS 285C.615.

(2) The Department verification process may include determination of project related employment through other Oregon agencies:

- (a) Department of Revenue,
- (b) Employment Department, and
- (c) Any other relevant agencies.

(3) Projects are eligible for consideration in the income tax calculation and county fund transfer only to the extent that employment information is verifiable.

Stat. Auth.: ORS 285C.615(7)
 Stats. Implemented: ORS 285C.600 - 285C.626
 Hist.: DAS 1-2013, f. & cert. ef. 7-31-13

125-180-1040

Personal Income Tax Estimate

(1) The personal income tax estimate is derived from:

(a) Reported number of workers hired or retained as a result of investment in an eligible project under the Strategic Investment Program ORS 285C.615; and

(b) The Department of Revenue's annual Oregon Personal Income Tax Statistics (150-101-406) report.

(2) A tax rate is determined based on the reported average pay per average eligible worker.

(3) Labor earnings are multiplied by the project tax rate for an income level equal to that of the wages paid to the average eligible worker.

Stat. Auth.: ORS 285C.615(7) & 285C.635(4)
 Stats. Implemented: ORS 285C.600 - 285C.626 & 285C.635
 Hist.: DAS 1-2013, f. & cert. ef. 7-31-13

125-180-1050

Funds Transfer Request Form

Counties with an approved Strategic Investment Project must submit a request for fund transfer, in an Agency approved format, to the Department of Administrative Services not later than July 1 following the completion of the relevant property tax year. The request for fund transfer must be delivered from the county commission chair or designee and shall include (unless otherwise provided in prior requests):

- (1) Qualifying project name(s)
- (2) Original Strategic Investment Program agreement(s), and
- (3) Local taxing district distribution by percentage.

Stat. Auth.: ORS 184.340, 285C.615(7) & 285C.635(4)
 Stats. Implemented: ORS 285C.600 - 285C.626, 285C.635 & 285C.639
 Hist.: DAS 1-2013, f. & cert. ef. 7-31-13

125-180-1060

Funds Distribution

(1) The department shall distribute moneys from the Shared Services Fund to the eligible county annually.

(2) Counties shall transfer funds to local taxing districts according to the percentages derived from the personal income tax estimate provided in rule 125-180-1040.

Stat. Auth.: ORS 184.340, 285C.615(7) & 285C.635(4)
 Stats. Implemented: ORS 285C.600 - 285C.626, 285C.635 & 285C.639
 Hist.: DAS 1-2013, f. & cert. ef. 7-31-13

DIVISION 246

GENERAL PROVISIONS FOR PUBLIC CONTRACTING

General Provisions

125-246-0100

Application; Commentary; Federal Law Prevails

(1) These Rules of the Department of Administrative Services (Department) are policy and procedure for the Public Contracting of Agencies subject to these Rules and all state agencies that are subject to the DAS rules adopted under ORS 279A.140(2)(h) to regulate personal services contracts (see OAR 125-246-0335 through 125-246-0353). According to ORS 279A.065(5), the Department adopts these Rules, including but not limited to selected and adapted Public Contract Model Rules. Except for those Public Contract Model Rules expressly adopted by the Department in OAR 125-246-0100, 125-247-0100, 125-248-0100 and 125-249-0100, the Public Contract Model Rules adopted by the Attorney General do not apply to the Department or the Agencies. These Department Public Contracting Rules implement the Oregon Public Contracting Code and consist of the following four Divisions:

- (a) Division 246, which applies to all Public Contracting;
- (b) Division 247, which applies only to Public Contracting for Supplies and Services, and not to construction services or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services;
- (c) Division 248, which applies only to Public Contracting for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services; and
- (d) Division 249, which applies only to Public Contracting for construction services.

(2) If a conflict arises between these division 246 rules and rules in division 247, 248 or 249, the rules in divisions 247, 248 or 249 take precedence over these division 246 rules.

(3) Commentary on these Rules may be published by the Department to assist the Agencies by providing: examples, options, references, background, and other commentary. The Department's commentary is not a Rule or interpretation of any Rule and has no legally-binding effect.

(4) Federal statutes and regulations prevail and govern, except as otherwise expressly provided in ORS 279C.800 through 279C.870 (Prevailing Wage Rate) and despite other provisions of the Public Contracting Code, under the following conditions:

- (a) Federal funds are involved; and
- (b) The federal statutes or regulations either:

(A) Conflict with any provision of ORS Chapters 279A, 279B, or 279C.005 through 279C.670; or

(B) Require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, or ORS 279C.005 through 279C.670.

(5) Adaptation of Model Rules for Agency Use. The following words found in those Model Rules expressly adopted by the Department are replaced by the words as defined in OAR 125-246-0110:

- (a) "Contracting agency(ies)" is replaced by "Authorized Agency(ies)."
- (b) "Goods or services" is replaced by "Supplies and Services."

(c) “Agreements to agree” and “price agreement” are replaced by “Price Agreement.”

(6) Capitalization of Defined Terms. Uncapitalized terms in those Model Rules expressly adopted by the Department have the same meaning as the same terms that are capitalized and defined in OAR 125-246-0110.

(7) Department Policy. Agencies must comply with Department policies, if applicable.

(8) For purposes of these Division 246 Rules, the Department adopts the following Model Public Contract Rules: OAR 137-046-0300, 137-046-0330, 137-046-0400, 137-046-0410, 137-046-0420, 137-046-0430, 137-046-0440, 137-046-0450, 137-046-0460, 137-046-0470, 137-046-0480.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.020, 279A.030 & 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0110

Definitions

The following terms are a compilation of definitions, including those found in the Public Contracting Code, in other statutes referenced by the Public Contracting Code, and elsewhere in these Rules. Partial definitions of the Public Contracting Code are for the use of the Agencies only. The following terms, when capitalized in these 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) “Adequate” is defined in ORS 279C.305 and means sufficient to control the performance of the Work and to ensure satisfactory quality of construction by the contracting agency personnel.

(3) “Advantageous” means a judgmental assessment by the Agency of the Agency’s best interests.

(4) “Advocate for Minority, Women and Emerging Small Business”, (also known as the Director of Economic & Business Equity), means the individual appointed by the Governor to advise the Governor, Legislature and Director’s Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Advocate oversees the resolution of business concerns with Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses, (also known as the Office of Economic & Business Equity), according to ORS 200.025.

(5) An “Administrator” or “Administering Contracting Agency” is defined in OAR 125-246-0400.

(6) “Affected Person” or “Affected Offeror” means a Person whose ability to participate in a Procurement is adversely affected by an Agency decision.

(7) “Affirmative Action” is defined in ORS 279A.100 and means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

(8) “Agency” means those agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department according to ORS 279A.050 and 279A.140. This term includes the Department when the Department is engaged in Public Contracting. Under these Rules, an Agency is authorized only through a delegation of authority according to OAR 125-246-0170.

(9) “Agreement to Agree” means a Price Agreement as defined in Subsection (109).

(10) “Amendment” means a Written modification to the terms and conditions of a Public Contract, other than Changes to the Work as defined in OAR 125-249-0910, that meets the requirements

of OAR 125-247-0805, 125-248-0340, 125-249-0160, and 125-249-0910. For the purposes of these Rules, Amendments are included within the definitions of “Procurements” and “Contract Administration.”

(11) “Architect” is defined in ORS 279C.100 and means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms “architect,” “licensed architect” and “registered architect.”

(12) “Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services” is defined in ORS 279C.100(2).

(13) “As-Is, Where-Is” applies to the sale of Goods and means that the Goods are of the kind, quality, and locale represented, even though they may be in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Goods involved, based upon the buyer’s own inspection. Implied and express warranties are excluded in sales of Goods “As-Is, Where-Is.”

(14) “Authorized Agency” means any Person authorized according to OAR 125-246-0170 to conduct a Procurement or take other actions on an Agency’s behalf. This term, including its use in the Rules, does not convey authority to an Agency. For the authority of Agencies under the Code and these Rules, see 125-246-0170 only.

(15) “Award” means the Agency’s identification of the Person(s) with whom the Agency intends to enter into a Contract.

(16) “Bid” means a Written response to an Invitation to Bid.

(17) “Bidder” means a Person who submits a Bid in response to an Invitation to Bid.

(18) “Brand Name or Equal Specification” is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers’ names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the Agency’s requirements and that authorizes Offerors to offer Supplies and Services that are equivalent or superior to those named or described in the Specification.

(19) “Brand Name Specification” is defined in ORS 279B.200(2) and means a Specification limited to one or more products, brand names, makes, manufacturer’s names, catalog numbers or similar identifying characteristics.

(20) “Business Day” means 8:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, excluding State of Oregon holidays.

(21) “Chief Procurement Officer” means the individual designated and authorized by the Director of the Department to perform certain procurement functions described in these Rules, or the Chief Procurement Officer’s delegate.

(22) “Class Special Procurement” is defined in ORS 279B.085 and 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.

(23) “Client” means any individual, family or Provider:

(a) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof (“Services and Incidental Supplies”), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(b) Who in fact receives and utilizes services provided by an Agency primarily for that individual’s or family’s benefit;

(c) Who is under the custody, care, or both of the Agency; or

(d) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(24) “Client Services” means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

- (a) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;
- (b) Sustenance, including clothing;
- (c) Employment training or Skills training to improve employability;
- (d) Services for people with disabilities;
- (e) Foster care or foster care facilities;
- (f) Residential care or residential care facilities;
- (g) Community housing;
- (h) In-home care including home delivered meals;
- (i) Medical care, services and treatment, including but not limited to:
 - (A) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;
 - (B) Alcohol and drug treatment;
 - (C) Smoking cessation;
 - (D) Drugs, prescriptions and non-prescription;
 - (E) Nursing services and facilities;
 - (j) Transportation or relocation;
 - (k) Quality of life, living skills training; or
 - (l) Personal care; or
 - (m) Legal services and expert witnesses services;
 - (n) Religious practices, traditions and services, separately or in any combination thereof; and
 - (o) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.
- (25) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.
- (26) "Code" is the "Public Contracting Code," defined in ORS 279A.010(1)(bb), and "Code" means ORS Chapters 279A, 279B and 279C.
- (27) "Competitive Quotes" means the sourcing method according to OAR 125-249-0160.
- (28) "Competitive Range" means the Proposers with whom the Agency will conduct Discussions or Negotiations if the Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-247-0260 or 125-249-0650.
- (29) "Competitive Sealed Bidding" means the sourcing method according to ORS 279B.055.
- (30) "Competitive Sealed Proposals" means the sourcing method according to ORS 279B.060.
- (31) "Consultant" means the Person with whom an Agency enters into a Contract for the purposes of consulting, conferring, or deliberating on one or more subjects, and this Person provides advice or opinion; e.g., Consultants for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services as defined in ORS 279C.115 and information technology Consultants.
- (32) "Contract" means an agreement between two or more Persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. For the purposes of these Rules, "Contract" means Public Contract.
- (33) "Contract Administration" means all functions related to a given Contract, including Amendments, between an Agency and a Contractor from:
 - (a) The time the Contract is signed by all parties until;
 - (b) The Work is completed and accepted or the Contract is terminated, final payment has been made, and any disputes have been resolved.
- (34) "Contract Administrator" means the officer, employee, or other individual designated in Writing by an Authorized Agency, by name or position description, to conduct the Contract Administration of a Contract or class of Contracts.
- (35) "Contractor" means the Person with whom an Agency enters into a Contract and has the same meaning as "Consultant" or "Provider."
- (36) "Contract Price" means, as the context requires, the maximum monetary obligation that an Agency either will or may incur

- under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.
- (37) "Contract Review Authority" means the Director of the Department and the Director's delegatee, unless specified by statute as the Director of the Oregon Department of Transportation.
- (38) "Contract-Specific Special Procurement" is defined in ORS 279B.085 and 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 Supplies and Services on a one-time basis or for a single project.
- (39) "Contracting Agency."
 - (a) "Contracting Agency" is defined in ORS 279A.010(1)(b) and, for Agencies operating under these Rules and the Code, means the Director of the Oregon Department of Administrative Services, authorized to act on their behalf according to ORS 279A.140.
 - (b) The definition of "Contracting Agency" in ORS 279A.010(1)(b) does not give Agencies procurement authority. For procurement authority of Agencies, see OAR 125-246-0170.
- (40) "Cooperative Procurement" is defined in OAR 125-246-0400.
- (41) "Cooperative Procurement Group" is defined in OAR 125-246-0400.
- (42) "Days" means calendar days.
- (43) "Department" means the Oregon Department of Administrative Services. The procurement authority of the Department is described in OAR 125-246-0170. When a Rule refers to any action of the Department, any individual acting on behalf of the Department must be authorized to take such action in accordance with OAR 125-246-0170.
- (44) "Department Price Agreement" means a Price Agreement issued by the Department on behalf of all Agencies. Such Agreements may be mandatory for use by Agencies or voluntary for use by Agencies. Such Agreements may result from a Cooperative Procurement. According to OAR 125-246-0360 (Purchases through Federal Programs), an Authorized Agency may not purchase Supplies and Services through Federal Programs if a mandatory Department Price Agreement for those authorized Supplies and Services exists.
- (45) "Designated Procurement Officer" means the individual designated and authorized by the head of an Authorized Agency to perform certain Procurement functions described in these Rules. If any head of an Authorized Agency does not designate and authorize an individual as a Designated Procurement Officer, "Designated Procurement Officer" also means that head of the Authorized Agency, who then acts in the place of the Designated Procurement Officer.
- (46) "Descriptive Literature" means Written information submitted with the Offer that addresses the Supplies and Services included in the Offer.
- (47) "Director" is defined in ORS 279A.010(1)(e) and means the Director of the Department or a person designated by the Director to carry out the authority of the Director under the Public Contracting Code and these Rules.
- (48) "Discussions" means to exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer.
- (49) "Disqualification" means a disqualification, suspension or debarment of a Person according to ORS 200.065, 200.075, and 279A.110 and OAR 125-246-0210(4).
- (50) "Donee" is defined in ORS 279A.250(1) and means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire Surplus Property in accordance with rules adopted by the Department. Entities eligible to acquire federal donation property may also acquire Surplus Property other than federal donation property.
- (51) "Electronic Advertisement" means an Agency's Solicitation Document, Request for Quotes, request for information or

other document inviting participation in the Agency's Procurements made available over the Internet via:

- (a) The World Wide Web;
- (b) ORPIN; or

(c) An Electronic Procurement System other than ORPIN approved by the Chief Procurement Officer. An Electronic Advertisement may or may not include a Solicitation Document.

(52) "Electronic Offer" means a response to an Agency's Solicitation Document or request for Quotes submitted to an Agency via

- (a) The World Wide Web or some other Internet protocol; or
- (b) ORPIN.

(53) "Electronic Procurement System" means ORPIN or other system approved by the Chief Procurement Officer, constituting 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 an Agency to post Electronic Advertisements, receive Electronic Offers, and conduct any activities related to a Procurement.

(54) "Electronic Goods" means Goods which are dependent on electric currents or electromagnetic fields in order to Work properly and Goods for the generation, transfer and measurement of such currents and fields.

(55) "Emergency" means circumstances that:

- (a) Could not have been reasonably foreseen;
- (b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
- (c) Require prompt execution of a Contract to remedy the condition. An "Emergency Procurement" means a sourcing method according to ORS 279B.080, 279C.335(5), 125-248-0200, or related Rules.

(56) "Energy Savings Performance Contract" means a Public Contract between an Agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(57) "Engineer" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2).

(58) "Established Catalog Price" means the price included in a catalog, price list, schedule or other form that:

- (a) Is regularly maintained by a manufacturer or Contractor;
- (b) Is either published or otherwise available for inspection by customers; and
- (c) States prices at which sales are currently or were last made to a significant number of any category of buyers or to buyers constituting the general market, including public bodies, for the Supplies and Services involved.

(59) "Executive Department" is defined in ORS 174.112.

(a) Subject to ORS 174.108, "Executive Department" means: all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the Executive Department of government as described in Section 1, Article III of the Oregon Constitution, and that are not:

- (A) In the judicial department or the legislative department;
- (B) Local governments; or
- (C) Special government bodies.

(b) Subject to ORS 174.108, as used in the statutes of this State, "Executive Department" includes:

(A) An entity created by statute for the purpose of giving advice only to the Executive Department and that does not have members who are officers or employees of the judicial department or Legislative Department;

(B) An entity created by the Executive Department for the purpose of giving advice to the Executive Department, if the docu-

ment creating the entity indicates that the entity is a public body; and

(C) Any entity created by the Executive Department other than an entity described in Subsection (B), unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Executive Department.

(60) "Findings" is defined in ORS 279C.330 and means the justification for an Agency's conclusion that includes, but is not limited to, information regarding:

- (a) Operational, budget and financial data;
- (b) Public benefits;
- (c) Value engineering;
- (d) Specialized expertise required;
- (e) Public safety;
- (f) Market conditions;
- (g) Technical complexity; and
- (h) Funding sources.

(61) "Fire Protection Equipment" is defined in ORS 476.005 and means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities, excepting forest fire protection equipment.

(62) "Flagger" means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(63) "Formal Selection Procedure" means the procedure according to OAR 125-248-0220.

(64) "Fringe Benefits" is defined in ORS 279C.800 and means the amount of:

(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to Workers according to an enforceable commitment to carry out a financially responsible plan or program that is committed in Writing to the Workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the Contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(65) "Good Cause" is defined in ORS 279C.585, and the Oregon Construction Contractors Board must define "Good Cause" by rule. "Good Cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "Good Cause" must reflect the least-cost policy for Public Improvements established in 279C.305. This definition does not apply to OAR 125-247-0255 and 125-247-0260.

(66) "Good Faith Dispute" is defined in ORS 279C.580(5)(b) and means a documented dispute concerning:

- (a) Unsatisfactory job progress;
- (b) Defective work not remedied;
- (c) Third-party claims filed or reasonable evidence that claims will be filed;
- (d) Failure to make timely payments for labor, equipment and materials;

(e) Damage to the prime Contractor or subcontractor; or

(f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(67) "Goods" means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that an Agency is authorized by law to procure.

(68) "Goods and Services" or "Goods or Services" is defined in ORS 279A.010 and for purposes of these Rules falls within the meaning of "Supplies and Services" (see the definition of "Supplies and Services" in this Rule). "Goods and Services" or "Goods or

Services” does not include Personal Services. “Supplies and Services” includes Personal Services.

(69) “Grant” is defined in ORS 279A.010(1)(k)(A) and means:

(a) An agreement under which an Agency receives money, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Agency provides money, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(c) “Grant” does not include a Public Contract:

(A) For a Public Improvement for Public Works, as defined in ORS 279C.800; or

(B) For emergency Work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) An Agency pays moneys that the Agency has received under a Grant; and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the Agency.

(70) “Industrial Oil” means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

(71) “Informal Selection” means the procedure according to OAR 125-248-0210.

(72) “Intermediate Procurement” means a sourcing method according to ORS 279B.070 or OAR 125-249-0160.

(73) “Interstate Cooperative Procurement” is defined in OAR 125-246-0400.

(74) “Invitation to Bid” or “ITB” is defined in ORS 279B.005 and 279C.400 and means all documents, whether attached or incorporated by reference, used for soliciting Bids in accordance with 279B.055, 279B.070 or 279C.335.

(75) “Joint Cooperative Procurement” is defined in OAR 125-246-0400.

(76) “Judicial Department” is defined in ORS 174.113 and means the Supreme Court, the Court of Appeals, the Oregon Tax Court, the circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation. The Judicial Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Judicial Department and that does not have members who are officers or employees of the Executive Department or Legislative Department;

(b) An entity created by the Judicial Department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Judicial Department other than an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Judicial Department.

(77) “Labor Dispute” is defined in ORS 662.010 and includes any controversy concerning terms or conditions of employment, or concerning the association or representation of Persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(78) “Land Surveyor” is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).

(79) “Legally Flawed” is defined in ORS 279B.405(1)(b) and means that a Solicitation Document contains terms or conditions that are contrary to law.

(80) “Legislative Department” is defined in ORS 174.114 and, subject to 174.108, means the Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation. The Legislative Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Legislative Department and that does not have members who are officers or employees of the executive department or judicial department;

(b) An entity created by the Legislative Department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Legislative Department by a document other than a statute and that is not an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Legislative Department.

(81) “Locality” is defined in ORS 279C.800(3) and means the following district in which the Public Works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(l) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(82) “Lowest Responsible Bidder” is defined in ORS 279A.010(1)(r) and means the lowest Bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110(2) or 279C.375;

(c) Has not been debarred or disqualified by the Agency under ORS 279B.130 or 279C.440; and

(d) 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.

(83) “Lubricating Oil” means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(84) “Mandatory Use Contract” means a Public Contract, Department Price Agreement, or other agreement that an Agency is required to use for the Procurement of Supplies and Services.

(85) “Multisteped” means more than one step, phase, tier, or round in a process used in Competitive Sealed Bidding or Competitive Sealed Proposals according to ORS 279B and OAR division 247.

(86) “Negotiations” means to compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter.

(87) “Nonprofit Organization” is defined in ORS 279C.810 and means an organization or group of organizations described in Section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under Section 501(a) of the Internal Revenue Code.

(88) “Nonresident Offeror” means an Offeror who is not a resident Offeror. For the meaning of residency, see the definition of “Resident Offeror.”

(89) “Not-for-Profit Organization” means a Nonprofit Corporation as defined in ORS 307.130(1)(c).

(90) “OAR” means the Oregon Administrative Rules.

(91) “Offer” means a response to a Solicitation, including: a Bid, Proposal, Quote or similar response to a Solicitation.

(92) “Offeror” means a Person who submits an Offer

(93) “Offering” means a Bid, Proposal, or Quote.

(94) “Office of Minority, Women, and Emerging Small Business” or “OMWESB” is defined in ORS 200.025 and 200.055 and means the office that administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBE/WBE), and Emerging Small Business (ESB) Programs. OMWESB is the sole authority providing certification in Oregon for disadvantaged, minority, and woman-owned businesses, and emerging small businesses.

(95) “OPB Certified Professional” means an individual holding an active Oregon Procurement Basic Certification, issued by the Chief Procurement Officer.

(96) “Opening” means the date, time and place specified in the Solicitation Document for the public opening of Written sealed Offers.

(97) “Ordering Instrument” or “Order” means a document used by an Authorized Agency in compliance with the Public Contracting Code, these Rules, and Department policies, for the general purpose of ordering Supplies and Services from one or more Providers.

(a) An Ordering Instrument or Order may also be known as a Purchase Order, Work Order, or other name assigned by an Agency.

(b) A Price Agreement may specify the use of Ordering Instruments.

(c) Absent a Price Agreement and subject to the Public Contracting Code, Rules, and Department policies, an Authorized Agency’s appropriate use of an Ordering Instrument is an Offer to purchase Supplies and Services from one or more Providers, and a Provider’s responsive and appropriate acceptance of the Offer creates a Public Contract.

(98) “Ordinary Construction Services” means those services that are not Public Improvements, are procured under ORS Chapter 279B, and are otherwise under ORS Chapter 279C, in accordance with OAR 125-249-0100(1) and 125-249-0140.

(99) “Original Contract” means the initial Contract or Price Agreement of the Department or an Authorized Agency. See OAR 125-246-0400 for the definition of “Original Contract” that the Public Contracting Code and Rules use for Cooperative Procurements only.

(100) “ORPIN” means the on-line electronic Oregon Procurement Information Network administered by the Department, as further described in OAR 125-246-0500.

(101) “ORS” means the Oregon Revised Statutes.

(102) “Participant” is defined in OAR 125-246-0400.

(103) “Permissive Cooperative Procurement” is defined in OAR 125-246-0400.

(104) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any

other legal or commercial entity. “Person” is also defined in ORS 279C.500 and means the State Accident Insurance Fund Corporation and the Department of Revenue. “Person” is defined in ORS 279C.815 and means any employer, labor organization or any official representative of an employee or employer association.

(105) “Personal Services” under ORS 279B means services that require 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, the services of an accountant, physician or dentist, educator, information technology professional, Consultant, broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculptor). “Personal Services” under ORS 279C includes the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or Provider of Related Services as defined in ORS 279C.100, and that definition applies only to ORS 279C.100 to 279C.125, for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services.

(106) “Personal Services Contract” means a Contract or a member of a class of Contracts for Personal Services. Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services are a special class of Personal Services Contracts, defined in ORS 279C.100(5), and Providers under such Contracts are Consultants, as defined in OAR 125-248-0110(1).

(107) “Prevailing Rate of Wage” is defined in ORS 279C.800 and means the rate of hourly wage, including all fringe benefits, paid in the Locality to the majority of Workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(108) “Price Agreement.”

(a) “Price Agreement” is defined in ORS 279A.010(1)(v) and means a Public Contract for the Procurement of Supplies and Services at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the Authorized Agency does not guarantee a minimum or maximum additional purchase.

(b) The set price may exist at the outset or be determined later by an Ordering Instrument.

(c) A “Price Agreement” as a Public Contract may collectively consist of an initial agreement, together with later Ordering Instruments, if any.

(A) The initial agreement may be known as an agreement to agree, a master agreement, a Price Agreement for any Supplies and Services, a services agreement, or a retainer agreement, if such agreement meets the requirements of this Rule’s definition.

(B) The Ordering Instrument may be known as a work order, purchase order, or task order, or by another name for ordering purposes and related to the initial agreement.

(109) “Procurement” means the act of purchasing, leasing, renting or otherwise acquiring or selling: Supplies and Services; Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services; and Public Improvements. Procurement includes each function and procedure undertaken or required to be undertaken by an Authorized Agency to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public Contracting Code and these Rules. Procurement includes Contract Administration, and Contract Administration includes Amendments.

(110) “Procurement Document” collectively means the inclusive Solicitation Document and all documents either attached or incorporated by reference, and any changes thereto, used for any of the methods according to ORS 279A.200 through 279A.220, 279B.055 through 279B.085, 279C.100 through 279C.125, or 279C.300 through 279C.450.

(111) “Procurement File” means any of the following files maintained by an Authorized Agency: a solicitation, Contract, Amendment, Work Order, or contract administration file, separately or collectively.

(112) “Procurement Process” means the process related to these acts, functions, and procedures of Procurement.

(113) “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.

(114) “Property” is defined in ORS 279A.250 and means personal property.

(115) “Proposal” means a Written response to a Request for Proposals.

(116) “Proposer” means a Person who submits a proposal in response to a Request for Proposals, except for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services according to OAR 125-248-0110, whereby “Proposer” means a Consultant who submits a proposal to an Authorized Agency in response to a Request for Proposals.

(117) “Provider” means collectively or in the alternative: the supplier, Contractor or Consultant, providing Supplies and Services or Public Improvements.

(118) “Post-consumer Waste” means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. “Post-consumer waste” does not include manufacturing waste.

(119) “Public Agency” is defined in ORS 279C.800 and means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(120) “Public Body” is defined in ORS 174.109, subject to 174.108, and means state government bodies, local government bodies and special government bodies.

(121) “Public Contract” is defined in ORS 279A.010(1)(z) and means a sale or other disposal, or a purchase, lease, rental or other acquisition, by an Authorized Agency of Supplies and Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. “Public Contract” does not include Grants. For the purposes of these Rules, “Public Contract” means Contract.

(122) “Public Contracting” is defined in ORS 279A.010(1)(aa) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering Public Contracts or Price Agreements.

(123) “Public Contracting Code” or “Code” is defined in ORS 279A.010(1)(bb) and means 279A, 279B and 279C.

(124) “Public Improvement Contract” means a Public Contract for a Public Improvement. “Public Improvement Contract” does not include a Public Contract for emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(125) “Public Improvement” is defined in ORS 279A.010(1)(cc) and means a project for construction, reconstruction or major renovation on real property by or for an Authorized Agency. “Public Improvement” does not include:

(a) Projects for which no funds of an Authorized Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(126) “Public Works” is defined in ORS 279C.800 and includes, but is not limited to: roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for or by any public agency, to serve the public interest, but does not include the reconstruction or renovation of privately owned property that is leased by a Public Agency.

(127) “Purchase Order” means an Ordering Instrument or Order, as defined in this Rule.

(128) “Qualifications Based Selection (QBS)” means the qualifications based selection process mandated by ORS 279C.110 for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services Contracts.

(129) “Quote” means a verbal or Written Offer obtained through an Intermediate Procurement according to either OAR 125-247-0270 or 125-249-0160.

(130) “Recycled Material” means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(131) “Recycled Oil” means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(132) “Recycled Paper” means a paper product with not less than:

(a) Fifty percent of its fiber weight consisting of secondary waste materials; or

(b) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(133) “Recycled PETE” means post-consumer polyethylene terephthalate material.

(134) “Recycled Product” means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. “Recycled Product” includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product’s form.

(135) “Related Services” is defined in ORS 279C.100(8).

(136) “Request for Proposals” or “RFP” is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with 279B.060, 279B.070 or 279C.405 and related rules.

(137) “Request for Qualifications” or “RFQ” means a Written document issued by an Authorized Agency and describing: the Authorized Agency’s circumstances; the type of service(s) or Work desired; significant evaluation factors; their relative importance; if appropriate, price; and competitive qualifications. Contractors respond in Writing to the Authorized Agency by describing their experience and qualifications. The RFQ will not result in a Contract. It establishes a list of qualified Contractors in accordance with OAR 125-247-0550, 125-248-0220 or 125-249-0645.

(138) “Request for Quotes” means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Supplies and Services or Public Improvements described in the request.

(139) “Resident Bidder” is defined in ORS 279A.120 and means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this State, and has stated in the Bid whether the Bidder is a “Resident Bidder.”

(140) “Resident Offeror” means an Offeror that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Offer, has a business address in this State, and has stated in the Offer whether the Offeror is a “resident Offeror.”

(141) “Responsible” means meeting the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and not debarred or disqualified by the Authorized Agency under 125-247-0575 or 125-249-0370.

(142) “Responsible Bidder” or “Responsible Proposer” is defined in ORS 279A.105 and 279B.005 and means a person who meets the standards of responsibility as described in ORS 279B.110.

(143) “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 125-247-0640 or 125-249-0390(2), and who has not been debarred or disqualified by the Agency under 125-247-0575 or 125-249-0370, respectively.

(144) “Responsible Proposer” or “Responsible Bidder” is defined in ORS 279B.005 and means a Person who meets the standards of responsibility described in ORS 279B.110.

(145) “Responsive” means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(146) “Responsive Bid” or “Responsive Proposal” is defined in ORS 279B.005 and means a Bid or Proposal that substantially complies with the Invitation to Bid or Request for Proposals, respectively, and all prescribed Procurement procedures and requirements.

(147) “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.

(148) “Responsive Proposal” or “Responsive Bid” is defined in ORS 279B.005 and means a bid or proposal that substantially complies with the Invitation to Bid or Request for Proposals and all prescribed procurement procedures and requirements.

(149) “Retainage” is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the contract by the Authorized Agency.

(150) “Rules” means these Public Contracting Rules of the Department including divisions 246 through 249, unless otherwise indicated.

(151) “Scope” means the extent or range of view, outlook, application, operation, or effectiveness. Scope does not include the dollar amount of the Contract.

(152) “Secondary Waste Materials” means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. “Secondary Waste Materials” includes post-consumer waste. “Secondary Waste Materials” does not include excess virgin resources of the manufacturing process. For paper, “Secondary Waste Materials” does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(153) “Serial Negotiation” means a Negotiation that is sequential, on-going, consecutive, alternating, or repetitive.

(154) “Services” or “services,” for the purpose of these Rules only, means Trade Services, Personal Services, or any combination thereof.

(155) “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.

(156) “Signed” means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(157) “Small Procurement” means a sourcing method according to ORS 279B.065.

(158) “Sole-Source Procurement” means a sourcing method by which an Authorized Agency awards a Contract without competition to a single source for Supplies and Services, when Written justification demonstrates no other source is available, in accordance with ORS 279B.075 and OAR 125-247-0275.

(159) “Solicitation” means:

(a) A request by an Authorized Agency for the purpose of soliciting Offers. This request may take the form of an Invitation for 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 Authorized Agency requests such Offers; or

(c) The Solicitation Document itself.

(160) “Solicitation Document” means an Invitation to Bid; a Request for Proposals; a Writing for a Small, Intermediate, Informal Selection, Competitive Quote, or Emergency Procurement; a Special Procurement Solicitation; or other document issued to invite Offers from prospective Contractors in accordance with ORS 279B or 279C. “Solicitation Document” includes related documents, either attached or incorporated by reference, and any changes thereto, issued by an Authorized Agency to establish an Original Contract that forms the basis for an Agency’s participation in a Procurement. The following examples are not Solicitation Documents because they do not invite offers from prospective Contractors: Request for Qualifications, a prequalification of Bidders, a request for information, and a request for product prequalification.

(161) “Special Government Body” is defined in ORS 174.117 and

(a) Means any of the following:

(A) A public corporation created under a statute of this State and specifically designated as a public corporation.

(B) A school district.

(C) A public charter school established under ORS Chapter 338.

(D) An education service district.

(E) A community college district or community college service district established under ORS Chapter 341.

(F) An intergovernmental body formed by two or more public bodies.

(G) Any entity that is created by statute, ordinance or resolution that is not part of state government or local government.

(H) Any entity that is not otherwise described in this Section that is:

(i) Not part of state government or local government;

(ii) Created according to authority granted by a statute, ordinance or resolution, but not directly created by that statute, ordinance or resolution; and

(iii) Identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity, without regard to the specific terms used by the statute, ordinance or resolution.

(b) Subject to ORS 174.117, “Special Government Body” includes:

(A) An entity created by statute for the purpose of giving advice only to a special government body;

(B) An entity created by a Special Government Body for the purpose of giving advice to the special government body, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by a Special Government Body described in Subsection (a) of this

Section, other than an entity described in paragraph (B) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Special Government Body.

(162) “Special Procurement” means a sourcing method may be a class Special Procurement, a contract-specific Special Procurement or both, unless the context requires otherwise in accordance with ORS 279B.085 and OAR 125-247-0287.

(a) “Class Special Procurement” is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in 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 Supplies and Services.

(b) “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 Supplies and Services on a one-time basis or for a single project.

(163) “Specification” is defined in ORS 279B.200(3) and means any description of the physical or functional characteristics,

or of the nature of the Supplies and Services to be procured by an Agency. "Specification" includes: any requirement for inspecting, testing, or preparing the Supplies and Services for delivery and the quantities or qualities of Supplies and Services to be furnished under the Contract. Specifications generally will state the result to be obtained and occasionally may describe the method and manner of performance.

(164) "State" means the State of Oregon.

(165) "State Government," subject to ORS 174.108, means the Executive Department, the Judicial Department and the Legislative Department.

(166) "Substantial Completion" is defined in ORS 12.135 and means the date when the contractee accepts in Writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such Written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee.

(167) "Supplies and Services" includes "Supplies or Services" and collectively means Goods, Trade Services, Personal Services, and Ordinary Construction Services separately or in any combination of these terms thereof as appropriate within the context of the Rule. "Supplies and Services" includes the terms "goods and services," "goods or services," and "personal services" contained in ORS 279A and 279B. This term does not include Public Improvements or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, governed under ORS 279C.

(168) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and private not-for-profit organizations or the general public or any combination thereof. See OAR 125-050.

(169) "Sustainability" is defined in ORS 184.421 and means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

(170) "Threshold" means a specific monetary limitation that distinguishes one Procurement method from another, triggers a requirement, or marks a point of reference or change in Rule. For example, the Thresholds of \$10,000 to \$150,000 distinguish Intermediate Procurements under ORS 279B from other methods.

(171) "Trade Services" means all remaining services that do not meet the definition for Personal Services.

(172) "Unnecessarily Restrictive" is defined in ORS 279B.405(1)(c) and means that Specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the Procurement needs of an Agency.

(173) "Used Oil" is defined in ORS 459A.555 and means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(174) "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(175) "Work" means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

(176) "Work Order" means an Ordering Instrument related to Services, including any incidental Supplies.

(177) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intend 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.

(178) "Written" means existing in Writing.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.200, 279B.005 & 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0120

Policies

(1) These Rules simplify, clarify and modernize Public Contracting pursuant to ORS 279A.015(1).

(2) These Rules provide a foundation for ethical and fair dealing in Public Contracting, designed to instill public confidence pursuant to ORS 279A.015(2).

(3) The promotion of efficient use of resources pursuant to ORS 279A.015(3) includes but is not limited to Sustainability. Pursuant to ORS 184.421, "Sustainability" means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives. ORS 184.421(1) sets forth the goals for the State of Oregon regarding Sustainability and provides that in conducting internal operations, Agencies must, in cooperation with the Department, seek to achieve the following objectives:

(a) State purchases should be made so as to serve the broad, long term financial interests of Oregonians, including ensuring that environmental, economic and societal improvements are made so as to enhance environmental, economic and societal well-being;

(b) Investments in facilities, equipment and durable goods should reflect the highest feasible efficiency and lowest life cycle costs;

(c) Investments and expenditures should help promote improvements in the efficient use of energy, water and resources;

(d) State operations and purchases should help maintain vital and active downtown and main street communities;

(e) State purchases should help support opportunities for economically distressed communities and historically underemployed people;

(f) State operations should be conducted in ways that significantly increase the efficient use of energy, water and resources;

(g) State operations and purchases should reflect the efficient use and reuse of resources and reduction of contaminants released into the environment.

(4) These Rules clearly identify and implement each of the legislatively mandated socioeconomic programs identified pursuant to ORS 279A.015(4).

(5) "Arriving at best value" pursuant to ORS 279A.015(5) means selecting a Provider based on a determination of which Providers' proposals offer the best trade-off between price and performance, in which quality is considered an integral performance factor. The selection may be based on evaluation factors including but not limited to:

(a) The total cost of ownership, including the cost of acquiring, operating, maintaining and supporting Supply and Services, Public Improvements, and Architectural, Engineering and Land Surveying and Related Services, or any combination thereof, over its projected lifetime;

(b) The technical merit of the Proposer's proposal; and

(c) The probability of the Proposer performing the requirements stated in the Solicitation on time, with high quality and in a manner that accomplishes the stated business objectives.

(6) Authorized Agencies must conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.015

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05

125-246-0130**Application of the Code and Rules; Exceptions**

(1) Code, Rules and Policies. Except as set forth in this Section and ORS 279A.025, an Agency must exercise all rights, powers and authority related to Public Contracting in accordance with the Public Contracting Code, Rules, and applicable Department policies (Policies).

(2) Exceptions for Contracts and Grants. These Rules do not apply to the following:

- (a) Contracts between Agencies;
- (b) Contracts between Agencies and Public Bodies;
- (c) Contracts between Agencies and the federal government;
- (d) For Cooperative Procurements, any contractual relationship described in Subsections (2)(a) through (c) of this Rule. The Code, Rules, and policies apply to the contractual relationships between the Agencies and Providers, other states, tribes, other nations, and any of their public entities; and

(e) Grants.

(A) Agency as Recipient. If an Agency is a recipient in an agreement with a grantor, the definition of Grant in ORS 279A.010 and OAR 125-246-0110 determines if the agreement is subject to the Code and these Rules. If the grantor has substantial involvement in the program or activity of the Agency, the agreement is not a Grant. The agreement is subject to the Code and these Rules.

(B) Agency as Grantor. If an Agency is a grantor in an agreement with a recipient, the definition of Grant in ORS 279A.010 and OAR 125-246-0110 determines if the agreement is subject to the Code and these Rules. If the Agency has substantial involvement in the program or activity of the Agency's recipient, the agreement is not a Grant. The agreement is subject to the Code and these Rules.

(3) Exception for a Federal Program. Authorized Agencies otherwise subject to the Code and these Rules may enter into Public Contracts under a federal program described in ORS 279A.180 and according to OAR 125-246-0360, without following the procedures set forth in ORS 279B.050 through 279B.085 and 125-247-0250 through 125-247-0690.

(4) Exception when Procuring from Qualified Rehabilitation Facilities (QRFs). Agencies subject to the Code and these Rules are not subject to the methods set forth in ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and related Rules when the Agencies procure Supplies and Services according to ORS 279.835 through 279.855 and OAR 125-055-0010(1) (Acquisition of Supplies and Services from QRFs). Agencies are subject to the remainder of the Code and these Rules, including but not limited to delegation of authority in accordance with OAR 125-246-0170.

(5) Exception for Correctional Industries. Agencies otherwise subject to the Code and these Rules may enter into Contracts with correctional industries according to the Oregon Constitution, Article 1, Subsection 11, without being subject to the source selection procedures set forth in either ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and their respective rules.

(6) Exception for Price Agreements. Agencies otherwise subject to the Code and these Rules are not subject to the methods set forth in ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and related Rules when the Agencies procure Supplies and Services from a Department Price Agreement or other Price Agreement. Agencies are subject to the remainder of the Code and these Rules, including but not limited to delegation of authority in accordance with OAR 125-246-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.025, 279A.050, 279A.055 & 279A.180

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

Authority**125-246-0140****Procurement Authority**

(1) The Department must conduct all Procurements and administer the contracting for Supplies and Services; Architectural, Engineering and Land Surveying Services, and Related Services; and Public Improvements for the Agencies, unless delegated, according to ORS 279A.140 and 279C.105(1). Delegations of authority in accordance with OAR 125-246-0170 do not relieve the Department of this responsibility.

(2) For Agencies, the Department and its Director are the Contracting Agency described in the Public Contracting Code and represent the Agencies. Authorized Agencies receive delegated authority according to OAR 125-246-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050(1)(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0150**Applicability of These Rules to Agencies**

Agencies subject to the authority of the Director of the Department must follow these Rules. If an Agency is partially independent of the authority of the Department and partially subject to the authority of the Department, that Agency is responsible for obtaining any legal determination related to these Rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-246-0165**Delegation Policy and Procedures**

(1) Generally.

(a) Purpose. This Rule describes the policy and procedures related to the delegation of authority under OAR 125-246-0170, including but not limited to:

- (A) Policy of the Code;
- (B) Individual Representation;
- (C) Forms of Delegations and Revocations of Authority;
- (D) Changes in Individual Representation;
- (E) Procedural Requirements;
- (F) Signature; and
- (G) Commitment of Funds.

(b) This Rule applies to all delegations and sub-delegations of Authority (collectively, Delegations), modifications of Delegations, and revocations of Delegations under OAR 125-246-0170. This Rule does not delegate authority. All delegations by authority under the Rules are found solely in 125-246-0170.

(2) Policy of the Code. The policy of the Code is to clarify responsibilities, instill public confidence, promote efficient use of resources, implement socioeconomic programs, allow meaningful competition, and provide a structure that supports evolving procurement methods, according to ORS 279A.015. These Rules support this policy of the Code.

(3) Individual Representation. Public Contracting may be delegated only to an individual, representing the State's interests. Authority under these Rules may be delegated only to individuals acting on behalf of the Agencies and in accordance with this Rule. All individual delegates must hold and use this Authority within the scope of their employment by the Agency and act on behalf of the Agency as the Agency's representative. Sub-delegations may be in whole or in part according to ORS 279A.075. Any individual may decline a sub-delegation in whole or in part. A delegator or delegatee may also be referred to in this Rule as an "Authorized Individual."

(4) Forms of Delegations and Revocations of Authority. ORS 279A.075 provides that the exercise of all authorities in the Code may be delegated and sub-delegated in whole or in part. The form of a Delegation or revocation of Authority by an Authorized Individual may be by:

- (a) OAR 125-246-0170 by the Director of the Department;
- (b) A Written external or internal policy by an authorized delegator or revoker;
- (c) An Interagency Agreement, signed by the Chief Procurement Officer and the Authorized Agency; or
- (d) A letter or memorandum signed by an authorized delegator or revoker.

(5) Changes in Individual Representation. If an Agency determines that an Authorized Individual has ceased to represent that Agency for Procurement (Absent Individual), then:

(a) The Authority of the Absent Individual automatically reverts back to the individual who originally delegated the Authority to the Absent Individual. The Agency must determine who receives the reverted Authority in accordance with this Rule. If the Absent Individual is a head of an Agency or Designated Procurement Officer, the delegator of authority to that individual must notify the Chief Procurement Officer within thirty (30) days after the change in representation.

(b) Sub-delegations, if any, by an Absent Individual remain in effect unless and until the Authority of any sub-delegatees is modified or revoked by an Authorized Individual.

(6) Procedural Requirements.

(a) Compliance. Authorized Agencies must maintain good contracting procedures in accordance with the Public Contracting Code, related Rules and policies of the Department. Delegation of Authority does not exempt anyone from the requirements of the Public Contracting Code, related Rules, and policies of the Department. Any individual receiving delegated Authority is responsible for following the Public Contracting Code, related Rules, and policies of the Department.

(b) Modifications or Revocations.

(A) Authority. Subject to the conditions of Subsection (ii) below, a Delegation may be modified or revoked by:

- (i) The Director of the Department,
- (ii) The Chief Procurement Officer in accordance with OAR 125-246-0170(3)(b)(D) and 125-246-0170(3)(d)(J), or
- (iii) The original authorized delegator or successor of this delegator who made this Delegation being modified or revoked.

(B) Conditions.

(i) This modification or revocation of a Delegation must be in Writing;

(ii) The delegatee must receive reasonable notice of the modification or revocation of the Delegation; and

(iii) This modification or revocation of a Delegation must be based upon a determination.

(c) Maintenance of Documents. The Authorized Agency must maintain copies of letters, memoranda, or agreements granting a Delegation.

(7) Signature. When an Authorized Agency has delegated Authority according to OAR 125-246-0170, the Authorized Agency's signature constitutes both the execution and approval of the Contract, except as provided in 125-246-0170(2)(a)(B)(i).

(8) Commitment of Funds. ORS 291 and 293, together with the policies of the State Controller's Division of the Department, provide for public financial administration, including: appropriations, allotments by the Department, and an individual's authority to commit or encumber funds, financially obligate the Agency, and decide to expend funds. This type of authority may be referred to as commitment, expenditure, obligation, expenditure decision or signature authority (collectively, Commitment of Funds).

(9) Requests for Delegations. Any Agency may submit a delegation request through ORPIN to the Chief Procurement Officer for authority in accordance with the Public Contracting Code, this Rule, and any related policy of the Department. All requested Delegations must be approved in Writing by the Chief Procurement Officer and based upon a consideration of relevant criteria as follows:

- (a) The nature of the Supplies and Services to be provided;
- (b) Resources of the Agency requesting the delegation, including trained and qualified contract officers and staff, the Agency's experience and expertise, staff time available, and the

degree of economy and efficiency to be achieved in meeting the state's requirements if authority is delegated;

(c) The Agency's Procurement and public contracting past performance;

(d) Department's resources to exercise the authority if it is not delegated; and

(e) Value added by the Agency if the authority is delegated.

(10) Revocation of Delegations. The Chief Procurement Officer may revoke any delegation issued under section (9) of this rule at any time by written notice to the Designated Procurement Officer of the Agency, as defined in OAR 125-246-0170, based upon, but not limited to any of the following:

(a) Failure to comply with the requirements of the delegation;

(b) Deficiencies evidenced by performance audits performed by the Department, the Secretary of State, or the Legislative Assembly.

(c) Failure to comply with the Department training requirements to obtain an Oregon Basic Procurement Certification, Advanced Certification, or specific training described in the delegation;

(d) Lack of adequate experience in terms of procurement knowledge and any specialized knowledge pertinent to the authority delegated;

(e) The available resources of the Department to conduct the purchasing activities if authority is revoked; and

(f) The degree of economy and efficiency to be achieved in meeting the state's requirements if authority is revoked.

(11) Return of Delegations from Agencies to the Chief Procurement Officer. If an Agency needs assistance, an Agency may request that the Chief Procurement Officer reclaim the authority previously delegated to the Agency. With sole discretion, the Chief Procurement Officer may accept the reclamation request for assistance according to the responsibilities, resources, and needs of the Department and the Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stat. Implemented: ORS 279A.050, 279A.075 & 279A.140

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0170

Delegation of Authority

(1) Generally.

(a) Purpose. This Rule delegates the procurement authority of the Department (Authority). Only this Rule delegates this Authority.

(b) Authority of Agencies. The Director of the Department delegates Authority to the Designated Procurement Officers of the Authorized Agencies in section (2) of this rule.

(c) Authority of the Chief Procurement Officer. The Director of the Department delegates Authority to the Chief Procurement Officer in Section (3) of this Rule.

(d) Authority of the Director. According to ORS 279A.140, the Department must conduct all Procurements, including Contract Administration, for the Agencies. Other Sections of the Code authorize specific actions by the Director of the Department. According to ORS 279A.050(1) and (2), this Authority of the Department vests only in the Director of the Department. The Director is ultimately responsible for the Procurement of the Agencies.

(2) Delegation to Individuals in Agencies.

(a) Chain of Delegation and Responsibilities.

(A) Head and Designated Procurement Officer of the Agency.

(i) Conditional Delegation. The Director of the Department delegates Authority, only as set forth in this Section (2), to the heads of Authorized Agencies, on the condition that the heads of Authorized Agencies subdelegate such Authority to their Agencies' Designated Procurement Officers, who may further subdelegate such Authority in accordance with policies of their Agencies (Chain of Delegation). Every Authorized Agency must appoint a Designated Procurement Officer to serve that Authorized Agency; if none is appointed, the head of the Agency is deemed to be the Designated Procurement Officer and assumes the Authority, duties

and responsibilities of the Designated Procurement Officer (collectively, "Designated Procurement Officer"). The heads of the Agencies may not subdelegate Authority outside this Chain of Delegation, except as provided in subsection (2)(a)(B).

(ii) Manner of Appointment. The Authorized Agency determines its procedure for appointing its Designated Procurement Officer, and this Rule does not require or imply any inherent Authority in individual(s) or the Agency in order to make this appointment. The Agency must send a Written notice of its appointment of the Designated Procurement Officer to the Chief Procurement Officer.

(B) Exceptions: Head and Other Individuals of the Agency.

(i) Execution of Contracts. Heads of Authorized Agencies may subdelegate the Authority to execute Contracts, as described in subsection (2)(b)(F), to other individuals within their respective Agency, provided this subdelegation is in accordance with a Written alternative subdelegation plan, maintained on file with the Agency's Designated Procurement Officer.

(ii) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295. Heads of Authorized Agencies may subdelegate the Authority to procure general or special counsel authorized by the Attorney General, as described in subsection (2)(d)(L), to other individuals within their respective Agency, provided the head of the Authorized Agency has determined that the individual receiving the subdelegation has the requisite skills and knowledge to carry out the subdelegation. Such subdelegations may be further subdelegated within that Authorized Agency, provided the subdelegator has determined that each individual receiving the Delegation has the requisite skills and knowledge to carry out the subdelegation.

(iii) Chain of Delegation. Authorized Individuals in accordance with Subsections (2)(a)(B)(i) and (ii) are included in the Chain of Delegation.

(C) Responsibilities. Each individual in the Chain of Delegation remains responsible for the exercise of Authority by that individual's subdelegates, and subdelegation does not waive this responsibility. Each delegator must determine and document that the delegatee is capable and accountable for the Procurement. The Designated Procurement Officer, appointed within each Authorized Agency, is responsible for all delegated procurement activity on behalf of the Authorized Agency, as described in this section (2), except as provided in subsection (2)(a)(B).

(b) Duties and Responsibilities of Designated Procurement Officers. The Authority, duties and responsibilities of the Designated Procurement Officer, according to (2)(a)(A), are as follows:

(A) Serve as the exclusive supervisor and manager of the Authorized Agency's Procurement system;

(B) Conduct, supervise and manage the Procurement and the Procurement Process for the Authorized Agency in accordance with the Code and these Rules, except for those Procurements conducted by a delegatee to whom the Designated Procurement Officer has delegated Authority;

(C) Prepare or monitor the use of Specifications or statements of work for all Procurements of the Authorized Agency;

(D) Issue Solicitations and implement other non-Solicitation methods for all Procurements of the Authorized Agency in accordance with the Code and these Rules;

(E) Award Contracts only as authorized in accordance with this Rule;

(F) Execute Contracts, which means causing the signing of Contracts and performance of all necessary formalities to bring the Contracts into their final, legally enforceable forms.

If the Designated Procurement Officer is unable to make a Commitment of Funds as described in OAR 125-246-0165(8), then the head of the Authorized Agency may follow an alternative subdelegation plan in accordance with Subsection (2)(a)(B)(i).

(G) Comply with the reporting requirements of the Code, these Rules, and Department policies;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, Delegations, Special Procurements and exemptions. Monitoring Con-

tract development, awards, and compliance applies to all Delegations;

(I) Based upon the monitoring described in subsection (2)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing; and

(J) Conduct Cost Analyses, approve Feasibility Determinations and Exceptions, and otherwise comply with OAR 125-247-0110.

(c) Delegation by Rule Based Upon Thresholds. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services up to and including the Threshold of \$10,000, according to ORS 279B.065 and related Rules;

(B) Direct appointments of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services according to OAR 125-248-0200;

(C) Intermediate Procurements of Supplies and Services greater than \$10,000 and not exceeding \$150,000, and Amendments of Contracts resulting from Intermediate Procurements, according to ORS 279B.070, OAR 125-247-0270, and any related policy;

(D) Informal Selection Procedures of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services according to ORS 279C.110 and OAR 125-248-0210, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(E) Competitive Quotes for Public Improvements estimated not to exceed \$100,000, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(F) Competitively Sealed Bidding not exceeding \$150,000 and according to OAR 125-247-0255;

(G) Competitively Sealed Proposals not exceeding \$150,000 and according to OAR 125-247-0260;

(H) Sole-Source Procurements not exceeding \$150,000 and according to ORS 279B.075 and OAR 125-247-0275;

(I) Special Procurements in accordance with OAR 125-247-0287 not exceeding \$150,000.

(J) Purchase of Used Personal Property Special Procurements not exceeding \$150,000 and according to OAR 125-247-0288(9);

(K) Reverse Auctions Special Procurements not exceeding \$150,000 and according to OAR 125-247-0288(10); and

(L) Contract Administration as follows:

(i) For Contracts and Ordering Instruments authorized according to this section (2)(c) and (d), the Contract Administration of these Public Contracts and Ordering Instruments, including but not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s); but excluding the Contract Administration described in Subsection (v) below;

(ii) The daily or routine Contract Administration of Ordering Instruments placed against Department Price Agreements and Contracts procured by the Department on behalf of Agencies. This daily or routine Contract Administration includes but is not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s);

(iii) Activities specified in Writing by the Chief Procurement Officer or delegatee;

(iv) Activities specified in a related policy of the Department; and

(v) Despite subsection (2)(c)(L)(i) through (iv) above, this Delegation by subsection (2)(c)(L) does not include:

(I) The Contract Administration of Department Price Agreements; or

(II) For Contracts procured by the Department on behalf of Agencies, Amendments when the amended value of Contract exceeds \$150,000; and terminations of such Contracts when the amended value of such Contract exceeds \$150,000.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Emergency Procurements, in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(B) One-time, nonrepetitive Joint Cooperative Procurements in accordance with OAR 125-246-0400, provided that:

(i) No such Procurement results in a Permissive Cooperative Procurement that is open to any Agency outside of those Agencies jointly named in the original Procurement;

(ii) No such Procurement of Supplies and Services exceeds the Threshold of \$150,000, including all Amendments, according to OAR 125-247-0805;

(iii) No such Procurement of Public Improvements exceeds \$100,000, including Amendments according to OAR 125-249-0160 and 125-249-0910; and

(iv) The Authorized Agency must follow any related policy of the Department.

(C) Federal program Procurements not exceeding \$150,000 or according to a delegation agreement with the Chief Procurement Officer, and in accordance with ORS 279A.180 and related Rules;

(D) Client Services Special Procurements according to OAR 125-247-0288(1) and (2);

(E) Client Services procured under ORS 279B.055 through 279B.085 and related Rules, including all amendments according to OAR 125-247-0805;

(F) Renegotiations of Existing Contracts with Incumbent Contractors Special Procurements according to OAR 125-247-0288(3) and as follows: the Authorized Agency is limited to the same authority delegated to that Agency with regard to the Original Contract and any Amendments and may not collectively exceed any Threshold related to its authority to procure the Original Contract, except this limit may be exceeded with the prior Written approval of the Chief Procurement Officer;

(G) Advertising Contracts Special Procurements according to OAR 125-247-0288(4);

(H) Equipment Repair and Overhaul Special Procurements according to OAR 125-247-0288(5);

(I) Contracts for Price Regulated Items Special Procurements according to OAR 125-247-0288(6);

(J) Investment Contracts Special Procurements according to OAR 125-247-0288(7);

(K) Food Contracts Special Procurements according to OAR 125-247-0288(8);

(L) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295;

(M) Special Procurement(s) related to disaster response, according to OAR 125-247-0287;

(N) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services (A&E) Procurement according to OAR 125-248-0200 through 125-248-0340;

(O) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691; and

(P) Brand Name Specification Determinations for Sole Source Procurements not exceeding \$150,000 and according to OAR 125-247-0691.

(Q) Selling or leasing of Supplies and Services in accordance with OAR 125-246-0800.

(R) Buy Decision in accordance with OAR 125-247-0200(1) and (2).

(3) Delegation to the Chief Procurement Officer.

(a) Powers and Authorities. The Director of the Department delegates to the Chief Procurement Officer the rights, powers and authority vested in the Director of the Department to:

(A) Delegate and subdelegate these authorities in whole or in part according to ORS 279A.075;

(B) Approve Special Procurement requests, according to ORS 279B.085 and related Rules, and receive filed protests of approvals of Special Procurements, according to ORS 279B.400(1);

(C) Conduct hearings, approve Agency findings, approve exemption requests, and issue exemption orders, according to ORS 279C.335, ORS 279C.345, 279C.390, and related Rules;

(D) Create all procedures and Specifications required by the Public Contracting Code and these Rules;

(E) Receive, maintain, and act upon information contained in reports, including but not limited to ORS 279A.140(h) and 279C.355, as required by the Public Contracting Code and these Rules;

(F) Receive and resolve protests according to ORS 279B.400 to 279B.420 and Division 247 Rules, except for appeals from a decision of the Chief Procurement Officer or delegatee;

(G) Receive notices, conduct hearings, and make decisions regarding prequalifications, debarments, and Disqualifications according to ORS 279A.110, 279B.425, 279C.450, 200.065(5), and 200.075(1), except for appeals from a decision of the Chief Procurement Officer or delegatee;

(H) Approve expedited notices for Sole-Source Procurements according to OAR 125-247-0275;

(I) Procure and administer Cooperative Procurements and receive, hear, and resolve related protests and disputes, according to ORS 279A.200 through 279A.225 and OAR 125-246-0400;

(J) Approve General Service Administration federal programs or federal Contracts in accordance with OAR 125-246-0360;

(K) Authorize public notice of bids, proposals, and public improvement Contracts to be published electronically and according to ORS 279B.055(4)(c) and 279C.360(1);

(L) Approve the manner and character of retainage according to ORS 279C.560(1) and (5);

(M) Approve exemptions waiving or reducing the bid security or bonds for Public Improvement projects in accordance with ORS 279C.390(1);

(N) Approve electronic-filing (e-filing) in accordance with ORS 84.049, 84.052 and 84.064;

(O) Approve procurement-related activities required by other law; and

(P) Other procurement actions of the Department specifically required by these Rules.

(b) Duties and Responsibilities of the Chief Procurement Officer. The authority, duties and responsibilities of the Chief Procurement Officer are as follows:

(A) Conduct Procurements, including administration of Contracts, for Agencies.

(B) Develop and maintain State-wide Procurement rules, policies, procedures and standard contract terms and conditions as necessary to carry out the Public Contracting Code.

(C) Subdelegate authority in whole or part, in accordance with OAR 125-246-0165(9);

(D) Revoke authority delegated by the Chief Procurement Officer or in accordance with OAR 125-246-0165(10);

(E) Maintain a file of Written subdelegation authority granted and revoked under these Rules in accordance with the law;

(F) Provide guidance and leadership on Procurement matters to Agencies and their employees;

(G) Provide training and instruction opportunities to assure Department staff and Agency staff are equipped with necessary knowledge and skills to comply with requirements of the Public Contracting Code, Rules, and Department policy related to Procurement;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contract, Contract compliance, spend, Delegations, Special Procurements and exemptions. Report these matters to the Authorized Agency and Director as appropriate. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon monitoring described in subsection (3)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055

through 279B.085 to optimize savings consistent with strategic sourcing.

(J) Appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition according to ORS 279A.015.

(c) Delegation by Rule Based Upon Threshold. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services on behalf of Agencies not to exceed \$10,000 according to ORS 279B.065;

(B) Intermediate Procurements of Supplies and Services greater than \$10,000 and not exceeding \$150,000, and Amendments of Contracts resulting from Intermediate Procurements, on behalf of Agencies and according to ORS 279B.070 and OAR 125-247-0270;

(C) Informal Selection procedures of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, on behalf of Agencies and according to ORS 279C.110 and OAR 125-248-0210;

(D) Competitive Quotes of Public Improvements estimated not to exceed \$100,000, according to ORS 279C.410 notes and OAR 125-249-0160; and

(E) All Procurements exceeding the Thresholds for Intermediate Procurements, Informal Procurements, or Competitive Quotes, according to ORS 279B.070 and OAR 125-247-0270 (Supplies and Services); ORS 279C.110 and OAR 125-248-0210 (Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services); and ORS 279C.410 and OAR 125-249-0210 (Public Improvements), respectively.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and OAR 125-246-0400;

(B) Special Procurements according to ORS 279B.085 and related Rules;

(C) Sole-Source Procurements in accordance with ORS 279B.075 and OAR 125-247-0275;

(D) Emergency Procurements in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(E) Federal program Procurements in accordance with ORS 279A.180 and OAR 125-246-0360;

(F) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services (A&E) Procurement according to OAR 125-248-0200 through 125-248-0340;

(G) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691;

(H) Brand Name Specification Determinations for Sole Source Procurements according to OAR 125-247-0691;

(I) Selling or leasing of Supplies and Services in accordance with OAR 125-246-0800;

(J) All Procurements otherwise delegated to an Authorized Agency according to Section (2) if the Chief Procurement Officer, at her or his own discretion, revokes and assumes this delegated authority, based upon a determination that any Authorized Agency refuses or fails to comply with any Delegation described in section (2); and

(K) Buy Decision in accordance with OAR 125-247-0200(1) and (2).

(d) Delegation to the Department Procurement Services Manager.

(a) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the Department Procurement Services Manager for the following Procurements, including Contract Administration:

(A) Strategic Sourcing: Cooperative Procurements and Statewide Price Agreements.

(i) Conduct Statewide Price Agreement Solicitations,

(ii) Award and execute Statewide Price Agreement Contracts, resulting Price Agreement Work Orders, and Statewide Price Agreement Qualified Rehabilitation Facility (QRF) Contracts,

(iii) Procure and administer Cooperative Procurements, including acting as an Administrator or Participant and participating in, sponsoring, conducting or administering Cooperative Procurements in accordance with OAR 125-246-0400,

(iv) Approve Cooperative Procurement Sole Source Justifications as follows:

(I) The Sole Source Request must be submitted through ORPIN and all Approvals must be attached to the ORPIN Request to allow for searching, e-filing, and reporting purposes,

(II) For each Sole Source Request, the reviewer(s) must create a Special Request e-file on an accessible drive and a paper file; evaluate the Request based upon a consideration of the criteria under ORS 279B.075 and related rules; document decision-making; and close the files for each Sole Source Request and Approval.

(B) Agency-Specific Procurements.

(i) Conduct Agency-Specific Solicitations, and "Agency-Specific" means one agency,

(ii) Award and execute Agency-Specific Contracts,

(iii) Execute Agency-Specific Contracts and Agency-Specific QRF Contracts,

(C) All Procurements.

(i) Purchase through the federal General Service Administration Schedule 70 in accordance with OAR 125-246-0360,

(ii) Make Contract amendments and conduct other Contract Administration,

(iii) Receive and resolve protests, except for appeals from a decision of the Chief Procurement Officer or delegate,

(b) Authorities related to Agency Delegation Requests and Approvals. The Director of the Department delegates to the Department Procurement Services Manager the authority to make Delegation Requests on behalf of Agencies and approve Agencies' Delegation Requests in accordance with the following conditions:

(A) The Delegation Requests must be submitted through ORPIN and all Delegation Agreements must be attached to the ORPIN Delegation Requests to allow for searching, e-filing, and reporting purposes,

(B) The Delegation Request and any Agreement relate to:

(i) A specific authority to one agency, not exceeding a cumulative total value of \$500,000, and not involving a policy decision, or

(ii) A specific authority to be an administrator for or participant in a cooperative procurement, and not involving a policy decision,

(C) For each Delegation Request, the reviewer(s) must create an e-file on an accessible drive and a paper file; complete the assessment form; evaluate the Request based upon a consideration of the criteria under in OAR 125-246-0165(9); authorize only the use of a procurement method under ORS 279B.055 through 279B.085 (seven sourcing methods) or 279C.330 through 335 (competitive bidding); document decision-making; and close the files for each Delegation Request and Agreement.

(D) All Delegation Requests, Assessments, and Agreements must be in writing and on the same forms as used by the Department Procurement Policy Team.

(c) Approval of Feasibility Determinations. The Director of the Department delegates to the Department Procurement Services Manager the authority to conduct Cost Analyses and approve Feasibility Determinations in accordance with OAR 125-247-0110.

(d) General.

(A) This Delegation of authority under section (4) is not exclusive. The Director of the Department still retains all procurement authority under ORS 279A.140.

(B) This Delegation under section (4) is for the sole purpose of the Department performing procurement services. Except as

provided in subsection (4)(b), the authority delegated under Section (4) may not be sub-delegated to Agencies.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.075 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 15-2005(Temp), f. & cert. ef. 12-22-05 thru 5-21-06; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

Minorities, Women and Emerging Small Businesses

125-246-0200

Affirmative Action; Limited Competition Permitted

According to ORS 279A.100, an Authorized Agency may limit competition on Public Contracts for Supplies and Services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, including but not limited to OAR 125-246-0314 (disabled veterans), and in accordance with any policies and procedures established by the Department.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.100

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-246-0210

Subcontracting to and Contracting with Emerging Small Businesses; Disqualification

(1) As set forth in ORS 279A.105, an Authorized Agency may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

(a) A business enterprise that is certified under ORS 200.055 as an emerging small business; or

(b) A business enterprise that is:

(A) Certified under ORS 200.055 as an emerging small business; and

(B) Is located in or draws its Workforce from economically distressed areas, as designated by the Oregon Business Development Department.

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

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

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

(3) Discrimination in Subcontracting Prohibited.

(a) Prohibition. An Offeror who competes for or is awarded a Public Contract may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman, emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

(b) Certification. Authorized Agencies must include in each Solicitation Document a requirement that Offerors certify in their Offers that the Offeror has not and will not discriminate, in violation of Subsection (3)(a), against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

(4) Disqualification:

(a) An Authorized Agency may disqualify a Person from consideration of award of the Authorized Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Public Contract according to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with Subsections (d) and (e) of this Section.

(b) As provided in ORS 200.065 and 200.075 an Authorized Agency may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a subcontractor) as follows:

(A) For a Disqualification under ORS 200.065, the Authorized Agency may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or if the Person has been disqualified by another Authorized Agency according to ORS 200.065.

(B) For a Disqualification under ORS 200.075, the Authorized Agency may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(a) through (c).

(c) An Authorized Agency may disqualify or suspend a Person's right to submit Offers or participate in Public Contracts only for the length of time permitted by ORS 200.065 or 200.075, as applicable.

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

(A) State that the Authorized 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 Authorized Agency does not receive the Person's Written request for a hearing within the time stated, the Person must have waived the right to a hearing;

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

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

(F) State the proposed Disqualification period; and

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

(e) Hearing. Upon the Authorized Agency's receipt of the Person's timely request, the Authorized Agency must promptly deliver written notification and this request to the Chief Procurement Officer. The Chief Procurement Officer must schedule a hearing upon its receipt of the Person's timely request. The Department must 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 before the hearing. The Chief Procurement Officer has the discretion to delegate authority under OAR 125-246-0170(3)(a)(G) and specify how the delegatee must review and hear Disqualifications.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.200.065, 200.075, 105 & 279A.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0220

Advocate's Office and OMWESB

(1) The Director of Economic & Business Equity (also known as the "Governor's Advocate's Office for Minority, Women and Emerging Small Business) was created in the Office of the Governor, and the Director of Economic & Business Equity is the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Director of Economic & Business Equity oversees the resolution of business concerns with Authorized Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Director of Economic & Business Equity is also charged with

maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses according to ORS 200.025.

(2) The “Office of Minority, Women and Emerging Small Business” (OMWESB), as part of the Governor’s Office, administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), Women Business Enterprise (WBE), and Emerging Small Business (ESB) Programs. As the sole certification authority in Oregon for disadvantaged, minority-and woman-owned businesses, and emerging small businesses, the Office of Minority, Women and Emerging Small Business (OMWESB) provides certification services for disadvantaged, minority, woman and emerging small businesses, according to ORS 200.025 and 200.055.

(3) A “Disadvantaged Business Enterprise” means a small business concern 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.

(4) An “Emerging Small Business” is a business with its principal place of business located in this State; a business with average annual gross receipts over the last three years not exceeding \$1 million for construction firms and \$300,000 for non-construction firms business which has fewer than 20 employees; an independent business (not a subsidiary, affiliate, or successor company of another business whose average gross receipts would exceed the stated limits); and a business properly licensed and legally registered in this State.

(5) A “Minority or Women Business Enterprise” is a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals, according to ORS 200.005.

(6) The general policy of the Department and these Rules is to expand economic opportunities for Disadvantaged Business Enterprises, Minority Business Enterprises, Women Business Enterprises and Emerging Small Businesses by exposing them to contracting and subcontracting opportunities available through Public Contracts, according to ORS 279A.105 and based upon the Legislative findings set forth in ORS 200.015.

(7) The Agency must support the participation of Minority, Women owned and Emerging Small Businesses in its purchasing processes by notifying the Director of Economic & Business Equity as required under ORS 200.035.

(8) When a Public Improvement Contract is less than \$100,000 and the Offerors are being drawn exclusively from a list of Certified Emerging Small Businesses maintained by the Office of Minority, Women and Emerging Small Business, the Authorized Agency may let the Contract without formal competitive sourcing methods 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 must be taken to obtain Quotes from different firms each time the list is used. The Authorized Agency must keep a Written record of the source and amount of the Quotes received and comply with the applicable requirements of this Rule.

(9) In carrying out the policy of affirmative action, an Authorized Agency may rely upon ORS 279A.100 and advice of legal counsel regarding its application.

(10) No Special Procurement according to ORS 279B.085 and no exemption according to ORS 279C.335 approved by the Chief Procurement Officer waives or excepts the requirement of notice to the Director of Economic & Business Equity in accordance with ORS 200.035 and any DAS policy. All Agencies must comply with ORS 200.035, notwithstanding the Public Contracting Code.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.100 & 279A.105

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

Contract Preferences

125-246-0300

Preference for Oregon Supplies and Services

See OAR 137-046-0300.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.120

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-246-0310

Reciprocal Preferences

(1) When evaluating Offers according to OAR 125-247-0255 through 125-247-0260, 125-249-0390 or 125-249-0640 through 125-249-0660, Authorized Agencies must add a percentage increase to the Offer of a Nonresident Offeror equal to the percentage, if any, of the preference that would be given to that Offeror in the state in which the Offeror resides. An Authorized Agency may rely on the list maintained by the Department according to ORS 279A.120(4) to determine:

(a) Whether the Nonresident Offeror’s state gives preference to in-state Offerors; and if so,

(b) The amount of such preference (Percentage).

(2) Authorized Agencies must add a percentage to the Offer that matches the Percentage described in Section (1) before determining Tie-Offers in accordance with OAR 125-246-0300.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.120

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-246-0314

Disabled Veterans Preference

(1) Generally. The Public Contracting Code and these Rules may not be construed to prohibit an Authorized Agency from engaging in public contracting practices designed to promote affirmative action goals, policies or programs to give a preference in awarding Public Contracts to Disabled Veterans. In carrying out an affirmative action goal, policy or program, an Authorized Agency may limit competition for any Public Contract estimated to not exceed \$50,000 to Disabled Veterans as defined in Section (2) (“Preference”).

(2) Definition. “Disabled Veteran” is defined in ORS 408.225. “Disabled Veteran” includes the individual as defined in ORS 408.225 and any business enterprise that one or more such individuals own or control, if the cumulative ownership or control by such individuals is 51% or greater.

(3) Establishing the Preference. The Authorized Agency may use a percentage for the Preference in a competitive procurement process or use the Preference for a direct award to the Disabled Veteran instead. In either case, the process for a Contract may not exceed \$50,000, and the Designated Procurement Officer of the Authorized Agency must make a written determination that supports the Preference.

(4) Subcontracting. An Authorized Agency may require a Contractor to subcontract some part of a Contract not to exceed \$50,000 to, or obtain materials to be used in performing the Contract from, a Disabled Veteran.

(5) Proof. Under Section (3) or (4), an Authorized Agency may require that a Disabled Veteran produce proof of service-connected disability from the United States Department of Veterans Affairs. The proof of service-connected disability may be in the form of an:

(a) Award letter;

(b) Award card; or

(c) Other evidence acceptable to the Authorized Agency from the United States Department of Veterans Affairs.

(6) Discrimination. A Bidder or Proposer who competes for or is awarded a Public Contract may not discriminate against a subcontractor in awarding a subcontract because the subcontractor employs a Disabled Veteran or is a Disabled Veteran.

(7) Debarment or Disqualification.

(a) Finding and Appeal. An Authorized Agency may debar or disqualify a Bidder or Proposer (Offeror) under OAR 125-247-0575 or 125-249-0370, if the Authorized Agency finds that the Offeror has violated Section (6). A debarred or disqualified Offeror may appeal under OAR 125-247-0750 or 125-249-0370.

(b) Limitation. An Authorized Agency may not allege an occurrence of discrimination in subcontracting as a basis for debarring or disqualifying a Bidder or Proposer under Section (6) more than three (3) years after the alleged discriminatory conduct occurred or more than three (3) years after the Authorized Agency, in the exercise of reasonable diligence, should have discovered the conduct, whichever is later.

(8) Certification. An Offeror must certify in the documents accompanying its Offer that the Offeror has not discriminated and will not discriminate against a Disabled Veteran or a subcontractor that employs a Disabled Veteran in obtaining a required subcontract.

(9) Violation. After a Contractor is awarded a Public Contract and if the Contractor violates the certification made under Section (8), the Authorized Agency may regard the violation as a major breach of contract that permits the Authorized Agency to:

(a) Terminate the Contract; or

(b) Exercise any of the remedies for breach of contract that are reserved in the Contract.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.100

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-246-0316

Lighting Preference Relating to Mercury

Authorized Agencies must comply with ORS 646A.566, including but not limited to:

(1) When making procurement decisions on lighting that contains mercury, an Agency must:

(a) Request information from potential suppliers on mercury content, energy use, lumen output and lighting lifetime;

(b) Issue specifications; and

(c) Favor lighting that contains mercury that meets the mercury content standards established by ORS 646A.564.

(2) After consultation with the Department of Environmental Quality, the Chief Procurement Officer may direct Agencies to use information and issue specifications to favor lighting in accordance with (1), and Agencies must follow the directions, if any.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 646A.566

Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0318

Oregon Employment Preference

Authorized Agencies must comply with ORS 279B.112, including but not limited to the following requirements for a discretionary preference:

(1) An Authorized Agency may give a preference to an Offer including a personnel deployment disclosure form (Disclosure Form) that states that the Offeror will employ more workers within Oregon than a competing Offer if the Offers otherwise suit the Agency's specifications for the procurement equally well.

(2) The Agency may state in the solicitation documents for any procurement (Solicitation) that the Agency will consider a Disclosure Form and may give a preference described in section (1) above. Then,

(a) An Offeror may submit a Disclosure Form with its Offer;

(b) If the Agency determines that the Offers suit the Agency's specifications for the procurement equally well, then the Agency may consider any Disclosure Forms submitted with those Offers in evaluating the Offers; and

(c) The Agency may prefer the Offer with a Disclosure Form that indicates that the Offeror will employ more workers within Oregon than a competing Offer, with or without Disclosure Form information.

(3) The Disclosure Form submitted by an Offeror must state:

(a) The number of workers that the Offeror and its subcontractors plan to deploy to perform the work described in the Solicitation;

(b) The number of workers that the Offeror and its first-tier subcontractors will employ within Oregon; and

(c) The number of jobs in each of the categories described in subsections (3)(a) and (b) that would be a newly created job.

(4) The Agency may adopt its own form and contents for the Disclosure Form, unless the Chief Procurement Officer requires Agencies to use an approved form and contents of the Disclosure Form.

(5) The Agency may:

(a) Verify the information stated in the Disclosure Form before awarding a public contract; and

(b) Require that the contractor maintain a minimum number of workers and jobs over the term of the contract.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.112

Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0319

Federally Funded Transit Projects — Preference for Exceeding Federal Buy America Requirements

See OAR 137-046-0330.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: Sec. 4, Ch. 52, OLs 2012

Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0320

Recycling; Definitions

(1) "Post-consumer Waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer Waste" does not include manufacturing waste.

(2) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(3) "Recycled PETE Product" means a product containing post-consumer polyethylene terephthalate material.

(4) "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. For paper, "secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.125, 279A.145, 279A.150, 279B.270 & 279B.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0321

Recycling Policy

(1) The Department promotes the Procurement by all Authorized Agencies of products made from Recycled Materials in accordance with ORS 279A.125 and 279B.270.

(2) When purchasing Goods, or pursuant to Subsection (2)(c), Personal Services that relate to the use of recovered resources and Recycled Materials, Authorized Agencies must:

(a) Review the procurement Specifications currently utilized in order to eliminate, wherever economically feasible, discrimination against the Procurement of recovered resources or Recycled Materials;

(b) Develop purchasing practices that, to the maximum extent economically feasible, assure purchase of materials which are recycled or which may be recycled or reused when discarded. The Department will make Recycled Products and materials available to Authorized Agencies whenever they can be obtained;

(c) Provide incentives for the maximum possible use of recovered resources and Recycled Materials, wherever economically feasible, in all procurement Specifications issued.

(3) Pursuant to ORS 279A.125, notwithstanding provisions of law requiring the Department to award a Contract to the lowest or best Offeror, the Department must give preference to the procurement of Goods manufactured from Recycled Materials, if the Recycled Product's costs do not exceed the costs of nonrecycled products by more than 5%, or a higher percentage if a Written determination is made by the Department. The requirements of ORS 279A.125 may be applied to Authorized Agencies by agreement or policy of the Department.

(4) The Offeror must indicate in the Offer, the materials considered relevant to the 5% preference. The 5% preference will only apply to the value of that portion of the Offer that offers non-paper products containing verifiable recycled contents.

(5) All Contracts must require Contractors to use, in the performance of the Contract Work, to the maximum extent economically feasible, Recycled Paper;

(a) All Contracts must require Contractors to use, in the performance of the Contract Work, to the maximum extent economically feasible, recycled PETE products, as well as other recycled plastic resin products. "Recycled PETE products" means a product containing post-consumer polyethylene terephthalate material. The Department must provide guidelines to Authorized Agencies and Contractors on the availability of necessary Goods that contain recycled PETE, as well as other recycled plastic resin supplies and materials; the Department must also identify suppliers able to provide necessary Goods containing recycled PETE, as well as other recycled plastic resin supplies and materials, pursuant to ORS 279A.150.

(b) All Authorized Agencies must include the following language in any Invitation to Bid or Request for Proposal: "Vendors must use recyclable products to the maximum extent economically feasible in the performance of the contract Work set forth in this document," pursuant to ORS 279B.270(2); and

(c) The Department must include Recycled Product purchasing information within publications and training programs provided to local governments requesting state government purchasing assistance, pursuant to ORS 279A.145.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.125, 279A.145, 279A.150, 279B.270 & 279B.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0322

Preference for Recycled Materials

(1) Notwithstanding provisions of law requiring an Authorized Agency to award a Contract to the lowest or best Offer of a Provider, and in accordance with ORS 279A.125 and Subsection (2) of this Section, an Authorized Agency charged with the Procurement of Goods for any public use must give preference to the Procurement of Goods manufactured from Recycled Materials whenever the Authorized Agency uses Competitive Sealed Bidding or Competitive Sealed Proposals pursuant to ORS 279B.055 or 279B.060, respectively, and as set forth in this Rule.

(2) In comparing Goods from two or more Offerors, if at least one Provider offers Goods manufactured from Recycled Materials and at least one Provider does not, an Authorized Agency must select the Provider offering Goods manufactured from Recycled Materials if each of the following four conditions exists:

(a) The Recycled Product is available;

(b) The Recycled Product meets applicable standards;

(c) The Recycled Product can be substituted for a comparable non-recycled product; and

(d) The Recycled Product's costs do not exceed the costs of non-recycled products by more than five percent (5%), or a higher percentage if a Written determination is made by the Authorized Agency and set forth in the Solicitation Document.

When making this determination, the Authorized Agency must consider the costs of the Goods following any adjustments the Authorized Agency makes to the price of the Goods after evaluation pursuant to OAR 125-246-0310.

(3) For the purposes of this Section, an Authorized Agency must determine if Goods are manufactured from Recycled Materials in accordance with standards established by the Department.

(4) Providers must certify in their Offers:

(a) The minimum, if not exact, percentage of Recycled Product in all materials and supplies offered; and

(b) Both the post-consumer and secondary waste content thereof. Providers may certify a zero percent Recycled Product content. This certification applies to Public Improvement products and all other Procurements.

(5) To be eligible for a preference under ORS 279A.125 and this Rule:

(a) The Provider must indicate which materials and supplies contain verifiable recycled content; and

(b) Such products must meet the requirements of ORS 279A.125 and this Rule.

(6) A preference under ORS 279A.125 will only be applied to those products in the Offer that contain verifiable recycled content.

(7) Offers that contain false information about:

(a) The percentage of Recycled Product, post-consumer and secondary waste content; or

(b) Verifiable recycled content, must be rejected as non-responsive, and the Provider offering false information may be deemed non-responsible.

(8) Contracts awarded as a result of a preference under ORS 279A.125 are subject to such investigation, including but not limited to, audits, plant visitations, examination of invoices, laboratory analysis, and other documents, etc., as the Department deems necessary to confirm that the products supplied therein contain the percentages of Recycled Product, post-consumer and secondary waste stated in the Offer.

(9) Failure to provide products containing the percentages of Recycled Product, post-consumer and secondary waste stated in the Offer may result in:

(a) The Provider reimbursing the State for the portion of the Contract Price that is attributable to the preference applied under ORS 279A.125;

(b) Contract termination; or

(c) Both (a) and (b), or such other remedies as the Department deems appropriate.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.125

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0323

Recycled Paper and Paper Products

(1) The Department promotes the use of Recycled Paper and paper products, and no less than 35% of Authorized Agency Procurements of paper products may be from Recycled Paper Products, pursuant to ORS 279A.155.

(2) The Department must make available to Agencies paper and paper products that contain significant quantities of Recycled Materials in all grades where it can be obtained. The Department and Authorized Agencies must purchase Recycled Paper and paper products when the cost of such Recycled Paper or paper products is no more than five (5%) higher than the cost of the same quality paper or paper products containing little or no Recycled Paper. The Department and Authorized Agencies must give a preference of up to five percent (5%) pursuant to ORS 279A.125(2), to suppliers of Recycled Paper and paper products, over the lowest price of non Recycled Paper and paper products if the fitness and quality of the Recycled Paper content paper meet Specification requirements and

the type of Recycled Paper content is equivalent to the same type of virgin material.

(3) Except as provided in this Rule and regardless of cost, the Department must make Recycled Paper and paper products available to Authorized Agencies through a Recycled Paper agreement. Authorized Agencies that find it economically feasible to exceed the incentive in Section (2) of this Rule for Recycled Paper may do so either by use of agreements for Recycled Paper or by indicating on their purchase request the percentage of Recycled Paper incentive, which is economically feasible for them.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.125 & 270A.155

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0324

Recycling: Food Service and Food Packaging

(1) The Department promotes the use of recyclable or biodegradable products for food service and packaging.

(2) The five percent (5%) preference in ORS 279A.125(2) must apply to purchases of Recycled Products for food service and packaging that are not paper products. The minimum purchase in ORS 279A.155 of at least thirty-five percent (35%) must apply to purchases of Recycled Products for food service and food packaging that are 100% paper or paper products.

(3) Recyclable or Biodegradable Products for food service and packaging will be made available for purchase by Authorized Agencies.

(4) Authorized Agencies are required to purchase recyclable or biodegradable food service and packaging products when purchasing supplies.

(5) The Department must include a provision in all food service Contracts and extensions to such Contracts, requiring the use of recyclable or biodegradable food service products when such products are readily available, meaning deliverable within thirty (30) days of placement of an order by the food service Contractor to its supplier. This period of time may be less or more, as industry standards for various commodities indicate.

(6) The Department must encourage its suppliers to provide biodegradable or Recycled Products as substitutes.

(7) The Department must use best efforts to obtain and use biodegradable or Recyclable Products as substitutes for products that are non-biodegradable or non-recyclable.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.125 & 270A.155

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Doing Business in Oregon

125-246-0330

Supplier Requirements

(1) Tax Compliance.

(a) No Contract or other agreement for more than \$1,000 may be entered into, renewed or extended with any Person unless the Person certifies in Writing, under penalty of perjury, that the Person is not in violation of any tax laws described in ORS 305.385(6) and (7).

(b) Agency must determine that a Bidder or Proposer is responsible under ORS 279B.110 and OAR 125-247-0500(1). In order to make this determination, a Bidder or Proposer must demonstrate to the Agency that the Bidder or Proposer has complied with the tax laws of this state or a political subdivision of this state, including ORS 305.620 and ORS Chapters 316, 317 and 318. The Bidder or Proposer must demonstrate compliance by submitting a signed affidavit that attests, under penalty of perjury, that the Bidder or Proposer has complied with the tax laws of this state or a political subdivision of this state (Affidavit).

(A) Agency may determine which Bidder or Proposer must submit an Affidavit and the timing and manner of the submittal.

(B) Agency may allow the Bidder or Proposer to electronically transmit the Affidavit, and Agency may maintain the electronically transmitted Affidavit in lieu of the original Affidavit.

(C) The Agency Designated Procurement Officer, DAS Chief Procurement Officer, DAS Procurement Services Manager, or delegate may approve the form(s) of the Affidavit.

(D) An Affidavit attests to the Bidder or Proposer's current compliance with tax laws. During the period Bidder or Proposer is in compliance, a Bidder or Proposer may submit a copy of the same Affidavit to multiple Agencies or for multiple Invitations to Bid or Requests for Proposals, and an Agency is not required to obtain a new original Affidavit from a Bidder or Proposer for each Procurement.

(E) The Bidder or Proposer is responsible for determining whether the Bidder or Proposer is in compliance with tax laws. If applicable, compliance with tax laws may not require payment of taxes.

(2) Requirements to Transact Business in Oregon.

(a) A Contractor who is a corporation, partnership, or who has an assumed business name must be registered with the Secretary of State Office in accordance with ORS Chapters 58, 60, 62, 63, 65, 67, 70, and 648. This registration is the obligation of the Contractor, not the Agency.

(b) In addition, for Contracts requiring the services of one or more architects, engineers, and land surveyors, these Consultants must be registered with the appropriate licensing boards under the provisions of ORS 671.020, 672.020, and 672.025.

(c) The statutory requirements for contracting firms to register with the Secretary of State's Office may be subject to a limited number of exceptions under federal law. For example, national banks, when they contract with Authorized Agencies, are not subject to the registration requirement.

(d) The Contractor or Consultant must be registered at the time of the execution of the Contract and thereafter.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140, 279B.110(1) & 279C.105(1)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

Services Contracts

125-246-0333

Independent Contractors

(1) An Authorized Agency may, within the limits of its delegation under OAR 125-246-0170 and its legislatively approved budget, Contract for Services with Providers who are Independent Contractors.

(2) "Independent Contractor" means a Person who provides services to an Authorized Agency in which the Authorized Agency neither controls nor has the right to control the means or manner by which Work is performed. The Authorized Agency may control the results of the services, but not control the means or manner of Contractor's performance of the Work.

(3) Within the parameters of employment, Workers' compensation, and other relevant state and federal laws, and after determining that the contract will not violate any collective bargaining agreements, an Authorized Agency may contract for Services when:

(a) The Work cannot be done in a reasonable time with the Authorized Agency's own Workforce;

(b) An independent and impartial evaluation is required; or

(c) It will be less expensive to contract for the Work.

(4) The Authorized Agency may not use Services Contracts to obtain and pay for the services of an employee. If a Contractor is not an Independent Contractor, the Authorized Agency may not enter into a Services Contract with the Contractor; instead, the Authorized Agency must follow personnel policies for employment options.

(5) Independent Contractor Status. The Authorized Agency must develop a Statement of Work for Services, including Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, that will not result in an employee relationship with the potential Contractor. Contractors must complete the Independent Contractor

Certification either as a contract provision or on a form approved by the Chief Procurement Officer (Independent Contractor Certification). If the Contractor cannot certify Independent Contractor status, the Authorized Agency may not contract with the Contractor using a Services Contract, including Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, except as otherwise allowed in Subsection (5)(f) of this Rule:

(a) An Independent Contractor Certification must be part of each Contract;

(b) If the Contractor is a corporation, the Independent Contractor Certification is still required.

(c) If the nature of the Services or project is such that an employee/employer relationship will exist, the Authorized Agency must hire the individual through normal personnel procedures.

(d) The Contract must include the Contractor's legal name and address. Either the Contract or a separate cover sheet for the Contract must include the Contractor's Social Security or federal tax identification number.

(e) The Contract must provide that the 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.

(f) When a Contractor cannot certify that the Contractor meets the definition of "independent contractor," is customarily engaged in an independently established business, and meets at least three of the requirements for such a business in accordance with ORS 670.600, then the Authorized Agency may contract with the Contractor only if the Designated Procurement Officer of the Authorized Agency approves the Contract upon a determination that the Contractor is an Independent Contractor and the Contract will not result in undue risk to the State.

(g) For compliance with the tax laws in accordance with ORS 279B.110, see OAR 125-246-0330.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140

Hist.: DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

Personal Services Contracts

125-246-0335

Authority and Standards for Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services.

(2) Identification of Personal Services Contracts.

(a) According to ORS 279A.140(2)(h), the Chief Procurement Officer may designate Contracts or classes of Contracts as Personal Services Contracts for the purposes of reporting Personal Services Contracts in accordance with ORS 279A.140 and identifying the appropriate required procedures in accordance with ORS 279A.070 and 279A.140. In the event of uncertainty or disagreement as to the status of any particular Contract or class of Contracts, the Chief Procurement Officer may determine whether a particular contract is a Personal Services Contract.

(b) The Authorized Agency must identify within the Contract that the Authorized Agency is contracting for Personal Services. A failure to adequately describe Personal Services within the Contract will not invalidate the Procurement or Contract if the Authorized Agency properly used a sourcing method according to ORS 279B.055 through 279B.085 or 279C.100 through 279C.125 and substantially followed the related Rules.

(3) Contracting Out for Services Provided by Employees.

(a) Where the Authorized Agency is contemplating contracting for Work performed by Authorized Agency employees represented by a labor organization, the Authorized Agency must review the relevant collective bargaining agreement to ensure the contract complies with the provisions and, if applicable, the requirements of ORS 279A.140.

(b) Whenever the Authorized Agency pays more in a given 12-month period to a Provider under a Personal Services Contract for services historically performed by state employees than would have been paid to the Authorized Agency employee performing the same Work, the Authorized Agency must report that fact, with a justifying statement to the Department. The report must be made at the conclusion of each fiscal year.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0345

Procedures for Personal Services Contracts

(1) Contract and Amendment Forms for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services. Authorized Agencies must comply with OAR 125-248-0300(1).

(2) Other Forms for Personal Services Contracts and Amendments. Authorized Agencies must use one of the forms provided or approved by the Chief Procurement Officer for Personal Services Contracts and Amendments (Forms).

(a) Revised Forms.

(A) Designated Procurement Officer Approval up to \$150,000. For revised Forms up to a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain its Designated Procurement Officer's approval of any revisions to the Form's terms and conditions. The Designated Procurement Officer's approval is not required for revisions to Form exhibits that are unrelated to terms and conditions.

(B) Department of Justice Approval over \$150,000. For revised Forms exceeding a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain Department of Justice approval of any revisions to the revised Form's terms and conditions. The Department of Justice approval is not required for revisions to Form exhibits that are unrelated to terms and conditions. The Department of Justice approval may be delivered by facsimile, email, letter or any other objective means of approval.

(b) Upon an Authorized Agency's request, the Department of Justice may approve a revised Form for repeated use for a specific class or classes of transactions.

(c) The Authorized Agency must review the approved Form at least every two years. If upon review the Authorized Agency revises the Form, the Authorized Agency must obtain Department of Justice approval before using the revised Form.

(3) Screening, Selection, Evaluation and Award Procedures. An Authorized Agency must follow the procedures set forth in Division 248 of these Rules when contracting for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services. For all other Personal Services Contracts, an Authorized Agency must select a sourcing method from the seven methods available according to ORS 279B.055 through 279B.085 and follow the screening, selection, evaluation and award procedures set forth for the selected sourcing method in Division 247 of these Rules.

(4) Amendments and Reinstatements. The procedures for Amendments and reinstatements are found in OAR 125-247-0805, 125-248-0340, and 125-246-0570, respectively. Procedures for Amendments and reinstatements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services are found in OAR 125-248-0340 and 125-248-0310, respectively.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.70 & 279A.140(h)(B)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0350

Approval of Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services.

(2) Chief Procurement Officer Approval. Except as provided in OAR 125-246-0170, the Chief Procurement Officer or delegate must approve all Personal Services Contracts exceeding \$150,000 before the Authorized Agency executes the Contract.

(3) Requisite Approvals First. All requisite approvals must be obtained, including the approval of the Attorney General, if required, before any Personal Services Contract entered into by an Authorized Agency becomes binding upon the State and before any service may be performed or payment made under the Contract, unless:

(a) The Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6); or

(b) The Chief Procurement Officer or delegate authorizes an Authorized Agency to acquire services before obtaining all requisite approvals in accordance with OAR 125-246-0351.

(4) Approval after Legal Sufficiency Review. The Chief Procurement Officer may not approve a Personal Services Contract before the Attorney General approves this Personal Services Contract under ORS 291.047.

(5) Types of Approvals.

(a) When Attorney General legal sufficiency approval is required under ORS 291.047, the Authorized Agency must seek legal approval;

(b) When an Authorized Agency contracts for services normally provided by another Authorized Agency or for services for which another Authorized Agency has statutory responsibilities, the Authorized Agency is required to seek the other Authorized Agency's approvals, prior to final approval by the Chief Procurement Officer. Examples of these special approvals include, but are not limited to:

(A) Department, Risk Management Services, for providing tort liability coverage.

(B) Department, Enterprise Goods and Services Division, Publishing and Distribution, for printing services;

(C) Department, Enterprise Goods and Services Division, for accounting services;

(D) Office of the Treasurer, Debt Management Division, for financial and bond counsel services (bond counsel services also require the approval of the Attorney General); and

(E) Department, Chief Information Office, for information-system related and telecommunications services. The Authorized Agency is also encouraged to use the Chief Information Office as a resource in carrying out information system-related projects. This may include:

(i) Assistance to the Authorized Agency in developing State-ments of Work related to information system projects;

(ii) Reviews to assure consistency with State standards and direction; and

(iii) A listing of vendors that provide information system-related services.

(c) The Authorized Agency's and Contractor's execution must be obtained;

(d) The Chief Procurement Officer approval, when required, is last.

(6) Attorney or Financial Auditing Services.

(a) The Attorney General has sole authority to contract for attorney services. Only the Attorney General may grant exceptions in Writing on a case-by-case basis;

(b) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Only the Secretary of State Audits Division may grant exceptions in Writing on a case-by-case basis.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0351

Acquiring Services before Obtaining Requisite Approvals of a Personal Services Contract

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services. "Requisite approvals" are defined in OAR 125-246-0350.

(2) Personal Services may be performed before all requisite approvals are obtained under a Personal Services Contract if the Personal Services Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6).

(3) The process set forth in this Rule is intended to allow Authorized Agencies to acquire services before obtaining all requisite approvals for those Personal Services Contracts that call for payments of less than the Threshold for legal sufficiency review by the Attorney General.

(4) The Chief Procurement Officer may authorize an Authorized Agency to acquire services before obtaining all requisite approvals when circumstances exist that require prompt action to protect the interests of the State. An Authorized Agency may seek such authorization for a Personal Services Contract or a class of Personal Services Contracts to address specific recurring needs to acquire services on short notice. An Authorized Agency seeking the Chief Procurement Officer's authorization must describe particular circumstances that make it impracticable to obtain all requisite approvals before acquiring services. The Chief Procurement Officer will only authorize an Authorized Agency to acquire services before obtaining all requisite approvals if the Authorized Agency follows the procedures set forth in this Rule. The Chief Procurement Officer's authorization according to this Rule only allows the Authorized Agency to acquire services before obtaining all requisite approvals. It does not authorize the Authorized Agency to make any payments before obtaining all requisite approvals.

(5) The Authorized Agency seeking the Chief Procurement Officer's authorization to acquire services before obtaining all requisite approvals must provide:

(a) Written findings to the Chief Procurement Officer that describe the specific recurring circumstances that require the Authorized Agency to take prompt action to protect the interests of the State because they create substantial risk of loss, damage, interruption of services or threat to public health or safety. The Authorized Agency must also describe why, under these specific circumstances, it will be impracticable to obtain all requisite approvals before acquiring services;

(b) The Personal Services Contract form that the Authorized Agency will use for the Contract entered into after acquiring services, but before making payments.

(c) Documentation demonstrating that the Authorized Agency has established procedures to administer the Contract or class of Contracts, for which it seeks authorization.

(6) The Chief Procurement Officer after review of the material required by Section (5) above, may authorize the Authorized Agency to acquire the specific services under the specific circumstances described in response to Section (5)(a) above before obtaining all requisite approvals. If the Chief Procurement Officer provides authorization, the Chief Procurement Officer will do so in Writing, subject to any conditions or limitations the Chief Procurement Officer deems appropriate, including but not limited to the duration of the authorization, and any other terms and conditions the Chief Procurement Officer may determine are appropriate.

(7) If Authorized Agency acquires services before obtaining all requisite approvals when authorized by the Chief Procurement Officer, the Authorized Agency, as soon as practicable after acquiring the services, must enter into a Written Contract in the

form submitted by the Authorized Agency and approved by the Chief Procurement Officer. The Authorized Agency must not revise the terms of the approved Contract form submitted by Authorized Agency without the Chief Procurement Officer's approval.

(8) The Authorized Agency must not make any payments for services before obtaining all requisite approvals.

(9) The Chief Procurement Officer authorization to perform services before obtaining all requisite approvals does not exempt the Authorized Agency from obtaining legal sufficiency review, if required under the provisions of ORS 291.047.

(10) An Authorized Agency authorized to perform services before obtaining all requisite approvals must follow all applicable screening and selection requirements unless otherwise exempt from those requirements.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-

29-14, cert. ef. 1-1-15

125-246-0353

Reporting Requirements for Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services.

(2) The Department maintains for state agencies an electronic reporting system within ORPIN for reporting Personal Services Contracts. Each state agency that is not exempt from the Public Contracting Code must report in ORPIN each Personal Services Contract and Amendment. The report must include the state agency name, not-to-exceed amount of the Contract, the name of the Contractor, the duration of the Contract, its basic purpose, and a copy of the Personal Services Contract or Amendment. Whenever a state agency pays more in a calendar year under a Personal Services Contract for services historically performed by state employees than the state agency would have paid to the state agency's employees performing the same Work, the state agency must so report through ORPIN and include in the report a statement of justification for the greater costs, according to ORS 279A.140(2)(h)(A)(i).

(3) The Department must submit a report to the Legislature summarizing state agency Personal Services Contracts. This report must include the name of the state agency, the not-to-exceed amount of the Contracts, the name(s) of Contractor(s), the duration of Contract(s) and the basic purpose of the Contract(s). The report must also include the total dollar figure of all Personal Services Contracts for each fiscal year.

(4) The Department maintains an electronic file of Personal Services Contracts report forms for public review. The electronic file includes a justification statement, when applicable, and documentation of the selection process for each Contract.

(5) The state agency must keep in the Procurement File all Personal Services Contracts, justification statements, when applicable, documentation of the selection process for each Contract, and the report forms in compliance with OAR 166-300-0015(7) and any other applicable laws.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(h)(A)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

Intergovernmental Relations

125-246-0360

Purchases Through Federal Programs

(1) Exemption. An Authorized Agency may purchase certain authorized Supplies and Services through General Service Administration (GSA) federal programs or federal Contracts (Federal Programs) without Competitive Sealed Bidding, Competitive Sealed Proposals or other competition required under ORS 279B.050 to 279B.085, provided that the Authorized Agency has federal authorization to purchase through the Federal Program and follows the procedures set forth in this rule.

(2) Federal Authorization.

(a) The Federal Programs named in ORS 279A.180 are accessible to Authorized Agencies for purchasing Supplies and Services. In addition, by this Rule, the Director of the Department (Director) hereby makes the determination according to ORS 279A.180, that the GSA Order of 2000 and any subsequent revisions or updating of this GSA Order of 2000 (GSA Orders) describe other Federal Programs that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies; therefore, Authorized Agencies may purchase through those Federal Programs described in a GSA Order without making individual requests for determination to the Director.

(b) If an Authorized Agency desires to purchase through another Federal Program that is not expressly named in ORS 279A.180 or a GSA Order, the Authorized Agency must request in Writing a determination from the Director or the Director's design-

nated representative. In the request, the Authorized Agency must document that the federal government has authorized states, including the Authorized Agency, to purchase through the proposed Federal Program. The request of the Authorized Agency and the determination by the Director or representative must be limited to those other Federal Programs described in ORS 279A.180 that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies.

(c) If no federal authorization exists as described in Sections (2)(a) and (b) of the Rule, then an Authorized Agency is not permitted to purchase through any Federal Program.

(3) Procedures. To purchase through a Federal Program, an Authorized Agency must document in its Procurement File that:

(a) The federal authority for the Authorized Agency to purchase through the Federal Program, referring to ORS 279A.180, a GSA Order, or the Chief Procurement Officer's approval of an Authorized Agency's request.

(b) The acquisition meets the Authorized Agency's needs;

(c) The price and other terms of the acquisition are Advantageous to the State;

(d) No mandatory Department Price Agreement for the authorized Supplies and Services exists, based upon the Authorized Agency's inquiry through ORPIN;

(e) The Authorized Agency has considered the acquisition's impact upon local business as follows:

(A) If the Procurement is in excess of \$5,000, the Authorized Agency has given timely notice through ORPIN of its needs, reasons, and intent to procure through a Federal Program;

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

(C) The Authorized Agency has considered any comments and replied, if appropriate, before proceeding with its Procurement through a Federal Program. This Rule provides for an informal opportunity to comment to and be considered by the Authorized Agency, instead of the formal notice requirements for Solicitations in excess of \$5,000 according to ORS 200.035.

(f) State and local preference programs, including but not limited to Inmate Labor in accordance with the Oregon Constitution, Article I, Section 41, Products of Disabled Individuals Program of ORS 279.835 to 850, and state requirements Contracts under OAR 125-247-0296, are not waived or otherwise adversely affected by an acquisition through a Federal Program;

(g) The Authorized Agency 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

(h) The Authorized Agency is informed of its Federal Program's Procurement Process, including:

(A) Voluntary and Direct Contract. The Authorized Agency and Contractors participate voluntarily. The Contractors make direct deliveries to the Authorized Agency and retain the right to decline orders on a case-by-case basis, for any reason, within a five-Day period of receipt of that order;

(B) Funding Fee. The price of a Federal Program Contract includes a GSA industrial funding fee to cover GSA administrative costs to operate the Federal Program;

(C) New Contract. When a Contractor accepts an order from an Authorized Agency, a new Contract is formed. The Contract's terms and conditions are incorporated by reference; and

(D) Additional Terms and Conditions. The Authorized Agency may add to its Contract such significant, substantial contract terms and conditions as are required by State statutes or rules, if such additions do not conflict with the Federal Program's Contract terms and conditions. Examples of such terms and conditions include, but are not limited to:

(i) Prompt Payment. The Authorized Agency may apply the terms and conditions of Oregon's prompt payment law to its Contracts, but if the Authorized Agency fails to make this addition, then the Authorized Agency 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);

(ii) 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

(iii) Conflict Resolution. The Authorized Agency may revise the Contract's dispute resolution provision to use Alternative Dispute Resolution (ADR) to the extent authorized by law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070 & Sec.335, Ch. 794, OL 2003 (HB 2341)

Stats. Implemented: ORS 279A.180

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0365

ORS 190 Agreements

(1) Reporting 190 Agreements through ORPIN. A state agency that enters into an agreement under ORS 190.110, 190.420 or 190.485, or an agreement under ORS 190.112 or under 660.342, must submit a summary of the agreement through ORPIN within the 30-day period immediately following the effective date of the agreement. For the purpose of this Rule only, "state agency" is defined in ORS 190. The summary must include the following information:

(a) Names of the parties to the agreement;

(b) Date of the agreement;

(c) Subject matter of the agreement; and

(d) The agency through which a person may obtain a copy of the agreement.

(2) Interstate and International Agreements. Following ORS 190, each Agency may enter into Interstate and International Agreements through negotiation, direct award, direct appointment, or in any other manner that satisfies the legal requirements for such Agreements.

(3) Tribal Agreements. Following ORS 190, each Agency may enter into Tribal Agreements through negotiation, direct award, direct appointment, or in any other manner that satisfies the legal requirements for such Agreements.

(4) Interagency and Intergovernmental Agreements. Following ORS 190, each Agency may enter into Interagency and Intergovernmental Agreements through negotiation, direct award, direct appointment, or in any other manner that satisfies the legal requirements for such Agreements.

(5) All Interstate, International, Tribal, Interagency and Intergovernmental Agreements, when required, are subject to review and approval by the Attorney General.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 190.110, 190.112, 190.420, 190.485, 279B.085, 660.342

Hist.: DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

Cooperative Procurement

125-246-0400

Cooperative Procurement; Purpose, Policy, and Definitions

(1) See OAR 137-046-0400 through 137-046-0480.

(2) Regardless of OAR 137-046-0400 through 137-046-0480, Authorized Agencies must comply with the following provisions:

(a) Adaptation of Model Rules for Agency Use. The following words found in those Model Rules expressly adopted by the Department are replaced by the words as defined in this subsection (2)(a):

(A) "Administering Contracting Agency" is replaced by "Administrator."

(B) "Purchasing Contracting Agency" is replaced by "Participant."

(b) Definitions. For the purposes of these Cooperative Procurement Rules only, the following definitions apply to Cooperative Procurement:

(A) An "Administrator" means a governmental body that solicits and establishes the Original Contract for Supplies and Services or Public Improvements in a Cooperative Procurement.

“Administrator” means the Chief Procurement Officer or subject to the approval of the Chief Procurement Officer: an Agency, another Public Body within the state of Oregon, or a governmental body outside the state of Oregon. An Administrator has the same rights and responsibilities as an Administering Contracting Agency under ORS 279A.200 through 279A.225.

(B) “Contract” means a Public Contract or Price Agreement resulting from a Cooperative Procurement by an Administrator.

(C) “Cooperative Procurement” means a Procurement conducted by an Administrator or on behalf of one or more Participants. Cooperative Procurement includes but is not limited to multiparty Contracts and Price Agreements.

(D) “Cooperative Procurement Group” means:

(i) A group of Agencies, Public Bodies within the state of Oregon or any governmental body outside the state of Oregon, separately or in any combination;

(ii) Approved by the Chief Procurement Officer; and

(iii) Joined through an intergovernmental agreement for the purposes of facilitating a Cooperative Procurement.

(E) “Interstate Cooperative Procurement” means a Permissive Cooperative Procurement in which the Administrator is authorized under that governmental body’s laws, rules, or regulations to enter into Public Contracts and in which one or more of the Participants are located outside the State of Oregon.

(F) “Joint Cooperative Procurement” means a Cooperative Procurement that identifies:

(i) The Participants or the Cooperative Procurement Group; and

(ii) The contract requirements or estimated contract requirements for the Original Contract.

(G) “Original Contract” means the initial Contract or Price Agreement awarded under a Cooperative Procurement by an Administrator.

(H) A “Participant” means a governmental body that procures Goods, Services, or Public Improvements from a Provider based on the Original Contract established by an Administrator in a Cooperative Procurement. For the purpose of the Cooperative Procurement Rules, the procured Services include Architectural, Engineering and Land Surveying Services, and Related Services. A Participant may be the Chief Procurement Officer or, subject to the approval of the Chief Procurement Officer: an Authorized Agency, a local Public Body, a state agency with independence under ORS 279A.050, or a governmental body located outside the State of Oregon. A Participant has the same rights and responsibilities as a Participating or Purchasing Contracting Agency under ORS 279A.200 through 279A.225.

(I) “Permissive Cooperative Procurement” means a Cooperative Procurement in which the Participants are not identified.

(c) Authority for Cooperative Procurements.

(A) The Chief Procurement Officer will enter into Cooperative Procurements on behalf of Agencies, unless an Authorized Agency receives a delegation of authority according to OAR 125-246-0170 to act as an Administrator or Participant.

(B) Subject to a delegation of authority described in subsection (2)(c)(A) of this Rule, an Administrator or Participant may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and these Rules.

(C) For Permissive Cooperative Procurements, each Participant that participates after the Award of the Original Contract must determine, in Writing, whether the Solicitation and award process for the Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085, consistent with 279A.200(2). The Participant must maintain this Written determination in the Participant’s Procurement File.

(d) Responsibilities.

(A) The Administrator of a Cooperative Procurement may establish any terms and conditions necessary to allow other Participating Authorized Agencies or Cooperative Procurement Groups

of which the Participant is a member (collectively, “Participant”) to participate in a Cooperative Procurement. The Administrator may require Participants to enter into a Written agreement that establishes the terms and conditions for participation in a Cooperative Procurement. These terms and conditions may include, but are not limited to: the establishment of any administrative fees for the Administrator, whether each Person must enter into a Written agreement with the Administrator, and any other matters related to the administration of the Cooperative Procurement source selection and the resulting Original Contract. The Administrator may include provisions in the Solicitation Document for a Cooperative Procurement and advertise the Solicitation Document in a manner to assist Participants’ compliance with the Code and these Rules.

(B) In administering or applying these Rules, the Administrator must collaboratively review and compare the procurement needs and requirements of both the Administrator and the respective Participant(s) for the purpose of using a Cooperative Procurement to achieve cost savings (for examples: lowest total cost of acquisition, least time to procure, process streamlining, Return on Investment calculation based on a comparison of the total costs of individual Authorized Agency Procurements versus a Cooperative Procurement).

(C) If a Participant enters into a Contract based on a Cooperative Procurement, the Participant must comply with the Code, these Rules, and any terms and conditions set out by the Administrator, including:

(i) The extent to which the Participant may participate in the Cooperative Procurement;

(ii) The advertisement of the Solicitation Document for the Cooperative Procurement; and

(iii) Public notice of the Participant’s intent to establish Contracts based on a Cooperative Procurement.

(D) Joint, Permissive, and Interstate Cooperative Procurement Solicitations must comply with OAR 125-247-0305.

(e) Amendments of Cooperative Procurements must comply with OAR 125-247-0805.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140, 279A.205, 279A.210, 279A.215, 279A.220, 279A.225

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

Notices and Advertisement

125-246-0500

Oregon Procurement Information Network (ORPIN)

(1) The Oregon Procurement Information Network, known as ORPIN, an Internet-based, on-line system, is the official publication forum for state Procurement notices and advertisements, as functionality allows, by the Department and all Agencies.

(2) All state Agencies must use ORPIN to comply with the reporting requirements for:

(a) Personal Services Contracts in accordance with OAR 125-246-0353;

(b) Agreements under ORS 190 in accordance with OAR 125-246-0365; and

(c) Special Procurements in accordance with OAR 125-247-0287(12).

(3) Authorized Agencies must use ORPIN in accordance with the Department’s ORPIN Policy no. 107-009-020, the Department’s MWESB Procurement Policy no. 107-009-030, and the Governor’s Executive Order No. 12-03.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

Contract Administration

125-246-0555

Contract Administration; General Provisions

(1) Authority. Procurements include Contract Administration. The authority for an Authorized Agency to conduct Contract Administration is found in OAR 125-246-0170.

(2) Contract Administrator. The Authorized Agency must appoint, in Writing, a Contract Administrator to represent the Authorized Agency for each Contract. The Contract Administrator may delegate in Writing a portion of the Contract Administrator's responsibilities to a technical representative for specific day-to-day administrative activities for each Contract, including communications according to OAR 125-246-0635.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279.065(5), 279.070, 279.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0556

Procurement Files

(1) Application. This Rule applies to Procurement Files, as defined in OAR 125-246-0110.

(2) Required Documentation. All Procurement Files must contain:

(a) All Written documents delivered to an Agency from the Department, whether the documents relate to approvals, revocations, orders, modifications, or other actions (Actions), related to the documents' subject matter and Action;

(b) An executed Contract, if awarded, and any Ordering Instruments and Amendments (collectively, Contract);

(c) The record of the actions used to develop and administer the Contract;

(d) A copy of the Solicitation, if any;

(e) The Contract Administrator and any delegates;

(f) Any required findings or statement of justification for the selection of the Provider and sourcing method according to ORS 279A.200 through 279A.220 (Cooperative Procurement); 279B.055 through 085 (seven methods for Supplies and Services); 279C.100 through 279C.125 (Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services); or ORS 279C.300 through 279C.450 (Public Improvements);

(g) Documentation of Contract Administration according to OAR 125-246-0555 and if required by the selected procurement method:

(A) A list of prospective Providers notified of any Solicitation;

(B) The method used to advertise or notify prospective Providers;

(C) A copy of each Offer that resulted in the Award of a Contract;

(D) The record of any Negotiation of the Statement of Work and results;

(E) A record of all material Communications regarding the Solicitation by interested Providers according to OAR 125-246-0635;

(F) All information describing how the Provider was selected, including the method and basis for awarding the Contract;

(G) A copy of the Request for Special Procurement, if any;

(H) Documentation for a Federal Program purchase according to OAR 125-246-0360; and

(I) Documentation related to Cooperative Procurements according to OAR 125-246-0400.

(3) Time Period. The Agency must maintain Procurement Files, including all documentation, for a period in compliance with OAR 166-300-0015(8) and any other applicable laws. Procurement Files must be made immediately available for review upon the request of the Department.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0570

Reinstatement of Expired Contract; Retroactive Approval of Existing Contract

(1) Application. This Rule applies to the reinstatement of expired or terminated Contracts (expired Contracts) and the retroactive approval of existing Contracts procured by Authorized Agencies for Supplies and Services and for Architectural, Engineering and Land Surveying Services or Related Services ("Contracts"). This Rule does not apply to mistakes that may occur in the solicitation process (see OAR 125-247-0470).

(2) Requirements to Reinstatement an Expired Contract.

(a) Before expiration, the Contract was properly signed by all parties;

(b) Then the signed Contract expired;

(c) The Agency reinstates the Contract:

(A) To fulfill its term, up to the maximum time period provided in the Contract; or

(B) To complete one or more deliverable(s) included within the Contract's Scope at the time of its expiration;

(d) The Agency documents in the Procurement File the deliverable(s) to be completed at the time of the expired Contract's reinstatement; and

(e) If the Contractor has performed work under the Contract, the reinstatement does not apply to payments made for work performed between the expiration of the Contract and the date of any reinstatement.

(3) Requirements to Retroactively Approve an Existing Contract.

(a) The Contract exists and has not expired;

(b) The Contract was signed by all parties except that the required approval of the DPO or CPO was lacking;

(c) If the Contractor has performed work under the Contract, the retroactive approval does not apply to payments made for work performed between the start of the Contract and the date of any retroactive approval.

(4) Process. For either a reinstatement of an expired Contract or retroactive approval of an existing Contract, the requesting Agency must meet the following conditions:

(a) The Agency must submit a Written request to the Agency's Designated Procurement Officer (DPO) if the Agency is authorized under OAR 125-246-0170, or if not, to the Chief Procurement Officer (CPO) with authority under 125-246-0170 (Request). If the Request is submitted to the DPO, the Agency must also follow its internal procedures.

(b) The Request must explain the following:

(A) The proposed reinstatement of the expired Contract or retroactive approval of the existing Contract.

(B) The background facts that led to the Request;

(C) The good faith basis for making the Request;

(D) The need for reinstatement of an expired Contract or retroactive approval of an existing Contract due to unforeseen or unavoidable conditions;

(E) The steps to prevent a reoccurrence. For examples:

(i) Improvement of Agency's internal policies and procedures; and

(ii) Provision of new training or retraining; and

(F) Acknowledgement that the Request is in the best interest of the Agency.

(c) Obtain all other approvals required for the Contract, including but not limited to: Attorney General's approval of legal sufficiency under ORS 291.047 or ratification under 291.049. The Authorized Agency must obtain all other approvals required for the Contract before any reinstatement, extension of time under Subsection (6), or retroactive approval becomes binding.

(d) The DPO or CPO, as described in Subsection (3)(a), must approve the Request.

(5) Effect of Approval.

(a) An approved reinstatement of an expired Contract makes the Contract in full force and effect, as if it had not expired.

(b) An approved retroactive approval of an existing Contract makes the Contract in full force and effect, as if it had been approved by the DPO or CPO when the Contract was formed.

(c) The DPO or CPO, as appropriate, may create any related Contract documents to implement the reinstatement or retroactive approval.

(d) The Agency may make an approved payment after any related Contract documents are signed by the necessary parties.

(6) Amendments of a Reinstated Contract.

(a) If the Agency requests reinstatement of an expired Contract, the Request of the Agency may also include a request to amend the reinstated Contract for time only. The DPO or CPO, as appropriate, may approve this Request, including the amendment.

(b) The Agency may amend a reinstated or retroactively approved Contract for purposes other than time in accordance with OAR 125-247-0805.

(7) An Authorized Agency may combine in one document a Reinstatement of a Contract in accordance with this Rule, Retroactive Approvals of that Contract in accordance with OAR 125-246-0570, and its Amendment in accordance with 125-247-0805, as needed.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0576

Payment Authorization for Cost Overruns for Services Contracts

(1) Payments on Contracts for Trade or Personal Services that exceed the maximum contract consideration (Cost Overruns) require approval (Approval). If the aggregated value of the Contract, including Cost Overruns, does not exceed \$150,000, the Designated Procurement Officer of the requesting Authorized Agency may approve the Cost Overruns in accordance with Section (2) of this Rule. If the aggregated value of the Contract, including Cost Overruns, exceeds \$150,000, the Chief Procurement Officer may approve the Cost Overruns in accordance with Section (2) of this Rule. The Cost Overruns may also require approval from the Department of Justice pursuant to ORS 291.047 and 291.049.

(2) Approval may be provided if:

(a) The Original Contract was duly executed and, if required, approved by the Department and the Attorney General;

(b) Payments relate to Services that were provided during the term of the Contract;

(c) The cost overrun is not associated with any change in the Statement of Work set out in the Original Contract;

(d) The cost overrun arose out of extraordinary circumstances or conditions encountered in the course of contract performance that were reasonably not anticipated at the time the Original Contract, or the most recent Amendment, if any, was signed. Such circumstances include, but are not limited to: emergencies arising in the course of the Contract that require prompt action to protect the Work already completed, compliance with official or judicial commands or directives issued during contract performance or insurance that the purpose of the Contract will be realized;

(e) The cost overrun was incurred in good faith, results from the good faith performance by the Contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional Work or performance rendered;

(f) The aggregated value of the Contract, including the Cost Overrun, and the Contract's objective are within the procurement authority of the Authorized Agency pursuant to OAR 125-246-0170, and the Authorized Agency currently has funds available for payment under the Contract; and

(g) The Agency must prepare a Written report that describes the Authorized Agency's discovery of the Cost Overrun, the reasons for the Cost Overrun, and the Agency's satisfaction of the conditions set forth in this Section (2) (Report). The Authorized

Agency must maintain this Report in its Procurement File and make this Report available to the Department upon request.

(h) The Designated Procurement Officer of the Authorized Agency approves in Writing the payment of the overrun, or such portion of the overrun amount as the Designated Procurement Officer of the Authorized Agency determines may be paid consistent with the conditions of this Rule. If the Designated Procurement Officer of the Authorized Agency has signed the Contract, or has immediate supervisory responsibility over performance of the Contract, that Person must designate an alternate delegate to grant or deny Written approval of payment.

(3) The Authorized Agency must obtain any Attorney General's approval of the Contract Amendment, if such approval is required by ORS 291.047, before making any Cost Overrun payment.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0580

Dispute Resolution

Pursuant to ORS 183.502, Authorized Agencies are authorized and encouraged to use alternative dispute resolution (ADR), including collaborative forms of dispute resolution such as mediation, facilitation and collaborative rulemaking. The Attorney General's Model Rules on ADR are designed to assist Authorized Agencies in the assessment and appropriate use of collaborative ADR, as set forth in the Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure under the Administrative Procedures Act, October 3, 2001.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Ethics in Public Contracting

125-246-0600

Policy

These Rules supplement and do not replace ORS 244.010 through 244.400, for the purpose of applying the policy of ORS 244.010 to Oregon Public Contracting under the Public Contracting Code and these Rules. Oregon Public Contracting is a public trust. The Agencies and Contractors involved in Public Contracting must safeguard this public trust.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0605

Selection and Award of Public Contracts

(1) Agency officers, employees or agents involved in the process of the selection and award of Public Contracts must carefully review the provisions of ORS 244.040.

(2) Agency officers, employees and agents are prohibited from soliciting or receiving Gifts, which means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

(3) Agency officers, employees and agents are prohibited from using their official position for personal or financial gain.

(4) Agency officers, employees and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal or financial gain.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0610

Appointments to Advisory Committees

The Director, Chief Procurement Officer, Designated Procurement Officer or a delegatee may appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition pursuant to ORS 279A.015.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0615

Nonretaliation

This Rule prohibits retaliation against anyone who complies with the Public Contracting Code and these Rules. Any officer, employee or agent of an Agency or Provider who engages in retaliation action will be subject to Penalties pursuant to ORS 279A.990, 244.350 to 244.400 and related rules. Also, any Provider who engages in a retaliation action may be debarred.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0620

Specifications

(1) Agencies and Providers must not develop Specifications that primarily benefit a Provider, directly or indirectly, to the detriment of an Agency or the best interest of the State.

(2) Agencies must not develop Specifications that inhibit or tend to discourage Public Contracting with Qualified Rehabilitation Facilities under ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045 where those Specifications inhibit or tend to discourage the acquisition of QRF-produced Supplies and Services without reasonably promoting the satisfaction of bona fide, practical procurement needs of the Agency.

(3) Agencies and Providers must not develop Specifications that inhibit or tend to discourage Public Contracting under other public procurement laws or policies of the Department.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0621

Anti-Trust Laws

(1) Authorized Agencies must be generally informed about anti-trust laws and their prohibitions, including the prohibition of any Contract or conspiracy in restraint of trade. Violations of anti-trust laws include but are not limited to the attempt of any Person(s) to monopolize or to conspire with any other Person(s) to monopolize any trade of commerce.

(2) Violations of anti-trust laws harm competition and the policies of ORS 279A.015. Also see OAR 125-247-0500, 125-247-0575, 125-249-0370 and 125-249-0390.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 646.725 and 646.730

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-246-0625

Sole-Source

Authorized Agencies may not select a Sole-Source Procurement pursuant to ORS 279B.075 and avoid a competitive Procurement if the purpose of the selection is to primarily benefit the Provider, directly or indirectly, to the detriment of an Authorized Agency or the best interest of the State.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0630

Fragmentation

A Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement, pursuant to ORS 279B.065, or an Intermediate Procurement, pursuant to ORS 279B.070.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279B.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0635

Authorized Agency and Provider Communications

(1) Research Phase. Authorized Agencies are encouraged to conduct research with Providers who can meet the State's needs. This research includes but is not limited to: meetings, industry presentations, and demonstrations with any Providers that, in the Agency's discretion, may be able to meet an Agency's need. Authorized Agencies must document the items discussed during the research phase of Solicitation development. The research phase ends the day of a Solicitation release or request for a Quote according to an Intermediate Procurement, unless the Solicitation or Intermediate Procurement provides for a different process that permits on-going research.

(2) Solicitation and Contracting Phase. Any communication between an Authorized Agency and Providers regarding a Solicitation, that occurs after the Solicitation release or request for a Quote and before the Award of a Contract, must only be made within the context of the Solicitation Document or Intermediate Procurement requirements (Communication). This Communication may allow for Discussions, Negotiations, Addenda, Providers' questions, and the Agency's answers to Providers' questions about terms and conditions, Specifications, Amendments, or related matters. During this phase, telephone conversations and meetings must be documented in the Procurement File. Written inquiries regarding the Solicitation should be responded to by the Authorized Agency in Writing. A record of all material Communications regarding the Solicitation by interested Providers must be made a part of the Procurement File according to OAR 125-246-0556.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

Selling or Leasing Supplies and Services

125-246-0800

Policy; Applicability; Methods

(1) Policy. A sound and responsive Public Contracting system, according to ORS 279A.015, may include purchasing, selling, and leasing activities. By definition, a Public Contract includes sales and leases by Agencies according to ORS 279A.010(1)(z). The policies of ORS 279A.015 apply to public selling and leasing activities.

(2) Applicability. This Rule applies to the sales and leases of Supplies and Services. This Rule does not apply to residential property or the public selling activity of Agencies specifically exempted from the Public Contracting Code by another provision of law or specifically authorized to conduct public selling or leasing activity by another provision of law. The sale or lease of Supplies and Services includes but is not limited to: concessions, software rights, and personal property.

(3) Methods. Agencies must use a method, as feasible for selling or leasing, according to ORS 279B.055 through 279B.085. For the sale of Goods, the value of the sale transactions for the purpose of selecting the appropriate sourcing method must be based on the gross amount of receipts.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.010(x), 279A.015, 279A.050(1)(2), 279A.065(5)(a) & 279A.070

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

Penalties

125-246-0900

Penalties

(1) Any violation of ORS 279A.140, 279A.280, or 279B.270 must be punished as described in 291.990, pursuant to 279A.990(1).

(2) Upon notice to the Department of an alleged violation pursuant to ORS 279A.990(1), the Department, at its own discretion, may provide to an individual of an Agency or an Agency an

optional administrative process with an opportunity for remedy prior or parallel to a legal process leading to conviction or a Department certification leading to other penalties provided by ORS 291.990. This Rule and administrative process may address related considerations, including but not limited to:

(a) What specific actions are interpreted as violations giving rise to penalties;

(b) Applicability to individuals of Agencies and Agencies, regardless of whether delegated authority existed pursuant to OAR 125-246-0170; and

(c) The placement of responsibility for violations along the chain of delegated responsibility.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.990

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

DIVISION 247

PUBLIC PROCUREMENT OF SUPPLIES AND SERVICES

General Provisions

125-247-0010 Policies

(1) ORS Chapter 279B and this division 247 apply the policies of 279A.015 to the Procurement of Supplies and Services. The seven sourcing methods for procurement, procedures, and legal remedies set forth in ORS Chapter 279B and these Rules simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards. ORS Chapter 279B and this division 247 provide a Public Contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, according to ORS 279A.015(6).

(2) Specific procedures accompany each method, followed by a Section of general procedures. Authorized Agencies must comply with both the specific procedures of a method and general procedures.

(3) The responsibility of the Designated Procurement Officer and any delegatee of an Authorized Agency is to choose the appropriate sourcing methods in accordance with the Code, Rules, and policy, and arrive at offers that represent optimal value to the Agency and the State.

(4) Meaningful competition can be achieved through various strategies and sourcing methods when procuring Supplies and Services, and this competition must be reasonably calculated and demonstrated to satisfy the Authorized Agency's and the State's needs.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.010

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0100 Applicability

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this division 247 apply to Public Contracting for Supplies and Services. In the event of conflict or ambiguity, the more specific requirements of the Rules in this division 247 take precedence over the more general requirements of the Rules in division 246.

(2) The Rules implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this division 247 of the Rules specifically addresses matters covered in ORS Chapter 279B.

(3) For purposes of these division 247 rules, the Department adopts the following Model Public Contract Rules: OAR 137-047-0255, 137-047-0257, 137-047-0260, 137-047-0261, 137-047-0265, 137-047-0270, 137-047-0310, 137-047-0320, 137-047-0400, 137-047-0410, 137-047-0420, 137-047-0440, 137-047-0450, 137-047-0460, 137-047-0470, 137-047-0480, 137-047-0490, 137-047-0525, 137-047-0575, 137-047-0620, 137-047-0640, 137-047-0650, 137-047-0660, 137-047-0670, 137-047-0700, 137-047-0710, 137-047-

0720, 137-047-0745, 137-047-0740, 137-047-0750, 137-047-0760, 137-047-0800, 137-047-0810.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.015

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0110

Feasibility Determination, Cost Analysis and Department Report

(1) The Table of Contents for this Rule is as follows:

(a) Section 2: Generally

(b) Section 3: Feasibility Determination

(c) Section 4: Cost Analysis: Estimation of Agency and Contractor Data

(d) Section 5: Decision: Comparison of Compensation and Other Costs

(e) Section 6: Decision: Comparison of Agency and Contracting Costs

(f) Section 7: Department Evaluation and Report

(2) Generally.

(a) Before conducting a Procurement for Services, an Authorized Agency must, in the absence of a Feasibility Determination under Section (3) of this Rule, conduct a Written Cost Analysis under sections (4) through (6) of this rule (Cost Analysis).

(b) Responsibilities for the Conduct of the Cost Analysis.

(A) An Agency with procurement authority must conduct the Cost Analysis for its Agency-specific Procurements;

(B) An Agency without procurement authority must conduct the Cost Analysis for its Agency-specific Procurements to be procured by the Department;

(C) At the Department's request, an Agency must contribute to the Cost Analysis for statewide Price Agreement Procurements; and

(D) The Department must conduct the Cost Analysis for statewide Price Agreement Procurements and Department -specific Procurements.

(c) This Rule applies to a Procurement for Services that the Authorized Agency estimates will result in one or more Contracts with a value that exceeds \$250,000 for the estimated term of the Contract(s) (Value), including incidental costs related to the Services, and Amendments. Authorized Agencies must not fragment to avoid this threshold (see OAR 125-246-0630).

(d) If a Procurement is conducted in accordance with this Rule, an Award is made, and one or more Amendments then increase the estimated contract's value over \$250,000, a Cost Analysis is not required at that time.

(e) "Services" has the meaning as defined in OAR 125-246-0110, except that for purposes of this Rule only:

(A) "Services" does not include the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or Provider of Related Services as defined in ORS 279C.100 as defined in ORS 279C.100; and

(B) "Services" does not include Client Services, defined as of August 4, 2009, in OAR 125-246-0110, as follows:

(i) "Client" means any individual, family or Provider:

(I) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(II) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(III) Who is under the custody, care, or both of the Agency; or

(IV) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(ii) "Client Services" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation

to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(I) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(II) Sustenance, including clothing;

(III) Employment training or Skills training to improve employability;

(IV) Services for people with disabilities;

(V) Foster care or foster care facilities;

(VI) Residential care or residential care facilities;

(VII) Community housing;

(VIII) In-home care including home delivered meals;

(IX) Medical care, services and treatment, including but not limited to:

(IX-a) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(IX-b) Alcohol and drug treatment;

(IX-c) Smoking cessation;

(IX-d) Drugs, prescriptions and non-prescription;

(IX-e) Nursing services and facilities;

(IX-f) Transportation or relocation;

(IX-g) Quality of life, living skills training; or

(IX-h) Personal care; or

(IX-i) Legal services and expert witnesses services;

(IX-j) Religious practices, traditions and services, separately or in any combination thereof; and

(IX-k) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(3) Feasibility Determination. An Authorized Agency may proceed with the Procurement of Services without conducting a Cost Analysis if the Authorized Agency makes Written findings that one or more of the Special Circumstances described in subsection (3)(b) make the Authorized Agency's use of its own personnel and resources to provide the Services not feasible (Feasibility Determination).

(a) Approval of Feasibility Determination.

(A) The Designated Procurement Officer or delegate (DPO) of an Authorized Agency must approve the Feasibility Determination for its Procurement;

(B) The DPO of an Agency without authority must approve the Feasibility Determination for an Agency-specific Procurement to be procured by the Department on behalf of that Agency;

(C) The Department Procurement Services Manager must approve the Feasibility Determination for a statewide Price Agreement Procurement or Department-specific Procurement. At the Department's request, DPOs must cooperate with the Department to prepare the findings for the Feasibility Determination for a statewide Price Agreement Procurement.

(b) Special Circumstances. Special Circumstances include any circumstances, conditions or occurrences that would make the Services, if performed by the Authorized Agency's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the Authorized Agency. Special Circumstances may include, but are not limited to, the follow circumstances:

(A) Expertise. The DPO approves a determination that the Authorized Agency lacks the specialized capabilities, experience, or technical or other expertise necessary to perform the Services. In making the finding, the Authorized Agency must compare the Authorized Agency's capability, experience or expertise in the field most closely involved in performing the Services with a potential contractor's capability, experience or expertise in the same or a similar field.

(B) Funding Requirement. The terms under which the Authorized Agency receives a grant or other funds for use in a Procurement require the Authorized Agency to obtain Services through an independent contractor;

(C) Law Requirement. Other state or federal law requires the Authorized Agency to procure Services through an independent contractor;

(D) Real or Personal Property. The Procurement is for Services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;

(E) Conflict of Interest; Unbiased Review. The Authorized Agency cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using the Authorized Agency's existing personnel or persons the Authorized Agency could hire through a regular or ordinary process would not be suitable;

(F) Emergency Procurement. The Procurement is for Services to which the provisions of ORS 279B.080 apply;

(G) Delay. The Procurement is for Services, the need for which is so urgent, temporary or occasional that attempting to perform the Services with the Authorized Agency's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the Services; and

(H) Services Completed within Six Months. The Services that the Authorized Agency intends to procure will be completed within six months after the date on which the contract for the Services is executed.

(c) Procurement File. All written determinations required in this section (3) must be made a part of the Procurement File in accordance with OAR 125-246-0556.

(4) Cost Analysis: Estimation of Agency and Contractor Data.

(a) Costs of Using Authorized Agency's Own Personnel and Resources. The Authorized Agency must estimate the Authorized Agency's cost of performing the Services and consider cost factors that include:

(A) Salaries or Wages and Benefits. The salary or wage and benefit costs for the employees of the Authorized Agency who would be directly involved in performing the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision or monitoring of the performance of the Services.

(B) Material Costs. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) Related Costs.

(i) Costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

(ii) Any costs related to stopping and dismantling a project or operation because the Authorized Agency intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.

(iii) The miscellaneous costs related to performing the Services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this subsection (4)(a) over the expected duration of the Procurement. These costs exclude the Authorized Agency's indirect overhead costs for existing salaries or wages and benefits for administrators and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the Authorized Agency performed the Services.

(D) Other Information. The Authorized Agency's costs described in this subsection (4)(a)(A) do not constitute an exclusive list of cost information. An Authorized Agency may consider other reliable information that bears on the cost to the Authorized Agency of performing the Services. For example, if the Authorized Agency has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services,

in a relatively recent Services project, the Authorized Agency may consider those actual costs in making its estimate.

(b) Costs a Potential Contractor Would Incur. The Authorized Agency must estimate the cost a potential Contractor would incur in performing the Services and consider cost factors that include:

(A) Salaries or Wages and Benefits. The estimated salary or wage and benefit costs for a potential Contractor and potential Contractor's employees who work in the business or industry most closely involved in performing the Services; and who would be necessary and directly involved in performing the Services or who would inspect, supervise, or monitor the performance of the Services.

(i) The Authorized Agency may, but is not required to, communicate with any actual Contractor for information related to this estimate (see OAR 125-246-0635).

(ii) The Authorized Agency may consider in making this estimate any public source of information, including but not limited to:

(I) Other Contracts of the Authorized Agency or another Agency for reasonably comparable services;

(II) Trade or other marketplace websites;

(III) Industry or professional associations and publications;

(IV) The Oregon Bureau of Labor and Industries or an agency of another jurisdiction that performs comparable functions; and

(V) A survey of Persons who provide reasonably comparable services by means including but not limited to Internet or telephone searches.

(B) Material Costs. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) Related Costs. The miscellaneous costs related to performing the Services. These miscellaneous costs include but are not limited to reasonably foreseeable fluctuations in the costs listed in subsections (4)(b)(A) through (C) over the expected duration of the Procurement.

(D) Other Information. The potential Contractor's costs described in subsections (4)(b)(A) through (C) do not constitute an exclusive list of cost information. An Authorized Agency may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if in the recent past, the Authorized Agency conducted a Solicitation that required cost information or permitted negotiation of price based on a cost analysis for Services reasonably comparable to the current Services, the Authorized Agency may use that cost information in estimating the costs of current Services.

(5) Decision: Comparison of Compensation and Other Costs.

(a) The Authorized Agency must compare:

(A) The Authorized Agency's estimated costs under Subsection (4)(a) and

(B) The Contractor's estimated costs under subsection (4)(b).

(b) Decision. If the Authorized Agency's costs exceed the Contractor's costs under Subsection (5)(a) for the sole reason that the Contractor's costs for salaries or wages and benefits under Subsection (4)(b)(A) are lower than the Authorized Agency's costs for salaries or wages and benefits under subsection (4)(a)(A), then the Authorized Agency may not conduct the Procurement.

(6) Decision: Comparison of Agency and Contracting Costs.

(a) If subsection (5)(b) does not apply, the Authorized Agency must compare:

(A) The Authorized Agency's estimated costs under Subsection (4)(a) and

(B) The total estimated costs that the Authorized Agency would incur in procuring the Services from a Contractor (Contracting Costs).

(b) Profit Included. Contracting Costs include the Authorized Agency's estimate of Contractor's profit in addition to the estimate of Contractor's costs under subsection (4)(b). If the Authorized Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable services, the Authorized Agency may consider the pricing offered in those Bids or Proposals in making its estimate.

Similarly, the Authorized Agency may consider what it actually paid under a Contract for the same or similar services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five (5) years preceding the date of the cost estimate. The Authorized Agency must take into account, when considering the pricing offered in previous Bids, Proposals, or Contracts, adjustments to the pricing in light of measures of market price adjustments that apply to the Services, such as the Consumer Price Indexes.

(c) Decision. If the Authorized Agency's Contracting Cost under this section is lower than the Authorized Agency's cost under subsection (4)(a), the Authorized Agency may conduct the Procurement. If the Authorized Agency's Contracting Cost is higher than the Authorized Agency's cost under subsection (4)(a), the Authorized Agency may not conduct the Procurement, unless the Exception of subsection (6)(d) applies

(d) Exception Based on Lack of Agency Personnel and Resources; Reporting. If the Authorized Agency determines that it would incur less cost in providing the Services with its own personnel and resources, the Authorized Agency may still conduct the Procurement if, at the time the Authorized Agency intends to conduct the Procurement, the Authorized Agency determines that it lacks personnel and resources to perform the Services within the time the Authorized Agency requires the Services (Exception). When an Authorized Agency conducts a Procurement under this Exception, the Authorized Agency must:

(A) Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the Authorized Agency requires the Services and the basis for the Authorized Agency's decision to conduct the Procurement;

(B) Obtain the Written approval by the DPO of the Authorized Agency of the Exception before conducting an Agency-specific Procurement or the Written approval by the CPO of the Exception before the Department conducts a Procurement.

(C) Provide to the Emergency Board, each calendar quarter, copies of each Cost Analysis, Exception, and any other records described in this Subsection (6)(d);

(D) Prepare a request to the Governor for an appropriation and authority necessary for the Authorized Agency to hire personnel and obtain resources necessary to perform the Services that the Authorized Agency procured under this Subsection (6)(d). The request must include a copy of the records that the Authorized Agency provided to the Emergency Board under Subsection (6)(d)(C).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.030, 279B.033 & 279B.036 (OL Ch. 880, § 4a)

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-247-0165

Practices Regarding Electronic Goods Procurement

(1) ORS 279B.025 requires the Department to establish procurement practices that ensure, to the maximum extent economically feasible, Procurement of Goods that may be recycled or reused when discarded.

(2) The Department and Authorized Agencies must procure Electronic Goods in a manner that includes consideration of the impact of the electronic goods upon the environment and public health, in addition to consideration of economic and community interests, in accordance with goals of sustainability pursuant to ORS 184.423. The Department and Authorized Agencies, separately or together, may:

(a) Consult with stakeholders to develop procedures or guidelines for Procurement of Electronic Goods; and

(b) Address policy and procedure decisions including but not limited to: recycling, relationship to Rules for State Surplus Property as set forth in OAR 125-246-0700 through 125-246-0730, Energy Star certifications, promote toxic use reduction, and the use of certain components such as mercury or lead that have detrimental impacts.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.025, 279B.270 & 279B.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0170

Life Cycle Costing

(1) Policy.

(a) Analysis. Life Cycle Costing provides a method of analysis, considering Sustainability and analyzing total cost of ownership as part of the best value of the purchased Goods (Products). The method applies to the development of Life Cycle Costing criteria for a Solicitation, collection of Product information about Life Cycle, evaluation of Offers, selection of Contractor(s), and award of Contract(s). Using this method, Agency does not award a Contract based solely on the lowest price, and a low Bid would include Life Cycle Costing.

(b) Planning. Agency must consider using Life Cycle Costing during planning for Competitive Sealed Bidding or Proposals. Life Cycle Costing is optional for other sourcing methods under this Division 247.

(c) Services Related to the Product. Agency may also consider the costs of Services related to a Product, including other Sustainability criteria.

(2) Definitions:

(a) "Life Cycle" means the life cycle of a Product, including conception, design, manufacture, service, and disposal. The design of the Product may allow for a repetitive lifecycle: material extraction, manufacturing/production, transportation, utilization/reuse, and disposal/recycling, which leads to the beginning of a new cycle.

(b) "Life Cycle Cost" means the total cost of acquiring, operating, supporting and (if applicable) disposing of the Product being acquired.

(c) "Life Cycle Costing" means an analysis method that quantifies Life Cycle Costs, including the costs of acquiring, operating, supporting and disposing of a Product. The method may also include any additional Costs that relate to adverse impacts of a Product, for example, impacts to the environment or public health.

(d) "Products" means goods, supplies, equipment, or materials.

(3) Life Cycle Costs. Life Cycle Costing considers the acquisition costs of a Product, and includes all associated costs of ownership, such as purchase price, shipping, maintenance and repair, longevity, and disposition costs at the end of life. For complex Products, several Contracts may be required and acquisition costs may involve research and development as well as production, delivery, and installation of the Product. Other costs expected to occur over the anticipated life of the Product may be added to the acquisition costs, based upon a reasonable determination by the Agency. Examples of other typical Life Cycle Costs include the following:

(a) Switching costs associated with changing from the current Product to another model or brand of the Product. Typically, such costs may include: removal, shipping, training, and replacement of peripheral equipment and consumables that support the Product. The Agency may also consider increased project management or additional transition time.

(b) Operating and support costs, including third party contract costs, associated with equipment, supplies, utilities, fuel, and services needed to operate and maintain an operational system.

(c) Disposal costs, including third party contract costs, associated with removing equipment from service and disposing of it. Evaluations that consider Life Cycle Cost should also consider any significant salvage, reuse, or resale value at the time of disposal.

(4) Solicitation Requirements. The Solicitation must:

(a) Describe to prospective Offerors how Life Cycle Costing will be considered and applied in the evaluation process and award decision.

(A) If the Agency plans to make an Award based solely on the lowest evaluated cost resulting from Life Cycle Costing, the Solicitation must describe an evaluation process that includes Life Cycle Costing. For example, an Invitation to Bid must include quantifiable total Life Cycle Costs as a part of the bid evaluation methodology

and award, and the lowest total Life Cycle Cost would be considered the low Bid.

(B) If the Agency plans to make an Award based on an evaluation of other factors than the lowest cost, the Solicitation for Proposals or Quotes must describe an evaluation process that includes Life Cycle Costing.

For example: (i) A Request for Proposals may include Life Cycle Costs as a part of the total points awarded for costs. All Life Cycle Costs will be calculated, and the lowest total Life Cycle Cost is awarded the maximum points allocated for cost in the Solicitation; or (ii) A Request for Proposals may separate Life Cycle Costs and assign to them a weight or points in addition to other defined costs and non-cost criteria in the evaluation process.

(b) Provide relevant information for the evaluation of the Offer; for example, projected Product usage, operating environment, and operating period.

(c) Describe the information that an Offeror must provide in the Offer, including relevant Life Cycle Costs and supporting information. Examples include:

(A) Average unit price, including production and operational costs,

(B) Delivery, shipping and transportation costs,

(C) Any response to switching costs identified in the Solicitation,

(D) Unit operating and support costs (for example, staffing and technical assistance, energy, parts requirements, scheduled maintenance, and training),

(E) Unit disposal costs (for example, the cost of removing equipment from the State facility),

(F) Unit salvage, reuse, or residual value,

(G) Any information related to testing, demonstrations, or interviews, and

(H) Other Product information related to Life Cycle and Sustainability.

(5) Solicitation Options. The Solicitation may:

(a) Provide for adjustments to the Life Cycle Costs if the costs continue over a period of years, for example, inflation or cost uncertainty, and

(b) Include third party estimates of a Product's Life Cycle.

(6) Award Decision.

(a) If Agency uses Life Cycle Costing, an Award resulting from Competitive Sealed Bidding must be made to the Responsible Offeror whose Responsive Offer provides the lowest overall cost of ownership in accordance with the Life Cycle Costing described in the Solicitation.

(b) If Agency uses Life Cycle Costing, an Award resulting from Competitive Sealed Proposals with Life Cycle Costing must be made to the Responsible Offeror whose Responsive Offer is determined to be the most Advantageous or best Proposal in accordance with the Life Cycle Costing described in the Solicitation.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.025, 279B.270 & 279B.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

Methods of Source Selection

125-247-0200

Buy Decision and Methods of Source Selection

(1) Buy Decision. The Buy Decision means the decision to buy Supplies and Services through socio-economic programs, agreements, or the open market (Source). Agency is not required to make a Buy Decision based on the lowest price. See the specific law for the authority to use each Source.

(2) Priority. Agencies must make their Buy Decision in the priority order set forth in subsections (a) through (d) and in accordance with applicable law (Priority). If a higher Priority Source satisfies a Procurement and law requires the use of that Source, the Agency must procure through that higher Priority Source and may not elect to procure through a lower Priority Source.

(a) Surplus Property. Procuring from surplus property promotes the efficient use of existing resources (see OAR 125-050-0100 through 125-050-0400).

(b) Qualified Rehabilitation Facilities (QRFs). Procuring from QRFs assists individuals with disabilities through gainful employment (see ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045).

(c) Inmate Labor. See the Oregon Constitution, Article I, Section 41, subsection 11, which encourages the use of inmate work programs.

(d) Statewide Department Price Agreement. Economy and efficiency are promoted through volume and strategic purchases. Some Statewide Department Price Agreements are Mandatory Use Contracts, described in OAR 125-247-0296. To determine if a Price Agreement exists and whether it is mandatory, use ORPIN and perform a "Statewide Contract Search" or an "Award Search" for "active" Contracts. Under ORS 279A.140, DAS has the procurement authority to establish and administer statewide Price Agreements, and according to the terms of each Price Agreement, DAS delegates the procurement authority to the Agencies to use these Statewide Department Price Agreements.

(3) ORS 190 Agreement. Section (2) does not apply to ORS 190 Agreements that promote the use of existing state resources, including an Interagency Agreement, Intergovernmental Agreement, Interstate Agreement, International Agreement, or Tribal Agreement (see OAR 125-246-0365). An Agency may elect to use an ORS 190 Agreement at any time.

(4) Open Market. If sections (2) and (3) do not apply, the Agency may procure Supplies and Services through the open market, using the methods provided under the Public Contracting Code, related Rules, and policies. See ORS 279AB, OAR 125-246 and 247.

(5) Methods of Source Selection. An Authorized Agency must award a Contract for Supplies and Services by one of the following seven sourcing methods in accordance with the Code and related Rules:

- (a) Competitive Sealed Bidding according to ORS 279B.055;
- (b) Competitive Sealed Proposals according to ORS 279B.060;
- (c) Small Procurement according to ORS 279B.065;
- (d) Intermediate Procurement according to ORS 279B.070;
- (e) Sole-Source Procurement according to ORS 279B.075;
- (f) Emergency Procurement according to ORS 279B.080; or
- (g) Special Procurement according to ORS 279B.085.

A Cooperative Procurement in accordance with OAR 125-246-0400 substantially uses a Competitive Sealed Bidding or Competitive Sealed Proposals method.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-247-0255

Competitive Sealed Bidding

(1) See OAR 137-047-0255 and 137-047-0257.

(2) Regardless of OAR 137-047-0255 and 137-047-0257, Authorized Agencies must comply with the following provisions:

(a) Options. An Authorized Agency may use one or more or any combination of the processes described in this Rule.

(b) Public Notice. The Authorized Agency must provide public notice of the Competitive Sealed Bidding Solicitation as set forth in OAR 125-247-0305.

(c) Emerging Small Business. The Invitation to Bid must include the requirement, if applicable, for the awarded Bidder to obtain or subcontract labor, materials, or labor and materials from a supplier registered as an Emerging Small Business.

(d) Revised Rounds of Bidding.

(A) Process. Revised Rounds of Bidding means a process that begins with an initial round of Competitive Sealed Bidding according to OAR 125-247-0255 and may, at the discretion of the Authorized Agency, include successive rounds of Bidding in order for the Agency to gain the best Offer for purposes of Award. An Agency may revise the Solicitation's Specifications, terms and conditions, and pricing structure for successive rounds to best meet

the State's needs. Bidders must be allowed adequate time to revise and resubmit their Bids in accordance with the requirements set forth in the newly revised Solicitation Document. At each successive round, the Agency may disregard its scoring of prior Bids and commence new scoring for the new Bids. The Agency must comply with the following procedures for this type of Solicitation:

(B) Revisions. The Agency may reject any Bid, after any round, because the Bid did not meet a minimum score or minimum set of requirements. The Agency may then proceed with a subsequent round that requires additional Bids to be submitted, based on different Specifications, terms and conditions, pricing structure, scoring model, references and set of award criteria, separately or in any combination thereof, in order to best meet the State's interests (Revisions). If any Revision is made by the Agency in any subsequent round, the Agency has the right, in its sole discretion, to permit any Bidder whose Bid was previously rejected to submit a new Bid, if the reason(s) for the rejection of the prior Bid by that Bidder no longer applies. Following clarifications and additional investigations, the Agency may reinstate or disqualify an Bidder at any stage of the evaluation process.

(C) Disclosures. The initial Solicitation Document must disclose that a Revised Rounds of Bidding process will or may be used. The Agency must give notice to all initial Bidders of any Revision(s) in the Specifications, terms and conditions, pricing structure, scoring model, and award criteria, separately or in any combination. If the Agency discloses any prices, terms or conditions offered by other Bidders, the Agency must give notice of these disclosures to the initial Bidders.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0260

Competitive Sealed Proposals

(1) See OAR 137-047-0260 and 137-047-0261.

(2) Regardless of OAR 137-047-0260 and 137-047-0261, Authorized Agencies must comply with the following provisions:

(a) An Authorized Agency may use one or more or any combination of the procedures described in ORS 279B.060 and this Rule.

(b) In addition to the requirements in ORS 279B.060(2), the Request for Proposals must include the following:

(A) The form and instructions for submission of Proposals;

(B) A description of the procurement process, including but not limited to: optional process, evaluation, selection, and protest process.

(C) Mandatory preferences, if applicable, and any discretionary preferences, if elected; and

(D) All applicable certifications of compliance with tax laws.

(c) Interviews. If the evaluation committee conducts interviews, it must award weights, points or other classifications indicated in the Request for Proposals for the anticipated interview.

(d) Competitive Range. The Authorized Agency may decrease the number of Proposers in the initial Competitive Range if the excluded Proposers have no reasonable chance to be the most Advantageous Proposer.

(e) The Authorized Agency may continue serial or simultaneous Negotiations until the Agency has determined:

(A) To award the Contract to the eligible Proposer with whom it is currently discussing or negotiating;

(B) To conduct Revised Rounds of Negotiations; or

(C) To cancel the Procurement under ORS 279B.100.

(f) Revised Rounds of Negotiations.

(A) Process and Revisions. After publication of the original Request for Proposals, the Authorized Agency may conduct successive rounds of Proposals achieved through Negotiations to gain the best Proposal for purposes of Award. These Negotiations may concern the price, Specifications, and final terms and conditions, separately or in any combination. The Agency must treat all Proposers fairly. Before the start of each round of Negotiations, the

Agency must disclose the parameters of that round of Negotiations. At that time, the Agency may revise the Solicitation's Specifications, terms and conditions, evaluation criteria and weight, and pricing structure in order to best meet the State's interests (Revisions). At each successive round, the Agency may disregard its scoring of prior Proposals and commence new scoring for the new Proposals. The Agency may eliminate any Proposal after a round because the Proposal did not meet a minimum score, or the Proposal was not susceptible to award, and then proceed with a subsequent round that requires additional Proposals based on the Revision(s). If any Revision is made by the Agency in any subsequent round, the Agency reserves the right, in its sole discretion, to permit any Proposer whose Proposal was previously eliminated to submit a new Proposal, if the reason(s) for the elimination of the prior Proposal no longer applies.

(B) Disclosures. The initial Solicitation Document must disclose that a Revised Rounds of Negotiation process will or may be used. The Agency must give notice to all initial Proposers of any Revision(s) in the Specifications, terms and conditions, pricing structure, scoring model, and award criteria, separately or in any combination. If the Agency discloses any prices, terms or conditions offered by other Proposers, the Agency must give notice of these disclosures to the initial Proposers.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.060

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0265

Small Procurements

(1) Generally. For Procurements of Goods or Services less than or equal to \$10,000 an Authorized Agency may Award a Contract as a Small Procurement pursuant to ORS 279B.065.

(2) Amendments. An Authorized Agency may amend:

(a) A Contract Awarded as a Small Procurement before January 1, 2014 in accordance with OAR 125-247-0805, but the cumulative amendments must not increase the total Contract Price to a sum greater than \$6,000; and

(b) A Contract Awarded as a Small Procurement on or after January 1, 2014 in accordance with OAR 125-247-0805, but the cumulative amendments must not increase the total Contract Price to a sum greater than \$12,500.

(3) An Authorized Agency must comply with ORS 200.035.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-247-0270

Intermediate Procurements

(1) See OAR 137-047-0270.

(2) Regardless of OAR 137-047-0270, Authorized Agencies must comply with the following provisions:

(a) Amendments. If the cumulative value of the original Contract Price and all Amendments exceeds \$150,000.00, or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater, then the Authorized Agency must request and obtain prior approval of a Special Procurement in accordance with OAR 125-247-0287.

(b) Written Solicitation. Authorized Agencies are not required to use a Written Solicitation, unless an Agency's Designated Procurement Officer requires a Written Solicitation. This Written Solicitation may allow revisions to the Solicitation and opportunity for protests, at the discretion of the Agency.

(c) Documentation. Authorized Agencies must document:

(A) The method used by the Agency; and

(B) Communications between the Agency and prospective Offerors.

(d) Borderline Procurements. If an Authorized Agency's Designated Procurement Officer in good faith estimated that the Procurement would be equal to or less than \$150,000, and learned

thereafter that all of the Offers were minimally exceeding \$150,000, this Procurement complies with ORS 279B.070 and this Rule upon the following conditions:

(A) The Designated Procurement Officer must document in the Procurement File the basis for the original estimate under \$150,000 and the process used; and

(B) The Agency must comply with the remainder of ORS 279B.070 and this Rule.

(e) Notice on ORPIN. The Agency must post on ORPIN a notice that it is seeking at least three Offers.

(A) The Notice must provide:

(i) A general description of the Supplies and Services to be acquired;

(ii) Contact information;

(iii) An adequate time period in accordance with the DAS MWESB Policy; and

(iv) For Intermediate Procurements exceeding \$100,000, the Time Period must be a reasonable interval of at least seven (7) calendar Days. Despite this Time Period, Authorized Agencies may determine that a shorter Time Period is in the public's interest and that a shorter Time Period will not substantially affect competition. The Authorized Agency must document the specific reason for the shorter Time Period in the Procurement File in accordance with OAR 125-246-0556.

(B) OAR 125-247-0305 (Public Notice of Solicitation Documents) does not apply to Intermediate Procurements.

(f) Negotiations. An Authorized Agency may negotiate with an Offeror.

(g) Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.070

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-247-0275

Sole-Source Procurements

(1) Generally. An Authorized Agency with delegated authority according to OAR 125-246-0170 may award a Contract without a competitive process through a Sole-Source Procurement according to the requirements of ORS 279B.075, this Rule, and the policy of the Department. The Authorized Agency must make a determination of a sole source based upon Written findings of fact that the Supplies and Services are available from only one source.

(2) Findings of Fact. Findings of fact required under OAR 125-247-0275(1) may include:

(a) Compatibility. The efficient utilization of existing Supplies and Services requires the acquisition of compatible Supplies and Services from only one source. For example, compatibility may be implicated when: Supplies are required to directly interface with or attach to equipment of the same manufacturer and no other manufacturer's Supplies will correctly interface with existing equipment; or when Services such as maintenance, warranty, project management, or systems integration are required to interface or integrate with existing Supplies and Services.

(b) Exchange of Software or Data. Specific Supplies and Services, which are available from only one source, may be required for the exchange of software or data with other public or private agencies. This finding may be particularly applicable when the Supplies and Services involve assets such as copyrights, patents, trademarks, and trade secrets.

(c) Pilot or Experimental Project. Supplies and Services are for the use in such projects, which may include but are not limited to research and economic development projects.

(d) Other findings that support the conclusion that Supplies and Services are available from only one source may include but are not limited to considerations of: unique design, availability, geographic location, exclusive authorized representative, cost of conversion, and warranty services.

(3) Market Research. ORS 279B.075 requires that the Authorized Agency “determines in writing” that the goods or services are “available from only one source.” This means that the Authorized Agency must conduct and document its market research before public notice described in Section (4) or (5).

(4) Contracts up to \$150,000. For all Contracts awarded through Sole-Source Procurements over \$5,000 and not exceeding \$150,000:

(a) The Authorized Agency must place a public notice on ORPIN of its determination that the Supplies and Services or class of Supplies and Services are available from only one source.

(b) The public notice must describe the Supplies and Services to be acquired through a Sole-Source Procurement and identify the prospective Contractor and include the date, time and place that protests are due.

(c) The Authorized Agency must give Affected Persons at least seven calendar (7) Days from the date of the public notice of the determination that the Supplies or Services are available from only one source to protest the determination under OAR 125-247-0710. If the Department is conducting the Sole-Source Procurement, then the Department is the Authorized Agency for purposes of this Rule.

(d) The Authorized Agency must obtain the Written approval of that Agency’s Designated Procurement Officer or delegatee before the Authorized Agency places a public notice on ORPIN in accordance with this Section.

(5) Contracts over \$150,000. For all Contracts exceeding \$150,000:

(a) The Authorized Agency must place a public notice on ORPIN in accordance with Subsections (4)(a)-(c); and if the Department is conducting the Sole-Source Procurement, then the Department is the Authorized Agency for purposes of this Rule; and

(b) The Authorized Agency must obtain the Written approval of the Chief Procurement Officer or delegatee before the Authorized Agency places a public notice on ORPIN in accordance with this Section.

(6) Negotiation. According to ORS 279B.075 and to the extent reasonably practical, the Authorized Agency must negotiate with the sole source to obtain contract terms advantageous to the Authorized Agency.

(7) Protest. An Affected Person may protest the Authorized Agency’s determination that the Supplies and Services or class of Supplies and Services are available from only one source in accordance with OAR 125-247-0710.

(8) Brand Name Requirements. If the findings of fact required under this Rule include a specification of a Brand Name, that specification must be in accordance with ORS 279B.215 and OAR 125-247-0691.

(9) Legal Sufficiency Review. When legal sufficiency review by the Attorney General is required under ORS 291.047, the Authorized Agency must seek this approval.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.075

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0280

Emergency Procurements

(1) An Authorized Agency may award a Contract as an Emergency Procurement under ORS 279B.080. An Authorized Agency has delegated authority to enter into an Emergency Contract according to OAR 125-246-0170.

(2) An Authorized Agency may, in its discretion, enter into a Contract without competitive Solicitation if an Emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a Contract to remedy the condition.

(3) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must encourage

competition that is reasonable and appropriate under the Emergency circumstances. However, for the emergency procurement of construction services that are not Public Improvements, see ORS 279B.080(2).

(4) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must, either before or promptly after entering into an Emergency Contract, make and retain in its Procurement File documentation of the nature of the Emergency that includes:

(a) A brief description of the Supplies and Services to be provided under the Contract, together with its cost or anticipated cost;

(b) A brief explanation of how the Contract, in terms of duration or Supplies and Services provided under it, was restricted to the Scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances;

(c) A description of 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

(d) Documentation of the measures taken under Section (3) to encourage competition; the amounts of the Bids, Quotes or Proposals obtained, if any; and the reason for selecting the Contractor.

(5) The head of the Authorized Agency, or a person designated under ORS 279A.075, must authorize the conduct of the emergency procurement, and must review and approve the documentation required by Section (4) of this Rule.

(6) Any Contract awarded under this Rule must be awarded no later than sixty (60) days following the approval of the documentation of the emergency unless the head of the Authorized Agency or Person designated has granted an extension.

(7) Agencies must also comply with OAR 137-045-0070, Emergency Public Contract Exemption, if applicable. The Authorized Agency must maintain a copy of any required report in the Authorized Agency’s Emergency Procurement File.

(8) For an Emergency Procurement of construction services that are not Public Improvements, the Authorized Agency must insure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the Procurement, the Authorized Agency must set a solicitation time period that the Authorized Agency determines to be reasonable under the emergency circumstances and may issue Written or oral requests for Offers or make direct appointments without competition in cases of extreme necessity.

(9) 2009 “Go Oregon!” Economic Stimulus Package.

(a) Program. The 2009 “Go Oregon!” Economic Stimulus Package, Enrolled Senate Bill 338, House Bill 5562 and related legislative measures (Program), provides funding and direction to identified Authorized Agencies for deferred maintenance, capital construction, capital renewal, code compliance, safety, renovation, and other construction projects (Projects). The Program’s objective is to stimulate Oregon’s economy through job growth by providing opportunities to local businesses and certified minority, women and emerging small businesses. The Director of the Department has made a determination of emergency circumstances and documented the nature of the Emergency under the Program (Emergency Determination). Most of the Projects are not Public Improvements as defined in OAR 125-246-0110(127). ORS 279C.320 provides that ORS 279B.080 regulates these Projects.

(b) Application. Sections (2) through (6) of this Rule do not apply to Procurements and Contracts under the Program.

(c) Emergency Documentation. The Emergency Determination documents the nature of the Emergency on behalf of the Authorized Agencies to satisfy the requirement of ORS 279B.080. No further documentation that an Emergency exists is required of the Authorized Agencies.

(d) Authorization. The Designated Procurement Officer, or designee, of the Authorized Agency must authorize Procurements under the Program and may determine whether to excuse the

requirement of furnishing a good and sufficient performance bond or payment bond.

(e) Procurement Processes. The Authorized Agencies may conduct expedited Emergency Procurement processes, including but not limited to: informal or formal requests for quotes, invitations to bid, and requests for proposals; special procurements; and direct awards. Any of these processes may be utilized regardless of project value.

(f) Project Documentation. The Authorized Agency must retain in its Procurement File(s) the following documentation of its Emergency Procurements and Contracts under the Program:

(A) Copies of all data requested by the Department;

(B) A brief description of the Project;

(C) A description of how the particular contractor was selected and the measures taken to encourage competition, if reasonable and appropriate under the emergency circumstances.

(D) A statement by the Designated Procurement Officer, or designee, excusing performance and payment bonds for the Project in accordance with ORS 279C.380(4), if applicable.

(g) Timing. The documentation described in Section (9)(f) may occur a reasonable time after the award of the Contract. No documentation is required before the award of the Contract.

(10) Other State Economic Stimulus Programs.

(a) Application. For any other state economic stimulus program that is administered by the Department or an Authorized Agency (State Program), Sections (9)(d) through (g) replace Sections (2) through (6) of this Rule and apply to the State Program on the following condition: the Department or Authorized Agency determines that the State Program is in response to adverse economic circumstances.

(b) Emergency Determination and Documentation. The Director of the Department may make an emergency determination and document the nature of the Emergency on behalf of Authorized Agencies. Regardless of any determination by the Director of the Department, an Authorized Agency may make an emergency determination and document the nature of the Emergency on that Agency's behalf and in accordance with ORS 279B.080.

(11) Federal Economic Stimulus Programs.

(a) Application. For any federal economic stimulus program that is administered by the Department or an Authorized Agency (Federal Program), Sections (9)(d) through (g) replace Sections (2) through (6) of this Rule and apply to the Federal Program upon the following condition: the Department determines that the Federal Program is in response to adverse economic circumstances.

(b) Emergency Determination and Documentation. The Director of the Department may make an emergency determination and document the nature of the Emergency on behalf of Authorized Agencies. Regardless of any determination by the Director of the Department, an Authorized Agency may make an emergency determination and document the nature of the Emergency on that Agency's behalf and in accordance with ORS 279B.080.

(12) Amendment. An Authorized Agency may modify a Contract awarded as an Emergency Procurement if the emergency justification for entering into the Contract still exists, and the Amendment is necessary to address the continuing emergency. This modification may be made by change order or Amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.080 & 279C.320

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 5-2009(Temp), f. & cert. ef. 2-13-09 thru 8-12-09; DAS 9-2009, f. & cert. ef. 8-11-09; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0285

Special Procurements; Purpose and Application

(1) Generally. An Authorized Agency may award a Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) Purpose. Pursuant to ORS 279B.085, these Rules establish the criteria for procuring Supplies and Services through Special Procurements by the Department and Authorized Agencies. Authorized Agencies must have delegated authority pursuant to OAR 125-246-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0286

Special Procurements; Definitions

As used in this Section and ORS 279B.400:

(1) "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 or for multiple projects.

(2) "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 on a one-time basis or for a single project.

(3) "Special Procurement" means, unless the context requires otherwise, a class Special Procurement, a contract-specific Special Procurement or both.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0287

Special Procurements; Request Procedures

(1) Approval. An Authorized Agency may request approval of its new or amended Special Procurement from the Chief Procurement Officer. The request must describe one or more particular Contracts or class of Contracts and use the designated ORPIN form. A request for a Special Procurement concerns the procurement process only, and the authority to use the Special Procurement is determined under OAR 125-246-0170.

(2) Requests. Special Procurement Requests must contain the following:

(a) Request must include reason(s) why Agency has elected to use Special Procurement and how it will benefit the Agency or the public.

(b) The Request must include findings, market research, or other documentation that the Special Procurement:

(A) Is unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts, and

(B) Either:

(i) Is reasonably expected to result in substantial cost savings to the Agency or to the public; or

(ii) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any related Rules.

(c) The alternative process designed by the Agency must be clear and complete, including a description of the Supplies and Services that are the subject of the Special Procurement, provisions for advertisement, a procurement process, including provisions for Amendment and criteria for selection, and the proposed contract document.

(d) The Chief Procurement Officer may require any additional information deemed necessary to evaluate the Agency's request for approval of a Special Procurement.

(3) Effect. The Special Procurement approval is effective only after the Chief Procurement Officer's approval of the findings and Request and completion of the Public Notice required under section (4) of this Rule.

(4) Public Notice. The Public Notice process and requirements are as follows:

(a) General. The requesting Authorized Agency must give public notice of the approval of its Special Procurement as required under ORS 279B.085(4) and in accordance with this Rule, unless otherwise directed by the Chief Procurement Officer (Public Notice). As a Written condition to approval of the Special Procurement, the Chief Procurement Officer may require that the Department instead of the requesting Agency give the Public Notice.

(b) Content. The Public Notice must at least describe the Supplies and Services or class of Supplies and Services to be acquired through the Special Procurement.

(c) Time Periods.

(A) If the Special Procurement involves one or more Solicitations, then Public Notice of the approval of the proposed Special Procurement must be given at least seven (7) calendar Days before the Award. The Solicitation Document must either contain the attached request and approval of the Special Procurement or incorporate the request and approval by reference with the documents easily accessible to Affected Persons; or

(B) If the Special Procurement does not involve a Solicitation, then Public Notice of the approval of the Special Procurement must be given at least seven (7) Days before the commencement of the Special Procurement.

(d) An Agency may request certain information to be withheld from the public notice requirement of this Rule in cases where confidentiality or security may be jeopardized only according to an exception under the Public Records Law (ORS 192.410 through 192.505).

(5) Protest. An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and OAR 125-247-0700.

(6) Reference. Any Solicitation or Contract resulting from a Special Procurement approval must contain a reference to the number of the approved Special Procurement.

(7) Conditions. If the Chief Procurement Officer provides Written approval of the proposed Special Procurement (Approval), the Authorized Agency must award any Contract under the Special Procurement in accordance with the conditions of this Approval and any subsequent amendments to the Approval. The Approval may include conditions, including but not limited to expiration, Public Notice and dollar limitations, and may be revoked at any time by the Chief Procurement Officer.

(8) If an Authorized Agency competitively solicits, it must comply with the process described in the Special Procurement or the Rules for that method of Solicitation according to ORS 279B.055 through 279B.070 and 279A.200 et seq.

(9) Nothing in this Rule exempts the Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(10) All Agencies must comply with ORS 200.035 and related Department policy, despite this Rule.

(11) If an Authorized Agency intends to award a Contract through a Special Procurement that calls for competition among prospective contractors, the Authorized Agency must award the Contract to the Offeror the Authorized Agency determines to be the most advantageous to the Authorized Agency.

(12) Reporting. An Authorized Agency must comply with ORS 279A.165, including but not limited to:

(a) Application. This section (12) applies to all Special Procurements advertised or otherwise solicited on or after January 1, 2012.

(b) Records. An Authorized Agency must maintain records about its Special Procurements that enable the Agency to determine and provide to the Chief Procurement Officer at least the following information:

(A) The name of the Agency that conducted each Special Procurement;

(B) The number of Special Procurements the Agency conducted;

(C) The number of contracts awarded through each Special Procurement;

(D) A summary of the reasons that the Agency decided to conduct each Special Procurement;

(E) A descriptive summary of the procurement procedure used to conduct the Special Procurement, noting whether the procedure was competitive or not;

(F) A listing of the number of Offers the Agency received if the Special Procurement procedure was competitive;

(G) The contract price or estimated contract price for each contract awarded through a Special Procurement;

(H) A summary of the protests or other responses to the approval of each Special Procurement that the Agency received; and

(I) A summary of the disposition of the protests or other responses described in subsection 12(b)(H).

(c) Reports. Authorized Agencies must provide to the Chief Procurement Officer the information in section (12)(b) of this rule.

(A) Form. Agencies must report on a form approved by the Chief Procurement Officer.

(B) Timing. Agencies must deliver regular reports on the approved form to the Chief Procurement Officer no later than the dates announced by the Chief Procurement Officer.

(d) Section (12) of this Rule is effective on the date of the filing of this amended Rule.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.165 & 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-247-0288

Special Procurements; by Rule

(1) Client Placement and Client Health Care Services.

(a) Authorization and Application. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to enter into Written agreements for Client Placement and Client Health Care services, as described in this Rule. When an Authorized Agency determines that a need exists to secure or maintain Client Placement Services or to secure Client Health Care Services, the Authorized Agency may contract subject to the following definitions and conditions of this Section (1).

(A) "Client Placement Services" means securing, enhancing, or continuing the placement of a Client in a structured family-like setting or residential setting operated by a qualified Provider.

(B) "Client Health Care Services" means health care services or provision of incidental or specialized supplies related to the health of a Client. Client Health Care Services include but are not limited to: preventive, diagnostic, therapeutic, behavioral, rehabilitative, maintenance, or palliative care and counseling services, assessment, or procedure with respect to the physical or mental condition, or functional status of a Client, or that affect the structure or function of the body; and the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

(C) Services that may prevent a placement or placement disruption but that cannot definitively be classified as Client Placement Services by the Authorized Agency are deemed to be Client Placement Services and are subject to the Special Procurement approved under this Rule. This Special Procurement for Client Placement Services may include training only if it is provided directly to the Client, excluding Providers.

(b) Authorized Agencies must execute a Contract or amendment to an existing Contract within 180 days of obtaining the Client Placement Services or Client Health Care Services as defined herein. Should the Authorized Agency fail to execute the Contract within this specified period, then the Authorized Agency may execute the Contract if:

(A) A Written statement of justification that describes the unforeseen or unavoidable circumstances that were reasonably unanticipated and preclude the Authorized Agency from executing the Contract within the initial 180 day period; and

(B) A copy of the Written justification is maintained in the Procurement File.

(c) The Authorized Agency may not make any payments for Client Placement Services or Client Health Care Services before obtaining all requisite approvals of the Contract.

(d) An Authorized Agency may:

(A) Use one of the defined source selection methods as found in OAR 125-247-0200. If an Authorized Agency elects to use one of the defined source selection methods, it must conduct it in accordance with the Code, Rules and Department policies; or

(B) The Authorized Agency may elect to create its own source selection method. If an Authorized Agency elects to create its own source selection method, it must document the file describing why the alternate method was selected.

(e) The Authorized Agency must ensure that all Procurement personnel responsible for procuring Placement Services or Client Health Care Services are provided training on the conditions and limitations of this Rule.

(f) Contract and Amendment Forms.

(A) Original Forms. Authorized Agencies must use a Contract form and Amendment form (Form) approved by the Chief Procurement Officer when acquiring Client Placement Services or Client Health Care Services according to this Rule. The Chief Procurement Officer may approve the Form by facsimile, email, letter or any other method that provides an objective means to verify its approval. The Authorized Agency must review the approved Form at least every two years.

(B) Revised Forms.

(i) Designated Procurement Officer Approval up to \$150,000. For revised Forms up to a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain its Designated Procurement Officer's approval of any revisions to a Form's terms and conditions. The Designated Procurement Officer's approval is not required for revisions to Form exhibits that are unrelated to terms and conditions.

(ii) Department of Justice Approval over \$150,000. For revised Forms exceeding a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain Department of Justice approval of any revisions to the revised Form's terms and conditions. The Department of Justice approval is not required for revisions to Form exhibits that are unrelated to terms and conditions. The Department of Justice approval may be delivered by facsimile, email, letter or any other objective means of approval. Upon an Authorized Agency's request, the Department of Justice may approve a revised Form for repeated use for a specific class or classes of transactions.

(g) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(2) Client Services Source Selection.

(a) An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement Rule.

(b) The Chief Procurement Officer waives the source selection requirements as found in OAR 125-247-0200 for Authorized Agencies to procure Client Services, as defined in OAR 125-246-0110.

(c) The Authorized Agency is urged to solicit for Client Services when there is known competition. Under these circumstances, the Authorized Agency may:

(A) Use one of the defined source selection methods as found in OAR 125-247-0200. If an Authorized Agency uses one of the defined source selection methods, it must conduct it in accordance with the Code, Rules and Department policies; or

(B) The Authorized Agency may elect to create its own source selection method. If an Authorized Agency creates its own source selection method, it must document the file describing why the alternate method was selected. This Subsection (2)(c) does not apply to Section (1) above.

(3) Renegotiations of Existing Contracts with Incumbent Contractors.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to renegotiate and amend an existing Contract with an incumbent Contractor within the term of the contract, when market conditions have changed and it is in the best interest of the State.

(b) Process and Criteria. The Authorized Agency may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitution, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The Authorized Agency must post notice on ORPIN. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047. The Authorized Agency must meet the following conditions in its Renegotiations with incumbent Contractors:

(A) Favorable Result. The Authorized Agency must determine that, with all things considered, the renegotiated Contract is at least as favorable to the State as the Original Contract and document this in the Procurement File. For example, the Authorized Agency and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;

(B) Within the Scope. The Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the Authorized Agency may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation;

(C) Optional Term or Condition. If a Contractor offered to the Authorized Agency during the original Solicitation a term or condition that was rejected at that time, (for the purpose of this Subsection only, Rejected Term or Condition), the Authorized Agency may not renegotiate for a lower price based on this Rejected Term or Condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price according to a Rejected Term or Condition without additional consideration from the Authorized Agency and as only an option to the Authorized Agency, then the Authorized Agency may accept the option of a lower price under the Rejected Term or Condition. For example, if the Authorized Agency initially rejected a Contractor's proposed Condition that the price required a minimum order, any renegotiated Contract may not mandate this Condition; but the Authorized Agency may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and

(D) Market. In order to avoid encouraging favoritism or diminishing competition, the Authorized Agency must research the accepted competitive practices and expectations of Offerors within the market for the specific Contract(s) or Classes of Contracts to be renegotiated (Market Norm). The Authorized Agency must document the results of the Market Norm research in the Procurement File. Based upon this information, the Authorized Agency must confirm that, if the Authorized Agency follows the Market Norm, favoritism is not likely to be encouraged, competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the Authorized Agency accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.

(4) Advertising Contracts.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to purchase media advertising, regardless of dollar value, without competitive bidding, according to OAR 125-246-0170.

(b) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement

Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(5) Equipment Repair and Overhaul.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for equipment repair and overhaul, as described in this Rule.

(b) Conditions. An Authorized Agency, having delegated purchasing authority according to OAR 125-246-0170, may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(C) The Authorized Agency purchases within the limits and according to the methods in (5)(c) of this Rule.

(c) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(6) Contracts for Price Regulated Items.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for the Procurement of price regulated items, and the Authorized Agency must comply with the conditions of this Rule. An Authorized Agency having delegated purchasing authority according to OAR 125-246-0170 may, regardless of dollar value and without competitive bidding, contract for the direct purchase of Supplies and Services where the rate or price for the Supplies and Services being purchased is established by federal, state, or local regulatory authority.

(b) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(7) Investment Contracts.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for investment Contracts, including related Contracts arising from or giving rise to investment opportunities (collectively, investment Contracts), as described in this Rule. An Authorized Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by the Authorized Agency when such investment or borrowing is contracted according to duly enacted statute, or constitution.

(b) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency

Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(8) Food Contracts.

(a) Intent. The intent of this Rule is to provide a method for Authorized Agencies to procure food products, which are available for a limited period of time at “lower than normal” prices (also referred to as “spot buys”) (Food Contracts).

(b) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for the Procurement of Food Contracts, and the Authorized Agency must comply with the conditions of this Rule.

(c) Conditions. An Authorized Agency may procure an unlimited dollar value of food using a competitive bid or quote process when all of the following conditions are present:

(A) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item’s price on an existing Mandatory Use Contract or any recent bid and the amount saved exceeds any additional administrative costs incurred to purchase using this Special Procurement;

(B) The product being purchased has limited availability (i.e., the product may no longer be available upon completion of normal bid processes); and

(C) The purchase does not jeopardize fulfillment of a guaranteed minimum volume under an existing Mandatory Use Contract.

(d) Documentation. Purchases may only be made under this Special Procurement after the Authorized Agency documents the following in its Procurement File in accordance with OAR 125-246-0556: the Authorized Agency’s attempt and method to obtain Quotes from at least three sources; the Written Quote or Bid, if obtained; item Specifications; quantity; unit pricing; delivery; and other pertinent information. Contract or bid pricing used for comparison must be representative of current pricing available and must have been obtained or confirmed no more than six (6) months before the current purchase. When practical, Written Quotes are recommended.

(e) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN, except when the competitive method involves verbal Quotes for perishable food. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(9) Purchase of Used Personal Property.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule Subject to the provisions of this Rule, an Authorized Agency may purchase used property or equipment without competitive bidding and without obtaining Quotes, if, at the time of purchase, the Agency has determined and documented that the purchase will (i) be unlikely to encourage favoritism or diminish competition; and (ii) result in substantial cost savings or promote the public interest. “Used personal property or equipment” means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as “used,” at the time of the Authorized Agency purchase. “Used personal property or equipment” generally does not include property or equipment if the Authorized Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(b) Process and Criteria.

(A) For purchases of used personal property or equipment not exceeding \$150,000, Authorized Agencies having delegated authority according to OAR 125-246-0170, must, where feasible, obtain

three Quotes, unless the Authorized Agency has determined and documented that a purchase without obtaining Quotes will result in cost savings to the Authorized Agency and will not diminish competition or encourage favoritism.

(B) For purchases of used personal property or equipment exceeding \$150,000, the Department must obtain and keep a Written record of the source and amount of Quotes received. If three Quotes are not available, a Written record must be made of the attempt to obtain Quotes.

(C) If the total purchase is estimated to exceed \$150,000, an Authorized Agency must submit a Written request for a Written delegation of authority from the Chief Procurement Officer before making the purchase.

(D) Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(10) Reverse Auctions.

(a) Authority. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule.

(b) Process. A Reverse Auction means a process for the purchase of Supplies and Services by a buyer from the lowest Bidder. The Authorized Agency as the buyer must conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, Contract terms and conditions. Then, the Authorized Agency must solicit online Bids from all interested Bidders through an Internet-based program. The Solicitation must set forth a start and end time for Bids and specify the following type of information to be disclosed to Bidders during the Reverse Auction:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) “winning” or “not winning” or (ii) “1st, 2nd, or higher”);

(C) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above. Before the Reverse Auction commences, Bidders must be required by the Authorized Agency to assent to the Contract terms and conditions, either in Writing or by an Internet “click” agreement. The Bidders then compete for the award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the Authorized Agency. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. The Authorized Agency may cancel this Solicitation if this Agency determines that it is in this Agency’s or the State’s best interest. At the end of this Bidding process, the Authorized Agency must award any potential Contract to the lowest Responsible Bidder or in the case of multiple awards, lowest Responsible Bidders according to ORS 279B.055(10)(b). This process allows the Authorized Agency to test and determine the suitability of the Supplies and Services before making the Award. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(c) Policy. The Authorized Agency must follow the policy of the Department.

(d) Public Notice.

(A) The Authorized Agency must disclose the Reverse Auction process in the Solicitation Document. The Reverse Auction process must include the manner of giving notices of the price(s) offered, rank(s), score(s), and related details to the initial Bidders.

(B) The Authorized Agency must provide initial notice of this Solicitation through ORPIN.

(C) If the value exceeds \$150,000, the Authorized Agency must issue a Notice of Intent to award at least seven (7) calendar Days before making the Award.

(e) Prequalification. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must prequalify suppliers and provide an appeal process in accordance with ORS 279B.120 and related Rules.

(f) E-Procurement. The requirements of OAR 125-247-0330 apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of this Section (11) take precedence over the more general requirements of OAR 125-247-0330.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0295

Special Procurements: General or Special Counsel Authorized by the Attorney General

(1) Authority and Application. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule. Under ORS 180.235, the Oregon Attorney General may authorize a public officer or Agency to retain its own general or special counsel, including but not limited to conflict counsel, other than the Department of Justice. This Rule governs the process for obtaining such counsel.

(2) Definitions. For purposes of this Rule only, these terms have the following meanings:

(a) “Attorney General” means the Attorney General of the State of Oregon.

(b) “Authorized Agency” means a public officer or Agency that the Attorney General authorized to retain its own general or special counsel other than the Department of Justice under ORS 180.235.

(c) “Authorized Legal Services” means the legal services as authorized by the Attorney General for the particular matter or class of matters and as required by the Authorized Agency.

(d) “Outside Counsel” means general or special counsel selected by the Authorized Agency under this Rule.

(e) “Firm” means the proprietorship, partnership or professional legal corporation engaged in the practice of law of which Outside Counsel is a partner, a shareholder, an associate, a member, or a lawyer serving as “of counsel.”

(f) “Solicitation” means a written or oral request for offers, proposals, statements of qualifications, or other information from individuals or entities.

(3) Selection Criteria.

(a) The Authorized Agency must select the Firm it considers most advantageous based on the following factors:

(A) The knowledge, skills and ability of the Firm that will provide Authorized Legal Services. The Firm’s ability to provide Authorized Legal Services includes the training and expertise of the Firm attorneys, including Outside Counsel. Outside Counsel must be a member of the Oregon State Bar according to ORS 180.235(2);

(B) The Firm’s experience, level of expertise and suitability to perform the Authorized Legal Services;

(C) Whether the Firm’s available personnel possess any required licenses or certifications required to perform the legal services for the Authorized Legal Services, such as licenses to practice law in the appropriate jurisdiction, or to appear in a certain forum;

(D) The Outside Counsel’s availability and capability to perform the Authorized Legal Services and meet the Agency’s needs;

(E) The commitment the Outside Counsel and Counsel’s Firm can make to the Authorized Agency to meet the Agency’s needs;

(F) The value of the Firm's legal services, taking into account the cost of the Firm's legal services; and

(G) Other factors the Authorized Agency considers relevant to accomplish an optimal, timely outcome.

(b) In weighing the evaluation factors, no single factor is determinative.

(4) Scope of Firms Considered. The Solicitation process may range from direct negotiation and contracting with a single firm to publication of a request for proposals. The Authorized Agency must extend Solicitations to those firms that it considers reasonable and practical to solicit under the circumstances, and must take into consideration the following factors:

(a) When the subject matter of the Authorized Legal Services requires specialized knowledge in a particular field of law, the Authorized Agency may limit the Solicitation to prospective Firms that have a reputation of subject matter expertise in that field of law;

(b) The Authorized Agency must limit the number of Firms considered under the Solicitation as appropriate if the interests of the Authorized Agency would likely be adversely affected by delay in obtaining a Firm or through broad distribution of the Solicitation; and

(c) Other factors the Authorized Agency considers relevant to accomplish an optimal, timely outcome.

(5) Documentation of Selection.

(a) The Authorized Agency must prepare a record of selection signed by the public officer or Agency designated to be responsible for the selection process. The record of selection must include the public officer's or Agency's summary of:

(A) The Solicitation process used and the Firms considered in the Solicitation process;

(B) Why the selected firm is considered most advantageous to the Authorized Agency; and

(C) Why the Scope of the Solicitation was reasonable and practical under the circumstances.

(b) As used in (5)(a) above, the public officer may include a member of the Authorized Agency's board or commission.

(c) The record of solicitation must be retained by the Authorized Agency within the Procurement File for the Firm.

(6) The Agency may procure Amendments to existing Contracts under this Rule. In lieu of complying with Sections (4) through (5) of this Rule, the Agency must document why amending the Contract is necessary and in the best interest of the State.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.075, 279B.085

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0296

Price Agreements and Mandatory Use Contracts

(1) Mandatory Use Contracts, for the purposes of this Rule and including Department Price Agreements, service agreements, and sales agreements, may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining Agency requirements for volume discounts, standardization among Agencies, and reducing lead time for ordering. A Mandatory Use Contract requires the Authorized Agency to purchase Supplies and Services for an anticipated need at a predetermined price, provided the Mandatory Use Contract is let by a competitive Procurement Process according to the requirements of ORS 279ABC and these Rules.

(2) Authorized Agencies may purchase the Supplies and Services from a Contractor awarded a Mandatory Use Contract without first undertaking additional competitive Solicitation.

(3) Authorized Agencies must use Mandatory Use Contracts established by the Department unless otherwise specified in the Contract, allowed by law or these Rules, or specifically authorized by the Chief Procurement Officer.

(4) Despite section (3) above, Authorized Agencies are exempted from Mandatory Use Contracts for acquisition of the following, regardless of dollar amount:

(a) Supplies and Services from another Oregon Public Agency provided that a formal, Written agreement is entered into between the parties;

(b) Personal property for resale through student stores operated by public educational Agencies; and

(c) Emergency purchases declared by an Authorized Agency according to ORS 279B.

(5) Authorized Agencies may be exempted from a Mandatory Use Contract upon a request to and approval by the Contract Administrator of the Mandatory Use Contract.

(6) The term of the Contract, including renewals, must not exceed the maximum term stated in the original Solicitation.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

Procurement Process

125-247-0300

Applicability of General Rules to Methods of Source Selection

(1) Generally. These Procurement Process Rules are intended to apply to more than one sourcing method according to ORS 279B.050 through 279B.085 and to specify those methods.

(2) In the event of conflict or ambiguity arising from specific requirements of another Rule in Division 247 and a general Rule in OAR 125-247-0305 through 125-247-0691, the specific requirements of another Rule take precedence over the more general requirements of a Rule under Procurement Process.

(3) If a general Rule in OAR 125-247-0305 through 125-247-0691 is silent regarding its specific application or an ambiguity arises regarding the application of any such Rule to any of the seven sourcing methods of ORS 279B.050 through 279B.085, that Rule applies only to Bidding and Proposals in accordance with ORS 279B.055, 279B.060, and OAR 125-247-0255 through 125-247-0261.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0305

Public Notice of Solicitation Documents

(1) Application. This Rule applies only to Bidding and Proposals in accordance with ORS 279B.055, 279B.060, and OAR 125-247-0255 through 125-247-0260.

(2) Notice of Solicitation Documents.

(a) Official Notice. An Authorized Agency must post public notice of every Solicitation Document on ORPIN in accordance with OAR 125-246-0500 (Official Notice).

(b) Additional Notice. The Authorized Agency may give additional notice if:

(A) The additional notice refers to the Official Notice, and

(B) The Authorized Agency uses any method it determines appropriate to foster and promote competition, including:

(i) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Authorized Agency's Procurements;

(ii) Placing notice on the Authorized Agency's Internet World Wide Web site; or

(iii) Publishing notice in a newspaper of general circulation as described in ORS 279B.055(4) (Additional Notice).

(3) Content of Official and Additional Notices. All notices for solicitation of Offers must set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Supplies and Services to be acquired;

(c) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Supplies and Services is one for which Persons must be prequalified;

(d) The office where contract terms, conditions and Specifications may be reviewed if not electronically attached;

(e) The name, title and address of the individual authorized by the Authorized Agency to receive Offers;

(f) The scheduled Opening; and

(g) Any other information the Authorized Agency deems to be appropriate.

(4) Notice Time Periods.

(a) The Authorized Agency must give Official Notice of an Invitation to Bid at least fourteen (14) Days before the Closing.

(b) The Authorized Agency must give Official Notice of a Request for Proposals at least thirty (30) Days before the Closing.

(c) The Authorized Agency may give Additional Notice for any reasonable time

(d) Despite Section (4)(a) and (b), the Authorized Agency may determine that a shorter time period is in the public's interest and that a shorter time period will not substantially affect competition. In no event may the Authorized Agency give any Official Notice less than seven (7) Days before Closing. The Authorized Agency must document the specific reasons for the shorter time period in the Procurement File in accordance with OAR 125-246-0556.

(e) Despite other provisions of this Rule, the public notice time period for a Qualified Products List is at least seven (7) days.

(5) Availability of Written Advertisement for Offers. Upon the request of any member of the public, the Authorized Agency must provide a copy of each advertisement for Offers and all supporting documents, to be located in the Procurement File or an identified repository.

(6) Minority, Women, and Emerging Small Business. In accordance with ORS 200.035, an Authorized Agency must provide timely notice of all Procurements to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000.

(7) Fees. The Authorized Agency may charge a fee or require a deposit for the Solicitation Document, supporting documents and any combination thereof.

(8) Notice of Addenda. The Authorized Agency must provide notice to potential Offerors on ORPIN of any Addenda to a Solicitation Document in accordance with OAR 125-247-0430.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-247-0310

Bids or Proposals are Offers

See OAR 137-047-0310.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

Electronic Procurement Processes (E-Procurement)

125-247-0320

Facsimile Bids and Proposals

See OAR 137-047-0320.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0330

E-Procurement

(1) General.

(a) Electronic Processes. An Authorized Agency may conduct all phases of a Procurement, including without limitation, the posting of Electronic Advertisements and the receipt of Electronic Offers, by the following electronic processes:

(A) E-Bidding;

(B) Reverse Auction; or

(C) Special Procurement if (i) or (ii) are not appropriate (Electronic Processes). The Authorized Agency must specify in a Solicitation Document, a request for Quotes, or any other Writing that instructs Persons how to participate in the Procurement.

(b) Security Measures. The Authorized Agency must open an Electronic Offer in accordance with electronic security measures in effect at the Authorized Agency at the time of its receipt of the Electronic Offer. Unless the Authorized Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Authorized Agency's use of electronic Signatures must be consistent with applicable statutes and rules. An Authorized Agency must authorize, and may limit the use of Electronic Processes of conducting a Procurement based on the best interests of the Authorized Agency, as determined by the Authorized Agency.

(d) If the Authorized Agency determines that Bid or Proposal security is or will be required, the Authorized Agency should not authorize Electronic Offers unless the Authorized Agency has another method for receipt of such security.

(2) Rules Governing Electronic Procurements. The Authorized Agency must conduct all portions of an electronic Procurement in accordance with these Division 247 Rules, unless otherwise set forth in this Rule.

(3) Preliminary Matters. As a condition of participation in an electronic Procurement, the Authorized Agency may require potential Contractors to register with the Authorized Agency before the date and time on which the Authorized Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Authorized Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) Offer Process. An Authorized Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Authorized Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Authorized Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Authorized Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Authorized Agency will first receive Electronic Offers, the Authorized Agency must begin to accept real time Electronic Offers on ORPIN or other Electronic Procurement System approved by the Chief Procurement Officer (for purposes of this Rule, collectively, ORPIN), and must continue to accept Electronic Offers in accordance with Subsection 5 of this Rule until the date and time specified by the Authorized Agency, after which the Authorized Agency will no longer accept Electronic Offers.

(5) One-Time Receipt of All Electronic Offers. When an Authorized Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Authorized Agency must receive the Electronic Offers in accordance with these Division 247 Rules.

(6) Failure of the E-Procurement System. In the event of a failure of ORPIN that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Authorized Agency may cancel the Procurement in accordance with OAR 125-247-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the ORPIN becomes available.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0340

Reverse Auctions

(1) If the Authorized Agency desires to conduct a Reverse Auction as defined in OAR 125-247-0288, the Authorized Agency must follow the policy of the Department. The requirements of OAR 125-247-0288 apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of OAR 125-247-0288 take precedence over the more general requirements of this Rule.

(2) Multiple Receipts of Offers during a Period of Time. When the Authorized Agency specifies that Persons may submit multiple Electronic Offers during a period of time, the Authorized Agency must accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(a) Following receipt of the first Electronic Offer after the day and time the Authorized Agency first receives Electronic Offers, the Authorized Agency must give notice to the initial Bidders and update on a real time basis:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) “winning” or “not winning” or (ii) “1st, 2nd, or higher”);

(C) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above. At any time before the date and time after which the Authorized Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(b) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Authorized Agency first accepts Electronic Offers.

(c) A Person may withdraw an Electronic Offer only in compliance with these division 247 Rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

Bid and Proposal Preparation

125-247-0400

Offer Preparation

See OAR 137-047-0400.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0410

Offer Submission

See OAR 137-047-0410.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0420

Pre-Offer Conferences

See OAR 137-047-0420.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0430

Addenda to Solicitation Document

(1) Issuance; Receipt. The Authorized Agency may change a Solicitation Document only by Written Addenda. An Offeror must provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Authorized Agency otherwise specifies in the Addenda.

(2) Notice and Distribution. The Authorized Agency must notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document must specify how the Authorized Agency will provide notice of Addenda and how the Authorized Agency will make the Addenda available before Closing, and at each subsequent step or Phase of evaluation if the Authorized Agency will engage in a Multistep Competitive Sealed Bidding process in accordance with OAR 125-247-0255, or a Multi-tiered or Multistep Competitive Sealed Proposals process in accordance with 125-247-0260.

(3) Timelines; Extensions.

(a) The Authorized Agency must issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Authorized Agency may extend the Closing if the Authorized Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the Authorized Agency must not issue Addenda less than 3 Business Days before the Closing unless the Addendum also extends the Closing.

(b) Despite Subsection (3)(a) of this Rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any step or Phase of competition under a Multistep Sealed Bidding or Multistep Sealed Proposals, issued in accordance with OAR 125-247-0255 or 125-247-0260, must be issued no fewer than five (5) Days before the beginning of that step or Phase of competition, unless the Authorized Agency determines that a shorter period is sufficient to allow the Offerors to prepare for that step or Phase of competition. The Authorized Agency must document the factors it considered in making that determination, which may include, without limitation, the Scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next step or Phase of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR 125-247-0730, by the close of the Authorized Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under 125-247-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with 125-247-0730, then the Authorized Agency may only consider an Offeror's request for change or protest to the Addendum, and the Authorized Agency must not consider a request for change or protest to matters not added or modified by the Addendum. Despite any provision of this subsection (4) of this Rule, an Authorized Agency is not required to provide a protest period for Addenda issued after initial Closing during a or multistep Procurement Process conducted according to ORS 279B.055 or 279B.060 and their respective rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0440

Pre-Closing Modification or Withdrawal of Offers

See OAR 137-047-0440.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0450

Receipt, Opening, and Recording of Offers

See OAR 137-047-0450.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0460

Late Offers, Late Withdrawals, and Late Modifications

See OAR 137-047-0460.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0470

Mistakes

See OAR 137-047-0470.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0480

Time for Authorized Agency Acceptance

See OAR 137-047-0480.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0490

Extension of Time for Acceptance of Offer

See OAR 137-047-0490.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

Qualifications and Duties

125-247-0500

Responsibility of Offerors

(1) Determination. Before awarding a Contract, the Authorized Agency must determine that the Offeror submitting the lowest Bid or Proposal or most Advantageous Offer is Responsible. The Authorized Agency must use the standards set forth in ORS 279B.110 and OAR 125-247-0640(1)(c)(F) to determine if an Offeror is Responsible. In the event an Authorized Agency determines an Offeror is not Responsible, it must prepare a Written determination of non-Responsibility as required by ORS 279B.110 and must reject the Offer.

(2) Independent Contractor Status, Tax Compliance, and Requirements to Transact Business in Oregon. For these responsibilities of Offerors, see OAR 125-246-0330.

(3) Life Cycle Costing. See OAR 125-247-0170.

(4) Record of Performance and Integrity. Authorized Agencies must comply with ORS 279B.110.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-247-0525

Qualified Products Lists

See OAR 137-047-0525.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085, 279B.115

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0550

Prequalification of Prospective Offerors, Pre-negotiation of Contract Terms and Conditions, and Request for Qualifications (RFQ)

(1) Prequalification of Prospective Offerors. An Authorized Agency may prequalify prospective Offerors according to ORS 279B.120 and 279B.125. Despite the prohibition against revocation of prequalification in ORS 279B.120(3), an Authorized Agency may determine that a prequalified Offeror is not Responsible before Contract Award.

(2) Pre-negotiation of Contract Terms and Conditions. An Authorized Agency may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in Section (1) or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the Authorized Agency and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. An Authorized Agency may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When an Authorized Agency has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, an Authorized Agency may consider the terms and conditions in the Proposal evaluation process.

(3) Request for Qualifications (RFQ). For purposes of this Section, an RFQ may be used without the RFQ constituting a Pre-qualification according to Section (1) of this Rule, if the Authorized Agency establishes the RFQ to determine whether competition exists to perform the needed services or to establish a nonbinding, open list of qualified Contractors in addition to the general public and in order to expand the pool of qualified Contractors, before issuing a Request for Proposals (RFP). If an Authorized Agency establishes a closed, exclusive, or binding list of qualified Contractors, then the Authorized Agency must comply with Section (1) of this Rule. The Authorized Agency is not required to issue an RFQ and may elect to forego using an RFQ before issuing an RFP.

(a) At a minimum, the RFQ must 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 RFQ 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 deemed necessary by the Authorized Agency 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. The RFQ must include the date, time and place of the meeting(s).

(c) Unless the RFQ establishes that competition does not exist or unless the Solicitation process is canceled or all qualification statements are rejected, all respondents who met the published qualifications must receive a notice, or other materials as appropriate, in addition to the general public, of any required services and have an opportunity to submit a proposal in response to an Authorized Agency's subsequent RFP.

(d) All RFQs must:

(A) Be in Writing;

(B) Be posted on ORPIN;

(C) Provide that the Authorized Agency 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; and

(D) Provide that the Authorized Agency is not responsible for any costs of any proposers incurred while submitting Proposals, and that all Proposers who respond to Solicitations do so solely at their own expense, unless compensation is expressly provided for in the Solicitation Document.

(e) According to ORS 200.035, the Authorized Agency must notify, in Writing, the Advocate for Minority, Women and Emerging Small Businesses of each Solicitation and contracting opportunity exceeding \$5,000.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279.015, 279B.050-279B.085, 279B.120, 279B.125

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-247-0575

Debarment of Prospective Offerors

(1) See OAR 137-047-0575.

(2) Regardless of OAR 137-047-0575, the Chief Procurement Officer is the Contracting Agency and acts on behalf of the Director of the Department under ORS 279B.130 and 279B.425.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.050-279B.085, 279B.130

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

Offer Evaluation and Award

125-247-0600

Offer Evaluation and Award

(1) Authorized Agency Evaluation. The Authorized Agency must evaluate Offers only as set forth in the Solicitation Document, according to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Authorized Agency must not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Authorized Agency must apply the reciprocal preference set forth in ORS 279A.120(2)(b) and OAR 125-246-0310 for non-resident Bidders.

(B) Public Printing. The Authorized Agency must, for the purpose of evaluating Bids, apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Authorized Agency determines that one or more Bids are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the Authorized Agency determines that one or more Proposals are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(B) Public Printing. The Authorized Agency must for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Authorized Agency must give preference for Recycled Materials as set forth in ORS 279A.125 and OAR 125-246-0322.

(2) Clarification of Bids or Proposals. After the Bid Opening, an Authorized Agency may conduct Discussions with apparent Responsive Offerors for the purpose of clarification and to assure full understanding of the Bids or Proposals. All Bids or Proposals, at the Authorized Agency's sole discretion, needing clarification must be afforded such an opportunity. The Authorized Agency must document clarification of any Bidder's Bid in the Procurement File in accordance with OAR 125-246-0556.

(3) Negotiations Prohibited or Allowed.

(a) Prohibition in Competitive Sealed Bidding. An Authorized Agency must not negotiate with any Bidder in a competitive sealed bidding according to ORS 279B.055 and related Rule. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-247-0805. An

Authorized Agency may conduct Discussions in accordance with OAR 125-247-0255.

(b) Allowance in Other Procurement Methods. An Authorized Agency may conduct Discussions or Negotiations with one or more Offerors in Competitive Sealed Proposals, Small Procurements, Intermediate Procurements, Emergency Procurements if applicable, and Special Procurements if applicable, in accordance with ORS 279B.060(7) and (8), OAR 125-247-0260, 125-247-0270, 125-247-0287, and 125-247-0288. To the extent practical, an Authorized Agency must negotiate in Sole-Source Procurements in accordance with OAR 125-247-0275. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-247-0805.

(c) Other Procurements. This Section (3) does not apply to Small Procurements, Emergency Procurements, or Special Procurements which do not use Solicitations.

(4) Award.

(a) General. If awarded, the Authorized Agency must award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Authorized Agency may award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with the Award based on individual line item, group total of certain items, a "market basket" of items representative of the Authorized Agency's expected purchases, or grand total of all items.

(c) Multiple Awards; Bids.

(A) Despite Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. A multiple Award may be made if the Award to two or more Bidders is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, skills, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be awarded for any Invitation to Bid must not preclude the Authorized Agency from awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Authorized Agency must specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services. This criteria may include consideration and evaluation of the terms and conditions agreed to by the Contractors.

(d) Multiple Awards; Proposals.

(A) Despite Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. A multiple Award may be made if the Award to two or more Proposers is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, skills, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Proposers that multiple Contracts may be awarded for any Request for Proposals must not preclude the Authorized Agency from awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Authorized Agency must specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services. This criteria may include consideration and evaluation of the terms and conditions agreed to by the Contractors.

(e) Partial Awards. If after evaluation of Offers, the Authorized Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Authorized Agency may award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Authorized Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or None Offers. An Authorized Agency may award all or no Offers if the evaluation shows an all or no Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

(g) Life Cycle Costing. The Authorized Agency must follow OAR 125-247-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0610

Notice of Intent to Award

(1) Notice of Intent to Award. The Authorized Agency must provide Written notice of its intent to award a Contract resulting from a formal Invitation to Bid or Request for Proposal to all Offerors according to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Authorized Agency determines that circumstances justify prompt execution of the Contract, in which case the Authorized Agency may provide a shorter notice period. The Authorized Agency must document the specific reasons for the shorter notice period in the Procurement File in accordance with OAR 125-246-0556.

(2) Finality. The Authorized Agency's Award must not be final until the later of the following:

(a) The expiration of the protest period provided according to OAR 125-247-0740; or

(b) The Authorized Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

(3) The Authorized Agency may provide this notice through any reasonable means and, if functionality exists, through ORPIN in accordance with OAR 125-246-0500.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.050-279B.085, 279B.135

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-247-0620

Documentation of Award

See OAR 137-047-0620.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0630

Availability of Award Decisions

(1) Contract Documents. To the extent required by the Solicitation Document, the Authorized Agency must deliver to the successful Offeror a Contract, a Signed Purchase Order, Price Agreement, or other Contract documents as applicable.

(2) Availability of Award Decisions. A Person may obtain tabulations of awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the Authorized Agency a Written request accompanied by payment. The requesting Person must provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the Authorized Agency may make available tabulations of Bids and Proposals through ORPIN or the Authorized Agency's website.

(3) Availability of Procurement Files. After the notice of intent to award, the Authorized Agency must make Procurement Files available in accordance with applicable law, except where applicable law requires the Authorized Agency to make information contained in the Procurement Files available before any notice of intent to award. See the Public Records Law. A protester of a Competitive Range in accordance with OAR 125-247-0260 is not

entitled to obtain or review the Procurement Files related to the protest until after the notice of intent to award. See OAR 125-247-0720.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-247-0640

Rejection of an Offer

See OAR 137-047-0640.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0650

Rejection of All Offers

See OAR 137-047-0650.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0660

Cancellation of Procurement or Solicitation

See OAR 137-047-0660.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0670

Disposition of Offers if Solicitation Cancelled

See OAR 137-047-0670.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

Specifications

125-247-0690

Policy

(1) As provided in ORS 279B.205 and consistent with 279A.015, specifications must seek to promote optimal value and suitability for the purposes intended and to reasonably encourage competition in satisfying an Agency's needs. Subject to 279B.405, the specification content must be determined in the sole discretion of the Agency.

(2) Contractor Advantage; General.

(a) Policy. As provided in ORS 279B.210, it is the policy of the State of Oregon to encourage the development of clear, precise and accurate Specifications in Solicitations for Public Contracts. To that end, in developing Specifications, Agencies may consult, under contract or otherwise, with technical experts, suppliers, prospective contractors and representatives of the industries with which the Agencies contract, as set forth in ORS 279B.210.

(b) Application. In the event of conflict or ambiguity arising from the general requirements of section (2) of this Rule and the specific requirements of section (3) of this Rule, the specific requirements take precedence over the general requirements.

(3) Contractor Advantage; Services Contract; Exception. An Authorized Agency must comply with ORS 279B.040, including but not limited to the following:

(a) No Appearance of Contractor Advantage. If an Agency enters into a contract with a contractor to advise or assist the Agency in developing specifications, a scope or statement of work, an invitation to bid, a request for proposals or other solicitation documents and materials (Solicitation Materials) related to a procurement (Procurement), the Agency may not accept an Offer from that contractor or its affiliate that is related to the Procurement, if a reasonable person would believe that, by giving the advice or assistance, the contractor or affiliate would have or would appear to have an advantage in the Procurement."Affiliate" means a person

that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a contractor described in this section.

(b) Exception.

(A) Before awarding a contract for the advice or assistance of a contractor described in subsection (3)(a), the Agency must request an exception from the Chief Procurement Officer, if the Agency wishes to later accept an Offer from the Provider.

(B) The Agency's request for the exception must include sufficient findings of fact and justifications that will enable the Chief Procurement Officer to make an independent judgment.

(C) The Chief Procurement Officer must determine whether:

(i) The Agency needs advice or assistance from a contractor to develop the Solicitation Materials;

(ii) Accepting an Offer from the contractor that gives the advice or assistance is the only practicable way in which the Agency can conduct the Procurement successfully; and

(iii) Approving the exception:

(I) Is unlikely to encourage favoritism in awarding public contracts or to substantially diminish competition for public contracts; and

(II) Is reasonably expected to result in substantial cost savings to the Agency; or the public or otherwise substantially promotes the public interest in a manner that could not be practicably realized by complying with the prohibition described in subsection (3)(a).

(D) If the Chief Procurement Officer approves the Agency's request, the Chief Procurement Officer must prepare written findings and justifications for the approval.

(E) If the Chief Procurement Officer disapproves the Agency's request, the Chief Procurement Officer must:

(i) State the Chief Procurement Officer's reasons for the disapproval in a written notice to the Agency, and

(ii) Indicate whether the disapproval extends only to the Agency's acceptance of an Offer from a contractor described in Subsection (3)(a) or whether the Chief Procurement Officer also disagrees with the Agency's stated need for advice or assistance from a contractor.

(F) The Chief Procurement Officer's approval or disapproval is final.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.040, 279B.205 & 279B.210

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-247-0691

Brand Name or Equal Specification

(1) Applicability and Use. This Rule applies to Specifications for a Solicitation or class of Solicitations. For a Solicitation or class of Solicitations under ORS 279B.060, 279B.065, 279B.070, 279B.085, or 279A.200–279A.225, as provided in 279B.215:

(a) A brand name or equal Specification may be used when the use of a brand name or equal Specification is advantageous to the Agency, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the Agency.

(b) The Agency is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.

(c) Nothing in this Subsection may be construed as prohibiting an Agency from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the Agency.

(2) Determination. A brand name Specification may be prepared and used only if the Agency determines for a Solicitation or a class of Solicitations that only the identified brand name Specification will meet the needs of the Agency based on one or more of the following written determinations:

(a) That use of a brand name Specification is unlikely to encourage favoritism in the awarding of Public Contracts or substantially diminish competition for Public Contracts;

(b) That use of a brand name Specification would result in substantial cost savings to the Agency;

(c) That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or

(d) That efficient utilization of existing Goods requires the acquisition of compatible Goods or Services.

(3) An Agency's use of a brand name Specification may be subject to review only as provided in ORS 279B.405.

(4) Single Manufacturer, Multiple Sellers. An Authorized Agency may prepare and use a brand name or equal Specification for Supplies and Services available from only one manufacturer, but available through multiple sellers, if the Authorized Agency complies with Sections (1) and (2) of this Rule and the following requirements:

(a) If the total purchase is \$5,000 or more but does not exceed \$150,000 and Supplies and Services are not available under an existing Mandatory Use Contract, the Authorized Agency must obtain informal, competitive Quotes, Bids, or Proposals and document this process in the Procurement File according to ORS 279B.070 and OAR 125-247-0270;

(b) If the purchase exceeds \$150,000, and the Supplies and Services are not available under an existing Price Agreement for information technology with competing products or a Mandatory Use Contract, an Authorized Agency must first request and obtain prior written authorization from the Chief Procurement Officer to proceed with the acquisition.

(5) Single Manufacturer, Multiple Purchases. If an Authorized Agency intends to make several purchases of brand name-specified Supplies and Services from a particular manufacturer or seller for a period not to exceed five (5) years, the Authorized Agency must so state this information in: the Procurement File; the Solicitation Document, if any; or a Public Notice of a solicitation on ORPIN. If the Authorized Agency estimates the total purchase amount to exceed \$150,000, this estimate must also be stated in the Public Notice. This Section (5) does not apply to Department Price Agreements, also known as Mandatory Use Contracts.

(6) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(7) All Authorized Agencies must comply with ORS 200.035 and related Department policy, despite this Rule.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.215

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

Legal Remedies

125-247-0700

Protests and Judicial Review of Special Procurements

(1) See OAR 137-047-0700.

(2) Regardless of OAR 137-047-0700, the Chief Procurement Officer is the Contract Review Authority for the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.400

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0710

Protests and Judicial Review of Sole-Source Procurements

(1) See OAR 137-047-0710.

(2) Regardless of OAR 137-047-0710, the Designated Procurement Officer of the Authorized Agency is the Contract Review Authority if the cumulative value of the Contract and amendments does not exceed \$150,000.00. The Chief Procurement Officer is the Contract Review Authority if the cumulative value of the Contract and amendments exceeds \$150,000.00.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.405

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-

1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0720

Protests and Judicial Review of Multiple-Tiered and Multistep Solicitations

(1) See OAR 125-247-0720.

(2) Regardless of OAR 137-047-0720, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.405

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0730

Protests and Judicial Review of Solicitations

(1) Purpose. A prospective Offeror may protest the Procurement Process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2). According to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Authorized Agency and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Authorized Agency not less than seven (7) Days prior to Closing.

(3) Content of Protest. In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest must include a statement of the desired changes to the Procurement Process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) Authorized Agency Response. The Authorized Agency may not consider a Prospective Offeror's Solicitation protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The Authorized Agency must consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Authorized Agency must issue a Written disposition of the protest no less than three (3) business days before Bids, Proposals or Offers are due, unless a Written determination is made by the Authorized Agency that circumstances exist that require a shorter time limit, in accordance with the timeline set forth in ORS 279B.405(6). If the Authorized Agency upholds the protest, in whole or in part, the Authorized Agency may in its sole discretion either issue an Addendum reflecting its disposition under OAR 125-247-0430 or cancel the Procurement or Solicitation under OAR 125-247-0660.

(5) Extension of Closing. If the Authorized Agency receives a protest from a prospective Offeror in accordance with this Rule, the Authorized Agency may extend Closing if the Authorized Agency determines an extension is necessary to consider and respond to the protest.

(6) Clarification. Prior to the deadline for submitting a protest, a prospective Offeror may request that the Authorized Agency clarify any provision of the Solicitation Document. The Authorized Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Authorized Agency unless the Authorized Agency amends the Solicitation Document by Addendum.

(7) Judicial Review. Judicial review of the Authorized Agency's decision relating to a Solicitation protest must be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.405

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0731

Protests and Judicial Review of Qualified Products List Decisions

(1) See OAR 137-047-0745.

(2) Regardless of OAR 137-047-0745, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.115

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0740

Protests and Judicial Review of Contract Award

(1) See OAR 137-047-0740.

(2) Regardless of OAR 137-047-0740, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.410 & 270B.415

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0750

Judicial Review of Other Violations

(1) See OAR 137-047-0750.

(2) Regardless of OAR 137-047-0750, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.420

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0760

Review of Prequalification and Debarment Decisions

(1) See OAR 137-047-0745.

(2) Regardless of OAR 137-047-0745, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.425

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0805

Amendments to Contracts and Price Agreements

(1) See OAR 137-047-0800.

(2) Regardless of OAR 137-047-0800, Authorized Agencies must comply with the following provisions:

(a) Authority. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts, except that Amendments to Ordering Instruments may be accepted by the action of the Provider in accordance with the terms and conditions of the Ordering Instruments. All Amendments must receive all required approvals before the Amendments become binding on the Authorized Agency and before any service may be performed or payment made, including but not limited to the Department of Justice legal sufficiency review according to ORS 291.047.

(b) Approval.

(A) Authorized Agencies must obtain prior Written approval of the Amendment by the Designated Procurement Officer or delegate, or the Chief Procurement Officer or delegate, if the cumulative value of the original Contract Price and all Amendments exceeds \$150,000.00, or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater.

(B) The approval in subsection (b)(A) is not required if the Authorized Agency disclosed in the Solicitation Document and in the Contract its plans for future Amendments, like phases or other expected developments. Standard language used commonly in documents without variation (boilerplate) does not disclose the Agency's plans and expectations for future Amendments.

(C) The Designated Procurement Officer or delegate, or the Chief Procurement Officer or delegate, must determine and document the proposed Amendment:

(i) Is not a material change of the essential identity or main purpose of the Original Contract; and

(ii) Does not constitute a new undertaking that should result in a new Procurement. The determination and approval must be included in the Procurement File.

(c) Original Contract. The Original Contract was awarded either:

(A) According to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.080, 279B.085, or 279A.200 through 279A.220; or

(B) Other statutory law.

(d) Price Agreements. The Department or its delegate may amend a Price Agreement as permitted by the Price Agreement or applicable law.

(e) Intermediate Procurement. See OAR 125-247-0270.

(f) Emergency Procurement. See OAR 125-247-0280.

(g) Small Procurement. See OAR 125-247-0265.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-247-0810

Termination of Price Agreements

See OAR 137-047-0810.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

DIVISION 248

CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIC MAPPING, TRANSPORTATION PLANNING AND LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS

125-248-0100

Application

(1) In addition to the general requirements set forth in division 246 of these Rules, the Rules in this division 248 apply to:

(a) The screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, and Providers of Related Services under Contracts, and set forth the procedures through which Authorized Agencies select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and Land Surveying Services or Related Services; and

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

(2) In the event of conflict or ambiguity, the more specific requirements of the Rules in this Division 248 take precedence over the more general requirements of the Rules in division 246.

(3) The Rules as a whole implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this Division 248 of the Rules specifically addresses matters covered in ORS Chapter 279C.110 through 279C.125.

(4) Delegation of authority for these contracts must be according to OAR 125-246-0170.

(5) The dollar Threshold amounts that are applicable to the Direct Appointment Procedure, OAR 125-248-0200, the Informal Selection Procedure, 125-248-0210, and the Formal Selection Procedure, 125-248-0220, are independent from and have no effect on the dollar Threshold amounts that trigger the legal sufficiency review requirement for Agencies under ORS 291.047.

(6) For purposes of these division 248 Rules, the Department adopts the following Model Public Contract Rules: 137-048-0110, 137-048-0120, 137-048-0130, 137-048-0200, 137-048-0210, 137-048-0220, 137-048-0230, 137-048-0240, 137-048-0250, 137-048-0260, 137-048-0270, 137-048-0300, 137-048-0310, 137-048-0320.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

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

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-248-0110

Definitions

See OAR 137-048-0110.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-248-0120

List of Interested Consultants; Performance Record

See OAR 137-048-0120.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-248-0130

Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) See OAR 137-048-0130.

(2) OAR 137-048-0130(2)(b) and (c) are clarified as follows:

(a) Authorized Agencies must follow ORS 279C.120 and may not select a Consultant pursuant to 279B and related OAR 137-047.

(b) When selecting a Consultant, Authorized Agencies must follow the applicable selection procedure under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure).

(c) Authorized Agencies may incorporate into the selection procedure described in subsection (2)(b) one or more specific procedures found in competitive sealed bidding and competitive sealed proposals as described in ORS 279B.055, 279B.060, OAR 125-247-0255, and 125-247-0260. Non-procedural requirements of ORS 279B and OAR 125-247, like highest standards and good cause, do not apply to the selection procedure.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279C.100 - 279C.125 & 279C.307

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

Selection Procedures

125-248-0200

Direct Appointment Procedure

See OAR 137-048-0200.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110 & 279C.115

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-248-0210

Informal Selection Procedure

See OAR 137-048-0210.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-248-0220

Formal Selection Procedure

See OAR 137-048-0220.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-248-0230

Ties Among Proposers

See OAR 137-048-0230.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-248-0240

Protest Procedures

See OAR 137-048-0240.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

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

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-248-0250

Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs

See OAR 137-048-0250.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-248-0260

Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

See OAR 137-048-0260.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110, 279C.125

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-248-0270

Price Agreements

See OAR 137-048-0270.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

Post-Selection Considerations

125-248-0300

Contract Form; Prohibited Payment Methodology; Purchase Restrictions

(1) See OAR 137-048-0300.

(2) Contract Forms. The Department must develop and maintain a standard Contract form and an Amendment form, which must be used by the Authorized Agencies in completing all Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and Land Surveying Services and Related Services Contracts. These forms can be obtained from the Department. Authorized Agencies must review the approved Contract form and Amendment form at least every two years. If upon review the Authorized Agency revises either form, the Authorized Agency must obtain approval from its Designated Procurement Officer and the approval of the Attorney General for legal sufficiency according to ORS 291.047.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-248-0310

Expired or Terminated Contracts; Reinstatement

See OAR 137-048-0310.

Stat. Auth.: ORS 279A.050, 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.070, 279C.110 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-248-0330

Special Contract Processes

(1) Consultants for Agreements-To-Agree must be selected, and the Authorized Agency must obtain Architectural, Engineering and Land Surveying and Related Services by selecting a Consultant or Consultants in the following manner:

(a) The Authorized Agency selects one or more Consultants under the applicable provisions of OAR 125-248-0200, 125-248-0210, or 125-248-0220.

(b) The Authorized Agency develops a document that includes the general provisions required under OAR 125-248-300 and a specific Statement of Work for each anticipated Contract under the Agreement-To-Agree document.

(c) When the Authorized Agency selects more than one Consultant under the Agreement-To-Agree Solicitation process, the Authorized Agency must identify a standard in the Solicitation Document and the Agreement-to-Agree to be used in assigning particular Architectural, Engineering and Land Surveying and or Related Services under the Agreements-To-Agree.

(2) Design-Build Contracts involve the provision of both design and construction services for Public Improvements under one Contract. Under most circumstances, Design-Build Contracts are Mixed Contracts with the predominate purpose of the Contract involving construction of the Public Improvement. If the predominate purpose of the Contract is to obtain Architectural, Engineering and Land Surveying and Related Services, selection may proceed under these division 248 rules, so long as the requirements of OAR 125-248-0300 are not violated. Otherwise, the selection process will require an exemption from competitive bidding under ORS 279C, unless the Design-Build Contract is to be awarded to the Responsible Bidder submitting the lowest Responsive Bid.

Stat. Auth.: ORS 279A.050, 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110 & 279C.115

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-248-0340

Contract Amendments

See OAR 137-048-0320.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

DIVISION 249

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

125-249-0100

Application; Federal Override; Effective Date

See OAR 137-049-0100.

(1) In addition to the general requirements set forth in division 246 of these rules, the rules in this division 249 apply to Public Improvement Contracts. Only specific rules in this division 249 apply to Public Contracts for Ordinary Construction Services as described in OAR 125-249-0140. In the event of conflict or ambiguity, the more specific requirements of the rules in this division 249 take precedence over the more general requirements of the rules in division 246.

(2) The rules as a whole implement the Oregon Public Contracting Code (Code), as defined in ORS 279A.010. This division 249 of the rules specifically addresses matters covered in ORS Chapter 279C.005, 279C.010, 279C.300 through 279C.870. Rules related to Architectural, Engineering, Land Surveying, and Related Services are found in division 248.

(3) According to OAR 125-246-0100 and except as otherwise expressly provided in ORS 279C.800 through 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations require additional conditions or conflict with the Code or with these rules.

(4) For purposes of these division 249 rules, the Department adopts the following Model Public Contract Rules: OAR 137-049-0130, 137-049-0140, 137-049-0150, 137-049-0160, 137-049-0200, 137-049-0210, 137-049-0220, 137-049-0230, 137-049-0240, 137-049-0250, 137-049-0260, 137-049-0270, 137-049-0280, 137-049-0290, 137-049-0300, 137-049-0310, 137-049-0320, 137-049-0330, 137-049-0340, 137-049-0350, 137-049-0360, 137-049-0370, 137-049-0380, 137-049-0390, 137-049-0395, 137-049-0400, 137-049-0410, 137-049-0420, 137-049-0430, 137-049-0440, 137-049-0450, 137-049-0460, 137-049-0470, 137-049-0490, 137-049-0600, 137-049-0610, 137-049-0620, 137-049-0640, 137-049-0645, 137-049-0650, 137-049-0660, 137-049-0670, 137-049-0680, 137-049-0690, 137-049-0800, 137-049-0810, 137-049-0815, 137-049-0820, 137-049-0830, 137-049-0840, 137-049-0850, 137-049-0860, 137-049-0870, 137-049-0880, 137-049-0890, 137-049-0900, 137-049-0910.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0110 Policies

In addition to the policies of the Code as set forth in ORS 279A.015, the policy on competition as provided in 279C.300 applies to this division, except as provided in 279C.335. The policy on least-cost for Public Improvements applies as described within 279C.305.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.300 & 279C.305

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0120 Definitions

The definitions for this division 249 are found in OAR 125-246-0110, except the following Rule and definitions apply only to this division 249: Capitalized terms used in this division 249 of the Rules must have the meaning set forth below or within the Sections in which they appear (such as the Section on Alternative Contracting Methods beginning at 125-249-0600, and if not defined there, then the meaning set forth in division 246 of the rules, and if not defined there, then the meaning set forth in the Code at ORS 279A.010 (general definitions) or 279C.330 (for the term Findings).

(1) "Competitive Range" means the number of Proposers with whom the Authorized Agency will conduct Discussions or Negotiations if the Authorized Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-249-0390. The size of the Competitive Range must be stated in the Solicitation Document, but will be decreased if the number of Proposers that submit Proposals is less than the specified number, or may be increased by the Authorized Agency in accordance with OAR 125-249-0390.

(2) "Conduct Disqualification" means a Disqualification according to ORS 279C.440.

(3) "Disqualification" means the preclusion of a Person from contracting with an Authorized Agency for a period of time. Disqualification may be a Conduct Disqualification or DBE Disqualification. An Authorized Agency is authorized to disqualify a Person in accordance with OAR 125-249-0370.

(4) "Foreign Contractor" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See OAR 125-249-0490.

(5) "Notice" means any of the alternative forms of public announcement of Procurements, as described OAR 125-249-0210.

(6) "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 125-249-0390(2) and that has not been disqualified by the Authorized Agency under 125-249-0370. When used alone, "Responsible" means meeting the aforementioned standards.

(7) "Responsive Offer" (also, Responsive Bid or Responsive Proposal, as applicable) means an Offer that substantially complies in all material respects with applicable Solicitation procedures and requirements and the Solicitation Document. When used alone,

"Responsive" means having the characteristic of substantially complying in all material respects with applicable Solicitation procedure and requirements and the Solicitation Document.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-249-0130 Competitive Bidding Requirement

See OAR 137-049-0130.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.335

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0140 Contracts for Construction Other Than Public Improvements

See OAR 137-049-0140.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.320

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0145 Contracts for Oversight of Public Contracts

(1) Application.

(a) This Rule does not apply to a Procurement that qualifies as a construction manager/general contractor procurement or a design-build procurement, both as defined on August 4, 2009, in OAR 125-249-0610, as follows:

(A) "Construction Manager/General Contractor" (CM/GC) means a form of Procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; hold all subcontracts, self-perform portions of the Work as may be allowed by the Authorized Agency under the CM/GC Contract; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the Authorized Agency, architect/engineers and other Consultants. CM/GC also refers to a Contractor under this form of Contract, sometimes known as the "Construction Manager at Risk."

(B) "Design-Build" means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design Services, participates on the project team with the Authorized Agency, and manages both design and construction. In this form of Contract, a single Person provides the Authorized Agency with all of the Personal Services and Work necessary to both design and construct the project.

(b) This Rule applies to:

(A) Procurements first advertised or otherwise solicited on or after January 1, 2010; or

(B) Contracts entered into on or after January 1, 2010.

(2) Definitions. For the purposes of this Rule only,

(a) "Personal Services" means Personal Services as defined in OAR 125-246-0110.

(b) "Affiliate" means a Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Contractor who is a party to a Public Contract that is subject to oversight by means of a Public Contract for Personal Services.

(3) Requirements.

(a) If an Authorized Agency has contracted with a firm to provide construction services or Architectural, Engineering and Land Surveying Services or Related Services, the Authorized Agency may not contract with that same firm or an affiliate of that firm to provide Personal Services for administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise providing

oversight of the construction services or Architectural, Engineering and Land Surveying Services or Related Services.

(b) An Authorized Agency may not contract with a firm to perform construction services or Architectural, Engineering and Land Surveying Services or Related Services and then use the contract with that firm, through a subcontract, to contract with a Person to provide Personal Services for administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise providing oversight of that firm.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.307

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

125-249-0150

Emergency Contracts; Bidding and Bonding Exemptions

See OAR 137-049-0150.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.080, 279C.320 & 279C.380(4)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 5-2009(Temp), f. & cert. ef. 2-13-09 thru 8-12-09; DAS 9-2009, f. & cert. ef. 8-11-09; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0160

Intermediate Procurements; Competitive Quotes and Amendments

See OAR 137-049-0160.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.412

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

Formal Procurement Rules

125-249-0200

Solicitation Documents; Required Provisions; Assignment or Transfer

See OAR 137-049-0200.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.110, 279A.120, 279C.365, 279C.370, 279C.375, 279C.390, 279C.505-580, 279C.605, 305.385, 468A.720, 701.005 & 701.026

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0210

Notice and Advertising Requirements; Posting

(1) See OAR 137-049-0210.

(2) Regardless of OAR 137-049-0210, the Authorized Agency must furnish Notice using ORPIN.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.360 & 200.035

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0220

Prequalification of Offerors

See OAR 137-049-0220.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.430 & 279C.435

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0230

Eligibility to Bid or Propose; Registration or License

See OAR 137-049-0230.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365, 671.530 & 701.026

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0240

Pre-Offer Conferences

See OAR 137-049-0240.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365 & 279C.370

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0250

Addenda to Solicitation Documents

See OAR 137-049-0250.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0260

Request for Clarification or Change; Solicitation Protests

See OAR 137-049-0260.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.345 & 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0270

Cancellation of Solicitation Document

See OAR 137-049-0270.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0280

Offer Submissions

See OAR 137-049-0280.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.365, 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0290

Bid or Proposal Security

See OAR 137-049-0290.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365 & 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0300

Facsimile Bids and Proposals

See OAR 137-049-0300.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0310

Electronic Procurement

See OAR 137-049-0310.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0320

Pre-Closing Modification or Withdrawal of Offers

See OAR 137-049-0320.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.360, 279C.365, 279C.375 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0330

Receipt, Opening and Recording of Offers; Confidentiality of Offers

See OAR 137-049-0330.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365, 279C.375 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0340**Late Bids, Late Withdrawals and Late Modifications**

See OAR 137-049-0340.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365, 279C.375 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0350**Mistakes**

See OAR 137-049-0350.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.375 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0360**First-Tier Subcontractors; Disclosure and Substitution; ITB**

See OAR 137-049-0360.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.370, 279C.585, 279C.590 & 279C.835

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0370**Disqualification of Persons**

See OAR 137-049-0370.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 200.065, 200.075, 279A.110, 279C.440, 279C.445 & 279C.450

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0380**Bid or Proposal Evaluation Criteria**

See OAR 137-049-0380.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.335

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0390**Offer Evaluation and Award; Determination of Responsibility**

See OAR 137-049-0390.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070, OL 2005, Ch. 413

Stats. Implemented: ORS 279C.335, 279C.365, 279C.375, 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0395**Notice of Intent to Award**

See OAR 137-049-0395.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0400**Documentation of Award; Availability of Award Decisions**

See OAR 137-049-0400.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365, 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0410**Time for Authorized Agency Acceptance; Extension**

See OAR 137-049-0410.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0420**Negotiation With Bidders Prohibited**

See OAR 137-049-0420.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.340 & 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09,

cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0430**Negotiation when Bids Exceed Cost Estimate**

See OAR 137-049-0430.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.340

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-

08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert.

ef. 1-1-12

125-249-0440

Rejection of Offers

See OAR 137-049-0440.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.105, 279A.110, 279C.375, 279C.380 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0450

Protest of Contractor Selection, Contract Award

See OAR 137-049-0450.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.375, 279C.380, 279C.385 & 279C.460

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0460

Performance and Payment Security; Waiver

(1) See OAR 137-049-0460.

(2) In addition to OAR 137-049-0460, an Authorized Agency having delegated purchasing authority according to OAR 125-246-0170 may, in its discretion, waive the bid security requirements and performance and payment requirements if the amount of the Contract for the Public Improvement is less than \$100,000.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.375, 279C.380 & 279C.390

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0470

Substitute Contractor

See OAR 137-049-0470.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.365, 279C.370, 279C.375, 279C.380, 279C.390

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0490

Foreign Contractor

See OAR 137-049-0490.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.120

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

Alternative Contracting Methods

125-249-0600

Purpose

See OAR 137-049-0600.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279C.335 & 351.086

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0610

Definitions for Alternative Contracting Methods

See OAR 137-049-0610.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065 & 279C.335

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0620

Use of Alternative Contracting Methods

See OAR 137-049-0620.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279C.335 & 351.086

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0630

Findings, Notice and Hearing

(1) General. This Rule provides guidance to the Agencies for making a request for an Exemption to the Chief Procurement Officer in accordance with ORS 279C.335 and OAR 125-246-0170(3)(c).

(2) Findings: Required Information. The statutory definition of “Findings” at ORS 279C.330 means the justification for an Agency’s conclusion that includes, “but is not limited to,” information regarding eight identified areas.

(3) Findings Addressing Cost Savings. When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from competitive bidding requirements, the “substantial cost savings” criterion at ORS 279C.335(2)(b) allows consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and “such other factors as may be deemed appropriate.” Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the “substantial cost savings” requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including an analysis or reasonable forecast of future cost savings as well as present cost savings; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings must relate back to the specific characteristics of the project or projects at issue in the exemption request.

(c) As an alternative to the “substantial cost savings” requirement where an Alternative Contracting Method has not been previously used, the Authorized Agency may make a Finding that identifies the project as a “pilot project” under ORS 279C.335(2)(c).

(4) Findings Regarding Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that it is “unlikely” that the exemption will “encourage favoritism” or “substantially diminish competition” may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award made based upon identified selection criteria and an opportunity to protest that Award.

(5) Specificity of Findings.

(a) Method. Findings supporting a competitive bidding exemption must describe with specificity the Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (Request for Proposals) or two step (beginning with Requests for Qualifications) solicitation process will be utilized.

(b) Project(s). The Findings must clearly and generally identify the Project with respect to its defining characteristics. Those characteristics must include at least: Project descriptions, locations, anticipated time periods, anticipated contract values or the range of values, and other significant factors that distinguish the Project(s) from an Authorized Agency’s overall construction program.

(c) Contract. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

(d) Basis for an Order. The Chief Procurement Officer relies upon the representations and accuracy of the Authorized Agency’s Findings in subsections (a) and (b), which form the basis for and are incorporated by reference in any subsequent Exemption Order.

(6) Prior Review of Draft Findings. Agencies must submit draft Findings to the Chief Procurement Officer for review and concurrence prior to advertising the public hearing required by

ORS 279C.335(5). Agencies must also submit draft Findings to the Department of Justice for review and comment prior to advertising the public hearing.

(7) Class Exemptions. In making the findings supporting a class exemption the Authorized Agency must clearly identify the class with respect to its defining characteristics. Those characteristics must include some combination of Project descriptions or locations, time periods, contract values or method of Procurement or other factors that distinguish the limited and related class of Projects from an Authorized Agency's overall construction program. Classes must not be defined solely by funding sources, such as a particular bond fund, or by method of Procurement, but must be defined by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2).

(8) Public Hearing. Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, an Authorized Agency must give notice and hold a public hearing as required by ORS 279C.335(5). The hearing must be for the purpose of receiving public comment on the Authorized Agency's draft Findings.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065, 279C.335
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-249-0640

Competitive Proposals; Procedure

See OAR 137-049-0640.
Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279A.065, 279C.335 & 351.086
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0645

Requests for Qualifications (RFQ)

See OAR 137-049-0645.
Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.405
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0650

Requests for Proposals (RFP)

See OAR 137-049-0650.
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.400 - 279C.410
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0660

RFP Pricing Mechanisms

See OAR 137-049-0660.
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.335
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0670

Design-Build Contracts

See OAR 137-049-0670.
Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279A.065, 279C.110, 279C.335 & 351.086
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0680

Energy Savings Performance Contracts (ESPC)

See OAR 137-049-0680.
Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279A.065, 279C.110, 279C.335 & 351.086
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0690

Construction Manager/General Contractor (CM/GC)

See OAR 137-049-0690.
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.335 & 279C.380(2)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

Contract Provisions

125-249-0800

Required Contract Clauses

See OAR 137-049-0800.
Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.505 - 279C.545, 279C.800 - 279C.870
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0810

Waiver of Delay Damages Against Public Policy

See OAR 137-049-0810.
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.315
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0815

BOLI Public Works Bond

See OAR 137-049-0815.
Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.830
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0820

Retainage

See OAR 137-049-0820.
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.560, 279C.570 & 701.420
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0830

Contractor Progress Payments

See OAR 137-049-0830.
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.570
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0840

Interest

See OAR 137-049-0840.
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.570
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0850

Final Inspection

See OAR 137-049-0850.
Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.570(8)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0860

Public Works Contracts

See OAR 137-049-0860.
Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.800 - 279C.870
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0870

Specifications; Brand Name Products

See OAR 137-049-0870.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.345

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0880

Records Maintenance; Right to Audit Records

See OAR 137-049-0880.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.030, 279C.375, 279C.380 & 279C.440

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0890

Authorized Agency Payment for Unpaid Labor or Supplies

See OAR 137-049-0890.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.515

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0900

Contract Suspension; Termination Procedures

See OAR 137-049-0900.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.650, 279C.655, 279C.660, 279C.665 & 279C.670

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-249-0910

Changes to the Work and Contract Amendments

See OAR 137-049-0910.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065 & 279C.400(1)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

DIVISION 300

STATE PEER REVIEW AUDITS

125-300-0200

Purpose, Definitions, Reviews, and Annual Reports

(1) This rule is for defined Health Related Licensing Boards and the Oregon Health Licensing Agency to provide periodic reports and peer reviews to support the primary mission of protecting the public.

(2) Health Professional Regulatory Boards listed in ORS 676.160, other than the Oregon Health Authority with regard to certification of emergency technicians; and

(3) Health Licensing Agency created in ORS 676.605, consisting of the Boards in ORS 676.606.

(4) A Peer Review Committee will be selected by a majority of the agency executive directors and include at least two executive directors from the Health Professional Regulatory Boards and at least one public member of a Health Professional Regulatory Board. The Peer Review Committee shall:

(a) Conduct periodic review of agencies;

(b) Examine investigative, monitoring or licensing files; and

(c) Analyze strengths, weaknesses, opportunities and challenges of the licensing, monitoring or investigative process.

(5) The executive director of each agency shall provide an annual report to the Governor's office. The annual report shall include the following information for the reporting period:

(a) Number and type of current licensees;

(b) Number and type of applications processed;

(c) Number of complaints received;

(d) Number and type of board disciplinary actions taken;

(e) Number of licensees on probation;

(f) Number of licensees in the Health Professional Services program;

(g) Number of full time equivalent staff;

(h) Legislatively approved biennial budget amount; and.

(i) Summary of key performance measures.

Stat. Auth.: ORS 426.385, 675.070, 675.100, 675.130, 675.300, 675.310, 675.320, 675.510, 675.540, 675.583, 675.590, 675.600, 675.745, 675.775, 675.785, 676.165, 676.608, 677.010, 677.188, 677.190, 677.235, 677.250, 677.270, 677.275, 677.415, 677.417, 677.655, 678.111, 678.112, 678.140, 678.150, 678.442, 678.780, 678.800, 679.140, 679.230, 679.250, 679.290, 681.350, 681.400, 681.410, 681.450, 683.140, 683.250, 683.260, 684.010, 684.100, 684.103, 684.130, 684.140, 684.157, 685.110, 685.160, 685.170, 686.120, 686.130, 686.210, 687.051, 687.081, 687.115, 688.140, 688.160, 688.525, 688.545, 689.005, 689.115, 689.165, 689.195, 689.255, 689.265, 689.405, 689.508, 691.485, 691.505, 691.535, 692.180, 692.300, 692.320, sec. 38, ch. 43 OL 2009 (SB 131), sec. 50 OL 2009 (SB 177), repealing ORS 689.125 & sec. 1, ch 43, OL 2009 (SB131), & sec. 2, OL 2009 (SB 177).

Stats. Implemented: ORS 676.160

Hist.: DAS 2-2011, f. & cert. ef. 8-1-11

DIVISION 400

**PROVISIONS FOR EXTENDING
TELECOMMUNICATIONS SERVICES TO
QUALIFIED PUBLIC AND PRIVATE ENTITIES**

125-400-0000

Purpose, Applicability, and Effective Date

(1) The Legislative Assembly has declared the following provisions to be part of the policy of the State of Oregon regarding information technology:

(a) Use information technology in education, health care, economic development and government services to improve economic opportunities and quality of life for all Oregonians regardless of location or income.

(b) Encourage collaboration between Communities of Interest by geographic area and economic sector.

(c) Encourage competition among technology and service providers.

(2) The Department of Administrative Services ("Department") for the State of Oregon is the agency responsible for a statewide mandate to coordinate the development of and access to or delivery of telecommunications services to all state agencies and public or private entities that primarily operate for the public benefit in the areas of education, economic development, health care, human services, public safety, library or other similar public services related to the improvement of economic opportunities and quality of life in Oregon.

(3) The Information Resources Management Division ("Division") is the division within the Department through which the Department exercises its authority and privileges and discharges its duties and obligations related to the statewide information technology policy.

(4) The provisions of ORS 283.510 and 283.520, subsection (1), permit the Department to establish a statewide advanced digital communication network, and authorize the Department to execute contracts for the telecommunications equipment and services needed to establish such network.

(5) The provisions of ORS 283.520, subsection (2), authorize the Department to exercise its discretion in deciding to extend the benefits of state telecommunications contracts for networks, equipment and services to nonprofit organizations designated as Communities of Interest under the provisions of ORS 291.038, subsection (7).

(6) The provisions of ORS 291.038, subsection (5)(a), authorize the Department to exercise its discretion in deciding to furnish or deliver Statewide Integrated Video Conferencing and Statewide On-line Access Service to public and private entities that primarily conduct their activities for the direct good or benefit of the public or community-at-large in providing educational, economic development, health care, human services, public safety, library or other public services.

- (7) The purposes of these rules are to:
- (a) Define essential terms.
 - (b) Describe the application, review and appeal process regarding Community of Interest designation.
 - (c) Describe the application, review and appeal process regarding the furnishing or delivery of Statewide Integrated Video Conferencing and Statewide On-line Access services.
- (8) These rules apply after January 1, 2000, to:
- (a) Public or private entities seeking one or both of the following:
 - (A) Community of Interest designation, redesignation or appeal of denial of designation.
 - (B) Approval, reapproval or appeal of denial of application for Statewide Integrated Video Conferencing or Statewide On-line Access services.
 - (b) Local Established Providers seeking inclusion in the Division's listing of Internet access service providers.
 - (c) The renewal provisions of 125-400-0050(3) do not apply to subscribers of Internet Access services provided by the Data and Video Services Unit who have active accounts as of the effective date of these rules and there is no break in service by the subscriber subsequent to the effective date of rules.
- Stat. Auth.: ORS 283.500, 283.510, 283.520 & 291.038
 Stats. Implemented: ORS 283.520 & 291.038
 Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0010

Definitions

As used in OAR 125, division 400, unless the context requires otherwise:

- (1) "Advanced Digital Communication Network" means a network of equipment, facilities and services capable of distributing digital communications signals for the transmission of voice, data, image and video over distances.
- (2) "Affiliation" means a current relationship formalized in writing between two or more entities conducting activities in Oregon.
- (3) "Break in Service" means the subscriber elects to not renew an Internet Access service account within 30 days of expiration.
- (4) "Community of Interest (COI)" means an organization or organizations designated to receive available benefits from state telecommunications contracts based upon its satisfaction of all statutory requirements under ORS 291.038, subsection (7) and regulatory requirements under these rules.
- (5) "Data and Video Services Unit" is the organizational unit in the Division that is responsible for offering access to an integrated telecommunications network capable of transmitting video, voice and data communications to support the delivery of Statewide Integrated Video Conferencing and Statewide On-line Access services to any public or private entity qualified under the provisions of ORS 291.038, subsection (5)(a) and these rules.
- (6) "Department" refers to the Department of Administrative Services for the State of Oregon.
- (7) "Division" refers to the Information Resources Management Division that is the division within the Department that manages the state's telecommunications networks.
- (8) "Entity" includes any natural person capable of being legally bound, a sole proprietorship, a limited liability company, a corporation, foreign corporation, nonprofit corporation, profit and nonprofit unincorporated association, business trust, partnership, two or more persons having a joint or common economic interest, or a government or governmental subdivision.
- (9) "Incidental Beneficiary" means:
 - (a) Any entity that derives some incidental benefit from a contract to which it was not a donee, creditor or other party;
 - (b) Did not pay or otherwise contribute any value;
 - (c) Was not treated in any manner as an intended party; and
 - (d) Is not entitled to any action.
- (10) "Internet Access Service" means the component of Statewide On-line Access that provides electronic connectivity to the Internet and its services.

(11) "IRMD Web Site" refers to the publicly accessed Internet site maintained by the Division.

(12) "Local Established Provider" means Internet access service providers who satisfy all of the following criteria:

(a) Registration with the state of Oregon to do business within the state and the subject Local Exchange Telecommunications Service Area.

(b) Registration with the Division as an Internet access service provider for the subject Local Exchange Telecommunications Service Area.

(c) Acquisition, establishment, maintenance and current commercial use of operational dial-up equipment physically located within the subject Local Exchange Telecommunications Service Area.

(13) "Local Exchange Telecommunications Company" means a private entity with the capacity to deliver hardware, software or services for transmitting voice, data, video or images over distance; currently engaged in the business of such delivery of hardware, software or services; and registered with the State of Oregon Business Registry to conduct business for such purposes within the Local Exchange Telecommunications Service Area.

(14) "Local Exchange Telecommunications Service Area" is the geographically and legally defined area in which a person may access telecommunications information through a Local Exchange Telecommunications Company, without imposition of long distance telephone charges.

(15) "Nonprofit Organization" means an organization that can establish current satisfaction of all requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986.

(16) "Statewide Integrated Video Conferencing" means the Division-operated statewide electronic system with the capacity to transmit video, voice and data communications.

(17) "Statewide On-line Access" means the Division-operated electronic connectivity to information resources such as computer conferencing, electronic mail, databases and Internet Access.

(18) "State Telecommunications Contracts" are contracts negotiated by the Department on behalf of state agencies, as authorized under ORS 283.520, subsection (1). These contracts are for basic telecommunications services as well as long distance telecommunications services.

(19) "Telecommunications" means the hardware, software and services for transmitting voice, data, video and images over a distance.

Stat. Auth.: ORS 283.520 & 291.038
 Stats. Implemented: ORS 283.520 & 291.038
 Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0020

Benefits from State Telecommunications Contracts Extended to Communities of Interest

(1) The Department is responsible for establishing and maintaining a statewide advanced digital communications network; and has the authority to contract with telecommunications service providers and equipment manufacturers in constructing, maintaining and operating such network.

(2) In keeping with the statewide information technology policy, and to encourage collaboration between Communities of Interest by geographic area and economic sector, the Department has discretionary authority to act through the Division to extend benefits from state telecommunications contracts for networks, equipment and services to designated Communities of Interest.

(3) Designated Communities of Interest may contact the Division by mail at 155 Cottage Street N.E. in Salem, Oregon 97310-0315 or in person, at 955 Center Street N.E., Room 470, Salem, Oregon, for current information on available state telecommunications contract benefits.

(4) Designated Communities of Interest receiving benefits from these state telecommunications contracts for networks, equipment and services are not deemed parties to the subject contracts. Their enjoyment of any available state telecommunications contract benefits is merely incidental, is not guaranteed and is not intended

to and does not confer any contract rights upon them. Communities of Interest are neither donee nor creditor third party beneficiaries, but merely Incidental Beneficiaries who are not entitled to any action on the contract. The particular state telecommunications contract benefits are personal to each Community of Interest recipient, and recipients shall not use these benefits for resale. Failure to adhere to these guidelines could result in cancellation of Community of Interest designation and forfeiture of contract benefits.

Stat. Auth.: ORS 283.520 & 291.038

Stats. Implemented: ORS 283.520 & 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0030

Designation of Communities of Interest; Application; Approval; Cancellation; Redesignation

(1) The Division may designate an organization or organizations as a Community of Interest upon the applicant's full and complete compliance with these rules and its full and complete satisfaction of all statutory criteria under the provisions of ORS 291.038, subsection (7).

(2) Applications for Community of Interest designation shall be made on forms provided by the Division. These forms are available online at IRMD Web Site or from the office of the Division's Data and Video Services Unit located at 155 Cottage Street N.E., Salem, Oregon 97310-0315 or in person, at 955 Center Street N.E., Room 470, in Salem, Oregon. Completed application forms shall be submitted to the Network Communications Section Manager or designee either by mail addressed to 155 Cottage Street N.E. in Salem, Oregon 97310-0315 or personal delivery either to the Division office at 955 Center Street, N.E., Room 470, in Salem, Oregon. Application forms are not complete and will not be considered unless and until they include all of the following items and required information:

(a) Applicant's name, home and office addresses and telephone numbers.

(b) Applicant's mailing address, if different from its listed home and office addresses.

(c) Evidence of applicant's nonprofit and tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (a copy of the Internal Revenue Service determination letter, or advance ruling, indicating that applicant is a section 501(c)(3) tax exempt organization shall meet this requirement).

(d) Evidence that applicant has complied with the relevant provisions of ORS 65.001 to 65.990, and is registered with the Oregon Secretary of State to do business in Oregon as a nonprofit corporation.

(e) Statement and supporting evidence that applicant's mission is primarily to conduct activities for the direct benefit or good to the public or community-at-large in Oregon in one or more of the following public service areas:

- (A) Educational.
- (B) Economic Development.
- (C) Health Care.
- (D) Human Services.
- (E) Public Safety.
- (F) Library.
- (G) Other public services.

(f) Identification of the community-at-large served, if not readily apparent from the applicant's mission and activity statement and description.

(g) Evidence of applicant's current affiliation with a federal, state or local governmental unit within the State of Oregon.

(h) Identification of those particular state telecommunications contracts from which applicant seeks extension of benefits, if known.

(i) Signature of applicant or its authorized representative.

(3) The Network Communications Section Manager shall approve or deny a submitted application within twenty (20) working days from actual receipt of the application. Following the Division's approval of a submitted application, a written Community of Interest designation ("Designation") shall be issued to the successful applicant. Upon receipt of the Designation, and at the discretion of the Division, a Community of Interest may enter into a formal agreement with the Division to extend to the Community of

Interest certain benefits of telecommunications contracts for networks, equipment and services negotiated and executed by the State of Oregon under the provisions of ORS 283.520.

(4)(a) A Community of Interest Designation is a privilege, not a right. Designation expires one (1) year from the date of issuance. However, the Division may cancel a Designation prior to its normal expiration for cause based upon clear and convincing evidence of either of the following:

(A) A finding that the designee is abusing, or has abused, its status as a Community of Interest.

(B) A finding that the designee can no longer satisfy the statutory criteria under the provisions of ORS 291.038(7) to continue qualifying as a Community of Interest.

(b) Abuse of Community of Interest status includes, but is not limited to, the designee's resale of extended state telecommunications contract benefits. Cancellations for cause are reviewable under the process described in OAR 125-400-0080 below.

(5) Organizations seeking Community of Interest redesignation must follow the same process and are subject to the same eligibility requirements as if applying for an initial designation. Organizations seeking redesignation must submit their completed applications thirty (30) working days prior to the annual expiration date for their current Designation. Timely submissions will operate to extend the current Designation to cover the period necessary to review and take action on the new application for redesignation.

Stat. Auth.: ORS 283.520 & 291.038

Stats. Implemented: ORS 283.520 & 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0040

Denial of Community of Interest Designation; Reconsideration; Appeal

(1) An unsuccessful applicant for Designation shall receive a written notice that articulates the basis for denial of Community of Interest Designation.

(2) A dissatisfied applicant may appeal denial of Designation as follows:

(a) Timely submit a written appeal through the Network Communications Section Manager to the Chief Information Officer within twenty (20) working days from the date of notice of denial of Designation. Appellants may submit appeal packets either by mail addressed to 155 Cottage Street N.E. in Salem, Oregon 97310-0315, or personal delivery at 955 Center Street N.E., Room 470, in Salem, Oregon.

(b) Appellant must include the following items with the appeal packet:

(A) A letter or memorandum in which appellant explains the basis of appeal, identifies the relief sought and discusses the rationale in support of the requested relief.

(B) Any documentation or other evidence in support of the appeal.

(C) A copy of the notice of denial of Designation.

(D) A copy of the subject application for Designation and any attachments thereto.

(E) Any other matter requested by the Network Communications Section Manager or Chief Information Officer.

(c) The Network Communications Section Manager shall have five (5) working days from actual receipt of the submission of appeal to either reconsider the denial decision and approve the underlying application for Designation, or forward the appeal to the Chief Information Officer for further review.

(d) The Chief Information Officer shall review and take action on the appeal within twenty (20) working days from actual receipt of the submission from the Network Communications Section Manager. Completed action on the appeal includes submission of a written response to appellant. Such response shall take the form of a grant or denial of appeal. Any notice of denial of appeal shall state the reasons therefore.

(e) An applicant who has first exhausted these administrative remedies and is still dissatisfied with the decision of the Chief Information Officer may pursue the matter through the Circuit Court of the State of Oregon for Marion County.

(f) Failure to meet the timelines in this section will forfeit an applicant's rights to appeal at any level.

Stat. Auth.: ORS 283.520 & 291.038

Stats. Implemented: ORS 283.520 & 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0050

Access to Statewide Integrated Video Conferencing and Statewide On-line Access Services

(1) In keeping with the statewide information technology policy the Department has discretionary authority to act through the Division to furnish and deliver available Statewide Integrated Video Conferencing ("Video") and Statewide On-line Access ("On-line Access") services to those qualified to purchase these services under the provisions of ORS 291.038, subsection (5)(a) and these rules.

(2) Current information regarding user fees and rates is available online at IRMD Web Site or from the office of the Division's Data and Video Services Unit located at 155 Cottage Street N.E., Salem, Oregon 97310-0315 or in person, 955 Center Street N.E., Room 470, Salem, Oregon.

(3) Internet Access Service is a component of Statewide On-line Access Service. In compliance with the provisions of ORS 291.038, subsection (5)(c), the Department and Division shall not furnish or deliver this component of Statewide On-line Access to private entities where furnishing or delivering such service would directly compete with two or more Local Established Providers of such service within the Local Exchange Telecommunications Service Area. In communities with fewer than two Local Established Providers of such service within the Local Exchange Telecommunications Service Area, the Department and Division may furnish or deliver this component of Statewide On-line Access Service to public or private entities. The Division may refer private entities who are denied Internet Access Service under this section to a list of Internet access service providers conducting business in the subject Local Exchange Telecommunications Service Area. Internet access service providers may seek inclusion on this list through the process described in OAR 125-400-0090 below.

Stat. Auth.: ORS 283.520 & 291.038

Stats. Implemented: ORS 283.520 & 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0060

Application Process for Video and On-line Access Services

(1) The Division may furnish and deliver available Video and On-line Access services to public and private entities qualified under ORS 291.038, subsection (5)(a).

(2) Current Community of Interest designees are automatically qualified to purchase Video and On-line Access services.

(3) All applications for Video and On-line Access services shall be made on forms provided by the Division. These forms shall request information pertinent to the Division's determination that the applicant primarily conducts its activities for the direct good or benefit of the public or community-at-large in providing education, economic development, health care, human services, public safety, library or other public services in satisfaction of the qualifying criteria listed under ORS 291.038, subsection (5)(a). The forms are available online at the IRMD Web Site or from the office of the Division's Data and Video Services Unit located at 800 N.E. Oregon Street, Portland, Oregon 97232. Completed application forms shall be submitted to the Data and Video Services Unit Manager, or designee, electronically, by mail or personal delivery.

(4) The Data and Video Services Unit Manager, or designee, shall approve or deny a submitted application for Video or On-line Access services within twenty (20) working days from actual receipt of the submission. Following approval, the applicant is deemed a qualified subscriber and may purchase the identified services at the designated levels of service.

(5) Use of Video and On-line Access services is a privilege, not a right. Services furnished and delivered to subscribers are personal to them, and subscribers shall not use them for resale. The

Division may cancel a subscription prior to its normal expiration for cause based upon clear and convincing evidence of any of the following:

(a) A finding that the subscriber is abusing, or has abused, its privilege as a subscriber.

(b) A finding that the subscriber can no longer satisfy the statutory criteria under the provisions of ORS 291.038, subsection (5)(a) to continue qualifying as a subscriber.

(c) Violating the terms of the User Agreement Form.

(6) An entity seeking to renew its subscription must follow the same application process and be subject to the same eligibility requirements as if applying for an initial subscription. Entities seeking subscription renewal must submit their completed applications thirty (30) working days prior to the expiration date for their current subscription. Timely submissions will operate to extend the current subscription to cover the period necessary to review and take action on the new application for subscription renewal.

Stat. Auth.: ORS 283.520

Stats. Implemented: ORS 283.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0070

Denial of Application for Video or On-line Access Services; Reconsideration; Appeal

(1) An unsuccessful applicant for Video or On-line Access services shall receive a written notice from the Data and Video Services Unit Manager that articulates the basis for denial of application.

(2) A dissatisfied applicant may appeal this denial as follows:

(a) Timely submit a written appeal through the Data and Video Services Unit Manager to the Network Communications Section Manager within twenty (20) working days from the date of the notice of denial. Appellants may submit appeal packets either by mail addressed to 155 Cottage Street N.E., Salem, Oregon 97310-0315, or personal delivery at the Data and Video Services Unit office at 955 Center Street N.E., Room 470, Salem, Oregon.

(b) Appellant must include the following items with the appeal packet:

(A) A letter or memorandum in which appellant explains the basis of appeal, identifies the relief sought and discusses the rationale in support of the requested relief.

(B) Any documentation or other evidence in support of the appeal.

(C) A copy of the notice of denial.

(D) A copy of the subject application for Video or On-line Access services and any attachments thereto.

(E) Any other matters requested by the Data and Video Services Unit Manager or the Network Communications Section Manager.

(c) The Data and Video Services Unit Manager shall have five (5) working days from actual receipt of the submission of appeal to either reconsider the denial and approve the underlying application for Video or On-line Access services, or forward the appeal to the Network Communications Section Manager for further review.

(d) The Network Communications Section Manager shall review and take action on the appeal within twenty (20) working days from actual receipt of the submission from the Data and Video Services Unit Manager. Completed action on the appeal includes submission of a written response to appellant. Such response shall take the form of a grant or denial of appeal. Any notice of denial of appeal shall state the reasons therefore.

(e) An applicant who has first exhausted these administrative remedies and is still dissatisfied with the decision of the Network Communications Section Manager may pursue the matter through the Circuit Court of the State of Oregon for Marion County.

(f) Failure to meet the timelines in this section will forfeit an applicant's rights to appeal at any level.

(3) Private entities who are denied Internet Access Service under ORS 291.038, subsection (5)(c) and OAR 125-400-0050(3) may request review of such denial under the reconsideration and appeal process described in this section.

Stat. Auth.: ORS 283.520

Stats. Implemented: ORS 283.038
Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0080

Cancellation of Community of Interest Designation and Approval for Video or On-line Access Services; Right to Contested Case; Collaborative Dispute Resolution

(1) The Division shall adhere to the dispute guidelines and procedural rules as established under OAR 125-001-0005.

(2) To the extent possible, the Division shall encourage the use of alternative and collaborative dispute resolution procedures.

Stat. Auth.: ORS 283.520 & 291.038
Stats. Implemented: ORS 283.520 & 291.038
Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0090

Listing of Internet Access Service Providers

(1) Under the authority of ORS 291.038, subsection (5)(c) and OAR 125-400-0050(3) above, the Division shall not provide Internet Access Service to private entities where furnishing or delivering such service would directly compete with two or more Local Established Providers of such service within the subject Local Exchange Telecommunications Service Area. The Division may refer these private entities to its central list of Local Established Providers who are currently conducting business and providing Internet access service in the subject Local Exchange Telecommunications Service Area.

(2) Internet access service providers may submit a written request for inclusion in this central list of Local Established Providers. They must submit such requests on forms provided by the Division. These request forms are available online at IRMD Web Site or from the office of the Division's Data and Video Services Unit located at 800 N.E. Oregon Street, Portland, Oregon 97232. Completed request forms shall be submitted either electronically or by mail addressed to the Data and Video Services Unit, or delivered in person. Request forms are not complete and will not be considered unless and until they include all of the following items and required information:

(a) Applicant's business name, address, mailing address, electronic mail address, and telephone and facsimile machine numbers.

(b) Names and addresses of all principal owners.

(c) Identification of principal contact.

(d) Proof that the applicant is registered with the Oregon Secretary of State to do business as an Internet access service provider in Oregon.

(e) Date of business establishment and current number of employees.

(f) A complete list of all Oregon cities and towns where applicant's Internet access service is available without imposition of long distance charges.

(g) Length of time applicant's business has been offering Internet access service in the subject Local Exchange Telecommunications Service Areas.

(h) Applicant's business support desk/help line telephone number.

(i) Type of services offered.

(3) The central list of Local Established Providers may be posted electronically on a web page maintained by the Division.

(4) The central list of Local Established Providers shall contain a disclaimer that reads:

"The State of Oregon maintains this listing as a courtesy and does not make recommendations on specific qualifications of listed companies. Consumers who choose to use the list as a reference to contact any listed companies agree that: (i) such use is purely voluntary on their part, (ii) they use the list at their own risk, (iii) they shall defend, save, hold harmless and indemnify the State of Oregon, Department and Division and their officers, employees and agents from and against any claims, suits, or actions of any nature whatsoever for losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to consumers' contacts and subsequent relationships with any listed companies, and (iv) the State of Oregon, Department and Division and their officers, employees and agents shall not be liable for any direct, indirect, incidental, consequential or special damages of any sort resulting from, arising out of, or relating to consumers' contacts and subsequent relationships with any listed companies. Consumers are encouraged

to examine the proposed services of more than one company before subscribing to a single service. Listings posted here are voluntary and may not include all Internet access service providers doing business in Oregon."

(5) At least once every six months, the Division shall attempt to contact all Internet access service providers listed in the Division's central list of Local Established Providers to verify their eligibility for continued inclusion in the list. Such contact may be made electronically. If a listed provider fails to respond to such inquiry within thirty (30) days, the Division may remove it from the central list. In such circumstance, the state shall be held harmless and indemnified from any harm that is or could be caused to any provider who is removed from the list and who is in fact still operational.

(6) If Internet access service providers are ever dissatisfied either with the Division's decision not to include them in the central list of Local Established Providers, or with a Division decision to furnish and deliver Internet Access Service to private entities within a particular Local Exchange Telecommunications Service Area under ORS 291.038(5)(c) and OAR 125-400-0050(3) above, and the provider desires to complain about either Division action, then they shall first use the administrative appeal process described in OAR 125-400-0070 above.

Stat. Auth.: ORS 283.520 & 291.038
Stats. Implemented: ORS 283.520 & 291.038
Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

DIVISION 500

**NATURE OF THE STATE OF OREGON
ENTERPRISE NETWORK**

125-500-0000

Definitions

(1) The "State of Oregon Enterprise Network" ("SOEN") is the State's "Advanced Digital Communications ("ADC") Network" that provides for the transmission of voice, data, image and video over distance on a single network. SOEN is a backbone network consisting of high capacity switching devices and transmission facilities providing shared communication paths for clusters of dispersed users. SOEN is comprised of switched services procured from telecommunications providers and provisioned on devices and facilities that are generally available to the public and other customers.

(2) "Department of Administrative Services" ("DAS") means the state agency that is authorized to acquire ADC network services for the provision of SOEN pursuant to ORS 283.500 to 283.520 and 291.038.

(3) "Eligible Purchasers" include the entities eligible under:

(a) The Oregon Cooperative Purchasing Program ("ORCPP") which includes:

(A) Cities, Counties, School Districts, Special Districts, or Other Units of Local Government;

(B) U.S. Government Agencies;

(C) Indian Tribes or Agencies;

(D) Qualified Rehabilitation Facilities ("QRF");

(E) Residential Programs;

(F) Certain Qualified Public Benefit Corporations; and

(b) "Communities of Interest" approved in accordance with Oregon Administrative Rules 125-400-0000 through 125-400-0060.

(4) "E-Rate" means a program administered by the Universal Service Administrative Company to make discounted telecommunications and Internet services available to classrooms or other places of instruction at schools and libraries that meet the federal statutory definition of an eligible institution.

(5) "Telecommunications Systems" mean devices, components, facilities and applications that provide telecommunications services for the state and its agencies and enable the aggregation and transmission of voice, video or data between and among state agency users. Telecommunications Systems include gateway devices that enable clusters of users to access SOEN for the purpose of trans-

mitting voice, data, image or video over distance. Telecommunications Systems may include gateway devices used to connect to private telecommunications networks or the Internet.

Stat. Auth.: ORS 291.038

Stats. Implemented: ORS 283.500 - 283.520

Hist.: DAS 6-2000(Temp), f. & cert. ef. 9-11-00 thru 3-4-01; DAS 2-2001, f. & cert. ef. 3-1-01; DAS 4-2002(Temp), f. 8-13-02 cert. ef. 8-15-02 thru 2-10-03; DAS 7-2002, f. & cert. ef. 12-27-02

125-500-0005

Objectives of State of Oregon Enterprise Network

In planning for, acquiring, implementing and managing SOEN, the Department of Administrative Services shall be guided by the following objectives:

(1) SOEN shall provide high quality, reliable, and advanced digital communications network services for subscribing state agencies and Eligible Purchasers at the best value.

(2) SOEN shall be based upon a very high-capacity, high speed network that will enable service provisioning to all state agencies and Eligible Purchasers.

(3) SOEN shall be capable of delivering point-to-point or multipoint video for distance education and training to subscribing state agencies and Eligible Purchasers.

(4) SOEN shall have sufficient capacity to support the voice, video, and data transport requirements of state agencies and Eligible Purchasers.

(5) DAS shall not construct, install, operate or maintain SOEN.

(6) DAS may construct, install, operate or maintain Telecommunications Systems and shall coordinate the consolidation and operation of all Telecommunications Systems used by the state and state agencies.

(7) DAS will use agency service charges to acquire and improve SOEN services as needed. This will enhance the economic value of the advanced digital communications network infrastructure in Oregon.

(8) When feasible, SOEN may interconnect other publicly-owned, available and proven communications networks.

(9) When economically feasible, SOEN may interconnect existing State of Oregon wide area network services and Telecommunications Systems and regional networks established by Eligible Purchasers.

(10) The SOEN service providers' shall be responsible for all administrative and management functions necessary to operate SOEN at the required levels of service.

(11) To the extent feasible, SOEN shall enable the State of Oregon to obtain full period interactive monitoring, deployment configuration, and network segment management across the entire network.

(12) SOEN services shall be provided using state-of-the-art technology where economically and technically feasible. The SOEN service provider shall be responsible for the costs, labor and necessary equipment upgrades to make SOEN state-of-the-art.

(13) SOEN services may be provided by a single entity or a consortium of service providers. The prime contractor in any consortium shall be responsible for the performance of the obligations required by the SOEN purchase agreement.

(14) On behalf of participating schools or libraries, DAS may make application to the Universal Service Administrative Company to obtain E-Rate discounts on those eligible SOEN services. Applicable services include, but are not limited to:

- (a) Inter-LATA services;
- (b) Intra-LATA services;
- (c) Dedicated Internet access;
- (d) Dial-up Internet access statewide; and
- (e) Integrated services for routers and digital service units.

Stat. Auth.: ORS 291.038

Stats. Implemented: ORS 283.500 - 283.520

Hist.: DAS 6-2000(Temp), f. & cert. ef. 9-11-00 thru 3-4-01; DAS 2-2001, f. & cert. ef. 3-1-01; DAS 4-2002(Temp), f. 8-13-02 cert. ef. 8-15-02 thru 2-10-03; DAS 7-2002, f. & cert. ef. 12-27-02

125-500-0010

Procurement of Telecommunications or Data Transport Services

The development and procurement of telecommunications or data transport services by the Department of Administrative Services shall be guided by the following standards:

(1) DAS may procure telecommunications services and data transport, including SOEN services, from a single entity or a number of service providers to allow greater competition in the marketplace.

(2) Prior to the procurement of any telecommunications or data transport services, the Department of Administrative Services may consult with the appropriate advisory entities established under ORS 291.038, state agencies, and any other affected public bodies or interest groups that have an interest in the use of the State's information resources.

(3) To the extent feasible, interim purchase of telecommunications or data transport services shall be guided by the objectives set forth in section 125-500-0005 of these rules and shall be compatible with eventual full procurement of the SOEN services. The Department of Administrative Services shall use the state purchasing process to procure telecommunications or data transport services.

(4) Telecommunications or data transport services, including SOEN services, or statewide integrated video conferencing and statewide on-line access services, may be extended to Eligible Purchasers.

(5) To the extent feasible, the award of any contract for telecommunications or data transport services by the Department of Administrative Services shall be based upon specifications and requirements that promote electronic communication and information sharing among state agencies and between state and local governments, and with the public where appropriate; and that are based upon industry standards for open systems to the extent possible. The Department of Administrative Services shall also consider, wherever feasible, the achievement of the economic development and quality of life outcomes in the Oregon benchmarks, as well as the promotion of competition in the marketplace for the provision of advanced digital communication networks, in the award of these contracts.

Stat. Auth.: ORS 291.038

Stats. Implemented: ORS 283.500 - 283.520

Hist.: DAS 6-2000(Temp), f. & cert. ef. 9-11-00 thru 3-4-01; DAS 2-2001, f. & cert. ef. 3-1-01; DAS 4-2002(Temp), f. 8-13-02 cert. ef. 8-15-02 thru 2-10-03; DAS 7-2002, f. & cert. ef. 12-27-02

DIVISION 600

IDENTITY AUTHENTICATION/ ELECTRONIC SIGNATURES

125-600-0005

Guidelines for Use of Electronic Signatures by State Agencies

(1) The purpose of this rule is to implement the electronic signature provisions of the Uniform Electronic Signatures Act (UETA). The rule is not intended to apply to the other provisions of the act.

(2) This rule applies prospectively to new software applications with electronic transactions requiring signatures that are implemented after the effective date of this rule.

(3) Agencies shall follow the Information Resources Management Division policy which adopts the federal E-authentication process. The IRMD policy requires that agencies using electronic signatures:

(a) Determine the level of assurance the agency needs that the party signing an electronic transaction is authentic.

(b) Use only those tools and software applications approved by NIST and the Department of Administrative Services, Information Resources Management Services Division to mitigate the risks identified and provide the level of authentication needed.

(4) Agencies may request an exemption from these rules from the Department of Administrative Services.

Stat. Auth.: ORS 184.305, 291.038, 84, 84.049, 84.052, 84.055 & 84.064

Stats. Implemented: Portions of 2001 HB 2112

125-600-7550

Enterprise Geographic Information System (GIS) Software Standard

(1) **Purpose.** The purpose of this rule is to establish a common, enterprise GIS Software standard to promote the creation, use and exchange of inter-related and standards-based geographic data and geospatial business intelligence within and between state agencies. The objective of this standard is to provide a common geospatial software and data framework underpinning all future computer applications containing geospatial components thus increasing the value and use of those applications as state information technology assets. The GIS Software standard will also allow the State of Oregon the opportunity to leverage the buying power of the broadest possible user base. The GIS Software standard is anticipated to enable the most integrated, economic and efficient acquisition, installation and use of GIS across Oregon state government. These outcomes will be made possible through the:

(a) Current installed base of GIS software and trained expertise within state agencies.

(b) General technical benefits associated with the use of standardized software, including but not limited to:

(A) Simplified software and application infrastructure configurations.

(B) Ease of software installations and upgrades.

(C) Simplified application connectivity, security and data distribution architectures.

(D) The capacity for simultaneous multi-user editing, dataset versioning, and history retention.

(E) The ability to utilize existing geospatial business intelligence to ensure data integrity and consistency via the establishment of topology rules, data attribute domain rules, and data validation rules.

(c) Enterprise-oriented data and application accessibility offered by the use of common GIS software deployed across state agencies.

(d) Enhanced functionality and interoperability of related software components within a suite of software applications including the reduction of costly data translations between diverse software products and the ability to leverage data modeling and processing efforts for reuse between agencies.

(e) Ease of sharing geospatial data among agencies and with the public based on a common GIS software infrastructure.

(2) **Definitions.** For the purposes of this rule:

(a) “GIS” means geographic information systems which comprise the hardware, software, network, data, and human resources involved in creating, maintaining, managing, and distributing data, information, and knowledge about spatial objects and their relative positions.

(b) “GIS Software” means computer-language coding created specifically to facilitate the creation, management, distribution, accessibility, and promulgation of Spatial Data. For the purposes of this rule, “GIS Software” does not mean computer-language coding used for the purposes of computer aided design (CAD), simple address list management or similar business processes unless the purpose is to establish inter-agency Spatial Data.

(c) “Spatial Data” means digital information that identifies the geographic location of features and boundaries that are usually stored as coordinates and topology that can be mapped or used for comparative spatial analysis.

(d) “State Agency” or “Agency” means every state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held in the State Treasury, except:

(A) The Legislative Assembly, the courts and their officers and committees;

(B) The Public Defense Services Commission;

(C) The Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices;

(D) The State Board of Higher Education or any state institution of higher education within the Oregon University System; and

(E) The State Lottery.

(3) **Standard.** To achieve the purposes described in section (1) of this rule the standard for GIS Software for Oregon state agencies is the scalable suite of Environmental Systems Research Institute, Inc (ESRI) software applications:

(a) Deployed at the desktop, server, or web interface levels and designed to enable the creation, manipulation, management, storage and distribution of digital maps, digital spatial objects and any associated spatial tabular databases; or,

(b) To manage shared spatially-referenced information.

(4)(a) **GIS Software Inventory.** All state agencies shall inventory and report use of all GIS Software in the format and at the time established by DAS Enterprise Information Strategy and Policy Division (EISPD). Upon conclusion of the inventory the exception process described in subsection (5) of this rule becomes effective.

(b) **Continued use of existing, installed, non-standard GIS Software declared in inventory; assumed exception.** Agencies currently using non-standard GIS Software described by the agency in the inventory required by subsection (a) of this section will be granted a written exception to the enterprise GIS Software standard until such time as any of the conditions described in section (5)(d) of this rule occur.

(5)(a) **Exception.** Notwithstanding the enterprise GIS Software standard established in subsection (3) of this rule, the State Chief Information Officer (CIO) or their designee may grant a written exception to an agency to the GIS Software standard.

(b) **Considerations for evaluating an agency exception request.** Considerations to be weighed by the State CIO or their designee in evaluating an agency request for an exception to the GIS software standard include, but are not limited to:

(A) Agency business rationale for use of non-standard GIS software;

(B) The degree to which the requested non-standard use of GIS software would materially inhibit the state from ensuring that its information resources fit together in a statewide system capable of providing ready access to and sharing of information, computing or telecommunication resources;

(C) The degree to which the requested non-standard use of GIS software would interfere with the state’s goal of acquiring and using enterprise information technology resources in the most integrated, interoperable, efficient and economical manner possible; and

(D) Other factors deemed to be relevant to consider by the State Chief Information Officer (CIO).

(c) **Agency Exception Request.** An agency may be granted an exception to the GIS Software standard by submitting a written exception request to DAS EISPD. An agency exception request must address each of the considerations described in subsection (b) of this section and contain the facts base necessary to justify agency conclusions.