

**Chapter 125 Department of Administrative Services**  
**OREGON ADMINISTRATIVE RULES 1997 COMPILATION**

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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:

(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)(a) By mailing a copy of the notice to persons or organizations on the Department of Administrative Services mailing list maintained in Director's Office.

(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 Department of Administrative Services at 1225 Ferry Street S.E., Salem, Oregon 97310.

(3) By mailing or furnishing a copy of the notice to:

- (a) The United Press International;
- (b) The Associated Press.

Stat. Auth.: ORS Ch. 183 & 283

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

**125-001-0005**

**Model Rules of Procedure**

As filed with the Secretary of State, the Department has adopted the Revised Attorney General's Model Rules of Procedure dated January 27, 1986 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 office of the Attorney General or Department of Administrative Services.]

Stat. Auth.: ORS Ch. 183 & 283

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

**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: ORS

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 20**

**PERSONAL SERVICES CONTRACTS**

**125-020-0100**

**Introduction**

(1) State Agencies may, within the limits of a legislatively approved budget, contract for personal services with independent contractors. State Agencies should consider and are encouraged to

use qualified public resources through interagency agreements before using private Contractors (see OAR 125-022).

(2) Within the parameters of employment, workers' compensation, other relevant state and federal laws and collective bargaining agreements, an Agency may contract for personal services when:

(a) The required specialized skills, knowledge and resources are not available within an Agency;

(b) The work cannot be done in a reasonable time with an Agency's own workforce;

(c) An independent and impartial evaluation is required; or

(d) It will be less expensive to contract for the work.

(3) State Agencies may not use personal services contracts to obtain and pay for the services of an employee. If a contractor is not an independent contractor or a corporation, an Agency may not enter into a personal services contract with the contractor; instead, an Agency must follow personnel policies for employment options.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 2-1982, f. 6-23-82, ef. 7-1-82; BMD 2-1983, f. & ef. 12-9-83; BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-005

**125-020-0110**

**Responsibilities**

(1) Each Agency head is responsible for ensuring his or her Agency's compliance with the rules in this division, OAR Chapter 125, Division 20.

(2) Each Agency head shall appoint a Personal Services Contracts Coordinator to represent the Agency. Written notice of the coordinator's name shall be provided to the Department. The coordinator shall be responsible for understanding the laws, rules, policies and procedures of personal services contracting as established by the State of Oregon. Each coordinator must be trained and have the contracting skills to well-represent his or her Agency.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-011

**125-020-0120**

**Ethics**

Agency officers, employees or agents involved in the process of screening and selecting personal services contractors should carefully review the provisions of ORS 244.040. That statute prohibits agency officers, employees and agents from:

(1) Soliciting or receiving Gifts as defined by OAR 125-020-0140(12);

(2) Using their official position for personal or financial gain; and/or

(3) Using confidential information gained in the course of the screening and selection procedures for personal or financial gain.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-070

**125-020-0130**

**Personal Services Contract Definition**

(1) A contract for "personal services" calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal services contractor, with price being secondary. "Architect, Engineer, and Related Services" are a special class of personal services contracts, which are defined by OAR 125-065-0040 and are not covered by the provisions of ORS 291.021 or this rule.

(2) The screening and selection procedures for the award of

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personal services contracts are governed by ORS 291.021 and OAR 125-020. Personal Services Contracts are not “public contracts” as defined in ORS 279.011(5) and are not subject to the competitive procurement provisions of ORS 279.005 through 279.111.

(3) Pursuant to ORS 279.051(2), this rule describes a method for distinguishing “personal services” contracts from “public contracts” (particularly service contracts; e.g., janitorial, maintenance, data entry, and similar services customarily provided by any competent laborer, and trade-related services; e.g., contracts for trade-related activities, including labor and/or material to accomplish repair or maintenance of all types of equipment and structures). Examples of contracts or classes of contracts that do, or do not, involve the performance of personal services are provided in, respectively, sections (6) and (7) of this rule. These examples are provided solely for Agency guidance; only the Department has the authority to designate contracts or classes of contracts as “personal services” contracts. In the event of uncertainty or disagreement as to the status of any particular contract or class of contracts, the Department shall determine whether the work calls for the performance of personal services, or for services subject to the public contracting laws.

(4) An Agency may enter into a “personal services” contract with an independent contractor when:

(a) The work to be performed requires specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment;

(b) An Agency will not control the means or manner of the contractor’s performance, but must rely on the contractor’s specialized skills, knowledge and expertise to accomplish the work.

**Note:** An Agency’s reservation of the right to determine and modify the delivery schedule, evaluate the quality of completed performance, and accept or reject the completed performance does not mean that the Agency will control the means and manner of performance; and

(c) Selecting a contractor primarily on the basis of qualifications, rather than price, in accordance with the provisions of OAR 125-20, would most likely meet an Agency’s needs and result in obtaining satisfactory contract performance and optimal value for the State.

(5) An Agency should use a “public” contract, rather than a “personal services” contract, if:

(a) The work has traditionally been performed by contractors selected primarily on the basis of price; e.g., such work as construction services, equipment repair and maintenance services, food services, collection and hauling services, supplies and materials services, and similar services; services that result in an Agency obtaining products, equipment, supplies, or materials; or services that do not require specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment; or

(b) An Agency requires a service for which an Agency has developed, or should reasonably be able to develop, adequate design or performance specifications; and

(c) Selecting a contractor, in accordance with the competitive procurement provisions of ORS 279.005 through 279.111 and the applicable administrative rules (OAR Chapter 125, Divisions 030 and 300-360, and OAR 137-030 and 137-040), would meet an Agency’s needs and result in an Agency obtaining satisfactory contract performance and optimal value for the State.

(6) “Personal services” contracts may include, but are not limited to, the following:

(a) Contracts for services performed as an independent contractor in a professional capacity including, but not limited to, the services of an accountant; attorney; land use planner; physician or dentist; commercial pilot; aerial photographer; data processing consultant or broadcaster;

(b) Contracts for services as an artist in the performing or fine arts including, but not limited to, any person identified as a photographer, filmmaker, painter, weaver, or sculptor;

**Note:** Selection procedures for the requirements of the One Percent for

Art in Public Buildings program are found in OAR 190-20-015.

(c) Contracts for services that are specialized, creative and research-oriented;

(d) Contracts for services as a consultant; and

(e) Contracts for educational services.

(7) “Personal services” contracts do not include:

(a) Contracts, even though in a professional capacity, if primarily for a product; e.g., a contract with a data processing consultant to develop a new computer system design is for personal services, but a contract to design a computer system and supply all the hardware is primarily for a tangible product;

(b) Contracts with a temporary service or personnel agency to supply labor, which is of a type that can generally be done by any competent worker; e.g., data entry, key punch, janitorial, security guard, crop spraying, laundry, and landscape maintenance services contracts;

(c) Contracts with a management contractor that primarily supplies labor that can generally be done by any competent or skilled worker including, but not limited to, the following services: most conference planning, collection, crowd management, first aid training, courier, data and collection surveys;

(d) Contracts for trade-related activities considered to be labor and material contracts; and

(e) Contracts for services of a trade-related activity to accomplish routine, continuing and necessary functions, even though a specific license is required to engage in the activity. Examples include, but are not limited to, repair and/or maintenance of all types of equipment or structures.

Stat. Auth.: ORS 279.011, 279.051(2), 279.712(2) & 283.060

Stats. Implemented: ORS

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; GS 3-1992, f. & cert. ef. 2-3-92;

TTPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 125-310-092

**125-020-0140**

**Other Definitions**

(1) “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 (see ORS 291.002(7)).

(2) “Client services contract” means a contract for personal services provided directly to Agency clients including, but not limited to, medical and dental services, employment and training programs, residential care and other therapy services for clients.

(3) “Competitive solicitation” means a documented process providing an equal and open opportunity to qualified parties which culminates in a selection based on criteria that include, but are not limited to, the Contractor’s availability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance and fees or costs.

(4) “Contractor” means an independent contractor or corporation that performs a service(s) for an Agency, when an Agency has no right to and does not control the means and manner of performing the contract, except as to the delivery schedule, determining compliance with the Statement of Work, and accepting or rejecting the deliverables or results required under the contract.

(5) “Department” means the Department of Administrative Services of the State of Oregon as defined in ORS 291.002.

(6) “Director” means the Director of the Department of Administrative Services as defined in ORS 291.002.

(7) “Division” means the Transportation, Purchasing and Print Services Division of the Department of Administrative Services.

(8) “Effective date of contract” means the date established in the contract for the Contractor’s work to begin, or the date the contract receives all required approvals, whichever date is later.

(9) “Emergency” means not reasonably foreseeable circumstances that create a substantial risk of loss, damage or interruption of State-provided services; a threat to public health,

safety or the environment; or any other circumstance determined to constitute an emergency by the Agency head, Governor, State or federal law, or a judge having the authority to compel the State to take action addressing such an emergency and requiring prompt execution of a contract to remedy the condition.

(10) "Evidence of competition" means Agency documentation demonstrating competitive solicitation of responses from multiple individuals or firms in selecting a Contractor in accordance with the rules in this division.

(11) "Expert witness" means contracts for services of expert witnesses for the purposes of evaluating a claim or cause of action, preparing for or assisting with actual or likely litigation or otherwise assisting in resolving a dispute. This includes experts and professionals engaged to assist or consult on the state's presentation of its case in legal, administrative, and other official proceedings, regardless of whether the Contractor is called to testify.

(12) "Gift" means something of economic value given to a public official or the public official's relative without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives 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.

(13) "Proposal" means a competitive written offer submitted in response to an Agency solicitation.

(14) "Request for Proposals" (RFP) means a written document describing an Agency's circumstances and the type of service(s) desired; setting forth all significant evaluation factors and their relative importance and, if appropriate, price; and soliciting competitive written proposals. The RFP is intended to result in a contract (see OAR 125-020-0320).

(15) "Request for Qualifications" (RFQ) means a written document describing an Agency's circumstances and the type of service(s) desired; setting forth all significant evaluation factors and their relative importance and, if appropriate, price; and soliciting competitive written qualifications. The RFQ will not result in a contract but is intended to establish a list of qualified Contractors from which to seek proposals or select a Contractor using informal selection procedures or direct negotiation (see OAR 125-020-0330 and -0335).

(16) "Sole source" means a Contractor that provides professional or technical expertise of such a unique nature that the Contractor is clearly and justifiably the only practicable source to provide the service(s).

(17) "Standard fee contract" means a contract awarded for service to be performed for a standard fee, when the standard fee is established by the contracting Agency, and a like contract is available to all qualified applicants.

(18) "Statement of Work" means a written statement that specifically describes the phases of work or services, major tasks, or areas of responsibility the Contractor is to perform at a particular site, or within a particular locale during a stated period of time. The statement must identify specific objectives that the Contractor is to attain or describe in detail the deliverables that the Contractor is to provide. A schedule of delivery must be included.

(19) "VIP System" means the on-line electronic Vendor Information Program administered through the Transportation, Purchasing and Print Services Division of the Department of Administrative Services.

Stat. Auth.: ORSCh. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 2-1982, f. 6-23-82, ef. 7-1-82; BMD 2-1983, f. & ef. 12-9-83; BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); BMD 2-1993(Temp), f. 1-21-93, cert. ef. 1-22-93; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-010

#### 125-020-0200 Procedures and Assistance

These rules set forth procedures for Agencies to follow when entering into personal services contracts. State Agencies are

encouraged to contact the Division for assistance and copies of required forms.

Stat. Auth.: ORS Ch. 184, 289 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-007

#### 125-020-0210

##### Contract Forms

(1) The contract form provided in the **State of Oregon Personal Services Contract Manual** is the preferred contract format for the State of Oregon. If necessary, an Agency, at its own expense, may create its own contract form so long as it contains all the contract clauses and appropriate terminology found in the above-referenced manual. If an Agency contract contains any variations in the required clauses of the preferred form, the contract must be reviewed and approved for legal sufficiency by the Attorney General and reviewed and approved by the Department before an agency begins use of the contract form ( see OAR 125-020-0400 for minimum contract requirements).

(2) Agencies are required to:

(a) Follow the rules in this division;

(b) Prepare a contract;

(c) Appoint a supervising representative to represent the Agency in each contract and be responsible for monitoring Contractor performance and progress, authorizing Contractor payment(s), assuring lawful contract administration and, if required, executing timely amendments;

(d) Assign an Agency number to the contract;

(e) Obtain necessary approvals; and

(f) Complete and submit to the Division written justification that identifies the solicitation process or the use of waivers, Sole source or negotiation. Contracts over \$1,000 also require the submission of an original contract and one copy for Division use.

(3) The Division will review the contract for compliance with applicable rules of this division. Upon approval, the contract will be returned to the Agency. Work may only begin on or after the effective date.

(4) The Agency is required to maintain an account of actual payments under the contract in order to update Department records on a fiscal year basis.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-025

#### 125-020-0220

##### Approvals for Personal Services Contracts

(1) Department of Administrative Services: The Department shall approve all Agency personal services contracts before any such contract becomes binding and before any service(s) may be performed except:

(a) Contracts for which the Division has granted a delegation of authority from approval requirements as described in OAR 125-020-0600; and

(b) Contracts for which the Division has granted an exemption from approval requirements as described in OAR 125-020-0610.

(2) Attorney General: The Attorney General's review of personal services contracts for legal sufficiency is required when the contract establishes payment in excess of \$25,000. The approval of the Attorney General must be given prior to the effective date of the contract or the contract is not binding on the State of Oregon and no service can be performed or paid for under the contract (see OAR chapter 125, division 022 for Attorney General approval requirements of interstate and international agreements).

(3) Order of Approvals: When Attorney General legal sufficiency review is required, the Agency should seek legal approval prior to the Agency and Contractor approvals. Department of Administrative Services approval, when required, is last.

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(4) Other Special Approvals: When Agencies contract for services normally provided by another Agency, or services for which another Agency has statutory responsibilities, Agencies are required to seek additional approvals, prior to the final approval by Division. Examples of these special approvals include, but are not limited to:

(a) Department of Administrative Services, Risk Management Division for revising insurance coverages and/or providing tort liability coverage;

(b) Department of Administrative Services, Transportation, Purchasing and Print Services Division for printing services;

(c) Department of Administrative Services, State Controller's Division for accounting services;

(d) Office of the Treasurer, Debt Management Division for financial and bond counsel services; and/or

(e) Department of Administrative Services, Information Resources Management Division for information-system related and telecommunications services. Agencies are also encouraged to use this division's Planning and Review Section as a resource in carrying out information system-related projects. This may include:

(A) Assistance to agencies in developing Statements of Work related to information system projects. Such assistance may include:

(B) Reviews to assure consistency with State standards and direction; and

(C) a listing of vendors that provide information system-related services.

(5) Attorney or Financial Auditing Services :

(a) The Attorney General has sole authority to contract for attorney services. Exceptions may be granted in writing on a case-by-case basis only by the Attorney General;

(b) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Exceptions may be granted in writing on a case-by-case basis only by the Secretary of State Audits Division.

Stat. Auth.: ORS 184, 279, 291 & 305

Stats. Implemented: ORS

Hist.: BMD 2-1982, f. 6-23-82, ef. 7-1-82; BMD 2-1983, f. & ef. 12-9-83; BMD 1-1988, f. & cert. ef. 2-1-88; BMD 2-1988, f. 10-20-88, cert. ef. 11-1-88; BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-015

### **125-020-0300**

#### **Introduction to Screening and Selection Procedures**

(1) The policy of the State of Oregon is to select Contractors based on demonstrated qualifications and competence to perform the required services, encourage competition, discourage favoritism and obtain services at a fair and reasonable price. The purpose of this rule is to specify the Department's policies and procedures for Agency screening and selection of Contractors to perform personal services.

(2) Agencies shall comply with the procedures set out in these rules for screening and selecting persons to perform personal services contracts.

(3) Agencies shall provide evidence of competition for all contracts over \$2,500, except for circumstances as described in this rule. While qualifications are the primary criteria, whenever an Agency determines that the services offered by two or more individuals or firms are equally able to meet the Agency's needs and are of equal value, the Agency shall award the contract to the individual or firm offering the service at the lowest price.

(4) An agency may procure personal services from Contractors who are under contract with another agency pursuant to an interagency or intergovernmental agreement under OAR Chapter 125, Division 022, if such action is allowable under the original contract and if the original contract was competitively solicited in substantial compliance with the requirements of these rules.

(5) Personal services contracts submitted to the Division for approval or filing must include a summary statement of the selection process. This form is provided in the **State of Oregon Personal Services Contracting Manual** (see OAR 125-020-

0210). Agency records should include detailed documentation of the process.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-035

### **125-020-0310**

#### **Solicitation Requirements**

(1) All formal solicitations must satisfy the requirements of this rule. RFPs and RFQs must be in writing and must be advertised in accordance with the following procedures:

(a) All advertisements shall appear at least once in at least one newspaper of general circulation, on the VIP System, and in as many additional issues and publications as may be necessary or desirable to achieve adequate competition. The advertisement(s) shall be first published and appear at least once, no fewer than fourteen (14) calendar days before close of the solicitation, unless the Agency head or delegate declares in writing that a shorter period is deemed necessary in the public interest for a particular procurement; and

(b) Advertisement(s) shall describe, at a minimum, a brief summary of the proposed contract, the services sought, where copies of the solicitation may be obtained, and the deadline for submitting a proposal.

(2) The RFP or RFQ must provide that the Agency may, at any time during the solicitation or negotiation process, reject any or all proposals or cancel the solicitation without liability if it is in the public interest to do so.

(3) Unless compensation is expressly provided for in the solicitation document, the RFP or RFQ must provide that the 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.

(4) The RFP or RFQ must address, if applicable, the potential for contract amendments in documents used during the selection process. Failure to provide such notice in any solicitation may prevent amendments to any resulting contract.

Stat. Auth.: ORS

Stats. Implemented: ORS

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95

### **125-020-0320**

#### **Formal Selection Procedures**

Agencies shall use a formal selection procedure whenever the cost of the services is estimated or anticipated to exceed \$25,000. Under these formal procedures, RFPs or RFQs must be advertised in accordance with OAR 125-020-0310.

(1) Request for Qualifications (RFQ). An RFQ may be used to determine whether competition exists to perform the needed services or to establish a list of qualified Contractors prior to issuing an RFP or engaging in an informal selection procedure (see OAR 125-020-0140(15)).

**Note:** It is not mandatory that Agencies issue an RFQ; an Agency may elect to forego using an RFQ before issuing an RFP.

(a) At a minimum, the RFQ shall describe the particular specialty desired, the qualifications the Contractor(s) must have in order to be considered, and the evaluation factors and their relative importance. The 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 necessary to evaluate Contractor qualifications.

(b) A qualifications pre-submission meeting (voluntary or mandatory) may be held for all interested Contractors to discuss the proposed services. If the meeting is mandatory, the RFQ shall include the date, time and place of the meeting(s).

(c) Unless the RFQ establishes that competition does not

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exist or unless the solicitation process is canceled or all qualification statements rejected, all respondents (who met the published qualifications) shall receive a notice (or other materials as appropriate) of any required services and have an opportunity to submit a proposal in response to an Agency's subsequent RFP.

(2) Request for Proposal (RFP). The RFP is used as a formal competitive solicitation that describes specific services to be performed within a defined period of time. The solicitation sets forth criteria and methods for screening, selecting and ranking the best proposal(s) (see OAR 125-020-0140 (14)). The RFP may result in contracts with more than one provider.

(a) The RFP must either describe the situation and background for which proposals are being requested and state the outcome(s) desired, or propose a Statement of Work. The RFP must describe any conditions affecting the delivery of the services and the time period in which the services are to be completed. The RFP must, at a minimum, address the following information:

(A) Minimum standards and qualifications required to be met by the proposer(s) to be eligible to provide the services;

(B) The evaluation process and criteria to be used to select the Contractor(s), including the weight or points applicable to each criterion. Information must include the manner in which the proposer's cost and pricing proposal will be evaluated;

(C) A requirement to provide a list of similar services completed by the proposer(s) with references concerning past performance;

(D) The closing date and time of the solicitation and the delivery location(s) for proposals;

(E) Reservation of the right to seek clarifications of each proposal, and the right to negotiate a final contract in the best interest of the Agency, considering cost effectiveness and the level of time and effort required for the services;

(F) Reservation of the right to reject any or all proposals, if such rejection would be in the public interest;

(G) Reservation of the right to cancel the solicitation, if such cancellation would be in the public interest;

(H) A sample of the standard contract provisions;

(I) The date and time for any interviews, if scheduled; and

(J) Any other information to be used to evaluate, rank and select the best proposer(s). This should include, but is not limited to: information regarding proposal form and organization, anticipated contract award date, and at the Agency's discretion, funding information and budget requirements.

(b) A pre-proposal meeting (voluntary or mandatory) may be held for all prospective Contractors to discuss the proposed services, solicitation provisions and contract requirements. If the meeting is mandatory, the RFP shall include the date, time and place of the meeting(s).

(c) Agencies shall evaluate proposals by evaluation committee consisting of at least two individuals. The evaluation committee shall be provided guidelines for completing evaluations. The evaluation committee may consist of state employees and, if desired, members of the community with experience in related services. Evaluators shall be selected by Agencies on the basis of their ability to provide an objective, impartial evaluation of the proposals. If there is a conflict of interest, the evaluator shall declare this in writing and shall be excluded from participating in the evaluation. All proposals reviewed in a given competitive selection must be read and scored by each member of the evaluation committee.

(d) The proposal evaluation committee shall review, score and rank all responsive proposals according to the evaluation criteria in the RFP which may include, but are not limited to, the following:

(A) Availability and capability to perform the work;

(B) Experience of key staff on comparable projects, or in performing comparable services;

(C) Demonstrated ability to successfully complete similar projects or perform similar services on time and within budget;

(D) References from past clients, public and private;

(E) Performance history in meeting deadlines, submitting accurate estimates, producing quality work, and meeting financial obligations;

(F) Status and quality of any required licensing or certification;

(G) Knowledge and understanding of the required services as shown through the proposed approach to staffing and scheduling needs;

(H) Fees or costs;

(I) Results from oral interviews, if conducted;

(J) Availability of any specific required resources or equipment;

(K) Geographic proximity to the project or the area where the services will be performed;

(L) Identity of proposed subcontractors and their qualifications; and

(M) Any other criteria deemed relevant to the provision of services.

(e) Final ranking will be based on all information obtained by the committee during the evaluation process. Price will be considered, but will not necessarily govern selection of the Contractor(s).

(f) Contracts entered into under the formal selection procedure may be amended, provided the original contract allows for the particular amendment and the services to be provided under the amendment are included within, or directly related to, the scope of the project or the scope of the services described in the solicitation document.

Stat. Auth.: ORS

Stats. Implemented: ORS

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95

**125-020-0330**

**Informal Selection Procedures**

Agencies may use an informal selection process to obtain services if the estimated fee or contract price is equal to or less than \$25,000.

(1) The informal selection process shall solicit responses from at least three Contractors offering the required services. Prospective Contractors may be drawn from an Agency's current list of Contractors; the certified list of the Office of Minority, Women and Emerging Small Business; the VIP System; and/or any other known resources.

(2) The informal selection process shall be competitive. The selection and ranking may be based on criteria including, but not limited to, each proposer's:

(a) Particular capability to perform the services required;

(b) Experienced staff available to perform the services required, including each proposer's recent, current and projected workloads;

(c) Performance history;

(d) Approach and philosophy used in providing services;

(e) Fees or costs;

(f) Geographic proximity to the project or the area where the services are to be performed; and

(g) Work volume previously awarded by an Agency, with the object of effecting an equitable distribution of contracts among qualified Contractors, provided such distribution does not violate the policy of selecting the most highly-qualified Contractor to perform the services at a fair and reasonable price.

(3) All proposals received shall be reviewed and documented and the most qualified Contractor(s) selected and ranked.

(4) If the scope of the services is revised to the extent that the estimated cost of the services exceeds \$25,000 and the services are still required, an Agency shall terminate the contract and issue a new solicitation using the formal selection procedures or procedures allowed by subsequent rules set forth in this division, unless waived under the provisions of OAR 125-020-0340.

Stat. Auth.: ORS

Stats. Implemented: ORS

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95

**125-020-0335**

**Selection by Negotiation**

Agencies may procure personal services with Contractors directly through negotiation rather than through other solicitation



means, if the contract price is equal to or less than \$2,500.

(1) A procurement by negotiation must encourage competition to the maximum extent practicable under the circumstances of the procurement.

(2) If the scope of the services is revised to the extent that the estimated cost of the services exceeds \$2,500, an Agency shall solicit for a new Contractor(s) using applicable selection procedures under these rules, unless waived under the provisions of OAR 125-020-0340.

Stat. Auth.: ORS

Stats. Implemented: ORS

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95

#### 125-020-0340

##### Waivers

Use of a formal or informal solicitation process may be waived by an Agency under one or more of the following conditions:

(1) the Agency head or delegate declares an Emergency, as described in OAR 125-020-0140(9). Written findings supporting such a waiver must be submitted to the Division at the time of contract approval; or

(2) the Agency head or delegate declares an emergency for other good cause. Written findings supporting such a waiver must be submitted to the Division with the contract for approval. At the discretion of the Division, findings may be requested prior to the submission of the contract for Division approval.

Stat. Auth.: ORS

Stats. Implemented: ORS

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95

#### 125-020-0350

##### Sole Source

Sole source contracting, as defined in OAR 125-020-0140(16), is to be used as a tool to efficiently acquire services when only one Contractor is a practicable source for the services. Written justification for a Sole source contract shall be submitted to the Division at the time of contract approval (see OAR 125-020-0210(2)).

(1) If the cost of the services will exceed \$25,000, an Agency may award a contract on a sole source basis, only if prior to the award:

(a) notice of the Agency's intent to contract for the services, including the general specifications of the intended contract, is advertised in at least one newspaper or trade journal of general circulation in the area where the services are to be performed and on the VIP System; and

(b) the notice is published no fewer than five (5) days before close of the solicitation to allow prospective Contractors a reasonable opportunity to submit responses.

(2) Publication may be waived for good cause by the Agency head or delegate. The waiver must be in writing in the contract file and must include a detailed description of the efforts made to identify Contractors and the reasons public notice was not provided. Such written documentation shall be submitted to the Division at the time of contract approval.

Stat. Auth.: ORS

Stats. Implemented: ORS

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95

#### 125-020-0360

##### Protest Procedures

All protests of solicitation documents or selection processes are limited to the following issues and filing times:

(1) Solicitation protest: Unless a deadline is specified in the solicitation document, prospective Contractors may submit a written protest or request for change of particular solicitation provisions, specifications, or contract terms and conditions to the Agency no later than seven (7) calendar days prior to close of the solicitation. (Any solicitation document that requires an earlier protest deadline or request for change shall be approved by the Agency head or delegate, prior to the release of the solicitation.) The proposer shall submit in writing the reasons for the protest or

request and any proposed changes to the solicitation provisions, specifications or contract terms and conditions. The Agency will not consider a solicitation protest submitted after the deadline established in this section or the deadline provided in the solicitation document, if different.

(2) Selection protest: Every proposer who submits a proposal shall be notified of its selection status. Unless a different deadline is specified in the solicitation, a proposer who claims to have been adversely affected or aggrieved by the selection of a competing proposer shall have seven (7) calendar days after receiving notification to submit a written protest. To be adversely affected or aggrieved, the proposer must demonstrate that all higher-ranked proposers were ineligible for selection. The Agency shall not consider a protest submitted after the deadline established in this subsection, or the deadline provided in the solicitation, if different.

(3) The Agency head or delegate shall have the authority to settle or resolve a written protest submitted in accordance with sections (1) or (2) of this rule.

(4) Judicial review of the Agency's disposition of a written protest submitted in accordance with this rule may be available pursuant to the provisions of ORS 183.484.

Stat. Auth.: ORS

Stats. Implemented: ORS

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95

#### 125-020-0400

##### Introduction to Contract Requirements

(1) In addition to all applicable provisions that are required for legal sufficiency or for sound contract management, all personal services contracts shall include the following:

(a) A measurable Statement of Work and delivery schedule;

(b) The total sum of money to be paid for the satisfactory accomplishment of the work;

(c) A billing and payment schedule. Interim payments may be made for partial completion of tasks or services. When a contract specifies an end product, an amount equal to at least 10 percent of the total may be withheld until all required work is completed and accepted;

(d) A provision that payments will be made only for completed work that is accepted by the Agency;

(e) Certification that sufficient Agency funds are available and authorized for expenditure to finance costs of the contract within the Agency's appropriation or limitation covering the time period(s) of the contract;

(f) A provision indicating whether subcontracts for any of the work scheduled under the contract may be entered into without prior written approval from the Agency; and

(g) Provisions for termination by the Agency, including the manner by which it will be effected. The contract shall describe conditions under which the contract may be terminated for default as well as conditions under which the contract may be terminated because of circumstances beyond the Agency's control.

(2) If charges made for services performed are to be paid by grant funds, the services shall relate directly to the grant from which the funds are expended.

(3) The contract must provide that the Agency, the Secretary of State, the federal government, and their duly authorized representatives shall have access to the Contractor's books, documents, papers and records directly pertinent to the contract for the purpose of making audit, examination, excerpts and transcripts.

(4) The contract must provide that the contract is subject to all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

(5) It is the Agency's responsibility to comply with any other federal law or regulation specific to the funding source supporting the contract.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 2-1982, f. 6-23-82, ef. 7-1-82; BMD 2-1983, f. & ef. 12-9-83; BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); Renumbered from 122-20-020; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from

122-20-080

**125-020-0410**

**Independent Contractor Status**

(1) Agencies shall develop Statements of Work or services that do not result in an employee relationship with the potential Contractor. Agencies and Contractors shall complete the Independent Contractor Certification found in the **State of Oregon Personal Services Contracting Manual**. If the individual cannot certify independent contractor status, the Agency may not contract with the individual using a personal services contract, except as otherwise allowed in section 5 of this rule.

(a) An Independent Contractor Certification shall be part of each contract;

(b) A corporation is not considered an employee of the Agency. If the Contractor is a corporation, the Independent Contractor Certification is not required; however, the corporation representative's certification of corporation status or a certification by the Agency that the Agency has verified the Contractor's status with the Corporation Division of the Secretary of State's Office, must be submitted to the Division upon contract approval.

(2) If the nature of the services or project is such that an employee/employer relationship will exist, the Agency must hire the individual through normal personnel procedures.

(3) The contract shall include the Contractor's legal name, address, and Social Security or federal tax identification number.

(4) The contract shall 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.

(5) When an individual cannot certify that he or she satisfies four or more of the independent Contractor criteria in section B of the Independent Contractor Certification, the Agency may contract with the individual using a personal services contract only if the Division, in consultation with the Department of Justice, approves the use of a personal services contract upon a determination by the Division that the contractor is an independent contractor and the contract will not result in undue risk to the State.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 2-1982, f. 6-23-82, ef. 7-1-82; BMD 2-1983, f. & ef. 12-9-83; BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); Renumbered from 122-20-020; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-050

**125-020-0420**

**PERS Members As Contractors**

(1) State Employee: Contracts for the services of any person employed in another Agency will normally be in the form of an interagency agreement with the Agency that employs the person ("Employing Agency"). Exceptions may be granted by the Employing Agency head or delegate when such an agreement is impractical and the work will be done strictly on the employee's personal time as an independent contractor. Such exceptions will be processed as a personal services contract with the individual. The contract will include an authorizing signature from the Employing Agency.

(2) Public Employees' Retirement System (PERS) Member: Contracts for the services of a Contractor who is an active member of PERS must meet requirements of ORS chapter 237.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-055

**125-020-0430**

**Contracting Out for Services Provided by Employees**

(1) Where an Agency is contemplating contracting for work

performed by Agency employees represented by a labor organization, the Agency shall review the relevant collective bargaining agreement to ensure the contract complies with the provisions and, if applicable, the requirements of ORS 279.315.

(2) Whenever an Agency pays more in a given 12-month period to a Contractor under a personal services contract for services historically performed by state employees than would have been paid to an Agency employee performing the same work, the Agency shall report that fact, with a justifying statement to the Division. The report shall be made at the conclusion of each fiscal year.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-060

**125-020-0440**

**Tax Compliance**

No contract or other agreement over \$1,000 shall 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 305.380(4).

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-075

**125-020-0500**

**Introduction to Contract Administration**

Each Agency shall maintain a system of contract administration to assure conformance with the contract terms, conditions, and specifications and to assure adequate performance and accurate expenditures.

(1) Agency Contract Supervising Representative: Each contract shall state by name or position the Agency employee assigned to monitor the Contractor performance, to authorize payment for work performed, and to uncton as the representative of the Agency on matters concerning the particular contract.

(2) Contract Execution Authority: Each Agency shall maintain a public list identifying by name or position, the officers or employees authorized to sign personal services contracts.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-085

**125-020-0510**

**Agency Contract Files**

(1) Each Agency shall maintain contract files. Each file shall contain a complete record of the actions used to develop and administer a contract, including a statement of justification for the Contractor selection.

(2) For contracts in excess of \$2,500 in a given 12-month period, contract files shall also include the following:

(a) A copy of the solicitation and justification of Sole source, waiver or other method of selection;

(b) A list of prospective Contractors notified of the solicitation;

(c) Method used to advertise or notify prospective Contractors;

(d) A copy of each proposal that resulted in award of a contract;

(e) Method of evaluating proposals and the results of the evaluation;

(f) Record of negotiations and results;

(g) All information describing how the Contractor was selected, including the basis for awarding the contract; and

(h) Resulting contract, if awarded.

(3) For contracts of \$2,500 or less contract files shall include the names of firms or individuals and cost estimates or quotations considered, the basis for selection, and how price was determined.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

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Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-040

**125-020-0520**

**Contract Amendments**

- (1) Contract amendments must be made in writing.
- (2) Agencies must address the possibility of amendments in documents used during the original Contractor selection process. Amendments may not be used to circumvent rules establishing approvals at certain monetary levels.
- (3) The Division must approve an amendment to a contract if the original contract value is greater than \$1,000 or if the value of the contract as amended is greater than \$1,000. Contracts amended to increase time for performance as described in OAR 125-020-0530 and amendments to contracts entered under delegated or exempted authority do not need Division approval.
- (4) The Attorney General must approve an amendment to a contract if the original contract value is greater than \$25,000, or if the value of the contract as amended is greater than \$25,000. Contracts amended to increase time for performance as described in OAR 125-020-0530 and amendments to contracts entered under total exempted authority do not need Attorney General approval.
- (5) Justification shall be provided for any increase in time, compensation or other modification.
- (6) A sample contract amendment is provided in the **State of Oregon Personal Services Contracting Manual**. Agencies may create amendment forms as long as the clauses in the Division's sample are included.
  - (a) For amendments, Agencies are required to:
    - (A) Prepare a contract amendment;
    - (B) Obtain necessary approvals before the amendment is effective;
    - (C) Complete and submit a justification statement to the Division; and
    - (D) For amendments not needing Division approval, forward only the justification form to the Division.
  - (b) For contract amendments needing Division approval, Agencies shall submit the contract amendment package (one original and one copy of the contract amendment, one copy of any previous amendment(s), and one copy of the justification statement) to the Division;
  - (c) Division will review the contract amendment for compliance with applicable rules. Upon approval, the original contract amendment will be returned to the Agency.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-030

**125-020-0530**

**Amendments to Increase Time for Performance**

- (1) Contract amendments solely to increase time for performance or extend the date of expiration or termination of an existing personal services contract shall not require the prior approval of the Division or the Attorney General, provided that the following conditions are met:
  - (a) The original contract, if not exempt from the Department and Attorney General approval requirements under other provisions of these rules, has been approved by the Department and the Attorney General, as applicable; and
  - (b) The original contract has not expired or been terminated as of the date both (or all) parties have executed the extension amendment; and
  - (c) Additionally, one of the following conditions must apply:
    - (A) The amendment changes only the time for the completion of performance of the original contract, and expressly states that all other terms and conditions of the original contract remain in full force and effect; or
    - (B) When the services are of a continuing or repetitive nature compensated at an hourly, daily or similar periodic rate, the amendment:

- (i) Does not change the Statement of Work in the original contract and;

- (ii) Either does not increase the rate of compensation, or increases the rate only by an amount that does not exceed the rate of the increase determined by comparing the Portland, Oregon Metropolitan Area Consumer Price Index (all items) published immediately prior to the date the original contract was established with the same Index published immediately prior to the date of the extension.

- (2) This rule authorizes only one amendment of a personal services contract without approval.

- (3) If the amendment of a personal services contract under subsection (1)(c)(B) of this rule raises the aggregate amount of compensation to a level requiring Division or Attorney General approval under any other provisions of these rules, the Agency shall obtain the required approvals before the amendment becomes binding and before any services may be performed.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-032

**125-020-0540**

**Amendments for Cost Overruns**

- (1) Payments on contracts that exceed the maximum contract consideration require approval from the Division. Approval may be provided if:

- (a) The original contract was duly executed and, if required, approved by the Department and the Attorney General;

- (b) The original contract has not expired or been terminated as of the date written approval to increase the contract amount is granted;

- (c) The cost overrun is not associated with any change in the scope of the 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, to comply with official or judicial commands or directives issued during contract performance or to ensure 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) Except for the cost overrun, the contract and its objective is within the statutory authority of the Agency and the Agency currently has funds available for payment under the contract;

- (g) An officer or employee of the Agency has presented a written report to the Division within 60 days of the Agency's discovery of the overrun that states the reasons for the cost overrun and demonstrates to the Division's satisfaction that the original contract and the circumstances of the overrun satisfy the conditions stated above; and

- (h) The Agency head or delegate approves in writing the payment of the overrun, or such portion of the overrun amount as the Agency head or delegate determines may be paid consistent with the conditions of this rule. If the Agency head or delegate has signed the contract, or has immediate supervisory responsibility over performance of the contract, that person shall designate an alternate to grant or deny written approval of payment.

- (2) If the payment of the overrun amount approved under subsection (h) of this rule raises the aggregate amount of compensation to a level that requires Attorney General approval under any other provision of OAR chapter 125, division 020, the Agency shall obtain written approval from the Attorney General, as applicable, of the overrun payment's compliance with the conditions of this rule before making any overrun payment.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

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Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-033

**125-020-0550**

**Reinstatement of Expired Contracts**

(1) The Division may approve reinstatement or extension of an expired personal services contract if the following conditions are met:

(a) The Agency demonstrates to the Division, concisely and in writing, that the failure to extend or renew the personal services contract in a timely manner was due to unforeseen or unavoidable conditions;

(b) The written reinstatement and extension is presented to the Division and the Attorney General for approval, as applicable, within 60 days after expiration of the original contract; and

(c) The Agency provides the Division a concise written statement justifying the Contractor's completion of the work after expiration of the contract, there is no change in the Statement of Work, and either:

(A) The reinstatement and extension is exclusively for the purpose of permitting completion of the work or services for no additional compensation; or

(B) When the services are of a continuing or repetitive nature which are compensated at an hourly, daily or similar periodic rate, the reinstatement either:

(i) Does not increase the rate of compensation; or

(ii) Does not increase the rate of compensation so as to exceed the rate of the increase determined by comparing the Portland, Oregon Metropolitan Area Consumer Price Index (all items) published immediately prior to the date the original contract was established with the same Index published immediately prior to the date of the reinstatement and extension.

(2) When a personal services contract is reinstated pursuant to this section, the Agency may compensate the Contractor, at the rate of compensation established in the original contract, for work performed in the interim between the expiration of the original contract and the execution and approval(s) of the extension or amendment.

(3) This rule authorizes only one reinstatement of a personal services contract.

(4) No reinstatement of a personal services contract shall modify the original contract except with respect to the time for performance and any adjustment of compensation authorized by this rule.

(5) If the reinstatement of a personal services contract pursuant to this rule raises the aggregate amount of compensation to a level that requires Attorney General approval under any other provision of OAR chapter 125, division 020, contract approval must be executed before the extension becomes binding and before any services may be performed under the reinstated contract.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-034

**125-020-0600**

**Delegated Authority**

(1) The Department hereby delegates authority to Agencies to enter into:

(a) Client services contracts;

(b) Expert witness contracts;

(c) Standard fee contracts;

(d) contracts with an agency of the State of Oregon or any political subdivision thereof;

(e) contracts up to \$1,000, unless they are with a Contractor who has contracts totaling more than \$2,000 in the immediately preceding 12-month period; and

(f) any other contracts for which the Division's approval authority has been delegated to a specific Agency.

(2) Upon the Agency's written request, the Department may delegate authority to Agencies to enter into personal services contracts which an Agency is required to enter into by law or in a

particular category or within a specified dollar amount without prior Department approval.

(3) Agencies are required to maintain good contracting procedures and follow all applicable rules. Delegated authority does not exempt contracts from the requirements of these rules. The Department may revoke delegated authority by written notice to the Agency.

(4) The contract shall be prepared in accordance with OAR 125-020-0210.

(5) Agencies should maintain copies of letters granting delegated authority. Agencies may contact the Division for information about delegated authority.

(6) Agencies are required to keep an account of actual payments under the contract and will update Division records on a fiscal year basis.

(7) These contracts do not require Division approval; however, they are reported to the Division and included in the annual report to the Legislature.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-017 and 122-20-027

**125-020-0610**

**Exempted Authority**

(1) The Department hereby grants a partial exemption to Agencies that enter into personal services contracts for Client services and Expert witness services.

(a) This partial exemption allows Agencies to enter into these contracts by direct negotiation without Division approval.

(b) The partial exemption does not allow Agencies to enter into contracts over \$25,000 without the approval of the Attorney General for legal sufficiency.

(2) Except as described in OAR 125-020-0300(4), the Department hereby grants a total exemption for interagency and intergovernmental agreements (as defined by OAR 125-022-0050) for personal services contracts. This total exemption allows Agencies to enter into such agreements by direct negotiation without Division or Attorney General approval (see OAR 125-022).

(3) Upon an Agency's written request, the Department may exempt certain personal services contracts or classes of personal services contracts from any requirements of ORS 291.021 upon the following findings:

(a) it is unlikely that such exemption will encourage favoritism in the awarding of personal services contracts or substantially diminish competition for these contracts; and

(b) the awarding of personal services contracts pursuant to the exemption will result in substantial cost savings to the Agency. In making such findings, the Department may consider the type, cost, amount of the contract, number of persons available and any other factors the Department deems appropriate.

(4) Agencies are required to maintain good contracting procedures. The Department may revoke exempted authority by written letter to the Agency.

(5) Agencies shall maintain copies of letters granting exempted authority.

(6) Agencies are required to:

(a) follow all applicable rules ;

(b) prepare the contract;

(c) assign an Agency number to the contract;

(d) obtain required approvals; and

(e) maintain records as required by state laws.

(7) Copies of these contracts are not filed with the Division; however, exempted contract data must be reported to the Division and included in the annual report to the Legislature.

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-018 and 122-20-028

**125-020-0700**

**Reporting Requirements**

(1) The Division maintains a reporting system for Agencies. Agencies shall submit a reporting form to the Division for each contract, until notified by the Division that automation has been achieved. The reporting form shall include the name of Agency, amount to be paid under the contract, the name of the Contractor, the duration of the contract, and its basic purpose. A copy of the reporting form can be found in the **State of Oregon Personal Services Contracting Manual**. For exempted contracts, Agencies may choose to submit compiled data to the Division.

(2) The Division shall submit an annual report to the Legislative Assembly concerning Agency use of personal services contracts. The report, by statute, shall include the name of the Agency, the amount to be paid under contracts, the name(s) of Contractor(s), the duration of contract(s) and the basic purpose of the contract(s). The report shall also include the total dollar figure of all personal services contracts for each fiscal year.

(3) The Division maintains a system for filing copies of personal services contracts and relevant information for public inspection. The filing includes a justification statement and documentation of the selection process for each contract.

(4) The Department keeps on file all personal services contracts and the selection and justification statements for three years beyond each contract's expiration date. All such Division files are destroyed after three years.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 184, 279 & 291

Stats. Implemented: ORS

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-045 and 122-20-065

**DIVISION 21**

**FEEES FOR PUBLIC RECORDS**

**125-021-0005**

**Fees for Public Records**

(1) The Department of Administrative Services may charge fees for supplying public records. All requests for public records must be in writing.

(2) Fees charged recover actual costs of locating, compiling, making available for inspection, preparing copy in paper, audio, microfilm or machine readable format, and delivering public records. All fees assessed must be paid before public records are made available. Estimates for processing requests for public records will be given when requested.

(3) Standard fees:

(a) Making photocopies, \$0.25/page;

(b) Certification of Public Record, \$5.00

Stat. Auth.: ORS Ch. 192.440 & 283.060

Stats. Implemented: ORS

Hist.: GS 8-1989, f. 10-31-89, cert. ef. 11-1-89

**DIVISION 21**

**FEEES FOR PUBLIC RECORDS**

**125-021-0005**

**Fees for Public Records**

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(3) Standard fees:

(a) Making photocopies, \$0.25/page;

(b) Certification of Public Record, \$5.00

Stat. Auth.: ORS Ch. 192.440 & 283.060

Stats. Implemented: ORS

Hist.: GS 8-1989, f. 10-31-89, cert. ef. 11-1-89

**DIVISION 22**

**PERSONAL SERVICES AGREEMENTS WITH STATE AGENCIES AND OTHER GOVERNMENTAL ENTITIES**

**125-022-0050**

**Definitions**

(1) All applicable definitions contained in OAR 125-020-0140 are hereby incorporated by reference.

(2) "Unit of local government" means a county, city, district or other public corporation, commission, authority or entity organized and existing under state statute or city or county charter.

(3) "Interagency agreement" means an agreement between two or more agencies.

(4) "Intergovernmental agreement" means an agreement between an agency or agencies and one or more units of local government of the State of Oregon.

(5) "Interstate agreement" means an agreement between an agency or agencies and one or more public agencies of another state. For purposes of this definition, "public agency" includes any county, city, special district or other public corporation, commission, authority or entity organized and existing under the laws of such other state, or under the city or county charter of any county or city of another state.

(6) "International agreement" means an agreement between an agency or agencies and any nation or public agency of any nation other than the United States.

Stat. Auth.: ORS 184.305, 184.340 & 291.021

Stats. Implemented: ORS Ch. 184, 279 & 291

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95

**125-022-0100**

**Interagency and Intergovernmental Agreements**

(1) Interagency and intergovernmental agreements must comply with the requirements of ORS 190.110.

(2) An interagency and intergovernmental agreement must specify:

(a) The purpose of the agreement;

(b) The term of the agreement, including specific beginning and ending dates, if applicable;

(c) The total cost of the agreement to each agency party, including payment terms, if any;

(d) The methods to be employed to terminate the agreement; and

(e) Any other necessary or proper terms or provisions.

(3) Interagency and intergovernmental agreements must be signed on behalf of each party by an official with appropriate signature authority;

(4) Interagency and intergovernmental agreements need not be reported to or filed with the Department of Administrative Services.

(5) Each agency must maintain records of interagency and intergovernmental agreements in accordance with the agency's records retention schedule as approved by the Secretary of State, Archives Division.

Stat. Auth.: ORS 184.305, 184.340 & 291.021

Stats. Implemented: ORS Ch. 184, 279 & 291

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-012

**125-022-0200**

**Interstate Agreements**

(1) Interstate agreements must comply with the requirements of ORS 190.410 through 190.470.

(2) An interstate agreement must specify:

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- (a) Its duration;
- (b) The organization, composition and nature of any separate legal or administrative entity created to exercise the functions agreed upon;
- (c) The purpose of the agreement;
- (d) The method of financing the joint or cooperative undertaking;
- (e) The total cost of the agreement to each agency party, including payment terms, if any;
- (f) The methods to be employed to terminate the agreement; and
- (g) Any other necessary and proper matters.

(3) Interstate agreements must be submitted to the Attorney General before taking effect, in accordance with ORS 190.430.

(4) Interstate agreements may not relieve an agency of any obligation or responsibility imposed on it by law.

(5) Interstate agreements must be signed on behalf of each party by an official with appropriate signature authority.

(6) Interstate agreements need not be reported or filed with the Department of Administrative Services.

(7) Each agency must maintain records of interstate agreements in accordance with the agency's records retention schedule as approved by the Secretary of State, Archives Division.

Stat. Auth.: ORS 184.305, 184.340 & 291.021

Stats. Implemented: ORS Ch. 184, 279 & 291

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95

**125-022-0300**

**International Agreements**

(1) International agreements must comply with the requirements of ORS 190.480 through 190.490.

(2) An international agreement must specify:

- (a) Its duration;
- (b) The organization, composition and nature of any separate legal administrative entity created to exercise the functions agreed upon;
- (c) The purpose of the agreement;
- (d) The method of financing the joint or cooperative undertaking;
- (e) The total cost of the agreement to each agency party, including payment terms, if any;
- (f) The methods to be employed to terminate the agreement; and
- (g) Any other necessary and proper matters.

(3) International agreements must be submitted to the Attorney General before taking effect, in accordance with ORS 190.490.

(4) International agreements may not relieve an agency of any obligation or responsibility imposed on it by law.

(5) International agreements must be signed on behalf of each party by an official with appropriate signature authority.

(6) International agreements do not require prior approval by the Department of Administrative Services; however, international agreements must be filed with the Department of Administrative Services within 30 days of the effective date of the agreement.

(7) Each agency must maintain records of international agreements in accordance with the agency's records retention schedule as approved by the Secretary of State, Archives Division.

Stat. Auth.: ORS 184.305, 184.340 & 291.021

Stats. Implemented: ORS Ch. 184, 279 & 291

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92 (and corrected 1-31-92); TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-20-014

**DIVISION 23**

**STATE OF OREGON FINANCING AGREEMENTS**

**125-023-0000** [Renumbered to 122-070-0000]

**125-023-0010** [Renumbered to 122-070-0000]

**125-023-0020** [Renumbered to 122-070-0020]

**125-023-0030** [Renumbered to 122-070-0030]

**125-023-0040** [Renumbered to 122-070-0040]

**125-023-0050** [Renumbered to 122-070-0050]

**123-023-0060** [Renumbered to 122-070-0060]

**125-023-0070** [Renumbered to 122-070-0070]

**125-023-0080** [Renumbered to 122-070-0080]

**DIVISION 30**

**STATE PURCHASING**

**125-030-0000**

**Definitions**

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

(1) "Agency" means the Oregon Department of Administrative Services. Depending on the circumstances, "Agency" may also mean:

(a) State agencies that have independent statutory authority, or delegated authority under ORS 279.727, to perform their own public contracting;

(b) Those public agencies (as defined in ORS 279.011(6)) that have contracted with the Department to serve as their public contract review authority; and

(c) Any other public agency whose local contract review board has adopted some or all of the rules in divisions 030 and 0300-0360 of this chapter as public contracting rules of the agency.

(2) "Bid" has the meaning given that term in OAR 137-030-0000(3).

(3) "Bidder" means a person or company offering to supply goods or services to the state in response to an invitation to bid or other competitive bidding method where price or cost, delivery and/or project completion will be the predominant award criteria.

(4) "Biodegradable Product" is a product that will decompose when exposed to bacteria, light or other elements into soil material or other nontoxic substances.

(5) "Cash" means U.S. currency, cashier's checks, certified checks, traveler's checks or money orders made payable to the State of Oregon.

(6) "Competitive Bidding" means a price-based selection process, as provided in ORS 279.005 through ORS 279.111, that involves an advertised public notice, issuance of a written solicitation document inviting interested persons or firms to submit written, signed, and sealed bids, that are received by the agency and publicly opened at the designated time and place, and a contract awarded (if one is awarded) to the lowest responsive, responsible bidder.

(7) "Competitive Quotes" means the solicitation by the agency of offers from competing bidders, in accordance with the provisions of OAR 125-0310-0012. The solicitation may be accomplished by advertisement and/or by the agency initiating a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.

(8) "Construction Manager/General Contractor" means a method of public improvement contracting that uses a Construction Manager to perform value engineering, act as General Contractor, coordinate and manage the building process, provide general contractor expertise, establish a guaranteed maximum price for construction and be a member of the construction team with the agency, architect/ engineers and other consultants as the agency and/or the project may require.

(9) "Contract" means the written agreement between the agency and the contractor describing the work to be done and the obligations between the parties.

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(10) "Contract Document" includes, but is not limited to, the solicitation document, the accepted bid or proposal, a signed purchase order, personal services contract, price agreement, sales agreement, service agreement or other contract document. For public improvements, "Contract Document" includes the solicitation document including any bid addenda, instructions to bidders, general conditions, special conditions, if any, accepted bid or proposal, the contract and amendments thereto, if any, performance bond, certificates of insurance, plans, specifications, approved shop drawings, and approved change orders.

(11) "Contract Release Order" means the document authorizing a purchase on an existing requirements contract.

(12) "Cost" includes not only the product price but also other items of expense such as the actual or reasonably estimated costs related to quality or conversion, and may include such actual or estimated items as shipping, delivery, setup, installation and training.

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

(14) "Delegated Authority" means a process whereby the Division grants authority to a state agency to exceed the purchasing authority otherwise allowed, e.g., in an amount exceeding that stated in OAR 125-0310-0012, by way of an Inter-agency Agreement signed by the Agency and the Division Administrator. See OAR 125-030-0001.

(15) "Design/Build" means a method of public contracting where the responsibility for project team participation with the agency, project design, value engineering, management of the design and construction process, general contractor expertise, a guaranteed maximum price and construction is vested in a single entity, through one contract with the agency.

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

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

(18) "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, owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(19) "Disabled Individual" means an individual who, because of the nature of the individual's disabilities, is not able to participate fully in competitive employment and for whom specialized employment opportunities must be provided.

(20) "Division" means the Transportation, Purchasing and Print Services Division of the Department of Administrative Services.

(21) "Emergency" means not reasonably foreseeable circumstances that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that requires prompt execution of a contract to remedy the condition (ORS 279.011(4)).

(22) "Emerging Small Business" (ESB) has the meaning provided in ORS 200.005(3) and (4).

(23) "Exemption" is a formal process under ORS 279.015 or 279.017, and OAR chapter 125, division 0300, which allows a public contract to be entered into through use of an alternative procurement method instead of through competitive bidding. An "exemption" may be for a specific contract or solicitation, or it may be for a class or category of contracts. The rules in divisions 0300 - 0360 of this chapter are intended to inform the public of the Department's authority regarding the various exemptions and the areas where class exemptions have been approved for use by the Department and, depending on the circumstances, for use by other agencies, as defined in OAR 125-030-0000(1).

(24) "Fair Market Price" as it relates to Qualified Rehabilitation Facilities is defined in OAR 125-030-0015.

(25) "Guaranteed Maximum Price" means the price provided to the agency by the contractor that includes all costs of the work, as defined in the Contract Documents, excepting material changes

in the scope of work. This pricing mechanism is most often used in Construction Manager/General Contractor or Design/Build contracts where the guaranteed maximum price is provided early in the design to assist the agency in determining whether or not the project scope is within the agency's budget, allowing for design changes to be made at the preliminary design phase rather than after significant design work has been completed.

(26) "Invitation to Bid" means the solicitation of competitive, written, signed and sealed bids in which specification, price and delivery (or project completion) are the predominant award criteria.

(27) "Life Cycle Costing" means determining the cost of a product for its estimated useful life, including its disposal.

(28) "Lowest Responsible Bidder" has that meaning given in ORS 279.029.

(29) "Minority Business Enterprise" (MBE) means a small business concern which is at least 51 percent owned by one or more minorities, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minority individual(s) whose management and daily business operations are controlled by one or more of such individual(s) and which is certified as a Minority Business Enterprise by the Office of the Advocate for Minority, Women and Emerging Small Business at the time of a bid or proposal opening. (See ORS 200.005.)

(30) "Minority Individual" has the meaning given that term in ORS 200.005(7).

(31) "Nonresident Bidder" has that meaning given in ORS 279.029.

(32) "Personal property" has that meaning given in ORS 307.020.

(33) "Personal Services Contracts" are as defined in OAR chapter 125, division 20. "Services", as used in divisions 30 and 300-360 of this chapter, do not include personal services.

(34) "Political Subdivision" means "unit of local government" as defined in ORS 190.003.

(35) "Prevailing Wage Rate" has the meaning provided for "Prevailing rate of wage" in ORS 279.348(1).

(36) "Price Agreement" means the same as "Requirements Contract" and is defined in that section.

(37) "Public Contract" has that meaning given in ORS 279.011(5).

(38) "Public Contract Review Authority" means a local contract review board created pursuant to ORS 279.055 or the Department of Administrative Services if a local public agency has contracted with the Department to serve as its public contract review authority as provided in OAR 125-010-0005. For state agencies, the review authority is the Director of the Department of Administrative Services.

(39) "Public Improvement" has that meaning given in ORS 279.011(7).

(40) "Public Works", as relates to prevailing wage rates, has that meaning given in ORS 279.348(3).

(41) "Purchase" includes, but is not limited to, the acquisition of personal property, public improvements, and services, through buying for cash or a cash equivalent, exchanging for other property or services, or leasing or renting.

(42) "Qualified Rehabilitation Facility (QRF)" means a nonprofit community rehabilitation program or a vocational service provider whose purpose is to assist and encourage disabled individuals and which:

(a) During the fiscal year employs disabled individuals for not less than 75% of the hours of direct labor required for the manufacture or provision of its products or services (ORS 279.835 (4)(c));

(b) Must be either a community rehabilitation program certified through the Oregon Vocational Rehabilitation Division or a vocational service provider certified through the Oregon Mental Health Division of the Department of Human Resources;

(c) Meets the definition given in ORS 279.835 (4); and

(d) Has been, or is capable of being, certified by the Department as a QRF by filing an application request.

(43) "Reciprocal Preference" means a preference applied against the bid of a nonresident bidder equivalent to the percent

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preference or other competitive advantage provided to the nonresident bidder by its home state.

(44) "Recyclable Products" means a product composed of materials or groups of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

(45) "Recycled Material" has that meaning given in ORS 279.545(3).

(46) "Recycled Paper" has that meaning given in ORS 279.545(4).

(47) "Recycled Product" has that meaning given in ORS 279.545(5).

(48) "Request for Proposal" means the solicitation of written, competitive proposals, or offers, to be used as a basis for making an acquisition, or entering into a contract when specification and price will not necessarily be the predominant award criteria.

(49) "Requirements Contract" means an agreement in which the contractor agrees to supply some or all of an agency's requirements that arise for an item or items during a specified time period.

(50) "Resident Bidder" has that meaning given in ORS 279.029(6)(b).

(51) "Responsible Bidder" has that meaning given in OAR 125-030-0003. Depending upon the requirements of the solicitation, "Responsible Bidder" may also mean one who, in the determination of the Advocate for Minority, Women and Emerging Small Businesses, has undertaken both a policy and practice of actively pursuing participation by minority and women businesses in all bids, both public and private, submitted by such bidder, as defined in ORS 200.005(11).

(52) "Responsive Bid" has that meaning given in OAR 125-030-0004.

(53) "Retainage" has that meaning given in ORS 279.410, and that is in the amount(s) prescribed by ORS 279.420, 279.435 and OAR 137-040-0025(1).

(54) "Service" means work performed to meet an agency's need, especially work that is not connected with manufacturing a product. (Also see definitions in this rule for "Personal Services Contracts" and "Trade Services".)

(55) "Service Contract" means, in contrast to a personal services contract, a contract for labor, labor and materials, or trade related services, where the selection method is primarily based on price. Examples of service contracts are listed in OAR chapter 125 division 020.

(56) "Small Business" means a business which is independently owned and operated and which is not dominant in its field of operations. Small business size is determined by computing annual sales and receipts of the business and any affiliates. A maximum number of employees and the maximum dollar volume of business that a business concern may do varies from industry to industry as follows to reflect the different characteristics of such industries:

(a) Construction - a business may be considered a "small business" if its annual gross receipts for the three (3) preceding fiscal years do not exceed \$7.5 million;

(b) Manufacturing - a business is considered a "small business" if its total number of employees is less than 100 persons; or

(c) Service/Research and Development - a business is a "small business" if its average annual gross receipts for three (3) preceding fiscal years do not exceed \$500,000.

(57) "Small Disadvantaged Business" means a small business as defined above, that is also at least 51 percent owned by minority individual(s) or women, and whose daily management and control is vested in such individual(s), and is certified as a "Small Disadvantaged Business" by the Office of the Advocate for Minority, Women and Emerging Small Business.

(58) "Telecommunications Services" means the lease, rental or purchase of the network transmission facilities, services, or products, or central office services from the local telephone company or interexchange carrier, needed to communicate voice, data, text, images or video over a distance using electrical, electronic, satellite or lightwave transmission media. It may or

may not include acquisition of telephone network switching, PABX/ PBX, or customer premise station equipment, or purchase of customer premise wire or cable.

(59) "Trade Services" means a trade related service where selection is primarily based on price. Examples of trade services are found in OAR chapter 125 division 020. (Also see definitions in this rule for "Personal Services Contracts", "Service" and "Service Contract".)

(60) "Women's Business Enterprise" (WBE) means a small business concern that is at least 51 percent owned by one or more women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more women, whose management and daily business operations are controlled by one or more of such individual(s) and which is certified as a Women's Business Enterprise by the Office of the Advocate for Minority, Women and Emerging Small Business at the time of a bid or proposal opening. (See ORS 200.005(6).)

Stat. Auth.: ORS 279.845 & 283.060

Stats. Implemented: ORS 190.003, 200.005, 279.005 to 279.111, 279.348, 279.410, 279.420, 279.435, 279.545(3), (4)&(5), 279.550, 279.555, 279.710, 279.712, 279.717, 279.723, 279.725, 279.727, 279.835(2) & (4), 279.845, 283.140, 291.021, 291.038 & 307.020

Hist.: GS 2-1981(Temp), f. 7-30-81, ef. 8-1-81; GS 6-1981, f. & ef. 10-15-81; GS 10-1992, f. & cert. ef. 4-27-92; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### **125-030-0001**

#### **Authority of State Purchasing**

(1) The Department of Administrative Services, Transportation, Purchasing and Print Services Division, shall purchase or otherwise provide for the acquisition or furnishing of all supplies, materials, equipment and services for state agencies defined in ORS 279.710(2), except as otherwise provided in ORS 279.712, any other state law, or a Department administrative rule.

(2) Except as otherwise provided by law, the Department shall direct all purchasing of state agencies, including time, manner, authentication, requisition form, and written approval by the Department, pursuant to ORS 279.723, 279.725, and 279.744.

(3) The Department may authorize any state agency to purchase directly, pursuant to ORS 279.727, provided the agency follows the competitive procurement requirements of ORS 279.005 to 279.111. Such authorization is referred to as "delegated purchasing authority" and may take one of the following forms:

(a) Written policy issued by the Division;

(b) An Interagency Agreement, signed by the Division Administrator and the agency; or

(c) Administrative Rule, such as OAR 125-0310-0012.

NOTE: The authority of the Department of Administrative Services to adopt rules regarding the purchase or acquisition of goods and services for state agencies does not extend to local public agencies of the State of Oregon, unless the local public agency has contracted with the Department under OAR 125-010-0005 to provide contract review board services. Therefore, Oregon Administrative Rules chapter 125, divisions 030 and 0300 - 0360, are not binding upon local public agencies. However, local public agencies and contract review boards may find it helpful to use these rules, together with the Attorney General's Model Public Contract Rules, as the basis for crafting and promulgating local public contract rules.

If a local public agency chooses to use OAR chapter 125, divisions 030 and 0300 - 0360 as a starting point for developing its own local public contracting policies, the agency should first review each rule carefully for applicability to its own purchasing activities, modifying the existing language to suit its particular needs. For the rules in divisions 0300 - 0360, the local public agency should develop findings as required by ORS 279.015(2)(a) and (b) to address the issues of substantial cost savings, nonfavoritism and insubstantial diminishment of competition. Finally, the local public agency should present the draft rule and findings to its local contract review board for approval of the rule.

Stat. Auth.: ORS

Stats. Implemented: ORS 279.712

Hist.: TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### **125-030-0002**

#### **Model Public Contracting Rules**



As filed with the Secretary of State, the Department has adopted the Attorney General's Model Public Contracting Rules dated January 1995, to govern procedures to be used for all types of public contracts including public improvements contracts awarded and entered into by (i) the Department and (ii) agencies that have the Department serve as their public contract review authority. Every state agency that enters into direct purchases or contracts pursuant to authority delegated under ORS 279.727 shall be governed by the **Attorney General's Model Public Contracting Rules**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS 283.060

Stats. Implemented: ORS 279.049

Hist.: GS 4-1984, f. & ef. 12-5-84; GS 18-1990(Temp), f. & cert. ef. 10-16-90; GS 1-1991, f. 1-15-91, cert. ef. 1-16-91; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### **125-030-0003**

#### **Responsible Bidders; Responsibility Investigation**

(1) A responsible bidder is one who:

(a) Has adequate financial resources to perform the contract, or the ability to obtain such resources. The Department shall require acceptable evidence of the bidder's ability to provide or obtain the required financial resources. Acceptable evidence normally consists of, but is not limited to, current and recent

(i) Balance sheets;

(ii) Income statements;

(iii) Cash flow statements; and/or

(iv) A performance bond from an acceptable surety in an amount equal to the bid or proposal price. Such evidence may also include a commitment or specific arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, or other resources:

(b) Has the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and public business commitments;

(c) Has a satisfactory performance record. A bidder who is, or recently has been, seriously deficient in contract performance shall be presumed to be nonresponsible, unless the Department determines that the circumstances were properly beyond the contractor's control or that the contractor has taken appropriate corrective action. Record of failure to perform acceptably is strong evidence of nonresponsibility. The Department shall consider the number of contracts involved and the extent of the deficiency of each in making this evaluation. In addition, the Department may consider whether the bidder's performance history demonstrates responsibility as defined in ORS 200.005(11) and 200.045(3);

(d) Has key personnel available of sufficient experience, as determined by the contracting agency, to perform the contract;

(e) Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain these skills and abilities, as required to satisfactorily perform the contract. These may include, as appropriate, such elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the bidder and its proposed subcontractor(s);

(f) Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and

(g) Is otherwise qualified and eligible to receive award under applicable laws and regulations.

(2) The Department has the right, prior to awarding any public contract, to make such investigation as is necessary to determine whether a bidder is responsible. This investigation may include, but is not limited to:

(a) An inquiry into the responsibility of the bidder's proposed subcontractors and suppliers; and

(b) Requiring a bidder to demonstrate its financial ability to perform the contract, as provided in subsection (1)(a) of this rule. In exercising this right, the Department shall notify the apparent

successful bidder in writing to submit such documentation as the Department deems necessary to complete a thorough evaluation of the bidder's financial ability; and

(c) By submitting a bid, a bidder authorizes the Department to request any credit report information that the Department deems necessary to investigate and evaluate whether a bidder is sufficiently financially responsible to perform the contract(s).

(3) If a bidder fails to promptly supply, or have supplied, information requested by the Department during its responsibility investigation, such failure shall be grounds for a finding of nonresponsibility.

(4) A responsible proposer is one who has the attributes, qualities or capabilities of a responsible bidder as set forth in subsections (1)(a) through (g) of this rule. The Department has the right, as set forth in section (2) of this rule, to make such investigations as necessary to determine whether a proposer is responsible.

(5) Only bids and proposals from responsible bidders or proposers, as defined in this rule, shall be eligible for contract award. Bids or proposals from nonresponsible bidders shall be rejected as provided in OAR 137-30-100.

Stat. Auth.: ORS 279.035, 279.037 & 283.060

Stats. Implemented: ORS 279.029, 279.035

Hist.: GS 18-1992, f. & cert. ef. 10-5-92; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### **125-030-0004**

#### **Responsive and Nonresponsive Bids or Proposals; Acceptance and Rejection**

(1) A "responsive bid or proposal" is one which complies in all material aspects with an Invitation to Bid or Request for Proposals (hereafter referred to as ITB and RFP, respectively) and with all prescribed public bidding procedures and requirements.

(2) A "nonresponsive bid or proposal" is, except in the case of minor informalities as provided in OAR 137-30-075(2), one which:

(a) Omits, or is unclear as to, the price; or price cannot be determined in the bid or proposal documents;

(b) Offers goods or services of a lesser quality or quantity than requested in the ITB or RFP;

(c) Requires a delivery date different from that required in the ITB or RFP;

(d) Takes exception to the terms and conditions of the ITB or RFP;

(e) Is conditional upon the public contracting agency's acceptance of terms and conditions different from those contained in the ITB or RFP; or

(f) Contains a deviation which, if the bid or proposal were accepted, would give the bidder or proposer a substantial advantage or benefit not shared by other bidders or proposers to the ITB or RFP.

(3) The Department shall accept, and consider for award, only those bids or proposals which are responsive as defined in this rule. Nonresponsive bids or proposals shall be rejected, as provided in OAR 137-30-100.

Stat. Auth.: ORS 279.035, 279.037 & 283.060

Stats. Implemented: ORS 279.029, 279.035

Hist.: GS 18-1992, f. & cert. ef. 10-5-92; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### **125-030-0005**

#### **Bidder Qualification for Public Contracts**

(1) The prequalification procedures described herein apply to public improvement projects. The Department may require construction contractors to prequalify prior to bidding on public contracts for public improvements as defined in ORS 279.011 (7), when such public contracts are competitively bid in accordance with ORS 279.015 (1). When prequalification is required, the Department will notify prospective bidders of the prequalification requirement in accordance with the following procedure:

(a) Every notice that prequalification is required will be advertised. The advertisement will be published a minimum of one time in at least one newspaper of general circulation in the

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area where the contract is to be performed, and in as many additional issues or publications, if any, as the Department may deem necessary. Additionally, all such notices shall contain:

(A) A general description of the public improvement project(s), including target completion date(s) and the scope of the construction services desired;

(B) The location where interested persons and firms may obtain prequalification applications, information about the prequalification criteria and other related documents, if any, and the date and time by which interested parties may obtain them;

(C) The date and time by which prequalification applications must be filed, generally a reasonable time prior to issuing the bid documents, and the location at which they must be filed; and

(D) The name, title, agency name and address of the person designated to receive the prequalification application.

(b) Notice of the prequalification requirement and how to obtain applications, including information about the prequalification criteria and any related documents, may also be mailed or otherwise furnished to a sufficient number of prospective construction contractors as the department deems necessary to obtain adequate competition. Such notices will contain the information set forth under subsection (1)(a) of this rule and may contain other related information.

(2) Each prequalification application shall be in writing on a standard form as prescribed by the Department in ORS 279.039 and 279.041.

(3) The Department will, within 30 days of receiving prequalification applications submitted in accordance with sections (1) and (2) of this rule, notify each applicant whether the applicant is qualified, the nature and type of contracts on which the applicant is qualified to bid and the time period for which the prequalification is valid.

(4) If the Department determines that the applicant is not qualified, or that the prequalified status of a person or firm should be revised, revoked, or suspended for a period of time, notice shall be provided as required by ORS 279.039(2), 279.041 and OAR 137-30-110(5), as appropriate.

(5) The criteria used to evaluate prequalification applications shall be established and weighted prior to the advertised notice of required prequalification. Such criteria may include but need not be limited to:

(a) The applicant's financial resources, including:

(A) Bonding capacity;

(B) Solvency; and

(C) Past payment history with employees, suppliers and subcontractors;

(b) The applicant's equipment and technology available to perform the contract, including:

(A) Whether the applicant has or can reasonably obtain through subcontractors all licenses and registrations necessary for use and operation of the equipment or technology; and

(B) The applicant's safety programs and safety records, as evidenced by the contractor's experience modifier issued by the Department of Insurance and Finance, Worker's Compensation Division;

(c) The applicant's key personnel available to perform the contract, including:

(A) The specific capabilities of the applicant and its key personnel as demonstrated by work on past projects which are comparable in size, nature, and technical and managerial complexity to the public improvement project(s) and the scope of construction services desired by the Department;

(B) The identity and experience of the key personnel to be assigned to the public improvement project(s);

(C) The applicant's general approach to the public improvement project, citing planning, phasing and scheduling techniques, generally, and, to the extent possible, particularly as applied to the public improvement project; and

(D) The applicant's experience and record in using emerging small business enterprise requirements and/or using minority and women business enterprises as defined in ORS 200.005;

(d) The applicant's performance history on other contracts, including:

(A) Whether the applicant has breached two or more contractual obligations to public and private contracting agencies;

(B) The applicant's experience with bilateral team-building (partnering) as a dispute resolution method for completing public improvement projects within budget, on schedule, and in accordance with plans and specifications; and

(C) References from owners, architects and engineers for whom, or with whom, the applicant has worked in the past.

(6) The Department shall have the sole discretion of assigning point values to the prequalification evaluation criteria for each public improvement project for which prequalification is deemed appropriate. Unless assigned at the time of advertisement, the criteria used for any particular public improvement project shall have equal weight and value.

(7) The evaluation team shall include participation by a disinterested construction industry representative.

Stat. Auth.: ORS Ch. 181, 279.039(1), 283.060, Ch. 351 & 358

Stats. Implemented: ORS 279.039, 279.041

Hist.: GS 2-1981(Temp), f. 7-30-81, ef. 8-1-81; GS 6-1981, f. & ef. 10-15-81;

GS 4-1992(Temp), f. 2-27-92, cert. ef. 2-28-92; GS 16-1992, f. 8-6-92, cert. ef.

8-7-92; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-030-0009**

**Pre-Bid and Pre-Proposal Conferences**

(1) In accordance with OAR 137-030-0040, pre-bid or pre-proposal conferences may be scheduled. Each pre-bid and pre-proposal conference shall be described in the corresponding solicitation document as "voluntary" or "mandatory". A pre-bid or pre-proposal conference shall be construed as "voluntary", or optional, for vendors to attend, unless otherwise stated as "mandatory" in the solicitation document (or addendum thereto). If a conference is "mandatory", it shall be required for a bidder or proposer to attend in order to submit a bid or proposal, for the corresponding contract.

(2) Reasons for designating a pre-bid or pre-proposal conference as "mandatory" include, but are not limited to, a determination that only by attending the conference will a bidder or proposer obtain information relating to the solicitation, of a nature which cannot practicably be obtained by written means, and which is needed in order to submit a responsive bid or proposal.

(3) The attendee at a "mandatory" pre-bid or pre-proposal conference, if other than the bidder or proposer, may be required to present written authorization to represent the bidder or proposer at the pre-bid or pre-proposal conference. Such individual(s) must be:

(a) An authorized employee or officer of a bidder or proposer that would be the primary contractor or equal partner upon award of the contract; or

(b) An agent of the bidder or proposer authorized to represent that bidder or proposer at the pre-bid or pre-proposal conference, if such bidder or proposer would be the primary contractor or equal partner upon award of the contract.

Stat. Auth.: ORS 279.035 & 283.060

Stats. Implemented: ORS 279.717

Hist.: GS 1-1993, f. & cert. ef. 3-12-93; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-030-0015**

**Purchasing Policies Governing the Acquisition of Goods and Services from Qualified Rehabilitation Facilities**

(1) As used in this rule:

(a) "Agency" means a public agency, as defined in ORS 279.011(6) procuring a contract under the Products of Disabled Individuals Law, ORS 279.835 through 279.855;

(b) "Price" means the Fair Market Price as determined in accordance with the rules in this section.

(2) It is the policy of the Department to assist Qualified Rehabilitation Facilities, (hereinafter referred to as QRF's) as defined in ORS 279.835(4), by administering a program to identify contractual opportunities in the public sector, and to assist and encourage agencies to enter into contractual relationships with QRF's for the provision of products and services.

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(3) Any nonprofit activity center or rehabilitation facility which seeks certification to participate in this program shall submit an application with the Department on forms prescribed by the Department. The Department will take action on the application within thirty (30) days after receipt.

(4) The Transportation, Purchasing and Print Services Division (hereinafter referred to as "Division") will survey all certified QRF's to determine the price of all QRF products manufactured and services offered for sale to agencies. Based upon this survey, the Division will establish and annually publish a directory of sources, or potential sources, of products or services provided by certified QRF's which the Division determines to be suitable for procurement by agencies. The Division shall annually distribute this directory to all agencies.

(5) Pursuant to ORS 279.845(1)(a), the Division shall determine the fair market price of products manufactured and services offered for sale to agencies that the Division determines are suitable for procurement by agencies.

(6) Determination of Fair Market Price. The Fair Market Price (hereinafter referred to as Price) shall be a reasonable price which shall recover for the QRF the cost of raw materials, labor, overhead, delivery costs and an amount held in reserve for inventory and equipment replacement. In determining the Price of products or services offered for sale, the Division may consider the following factors:

(a) Prices of similar products or services purchased in comparable quantities by federal agencies under the authorized federal program (Javits-Wagner-O'Day Act);

(b) Prices of products or services of similar specifications and quantities previously purchased from a responsible in-state contractor engaged in the business of selling similar products or services, making due allowance for general inflationary or deflationary trends;

(c) Amounts which private businesses pay for similar products or services in similar quantities of comparable scope and specifications if purchasing from a reputable corporation engaged in the business of selling similar products or services; and

(d) Actual QRF costs of manufacturing or providing products or services, including labor to perform to specifications, legal requirements to pay equitable wages to persons with disabilities, and usual, customary and reasonable costs of manufacturing, marketing and distribution.

(7) Initial Price Determination Procedures:

(a) For products or services which the Division determines may be suitable for purchase by agencies, an agency or the Division shall provide the QRF with a solicitation document and an annotated bid tabulation covering the current contract period or most recent solicitation. Additionally, an agency or the Division shall provide the QRF with the new scope of work and specifications, if any, covering the initial period the QRF would provide the product or service;

(b) The QRF shall submit its proposed price to the agency and Division, utilizing costing methods and forms prescribed by the agency or Division. The QRF must make full disclosure of known costs and make a good faith projection of anticipated future product or service costs. The disclosure shall include, but need not be limited to, the cost of the following items: labor, fringe benefits, materials and/or supplies, equipment, maintenance, overhead, delivery, administration and other factors used in the QRF's price determination. The Division may require the QRF to describe and quantify to the extent possible, the economic and social benefit to the State of Oregon of performing the contract under the Products of the Disabled Law. When quantifying economic and social benefits, the QRF shall consider, but need not be limited to, the following: the number of workers employed under the contract, and the volume and scope of the work required;

(c) Unless otherwise allowed by the Division, prices for products and services shall include all costs associated with the delivery of the product or service;

(d) The Division shall validate and verify the QRF's costing and economic and social benefits calculations;

(e) At the Division Administrator's request, an ad hoc Cost

and Benefits task force may be convened to review QRF costing and economic and social benefit calculations, and to recommend a Price for the product or service provided. Each task force shall include at least one representative from each of the following: private sector, state agency, the Division, the QRF, and the Advisory Council for Purchases from Qualified Rehabilitation Facilities. Members of the task force shall be free of vested interest in the contract under review.

(f) If a recommended price or specification change cannot be negotiated which would ensure the recovery of the QRF's costs, the QRF may elect to discontinue consideration of the contract, or to accept the final price set by the Division;

(g) Prior to contract implementation, the Division shall transmit the notice of the approved Price to the agency and the QRF;

(h) During both initial price determinations and subsequent price reviews, the Division, the agency, and the QRF shall keep in mind the purpose of the law: to encourage and assist disabled individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for disabled individuals.

(8) Expiration or Revision of Prices. The following procedure shall be used in developing price revisions or subsequent prices upon contract expiration. Should the price for a product or service need adjusting, the adjustment shall be based upon changes in the scope of work, the prevailing wage, significant changes in market pricing as verified by subsections (6)(a), (6)(b), (6)(c) and (7)(e) of this rule, and/or QRF cost factors. The QRF shall submit to the Division and the agency a request for a price change showing a breakdown of cost changes on forms provided by the Division with appropriate documentation, as requested by the Division or agency.

(a) The price established by the Division for a product or service on the Division's QRF Procurement List shall remain in effect until the Division approves a new price. In redetermining price, the Division may use the same factors as are noted in subsections (6)(a), (6)(b), (6)(c) and (7)(e) of this rule. At the discretion of the Division, the QRF shall submit updated social benefit documentation. At the Division Administrator's request, an ad hoc Cost and Benefits task force may be convened to review QRF costing and economic and social benefit calculations, and to recommend a price for the product or service provided. Each task force shall include at least one representative from each of the following: private sector, state agency, the Division, the QRF, and the Advisory Council for Purchases from Qualified Rehabilitation Facilities. Members of the task force shall be free of vested interest in the contract under review. The new price shall take into consideration:

(A) Any changes in the scope of work or in tasks required by the agency;

(B) Changes resulting from a new prevailing wage applicable to the service or product; or

(C) Any changes in other elements of QRF costs, which may include such factors as labor, fringe benefits, materials, supplies, equipment, maintenance, overhead and delivery.

(b) A price established by the Division shall apply for a period of one year unless otherwise determined in the contract. Until a new price is approved by the Division, the QRF shall continue to provide the service or product in accordance with the scope of work which was the basis for establishing the existing price. The agency shall not pay or agree to pay the QRF any price other than the price approved by the Division.

(9) Actions Required by the Procuring Agency or Division. The following information reporting is required of the agency in order to assist the Division in price determination:

(a) In the event that the agency or Division wishes to change specifications from the most recent solicitation for the product or service, the agency or Division shall notify the QRF in writing of specific changes in the scope of work or other conditions which will be required during the new contract period;

(b) Upon receipt of notice of change, the QRF shall submit a price recommendation and price change request to the agency and Division for review and approval.

(10) QRF's may purchase equipment, materials, supplies and services through the Division in the same manner as state agencies, as provided in ORS 279.710 to 279.746 and 279.820 to 279.824. However, neither the Division nor the State of Oregon shall be liable for any debt or obligation entered into on behalf of a QRF, and likewise shall not be liable for any debt or obligation incurred directly by a QRF.

(11) The Division will cooperate with agencies and provide relevant information, guidance and assistance necessary to ensure, to the fullest extent possible, maximum utilization of QRF products and services.

Stat. Auth.: ORS 279.845 & 283.060

Stats. Implemented: ORS 279.835, 279.840, 279.845 & 279.850

Hist.: GS 2-1981(Temp), f. 7-30-81, ef. 8-1-81; GS 6-1981, f. & ef. 10-15-81;

GS 10-1992, f. & cert. ef. 4-27-92; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### 125-030-0028

#### Recycled Materials and Products Policy

(1) The Division promotes the procurement of products made from recycled materials in accordance with ORS 279.550. OAR 125-030-0028 and 125-030-0029 apply to all state agencies, including the Legislative Assembly, the courts and their officers and committees, and the constitutional state officers, pursuant to ORS 279.545(7) and 279.555.

(2) The Division will make recycled products and materials available to state agencies whenever they can be obtained.

(3) Incentives, pursuant to ORS 279.555(1)(b), for recycled materials shall be applied whenever economically feasible.

(4) A preference of 5% shall be applied for materials and supplies manufactured from recycled materials, as provided in OAR 125-030-0029, with the exception of recycled paper and paper products, which receive a higher preference percentage stated in OAR 125-030-0030(2).

(5) The bidder or proposer shall indicate in its bid or proposal, the materials it considers relevant to the 5% preference. The 5% preference will only apply to the value of that portion of a bid or proposal that offers products containing verifiable recycled contents.

Stat. Auth.: ORS 283.060, 279.560 & 279.570

Stats. Implemented: ORS 279.550, 279.555, 279.560, 279.565, 279.570 & 279.630

Hist.: GS 2-1993(Temp), f. & cert. ef. 4-12-93; GS 4-1993, f. & cert. ef. 12-13-93; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### 125-030-0029

#### Recycled Materials Preference

(1) Bidders and proposers, in their bids and proposals, shall certify:

(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, regardless whether the products meet the percentage of recycled material specified for recycled products in ORS 279.545. Bidders and proposers may certify a zero percent recycled product content. This certification applies to public improvement products and all other procurements, except those which are subject to the preference provisions of ORS 279.580 to 279.650.

(2) To be eligible for a preference under ORS 279.570:

(a) The bidder or proposer must indicate which materials and supplies contain verifiable recycled content; and

(b) Such products must meet the requirements of ORS 279.570(a) through (d).

(3) A preference under ORS 279.570 will only be applied to that portion of a bid or proposal which offers products containing verifiable recycled content.

(4) Bids that contain false information about:

(a) The percentage of recycled product, post-consumer and secondary waste content; and

(b) Verifiable recycled content shall be rejected as nonresponsive, in accordance with OAR 125-030-0004.

(5) Contracts awarded as a result of a preference under ORS 279.570 are subject to such investigation, including but not limited to, audits, plant visitations, examination of invoices and

other documents, etc., as the Division deems necessary to confirm that the products supplied therein contain the percentages of recycled product, post-consumer and secondary waste stated in the bid or proposal.

(6) Failure to provide products containing the percentages of recycled product, post-consumer and secondary waste stated in the bid may result in:

(a) The contractor reimbursing the state for the portion of the contract price which is attributable to the preference applied under ORS 279.570; and

(b) Contract termination; or

(c) Both (a) and (b) of this section, or such other remedies the Division deems appropriate.

Stat. Auth.: ORS 283.060, 279.560 & 279.570

Stats. Implemented: ORS 279.545, 279.570

Hist.: GS 2-1993(Temp), f. & cert. ef. 4-12-93; GS 4-1993, f. & cert. ef. 12-13-93; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### 125-030-0030

#### Recycled Paper and Paper Products Policy

(1) The Division promotes the use of recycled paper and paper products, pursuant to ORS 279.565. This rule applies to all state agencies including the Legislative Assembly, the courts and their officers and committees, and the constitutional state officers, pursuant to ORS 279.545(7) and 279.555. Only those activities or facilities exempted by the Governor under ORS 279.560(3) are exempt from this rule.

(2) Paper and paper products which contain significant quantities of recycled materials will be made available to state agencies in all grades where it can be obtained. Purchase of recycled paper and paper products is mandatory when the cost of the such recycled paper or paper products is up to five percent (5%) higher than the cost of the same quality paper or paper products containing little or no recycled paper. The Department shall give a preference of up to twelve percent (12%), in accordance with ORS 279.621(2), to suppliers of recycled paper and paper products, over the lowest price of nonrecycled paper and paper products if the fitness and quality of the recycled content paper meet specification requirements and the type of recycled content is consistent with the type of virgin material.

(3) Except as provided in this rule, recycled paper and paper products, regardless of cost, will be available to state agencies either on a recycled paper requirements contract or by special bid. 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 requirements contracts for recycled paper or by indicating on their purchase request the percentage of recycled incentive which is economically feasible for them.

Stat. Auth.: ORS Ch. 181, 279, 283, 351 & 358

Stats. Implemented: ORS 279.545, 279.565, 279.570, 279.729, 279.621 & 279.630

Hist.: GS 2-1981(Temp), f. 7-30-81, ef. 8-1-81; GS 6-1981, f. & ef. 10-15-81; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### 125-030-0033

#### Recyclable and Biodegradable Purchasing Policies – Food Service and Food Packaging

(1) The Department promotes the use of recyclable or biodegradable products for food service and packaging.

(2) This rule applies to all state agencies including the Legislative Assembly, the courts and their officers and committees, and the constitutional state officers, pursuant to ORS 279.545(7) and 279.555.

(3) The five percent (5%) preference in ORS 279.570(2)(d) shall apply to purchases of recycled products for food service and packaging which are not paper products. The preference in ORS 279.621 of up to twelve percent (12%) shall apply to purchases of recycled products for food service and food packaging that are 100% paper or paper products.

(4) Recyclable or biodegradable products for food service and packaging will be made available for purchase by state agencies.

(5) Agencies are required to purchase recyclable or

biodegradable food service and packaging products when purchasing supplies.

(6) All state agencies shall 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 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.

(7) The Department shall encourage its suppliers to provide biodegradable or recyclable products as substitutes.

(8) State agencies shall use best efforts to obtain and use biodegradable or recyclable products as substitutes for products which are non-biodegradable or non-recyclable.

Stat. Auth.: ORS Ch. 279

Stats. Implemented: ORS 279.550, 279.545, 279.565, 279.570, 279.729, 279.621 & 279.630

Hist.: GS 7-1988, f. 12-7-88, cert. ef. 1-1-89; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-030-0035** [Renumbered to 125-050-0040]

**125-030-0040** [Renumbered to 125-050-0060]

**125-030-0050** [Renumbered to 125-030-0002]

### 125-030-0060

#### Procuring Supplies or Services from Governmental Sources

(1) Agencies may, regardless of dollar value, purchase goods or services from other State of Oregon agencies or Oregon local government units without competitive bids. If the agency determines that its requirements cannot be met by these sources, the price is not fair or reasonable, or if it is in the public interest, the agency may procure the goods or services from private businesses in accordance with the all applicable public contracting laws. When such procurements will be made from private business, public agencies shall not compete against private businesses.

(2) Procurements from public agencies outside the boundaries of the State of Oregon, if of an amount normally requiring competitive bidding, shall be made only in circumstances where the same or similar product or service cannot be readily obtained at competitive prices from private businesses. In no case shall any such procurement or solicitation be made without the prior approval of the Division.

Stat. Auth.: ORS Ch. 183 & 283

Stats. Implemented: ORS 190.110(1) & 279.015

Hist.: GS 2-1985(Temp), f. & ef. 6-6-85; GS 1-1986, f. & ef. 3-20-86; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### 125-030-0070

#### Reciprocal Preference Law Guidelines

(1) ORS 279.029(2) requires an agency to add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder is a resident. The purpose of the law is to retaliate against preferences by applying a penalty to the nonresident bidder from State X equal to the preference that would be applied in favor of that bidder in State X. When the lowest responsible bidder appears to be a nonresident bidder the following procedures shall be followed:

(a) Review the current Summary of In-State Preferences described in ORS 279.029(3), and locate the state of residence for the apparent low bidder;

(b) Under the column titled "percent preference" note if there is a percent preference listed. If the word "None" is the only word in that column, no percent increase is to be added to the nonresident bidder's bid;

(c) If there is a percentage listed for a product such as printing or coal, refer to the Scope of Preference and Conditions section for details;

(d) Note whether the commodity being purchased is specifically included or excluded. The comments will describe how

the preference is applied in the nonresident bidder's state. Note that some preferences apply only to a specific product or service;

(e) Note whether the bidder must claim the preference. If the bidder must claim the preference an inquiry must be made of the bidder in writing as to whether or not the preference is claimed by that bidder. If the preference need not be claimed (i.e., is automatic), it may be possible for the bidder to decline the preference. If the bidder reports that the preference has been declined this must be verified with the state agency responsible for recording such information;

(f) Note any dollar limitations that may apply in the Scope of Preference and Conditions;

(g) If it is determined that the nonresident bidder would receive a percentage preference in its resident state, add that percent to its bid. The following are examples:

(A) If the agency requests a price offer, multiply the price offered by the nonresident bidder by the percentage preference the bidder receives in its home state and add that sum to the price offered by the nonresident bidder.

**EXAMPLE:** Resident (Oregon) bidder's price is \$103. Nonresident bidder's price is \$100. Percentage preference (from Summary) is five (5) percent.  $\text{Multiply } .05 \times \$100 = \$5$ . Add \$5 to \$100 = \$105, which becomes the nonresident bidder's evaluated bid price. Award is made to the low bid (\$103) of the resident bidder;

(B) If the agency requests a percentage off list price offer from bidders with the award to be made to the bidder offering the greatest percentage discount, reduce the amount of the nonresident bidder's percentage offer.

**EXAMPLE:** The resident (Oregon) bidder offers nine percent (9%) discount (.91 multiplier). The nonresident bidder offers ten percent (10%) discount (.90 multiplier). The percentage preference (from Summary) is five percent (5%). Adjust the nonresident bidder's offer as follows:  $\text{Multiply } 1.05 \times .90$  (nonresident's multiplier after subtracting discount) = .945 (nonresident's adjusted multiplier, after applying the reciprocal preference). The nonresident bidder's bid is now 0.055 or 5.5% discount from price list. Award is made to the low bid, in this case the greatest percentage discount, 9% discount offered by the resident Oregon bidder;

(C) If a tie bid occurs, the contract shall be awarded to the resident bidder in Oregon, in accordance with ORS 279.021 and OAR 137-030-0095(2)(a).

(h) The procedures identified above apply even in the absence of an Oregon bidder. (See ORS 279.029(2) and (3).)

(2) Use the Summary dated the same year as the year that award is to be made. The Summary is updated on an annual basis and distributed in January of each year. During the course of the year new legislation may change preferences, but the information provided in the annual Summary is good for the entire year.

(3) If the nonresident bidder is still the lowest responsive and responsible bidder after the preference adjustment has been made, and the agency decides to award the contract to the nonresident bidder, the contract price is the price bid, not the adjusted price.

Stat. Auth.: ORS 279.029(2) & (3) & 283.060

Stats. Implemented: ORS 279.029

Hist.: GS 6-1990(Temp), f. 2-12-90, cert. ef. 2-13-90; GS 10-1990, f. & cert. ef. 5-4-90; GS 19-1990, f. & cert. ef. 11-14-90; GS 23-1990, f. & cert. ef. 11-27-90; GS 8-1991(Temp), f. & cert. ef. 4-19-91; GS 12-1991, f. & cert. ef. 7-5-91; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### 125-030-0080

#### Affirmative Action; General Policy

General Policy: The general policy of the Department and of these rules is to expand economic opportunities for Minority Business Enterprises, Women Business Enterprises and Emerging Small Businesses by exposing them to subcontracting opportunities available through public works contracts. With regard to Emerging Small Business Enterprises, these enterprises may be located in or draw their work force from within economically depressed areas as designated by the Economic Development Department in cooperation with the Employment Department. This effort is based upon the Legislative findings set forth in ORS 200.015.

Stat. Auth.: ORS 279.053, 279.059, 279.106, 279.111 & 283.060

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**OREGON ADMINISTRATIVE RULES 1997 COMPILATION**

Stats. Implemented: ORS 279.015 & 279.053

Hist.: GS 4-1991, f. & cert. ef. 4-9-91; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-030-0081**

**Minority and Women Business Enterprise Requirements**

(1) As used in this rule:

(a) "Affirmative Action", as used in this section, means a method of eliminating the effects of past and present discrimination, intended or unintended, on the basis of race, religion, national origin, age, gender, marital status or physical or mental disabilities, that are evident or indicated by analysis of present contracting or subcontracting patterns, practices and policies;

(b) "Capable" means a Minority or Women Business Enterprise registered with the Office of the Advocate for Minority, Women and Emerging Small Business;

(c) "Competitive" means the subcontract bid submitted by the Minority or Women Owned Business Enterprise was within ten percent (10%) of the lowest bid received by the bidder for a comparable scope of work. The bidder shall make available the bids it receives from prospective subcontractors. This term relates to price only and must not be interpreted to mean that a bid deemed competitive is therefore entitled to the subcontract award;

(d) "Documentation" means written materials purporting to establish the satisfaction of a good faith effort requirement that are capable of verification. These may include, but are not limited to, copies of business logs, correspondence or newspaper advertisements;

(e) "Economically Feasible Unit" means a unit of work identified in a project suitable for subcontracting in the normal course of business. These would be units that a contractor would ordinarily identify as suitable for performance by a subcontractor. The intent here is to have identified units that would be attractive to a serious and qualified subcontractor and not be shunned by that subcontractor because the unit of work is too small to be profitable;

(f) "Interested" means a Minority or Women Owned Business Enterprise that has expressed to the bidder an interest in learning more about the project identified in the initial solicitation by the bidder;

(g) "Justification" means a maintaining or showing of a sufficient reason why an action was taken and that action was not taken for an impermissible reason. Permissible reasons include, but are not limited to, not meeting bid invitation specifications or not being the low bid. An impermissible reason would be one that is arbitrary or capricious or based on race, gender, national origin, marital status or religion;

(h) "Negotiate" means to engage in good faith discussions with the potential subcontractors about their proposals/bids, and the work for which a bid is sought, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available; it also includes efforts to link the potential subcontractors with other subcontractors or suppliers for the purpose of encouraging participation by certified firms while ensuring that subcontractor bids are received for the entire scope of work;

(i) "Reasonable Number" means at least three (3) firms of those minority or women business enterprises certified by the Advocate for Minority, Women and Emerging Small Business Enterprise. Consideration should be given to the specialty of subcontracting or materials supply desired as well as the location of the project and whether or not the subcontractor is willing to perform work out of their geographic area. Fewer than three (3) firms may be contacted if fewer firms are available in the specialties required for the project or in the geographic area of the project;

(j) "Rebuttable Presumption" means a presumption which may be rebutted, or disproved, by evidence;

(k) "Timely Notice" means that the notice was conveyed to the subcontractor to allow at least five business days for the preparation and submission of a subcontract or material supply bid.

(2) When the estimated cost for a public improvement project

awarded by the Department exceeds \$100,000 and, in the determination of the Department, there are economically feasible subcontracting opportunities, or when the bid documents require it, the successful bidder shall have made good faith efforts to subcontract with, or obtain materials to be used in performing the contract from, Minority Business Enterprises and Women Business Enterprises.

(3) Performing all of the following actions by a bidder constitutes a rebuttable presumption that the bidder has made a good faith effort to satisfy the requirements described in subsections (a) through (j) of this section:

(a) Attendance at any presolicitation or prebid meetings scheduled by the agency to inform Minority or Women Business Enterprises of contracting and subcontracting or material supply opportunities available on the project;

(b) The bidder identified specific economically feasible units of the project that the bidder regards as appropriate for subcontracting to Minority or Women Business Enterprises;

(c) The bidder advertised once in at least two of the following publications: general circulation, trade association, minority and/or trade oriented, women-focus publications. The advertisement is to announce subcontracting or material supply opportunities;

(d) The bidder notified in writing a reasonable number of Minority or Women Business Enterprises, identified from a list of certified Minority or Women Business Enterprises provided by the Advocate for Minority, Women and Emerging Small Businesses office. The notice is to include the same information conveyed in subsection (c) of this section and is to provide timely notice to the identified enterprises;

(e) The bidder followed up the initial solicitation of vendors identified in subsection (d) of this section by contacting the specific enterprise either by telephone, post card or other electronic means to determine whether or not the enterprises were interested;

(f) The bidder provided those enterprises expressing an interest with information about the plans, specifications and the requirements for the identified subcontracting or material supply work. This may be satisfied by a referral to a plan center;

(g) The bidder negotiated with interested, capable and competitive Minority or Women Business Enterprises submitting bids and did not reject any bids without justification. Bid shopping is prohibited;

(h) If the agency or bidder requires bonding, lines of credit or insurance, the bidder will notify the Minority or Women Business Enterprise of this requirement and refer them to a potential source where this requirement may be met;

(i) The bidder contacted at least two minority and women community organizations and contractor groups, local, state and federal business assistance officers, and other organizations identified by the Advocate for Minority, Women and Emerging Small Businesses that assist in the recruitment and referral of Minority or Women Business Enterprises to economic opportunities; and

(j) The good faith efforts documented by the bidder are certified to be reasonably expected to produce participation in this project by capable and competitive Minority or Women Business Enterprises.

(4) Bid invitations will contain a checklist for the convenience of the bidder for recording and documenting the completion of the above listed actions. Completion of the checklist is optional for the bidder. Nevertheless, documentation of the actions listed in subsections (3)(a) through (j) of this rule, is mandatory and this information must be submitted with the bid. Failure to complete and submit documentation will result in the bid being rejected as nonresponsive.

(5) A bidder who contracts with an agency shall not discriminate against Minority or Women Business Enterprises in the awarding of subcontracts. A contractor's good faith efforts must be reasonably expected by the contractor to produce participation by Minority or Women Business Enterprises. Contractor shall certify as part of the bid documents accompanying the bid on a public contract that the contractor has

not discriminated against Minority or Women Business Enterprises in obtaining any required subcontracts and that the contractor reasonably expected the above documented good faith efforts to result in participation by Minority or Women Business Enterprises.

**EXAMPLE OF CERTIFYING STATEMENT:** By signing this document bidder hereby certifies that bidder has not discriminated against Minority or Women Business Enterprises in obtaining any subcontracts for this project, and that the documented good faith efforts of bidder were reasonably expected to result in participation by Minority or Women Business Enterprises in this project, in compliance with this OAR 125-30-081(5).

Stat. Auth.: ORS 279.053, 279.059, 279.106, 279.111 & 283.060

Stats. Implemented: ORS 279.015, 279.053 & 279.111

Hist.: GS 4-1991, f. & cert. ef. 4-9-91; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### **125-030-0082**

#### **Emerging Small Business Good Faith Effort Requirements**

(1) As used in this rule:

(a) "Capable" means an Emerging Small Business Enterprise registered with and certified as such by the Office of the Advocate for Minority, Women and Emerging Small Business;

(b) "Competitive" means the subcontract bid submitted by the Emerging Small Business Enterprise was within 10% of the lowest bid received by the bidder for a comparable scope of work. The bidder shall make available the bids it receives from prospective subcontractors. This term relates to price only and must not be interpreted to mean that a bid deemed competitive is therefore entitled to the subcontract award;

(c) "Documentation" means written materials purporting to establish the satisfaction of a good faith effort requirement that are capable of verification. These may include, but are not limited to, copies of business logs, correspondence or newspaper advertisements;

(d) "Economically Feasible Unit" means a unit of work identified in a project suitable for subcontracting in the normal course of business. These would be units that a contractor would ordinarily identify as suitable for performance by a subcontractor. The intent here is to have identified units that would be attractive to a serious and qualified subcontractor and not be shunned by that subcontractor because the unit of work is too small to be profitable;

(e) "Interested" means an Emerging Small Business Enterprise that has expressed to the bidder an interest in learning more about the project identified in the initial solicitation by the bidder;

(f) "Justification" means a maintaining or showing of a sufficient reason why an action was taken and that action was not taken for an impermissible reason. Permissible reasons include, but are not limited to, not meeting bid invitation specifications or not being the low bid. An impermissible reason would be one that is arbitrary or capricious or based on race, gender, national origin, marital status or religion;

(g) "Negotiate" means to engage in good faith discussions with the potential subcontractors about their proposals/bids, and the work for which a bid is sought, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available;

(h) "Rebuttable Presumption" means a presumption which may be rebutted, or disproved, by evidence;

(i) "Reasonable Number" means at least three (3) firms of those Emerging Small Business enterprises certified by the Advocate for Minority, Women and Emerging Small Business Enterprise. Consideration should be given to the specialty of subcontracting or materials supply desired as well as the location of the project and whether or not the subcontractor is willing to perform work out of their geographic area;

(j) "Timely Notice" means that the notice was conveyed to the subcontractor to allow at least five business days for the preparation and submission of a subcontract or material supply bid.

(2) When the estimated cost for a public improvement project

awarded by the Department exceeds \$100,000 and, in the determination of the Department, there are economically feasible subcontracting opportunities, or when the bid documents require it, the successful bidder shall meet the project's goals for subcontracting with or obtaining materials to be used in performing the contract from Emerging Small Business Enterprises. The goals shall be set out in the specifications which accompany the project's invitation to bid, request for proposal(s), or request for qualifications, and shall:

(a) Describe the goal for each project, based upon the nature of the project, its size and location, and the availability of emerging small businesses; and

(b) Include a statement that failure to meet the goals shall result in the rejection of any responding bid, unless bidder can demonstrate the performance of good faith efforts to subcontract with, or obtain materials to be used in performing the contract from, Emerging Small Business Enterprises.

(3) Performing all of the following actions by a bidder constitutes a rebuttable presumption that the bidder has made a good faith effort to satisfy the subcontracting requirement described in section (2) of this rule:

(a) Attendance at any presolicitation or prebid meetings scheduled by the agency to inform Emerging Small Business Enterprises of contracting and subcontracting or material supply opportunities available on the project;

(b) The bidder identified specific economically feasible units of the project that the bidder regards as appropriate for subcontracting to Emerging Small Business Enterprises;

(c) The bidder advertised once in at least two of the following publications: general circulation, trade association, minority and/or trade oriented, women-focus publications. The advertisement is to announce subcontracting or material supply opportunities;

(d) The bidder notified in writing a reasonable number of Emerging Small Business Enterprises, identified from a list of certified Emerging Small Business Enterprises provided by the Advocate for Minority, Women and Emerging Small Businesses office. The notice is to include the same information conveyed in subsection (c) of this section and is to provide timely notice to the identified enterprises;

(e) The bidder followed up the initial solicitation of vendors identified in subsection (d) of this section by contacting the specific enterprise either by telephone, post card or other electronic means to determine whether or not the enterprises were interested;

(f) The bidder provided those enterprises expressing interest, with information about the plans, specifications and the requirements for the identified subcontracting or material supply work. This may be satisfied by a referral to a plan center;

(g) The bidder negotiated with interested, capable and competitive Emerging Small Business Enterprises submitting bids and did not reject any bids without justification. Bid shopping is prohibited;

(h) If the agency or bidder requires bonding, lines of credit or insurance, the bidder will notify the Emerging Small Business Enterprise of this requirement and refer them to a potential source where this requirement may be met;

(i) The bidder contacted at least two minority and women community organizations and contractor groups, local, state and federal business assistance officers, and other organizations identified by the Advocate for Minority, Women and Emerging Small Businesses that assist in the recruitment and referral of Emerging Small Business Enterprises to economic opportunities; and

(j) The good faith efforts documented by the bidder are certified to be reasonably expected to produce participation in this project by capable and competitive Emerging Small Business Enterprises.

(4) Bid invitations will contain a checklist for the convenience of the bidder for recording and documenting the completion of the actions listed in section (3) of this rule. Completion of the checklist is optional for the bidder. Nevertheless, documentation of the actions listed in subsections

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(3)(a) through (j) of this rule, is mandatory and this information must be submitted with the bid. Failure to complete and submit documentation will result in the bid being rejected as nonresponsive. Department of Administrative Services Director or designee shall determine, if necessary, whether good faith efforts have been met pursuant to the criteria of said paragraph by verifying the documentation of the lowest responsible bidder.

(5) A bidder who contracts with an agency shall not discriminate against Emerging Small Business Enterprises in the awarding of subcontracts. A contractor's good faith efforts must be reasonably expected by the contractor to produce participation by Emerging Small Business Enterprises. Contractor shall certify as part of the bid documents accompanying the bid on a public contract that the contractor has not discriminated against Emerging Small Business Enterprises in obtaining any required subcontracts and that the contractor reasonably expected the above documented good faith efforts to result in participation by Emerging Small Business Enterprises.

**EXAMPLE OF CERTIFYING STATEMENT:** By signing this document bidder hereby certifies that bidder has not discriminated against Emerging Small Business Enterprises in obtaining any subcontracts for this project, and that the documented good faith efforts of bidder were reasonably expected to result in participation by Emerging Small Business Enterprises in this project, in compliance with this OAR 125-30-082(5).

(6) Any bidder whose bid has been rejected for noncompliance with the requirements of this section may, within three (3) days of the rejection of the bid, request the Division to reconsider the rejection, citing the error or misinterpretation of the documents which the bidder believes led to the incorrect rejection of its bid. The request must be in writing and received by the Division within three (3) business days of the date of rejection.

(7) The Director or designee shall determine whether the request for reconsideration should be granted. The Director or designee shall, in writing, within five (5) days after date of submission of the request, either deny the request or rescind the bid rejection.

(8) The Division may audit or otherwise inspect the records of contractors to determine compliance by those contractors with commitments made in satisfaction of the requirements of this rule. Any contractor determined to have failed to fulfill such requirements may be subject to penalty, including suspension of any contract or disqualification from bidding or performing work on any contract awarded by the Department for a period of up to three (3) years. Before the Department imposes any such sanction, a contractor is entitled to a hearing as provided in ORS 279.043 and 279.045.

(9) In the event a request for proposals, request for qualifications, or other process other than competitive bidding is used by the Division to contract for public improvements, the Division shall require in its solicitation document or attempt to negotiate affirmative efforts on behalf of emerging small businesses similar to those outlined in sections (2) or (3) of this rule.

(10) The Division will evaluate annually the effects of this rule.

Stat. Auth.: ORS 279.053, 279.059, 279.106, 279.111 & 283.060  
Stats. Implemented: ORS 279.015, 279.053, 279.059, 279.106 & 279.111  
Hist.: GS 4-1991, f. & cert. ef. 4-9-91; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-030-0100**  
**Life Cycle Costing**

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

(2)(a) At the time of writing specifications for the product, the agency shall identify those factors which will have cost implications over the life of the product and which, for evaluation purposes, will be used to adjust the bid or proposal price of the product;

(b) The solicitation document shall set out clearly the factors and methodology to be used in life cycle cost adjustments; and

(c) The results of life cycle costing adjustments shall be applied to the bid or proposal price of the product(s) offered, and the bid or proposal that results in the lowest overall ownership cost, taking into account the life cycle costing adjustments, shall be considered the lowest bid or best proposal for purposes of bid or proposal price evaluation.

Stat. Auth.: ORS Ch. 279 & 283  
Stats. Implemented: ORS 279.005 & 279.007  
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-015

**DIVISION 31**

**RETAINAGE FEES AND ACCOUNTS**

**125-031-0000**

**Deposits in Lieu of Retainage on Public Contracts**

(1) When a contractor elects to deposit securities with a bank or trust company in lieu of retainage on public contracts, the securities will be held by the custodian in fully transferable form and under the control of the public body.

(2) Non-negotiable securities so deposited shall have proper instruments attached to enable the public body to effect transfer of title should the contractor be unable to fulfill the contract obligations.

(3) The custodian bank or trust company will issue a safekeeping receipt for the securities to the public contracting agency. The receipt will describe the securities, the par value, the name of the contractor, and project number or other project identification.

(4) Unless otherwise mutually agreed, the value placed upon said securities shall be market value.

(5) Securities deposited in the manner described above will be released by the bank or trust company only upon the written instructions and authorization of the public contracting agency.

(6) In lieu of the above, an escrow agreement mutually acceptable to the contractor and the public contracting agency and the bank or trust company may be used.

Stat. Auth.: ORS Ch. 297  
Stats. Implemented: ORS  
Hist.: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76; Renumbered from OAR 127-50-030 (pursuant to Chapter 690, Oregon Law 1983)

**125-031-0005**

**Approved Securities Acceptable in Lieu of Retainage Fees**

(1) Bills, certificates, notes, or bonds of the United States.  
(2) Other obligations of the United States or its agencies.  
(3) Obligations of any corporation wholly owned by the federal government.

(4) Indebtedness of the Federal National Mortgage Association.

(5) General obligation bonds of the State of Oregon or any political subdivision thereof.

(6) Time Certificates of deposit or savings account passbooks issued by a commercial bank, savings and loan association, or mutual savings bank, duly authorized to do business in Oregon.

(7) Corporate bonds rated "A" or better by a recognized rating service.

(8) General obligation improvement warrants issued pursuant to ORS 287.502.

(9) Irrevocable letters of credit from a bank doing banking business in Oregon.

Stat. Auth.: ORS Ch. 279  
Stats. Implemented: ORS  
Hist.: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76; PCRB 106, f. & ef. 9-29-77; PCRB 4-1978, f. & ef. 3-3-78; Renumbered from 127-50-040 (pursuant to Chapter 690, Oregon Law 1983)

**125-031-0006**

**Approval of Surety Bond in Lieu of Retainage Fees**

(1) The Department of Administrative Services may, at its



sole discretion, accept surety bonds in lieu of all, any portion of, or none of funds retained or to be retained during performance of a contract.

(2) The contractor must make application when seeking to substitute a surety bond.

(3) Such application shall include:

(a) Names and addresses of all those holding a direct, beneficial or equitable interest in the contracting firm. Equitable ownership interests of less than 15 percent need not be reported;

(b) Prior five years experience of firm and principal members;

(c) A list of subcontractors and suppliers for whom the contractor is or will be withholding retainage under the contract, and the amount or percentage of such retainage;

(d) A certified statement agreeing to reduce retainage of the subcontractors and suppliers in an amount equal to that requested in the application in return for a like surety bond;

(e) A statement concerning whether the bond is intended for all or a portion of the retainage, and if it is for a portion, what amount of percentage;

(f) A list of all claims pending, and a list of all claims where the contractor, or surety, has agreed, or a court has found the contractor to be at fault, against any retainage fees or performance bonds of contractor or any instance where retainage has been forfeited by the contractor.

(4) Both the application and the Surety Bond must be approved by the Attorney General's Office and the Department of Administrative Services.

(5) Surety Bonds will only be considered for acceptance if they are from a surety company authorized to do business in the State of Oregon. A certified copy of a current license issued by the Oregon Department of Insurance and Finance must be submitted to satisfy this requirement.

(6) The Department of Administrative Services may approve a Surety Bond for any part of funds retained or to be retained during performance of the contract.

Stat. Auth.: ORS Ch. 279.420 & 283.060

Stats. Implemented: ORS

Hist.: GS 1-1989(Temp), f. & cert. ef. 7-13-89; GS 2-1990, f. & cert. ef. 1-12-90

#### 125-031-0010

##### Retainage Deposited in Interest-Bearing Account

(1) When a contractor elects to have an interest-bearing account established for deposit of retainage in a bank, savings bank, trust company, or savings association, the account will be established by the public contracting agency for the benefit of and under the control of the public contracting agency, with interest accruing to the contractor.

(2) When the account is established, proper instruments shall be furnished to the bank, savings bank, trust company, or savings association to prohibit withdrawal or transfer of the funds in the account except upon written instructions and authorization of the public contracting agency, and to enable the public contracting agency to close the account if in the judgment of the public contracting agency the contractor has not fulfilled the contract obligations.

(3) The bank, savings bank, trust company, or savings association will issue to the public contracting agency a receipt acknowledging the deposit and, on the initial receipt, describing the account, the provision for interest, the name of the contractor, and the full name under which the account is established.

(4) The amount deposited and accrued interest will be released by the bank, savings bank, trust company, or savings association only upon the written instructions by the public contracting agency.

(5) When the public contracting agency is an agency of the State of Oregon, the account shall be established through the State Treasurer.

Stat. Auth.: ORS Ch. 279.420 & 283.060

Stats. Implemented: ORS

Hist.: PCRB 1, f. 12-23-75, ef. 1-1-76; Renumbered from 127-50-050 (pursuant to Chapter 690, Oregon Law 1983); GS 2-1989(Temp), f. & cert. ef.

7-13-89; GS 1-1990, f. & cert. ef. 1-12-90

## 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**.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS

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: The Exhibits referenced in this rule are not printed in the OAR Compilation. Copies are available from the Department of Administrative Services. The publication(s) referred to or incorporated by reference in this rule are also available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS

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

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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: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS

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 Ch. 279 & 283

Stats. Implemented: ORS

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,

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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 Ch. 279 & 283

Stats. Implemented: ORS

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 125-35-020 of this plan.

[ED NOTE: The Exhibits referenced in this rule are not printed in the OAR Compilation. Copies are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS

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: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS

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: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS

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: The Exhibits referenced in this rule are not printed in the OAR Compilation. Copies are available from the Department of Administrative Services. The publication(s) referred to or incorporated by reference in this rule are also available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS

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

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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: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS

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 Ch. 279 & 283

Stats. Implemented: ORS

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: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS

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: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS

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: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS

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 Ch. 279 & 283

Stats. Implemented: ORS

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

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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 Ch. 283

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.: 283

Stats. Implemented: ORS

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 Ch. 283

Stats. Implemented: ORS

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

**DIVISION 50**

**STATE SURPLUS PROPERTY**

**125-050-0000**

**Definitions**

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

(1) "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.

(2) "Bid" — A competitive offer to purchase advertised surplus property at a price specified by the bidder.

(3) "Department" — The state Department of Administrative Services.

(4) "Direct Labor" — Includes all work required for preparation, production, processing and packing, but does not

include supervision, administration, inspection and shipping.

(5) "Employee's Household" — All persons residing with employee.

(6) "Employee's Immediate Family" — The children and/or step-children, parents and/or step-parents, grandparents and spouse of employee.

(7) "Invitation to Bid" — A competitive offer to bid on surplus property available for public sale. Also known as a bid advertisement.

(8) "Photographic Identification" — A document which 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" — Those agencies meeting the criteria specified in OAR 125-035-0045.

(11) "Surplus Property" — All personal property, vehicles and titled equipment excess to the state's needs available for sale to state agencies, political subdivisions of the state and private not-for-profit organizations and/or the general public.

Stat. Auth.: ORS 283.060

Stats. Implemented: ORS

Hist.: GS 6-1992, f. 2-27-92, cert. ef. 3-1-92

**125-050-0020**

**Eligibility of State Agencies, Political Sub-divisions and Non-Profit Organizations**

Prior to offering surplus property for public sale the state Surplus Property Program shall make surplus property available to the following:

(1) State agencies.

(2) Political subdivisions of the state.

(3) Any non-profit organization qualified to acquire federal surplus property pursuant to OAR 125-035-0045.

Stat. Auth.: ORS 283.060

Stats. Implemented: ORS

Hist.: GS 7-1992, f. 2-27-92, cert. ef. 3-1-92

**125-050-0040**

**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 30 calendar days from the date of invoice. All invoices outstanding in excess of 45 days shall be charged interest at the rate of eight percent per annum. Invoices outstanding in excess of 90 days shall result in suspension of purchasing privileges until such invoices have been paid in full.

(2) Surplus state property shall be available for warehouse floor sale or direct transfer to state agencies, political subdivisions and qualified non-profit organizations. Non-qualifying private entities and/or private citizens shall not be eligible to acquire surplus state property except at public sales. Priority for acquiring surplus state property through warehouse floor sales or direct transfer shall be granted to, in descending order:

(a) State agencies;

(b) Political subdivisions; and

(c) Qualified non-profit organizations.

(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 shall 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 sale or distribution. Political subdivisions and non-profit organizations shall place state surplus property in use for the purpose for which acquired within three months of receipt. They shall continue to use the property in that capacity for at least six months prior to disposal or resale. Exceptions may be made with the specific prior written approval of the state's Surplus Property Manager when equipment becomes

inoperable or unneeded.

Stat. Auth.: ORS Ch. 181, 279, 283.060, Ch. 351 & 358  
Stats. Implemented: ORS  
Hist.: GS 2-1981(Temp), f. 7-30-81, ef. 8-1-81; GS 6-1981, f. & ef. 10-15-81;  
GS 8-1992, f. 2-28-92, cert. ef. 3-1-92; Renumbered from 125-30-035

### 125-050-0060

#### Public Sales for Disposal of State Surplus Personal Property

(1) The Department of Administrative Services shall conduct public sales for the disposal of state surplus property. Methods of disposal shall include, but not be limited to, oral auctions, sealed bid sales and/or fixed price retail sales. It is the policy of the State of Oregon to give local government units the first opportunity after other state agencies to purchase state surplus property.

(2) Eligibility. Members of the general public may participate as buyers at public sales. No employee whether full-time, part-time or temporary, of the Department of Administrative Services, member of the employee's household and/ or 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) Conduct of Auctions and/or Sealed Bid Sales:

(a) The state shall advertise the date, time and location of public auction or sealed bid sales. A public invitation to bid shall be available at the Property Distribution Center, auction site or local Motor Vehicles Division offices 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;

(b) The state reserves the right to reject any and all bids regarded as not in the best interests of the state;

(c) All items shall be sold to the highest bidder. All property shall be offered "AS-IS, WHERE-IS" with no warranty or other guarantee as to its condition or fitness for use. A purchaser or disappointed bidder shall have no recourse against the state, the Department of Administrative Services, its Property Distribution Center or any of their respective officers, employees or agents. All sales shall be final.

(d) A bid security check (payable to the Department of Administrative Services) for \$10 or at least ten percent of the bid (whichever is greater), shall accompany all sealed bids. Cash shall not be acceptable. A bid security of less than \$10 or ten percent (whichever is greater) of the total bid shall disqualify a bid. The bid security of unsuccessful bidders shall be returned within 30 days following a bid opening. The successful bidder's bid security shall be applied as partial payment on property purchased.

#### (4) Payment:

(a) Full payment must be made on the day of the sale for all purchases except vehicles, boats or other titled equipment. For titled equipment, a ten percent down payment is required on the day of the sale. The time limit for making full payment, and the place where payment shall be made will be specified in public invitation to bid;

(b) Payment by personal check for amounts of \$1,000 or less MAY be accepted, at the absolute discretion of the Department of Administrative Services, when presented with two (2) pieces of acceptable identification, one of which must be a "photo I.D." Other acceptable identification may include major credit cards, a valid driver's license, or valid voter's registration card. **THE DEPARTMENT OF ADMINISTRATIVE SERVICES 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 CASH, CASHIER'S CHECK OR MONEY ORDER.**

(c) Payment by personal check for amounts exceeding \$1,000 MAY be accepted, at the absolute discretion of the Department of Administrative Services, when presented with two (2) pieces of

acceptable identification, one of which must be a "photo I.D." together with a letter from the financial institution on which the check is drawn guaranteeing payment of the full amount of the check. **THE DEPARTMENT OF ADMINISTRATIVE SERVICES 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 CASH, CASHIER'S CHECK OR MONEY ORDER.**

(d) Licensed and bonded automobile dealers may pay by company check or bank draft on day of sale if the dealer can show their license is current and in good standing. Dealers from outside the State of Oregon must establish their dealership standing with the State Surplus Property Manager one week prior to the auction.

#### (5) Claiming Items Purchased:

(a) Items not paid in full by the time specified in the sales terms and conditions shall be canceled and bid security forfeited;

(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 approval is obtained from the state Surplus Property Manager;

(c) Title to personal property sold shall be transferred to the purchaser when full and final payment is made, unless otherwise specified by the State. For vehicles, receipt of payment of the sale price and delivery of key to the purchaser constitutes delivery and possession. Titles to vehicles shall be transferred upon receipt of full payment. If payment is made by personal check, the title shall be released to the vehicle purchaser in 14 calendar days, or when the check clears the bank. The state rejects any liability once a purchaser takes possession of a vehicle;

(d) Motor Vehicles Division trip permits shall be required to drive unlicensed motor vehicles and shall be available at the sale site. A purchaser of a vehicle shall 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.

(6) Failure to Comply. Buyers may be barred from participation in state sales for the following reasons:

(a) Failure to observe the procedures set forth in the sales terms and conditions;

(b) Payment for purchase or bid security with a personal check which is dishonored by a payer's financial institution;

(c) Failure to claim purchases.

Stat. Auth.: ORS Ch. 181, 279, 283.060, Ch. 351 & 358

Stats. Implemented: ORS 279.805, 279.820, 279.828 & 279.830

Hist.: GS 2-1981(Temp), f. 7-30-81, ef. 8-1-81; GS 6-1981, f. & ef. 10-15-81;  
GS 1-1985(Temp), f. & ef. 1-16-85; GS 7-1986, f. 9-12-86, ef. 10-1-86; GS 9-1992, f. 2-28-92, cert. ef. 3-1-92; Renumbered from 125-30-040; TTPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

## 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

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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 ORS182.425(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 Ch. 182 & 283

Stats. Implemented: ORS

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 Ch. 276 & 283

Stats. Implemented: ORS

Hist.: GS 3-1983, f. & ef. 1-19-83

## DIVISION 65

### CONSULTANT SELECTION PROCEDURES: ARCHITECTS, ENGINEERS AND RELATED PROFESSIONAL CONSULTANTS

#### 125-065-0030

##### Purpose

The purpose of these rules is to specify the policy and procedures of the Department regarding selection of professional consultants to perform architectural, engineering, and related services required by the Division for construction, improvement, planning and related activities. It is the policy of the Department, through the Division, to select as expeditiously as possible the most qualified consultant based on the consultant's demonstrated competence and qualifications to perform the professional services required at a fair and reasonable price. The Division has established the following selection procedures, which are based upon OAR 137-035-0000 through 137-035-0080, Model Rules for Public Contracting Agency Screening and Selection of Persons to Perform Architectural and Engineering Personal Service Contracts.

Stat. Auth.: ORS 283.051

Stats. Implemented: ORS

Hist.: GS 3-1993, f. & cert. ef. 10-6-93

#### 125-065-0040

##### Definitions

For the purposes of OAR 125-065-0030 through 125-065-0110, the term:

(1) "Director": The Director of the Department of Administrative Services or the Director or other designated Executive Officer of a State Agency.

(2) "Department": The Department of Administrative Services or other State Agency as defined in ORS 291.002(7).

(3) "Division": The Facilities Division of the Department of Administrative Services or other designated responsible subdivision of a State Agency.

(4) "Architect, Engineer, or Related Services": Professional services related to the planning, design, engineering, or oversight of public improvement projects or components thereof, including but not limited to architects, landscape architects, engineers, space planners, surveyors, cost estimators, appraisers, material testers, mechanical system balancers, and project managers.

(5) "Compensation Requirements": A general indication of the cost of architectural, engineering, or related services based on factors which may include, but are not necessarily limited to, each consultant's:

(a) Costing procedures and/or pricing structure;

(b) Hourly rates and fee schedules;

(c) Overhead costs; and

(d) Fee range, as a percentage of direct construction costs, on previous similar projects. Compensation requirements provide only a general indication of the cost of professional services and, particularly during a formal selection process, should not be used to calculate firm, fixed prices for each consultant, or as the sole basis for selecting a consultant.

(6) "Proposal": A competitive written offer submitted in response to a Request for Proposals.

(7) "Request for Proposals": A written document soliciting

competitive written proposals and setting forth the criteria and method to be used to select the best proposal. The document:

(a) Provides a general description of a proposed project or projects, including a proposed statement of work;

(b) Indicates the type of services needed; and

(c) Requests prospective consultants to submit written proposals that address the proposed statement of work.

(8) "Request for Qualifications": A written document which:

(a) Provides a general description of a proposed project;

(b) Indicates the type of services needed, including, if deemed necessary or appropriate, a description of particular services needed for part or all of a proposed project or projects; and

(c) Requests each prospective consultant to provide a written response setting forth the consultant's specific experience and qualifications for performing the type of services required.

(9) "Statement of Work": A written statement that describes the:

(a) Phases of work, major tasks, or areas of responsibility to be performed by the consultant;

(b) For an individual or series of projects, or within a particular locale during a stated period of time. Such statement may be altered or modified during contract negotiations, but only as reasonably necessary to accurately describe the project approach and exact scope of services agreed to by the Division and the consultant.

(10) "VIP System": The on-line Vendor Information Program administered through the Transportation, Purchasing & Print Services Division of the Department of Administrative Services.

Stat. Auth.: ORS 283.051

Stats. Implemented: ORS

Hist.: GS 3-1993, f. & cert. ef. 10-6-93

#### 125-065-0050

##### Solicitation

Responses shall be solicited through public advertisement, which shall be made for each project, or biennially to develop a list of consultants interested in providing services to the Department by the following procedure:

(1) All advertisements shall appear at least once in at least one newspaper of general circulation in the area where the project is to be located, on the VIP System, and in as many additional issues and publications as may be necessary or desirable to achieve adequate competition. The advertisement(s) shall be published no fewer than 14 calendar days before close of the solicitation. The advertisement(s) shall briefly describe:

(a) The project;

(b) The professional services sought;

(c) Where copies of the solicitation may be obtained; and

(d) The deadline for submitting a response.

(2) Biennially, or at other designated times, the Division may announce that it will accept from architectural, engineering, and other related professional consultant firms, a statement of qualifications, credentials, and other data expressing interest in providing services:

(a) The Division may provide a standard form for this purpose. Materials received will be retained by the Division for use in:

(A) Direct notice to consultants providing services similar to those required for the project;

(B) The Informal Selection Procedure; and

(C) Where possible, in the Direct Appointment Procedure.

(b) Materials on file with the Division may be purged following the biennial solicitation, unless the Division is notified otherwise by firms desiring to continue expressing interest in performing services.

(3) The Division may at any time during the solicitation or negotiation process reject all consultant proposals and cancel the solicitation without liability therefor, after making a written finding that there is good cause for rejecting all proposals and that it would be in the public interest to cancel the solicitation.

(4) Unless consultant compensation is expressly provided for

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in the solicitation document, under no circumstances shall the Division be responsible for any consultant costs and expenses incurred in submitting responses to the solicitation under any part of this rule. All prospective consultants who respond to solicitations do so solely at the consultant's cost and expense.

(5) All solicitation documents shall include the following language: **"Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document"**.

(6) Prior to issuing the solicitation, the Division shall provide a copy of the request to the office of the Advocate for Minority, Women and Emerging Small Business.

Stat. Auth.: ORS 283.051

Stats. Implemented: ORS

Hist.: GS 3-1993, f. & cert. ef. 10-6-93

**125-065-0060**

**Formal Selection Procedure**

The formal selection procedure shall be used whenever the estimated cost of architectural, engineering, or related services exceeds \$50,000, or at the discretion of the Division:

(1) Responses shall be solicited through public advertisement, in accordance with OAR 125-065-0050, and a Request for Qualifications (RFQ) to establish a short list, followed by an RFP. However, if a limited number of responses is anticipated, or if it is determined to be in the Division's best interest, solicitation may proceed directly to an RFP process with or without an interview.

(2) The Request for Qualifications shall, at a minimum, contain:

- (a) The solicitation;
- (b) A statement of the particular consultant qualifications required or the project;
- (c) The evaluation criteria (including the weights or points applicable to each criterion); and
- (d) The screening or evaluation method to be used. The RFP may require any or all of the following:

(A) The consultant's particular capability to perform the architectural, engineering, or related services required for the project, and the consultant's recent, current, and projected workloads;

(B) The number of the consultant's experienced staff available to perform the professional services required by the project, including such personnel's specific qualifications and experience;

(C) A list of similar projects completed by the consultant with references concerning past performance; and

(D) Any other information which is deemed reasonably necessary to evaluate consultant qualifications.

(3) A pre-submission meeting may be held for all interested consultants to discuss the proposed project and the required services. Attendance at such a meeting, if held, may be mandatory.

(4) A consultant screening and evaluation committee of no fewer than two, and recommended no more than five, individuals shall be established to review, score and rank the consultants according to the solicitation criteria. The committee may be composed of members who, collectively, have experience in areas such as architecture, engineering, construction, and public contracting. Members may be appointed from qualified professional employees of the Department or other agencies, and may include private practitioners of architecture, engineering, or related professions, and representatives of user groups. One member of the committee from the Division shall be designated as the chairperson.

(5) Following screening and evaluation, a short list of at least three qualified professional consultants shall be established. Unless the RFQ is canceled, every consultant placed on a short list shall receive a copy of the RFP and have an opportunity to submit a proposal.

(6) The Request for Proposals shall describe or contain the following information:

(a) General background information, including a description of the project and the specific consultant services sought, and may

include the estimated construction cost and the time period in which the project is to be completed;

(b) The evaluation process and the criteria which will be used to select the consultant, including the weight or points applicable to each criterion;

(c) The closing date and time of the solicitation and the delivery locations for consultant proposals;

(d) The date and time for interviews, if planned;

(e) Reservation of the right to seek clarifications of each consultant's proposal, and the right to negotiate a final contract which is in the best interests of the Department, considering cost effectiveness and the level of consultant time and effort required for the project;

(f) Reservation of the right to reject, based on written findings, any or all proposals if there is good cause, and to cancel the solicitation, if doing so would be in the public interest;

(g) A sample of the contract the consultant will be expected to execute; and

(h) Any other information which is reasonably necessary to evaluate, rank and select consultants.

(7) A pre-qualification or pre-proposal meeting may be held for all interested consultants to discuss the proposed project and the required services. Attendance at such a meeting, if held, may be mandatory.

(8) An RFP consultant selection committee of no fewer than two, and recommended no more than seven, individuals shall be established to review, score and rank the consultants' responses to the RFP. The committee may be composed of members who, collectively, have experience in areas such as architecture, engineering, construction and public contracting. Members may be appointed from professional employees of the Department or other agencies, and private practitioners of architecture, engineering, or related professions, and user groups. One member of the committee from the Division shall be designated as the chairperson.

(9) The RFP consultant selection committee shall review, score and rank all responsive proposals according to criteria which may include, but are not limited to, the following:

- (a) Availability and capability to perform the work;
- (b) Experience of key staff on comparable project(s);
- (c) Demonstrated ability to successfully complete similar projects on time within budget;
- (d) References and recommendations from past clients, public and private;
- (e) Consultant's performance history in:
  - (A) Meeting deadlines;
  - (B) Submitting accurate estimates;
  - (C) Producing quality work; and
  - (D) Meeting financial obligations;
- (f) Status and quality of any required licensing or certification;

(g) Consultant's knowledge and understanding of the project as shown through the consultant's:

(A) Proposed approach to the project's staffing and scheduling needs; and

(B) Suggested alternatives to any perceived design and constructability problems.

(h) Consultant's compensation requirements as defined under OAR 125-065-0040(5), unless prohibited by federal requirements, such as those in **40 U.S.C. §§ 541 - 544 (Public Law 92-583, Brooks Architect-Engineers Act)**;

(i) Results from oral interviews, if conducted;

(j) Design philosophy and project approach;

(k) Availability of any special required resources or equipment;

(l) Identity of proposed subcontractors; and

(m) Any other criteria that are deemed to be relevant to the project, including, where the nature and budget of the proposed project so warrant, a design competition between competing professional consultants.

(10) Contract negotiations with the highest ranked consultant shall be directed toward obtaining written agreement on:

(a) The consultant's tasks, staffing, and a performance

schedule; and

(b) A maximum, not-to-exceed contract price which is consistent with the consultant's proposal and fair and reasonable to the Department, taking into account the estimated value, scope, complexity, and nature of the professional services.

(11) Negotiations may be formally terminated if they fail to result in a contract within a reasonable amount of time. Negotiations will then ensue with the second ranked consultant, and if necessary, the third ranked consultant. If the second or third round of negotiations fails to result in a contract within a reasonable amount of time, the solicitation may be formally terminated. Services of a qualified consultant may then be obtained through the direct appointment procedure under OAR 125-065-0080.

(12) If a project for which a consultant has been selected and awarded a contract becomes inactive, or is materially altered or terminated, whether due to project phasing, insufficient appropriations, or other reasons, the Division may, if the project is reactivated or continued after material alteration, retain the same consultant to complete the project if the Division makes written findings that retaining the consultant will:

(a) Not encourage favoritism in the awarding of architectural, engineering, or related personal service contracts or substantially diminish competition for such contracts; and

(b) Will result in substantial cost savings to the Department.

(13) Contracts entered into under the formal selection procedure set forth in this rule may be amended, provided the services to be provided under the amendment are included within, or directly related to, the scope of services that were described in the original solicitation document. Provided, further, that each such amendment must be in writing, signed by an authorized representative of the consultant and the Division, and receive all necessary approvals before it becomes binding on the State of Oregon.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS 283.051

Stats. Implemented: ORS

Hist.: GS 3-1993, f. & cert. ef. 10-6-93

### 125-065-0070

#### Informal Selection Procedure

The informal selection procedure may be used to obtain architectural, engineering, or related services if the consultant's estimated fee is equal to or less than \$50,000:

(1) A written solicitation inviting written proposals shall be sent to a minimum of five prospective consultants drawn from:

(a) The Division's current list of consultants; or

(b) Among all consultants offering the necessary services that the agency reasonably can locate.

(2) All proposals shall be reviewed and the three most qualified consultants selected and ranked.

(3) The informal selection procedure shall be competitive to the maximum extent practicable and the selection and ranking may be based on criteria which include, but are not limited to each consultant's:

(a) Particular capability to perform the architectural, engineering, or related services for the project being considered;

(b) Number of experienced staff available to perform the services required by the project, including each consultant's recent, current, and projected workloads;

(c) Performance history on past projects for public or private clients;

(d) Project approach and design philosophy;

(e) Consultant's compensation requirements as defined under OAR 125-065-0040(5), unless prohibited by federal requirements, such as those in **40 U.S.C. §§ 541 - 544 (Public Law 92-583, Brooks Architect-Engineers Act)**; and

(f) Geographic proximity to the project. The Division may also consider the volume of work, if any, previously awarded to each consultant, with the object of effecting an equitable distribution of contracts among qualified consultants, provided such distribution does not violate the principle of selecting the

most highly qualified consultant.

(4) Contract negotiations with the highest ranked consultant shall be directed toward obtaining written agreement on:

(a) The consultant's tasks, staffing, and a performance schedule; and

(b) A maximum, not-to-exceed contract price which is consistent with the consultant's proposal and fair and reasonable to the Department, taking into account the estimated value, scope, complexity, and nature of the professional services.

(5) Negotiations may be formally terminated if they fail to result in a contract within a reasonable amount of time. Negotiations will then ensue with the second ranked consultant, and if necessary, the third ranked consultant. If the second or third round of negotiations fails to result in a contract within a reasonable amount of time, the solicitation may be formally terminated. Services of a qualified consultant may then be obtained through the direct appointment procedure under OAR 125-065-0080.

(6) If the scope of a project is revised during negotiations so that the estimated cost of the consultant's services exceeds \$50,000, then the informal process shall be terminated and the services of a qualified consultant solicited using the formal selection procedure set forth in OAR 125-065-0060. Provided, however, that negotiations with the informally selected consultant may continue if the Division makes written findings that contracting with the consultant will:

(a) Not encourage favoritism in the awarding of architectural, engineering, or related personal service contracts; and

(b) Will result in substantial cost savings to the Department.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS 283.051

Stats. Implemented: ORS

Hist.: GS 3-1993, f. & cert. ef. 10-6-93

### 125-065-0080

#### Direct Appointment Procedure

(1) A qualified consultant may be appointed directly from:

(a) The Division's current list of consultants;

(b) Another Department's current list of consultants, pursuant to an interagency or intergovernmental agreement entered into in accordance with ORS Chapter 190; or

(c) Among all consultants offering the necessary services that the agency reasonably can locate, which may include public advertisement.

(2) The direct appointment procedure may be used when:

(a) Circumstances which could not reasonably have been foreseen create a substantial risk of loss, damage, interruption of services or threat to the public health or safety and require the prompt performance of architectural, engineering, or related services to remedy the situation; or

(b) The consultant's estimated fee does not exceed \$10,000; or

(c) The project:

(A) Consists of work which has been substantially described, planned or otherwise previously studied or rendered in an earlier contract, as in continuation of a project;

(B) The consultant's estimated fee for such project does not exceed \$50,000; and

(C) The selection procedure used for the original project was the formal selection procedure set forth in OAR 125-065-0060 (or a substantially equivalent procedure if the consultant services for the original project were procured prior to adoption of these rules); or

(d) The consultant will be assisting legal counsel, through expert analysis, testing, testimony or otherwise, on a project which is, or is reasonably anticipated to be, the subject of a claim, lawsuit or other form of action, whether legal, equitable, administrative or otherwise.

(3) A direct appointment pursuant to subsection (2)(a) or (b) of this rule, shall be competitive to the extent practicable and may be based on criteria which include but are not limited to:

(a) The consultant's availability, capabilities, staffing,

experience, and compensation requirements; and

(b) The project's location.

Stat. Auth.: ORS 283.051

Stats. Implemented: ORS

Hist.: GS 3-1993, f. & cert. ef. 10-6-93

#### 125-065-0090

##### Performance Record

A record of each consultant's performance, including information gained during an exit interview, may be compiled and maintained by the Division. A copy of such record shall be made available upon request to the consultant, unless lawfully exempt.

Stat. Auth.: ORS 283.051

Stats. Implemented: ORS

Hist.: GS 3-1993, f. & cert. ef. 10-6-93

#### 125-065-0100

##### Contract Provisions

The Department of Administrative Services shall develop and maintain a standard contract form which shall be used for all architect, engineer, and related service contracts, which can be obtained from the Facilities Division. In using the standard contract form, state agencies shall abide by the following contract provisions:

(1) Except as otherwise required by law, no consultant contract for architectural, engineering, or related services shall be awarded which contains fee provisions or fee schedules that are based on or limited to:

(a) Cost-plus-a-percentage-of-cost; or

(b) A percentage of construction or project costs.

(2) Except in cases of emergency as defined in ORS 279.011(4), no building materials, supplies or equipment for any building, structure or facility constructed by or for the Department shall be sold by or purchased from any person or firm employed as a consultant by the Division to provide architectural, engineering, or related services for such building, structure or facility, unless the consultant is providing:

(a) Construction manager/general contractor services; or

(b) Design-build services, or where that portion of the contract relating to the acquisition of building materials, supplies or equipment was awarded pursuant to applicable law governing the award of such contracts.

Stat. Auth.: ORS 283.051

Stats. Implemented: ORS

Hist.: GS 3-1993, f. & cert. ef. 10-6-93

#### 125-065-0110

##### Protest Procedures

All protests of solicitation or selection processes are limited to the following issues and filing times:

(1) Solicitation protest: Unless a different deadline is specified in the solicitation document, prospective consultants may submit a written protest, or request for change, of particular solicitation provisions, specifications, or contract terms and conditions to the Division no later than seven calendar days prior to the close of the solicitation. Such protest or request for change shall include the reasons for the protest or request, and any proposed changes to the solicitation provisions, specifications, or contract terms and conditions. No protest against selection of a consultant or award of a consultant contract, because of the content of solicitation provisions, specifications, or contract terms and conditions, shall be considered after the deadline established for submitting such protest.

(2) Selection protest: Every consultant who submits a proposal in response to an RFP shall be mailed a copy of the selection notice sent to the highest ranked consultant. Unless a different deadline is specified in the RFP, a consultant who has submitted a proposal and claims to have been adversely affected or aggrieved by the selection of a competing consultant, shall have seven calendar days after receiving the notice of selection to submit a written protest of the selection to the Division. To be adversely affected or aggrieved, a protester must claim that the protester was the highest ranked consultant eligible for selection,

i.e., the protester must claim that all higher ranked consultants were ineligible for selection because their proposals were nonresponsive or the consultants nonresponsible. The Department shall not consider a selection protest submitted after the time period established in section (2) of this rule, unless a different deadline is provided in the RFP.

(3) The Director of the Department, or designee, shall have the authority to settle or resolve a written protest submitted in accordance with section (1) or (2) of this rule. The Director of the Department, or designee, shall promptly issue a written decision on the protest.

(4) Judicial review of the Department's disposition of a written protest submitted in accordance with section (1) or (2) of this rule may be available pursuant to the provisions of ORS 183.484.

Stat. Auth.: ORS 283.051

Stats. Implemented: ORS

Hist.: GS 3-1993, f. & cert. ef. 10-6-93

## 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 Ch. 276 & 283

Stats. Implemented: ORS

DIVISION 75

USE OF BUILDINGS, PARKS AND GROUNDS 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 Ch. 276 & 283

Stats. Implemented: ORS

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 Wilson 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: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Administrative Services.]

Stat. Auth.: ORS Ch. 276 & 283

Stats. Implemented: ORS

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 Ch. 276 & 283

Stats. Implemented: ORS

Hist.: GS 3-1983, f. & ef. 1-19-83

#### 125-075-0015

#### Prohibiting Possession or Use of Firearms, Alcoholic Beverages and Other Illegal Substances on the Premises of State Office Buildings

(1)(a) No firearm of any kind including explosives shall be permitted at any time on the premises of any state office building owned or leased by the Department of Administrative Services;

(b) The provisions of this section shall 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) No alcoholic beverage of any kind, illegal drugs, or any statutorily controlled substance possessed unlawfully shall be permitted at any time on the premises of any state office building which is owned or leased by the Department of Administrative Services, except:

(a) Wine when stored or used for official public business by the Department of Agriculture under ORS Chapter 576; or

(b) Alcoholic beverages stored legally in any private vehicle in transit through or while legally parked on any public grounds or parking areas under the control of the Department of Administrative Services.

Stat. Auth.: ORS Ch. 276 & 283

Stats. Implemented: ORS

Hist.: GS 3-1983, f. & ef. 1-19-83

### 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 Ch. 276 & 283

Stats. Implemented: ORS

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

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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 Ch. 276 & 283

Stats. Implemented: ORS

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 Ch. 276 & 283

Stats. Implemented: ORS

Hist.: GS 3-1983, f. & ef. 1-19-83

**DIVISION 85**

**RECYCLING**

**125-080-0000**

**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 employment 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



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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 Ch. 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

**DIVISION 90**

**PARKING FACILITIES**

**125-090-0000**

**Definitions**

As used in the following Oregon Administrative Rules relating to Parking Facilities, unless the context requires otherwise:

(1) "Capitol Mall 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.

(2) "Car Pool" means cars and vans used for any regular ride-sharing arrangement between two or more employees which operates no fewer than two-thirds of the working days in each calendar month.

(3) "Commercial Parking" means parking made available by a private or public concern for which a use fee is charged.

(4) "Covered Parking" means any parking space protected from above by some amount of building structure.

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

(6) "Disabled" means an individual who because of physical disability, has been issued a parking placard, to the extent of its duration, by the DMV.

(7) "Downtown Eugene Area" means, for the purposes of OAR 125-090-0030, that 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.

(8) "Downtown Portland Area" means, for the purposes of OAR 125-090-0030, that 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.

(9) "Downtown Salem Area" means, for the purposes of OAR 125-090-0030, that 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.

(10) "DMV" means Driver and Motor Vehicle Services of the Oregon Department of Transportation.

(11) "Lloyd District" means that area within the Lloyd District 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.

(12) "Official 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, only if a State Employee is not permanently assigned, as described in subsection (a) of this section.

(13) "Parking Facilities" means any lot, grounds, structure, area or other property managed, controlled or administered by the Department and used or available for the storage of vehicles, principally automobiles, motorcycles or bicycles. Parking Facilities shall also include additional facilities designated by other state agencies to be managed, controlled or administered by the Department.

(14) "Reasonable Accommodation" means the Department shall assign parking spaces to Disabled State Employees, who register with the Department for a parking space in the Parking Facilities, as close as reasonably possible to the building entrance of the Official Station of the State Employee. Each parking space assigned to a Disabled State Employee shall be appropriately striped, including access aisles, if necessary.

(15) "Recognized Service Date" means the date reflecting an employee's time in state service.

(16) "Stacked Parking" means accommodating more than one vehicle per space.

(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, agent, or volunteer worker of the State of Oregon; or any individual assigned to, or by, a State Agency, whether temporarily, by his or her regular employer.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 190.240, 276.591 - 276.601, 283.100 & 283.110

Stat. 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

**125-090-0005**

**Rental Rates for Parking Facilities Controlled by the Department of Administrative Services**

(1) The provisions of this rule shall govern all of the Parking Facilities regulated by Division 90 and subsequent, applicable administrative rules. These above listed administrative rules provide the basis for establishing rental rates and for the review and adoption of revised rental rates of the Parking Facilities.

(2) The Department shall conduct an annual rate review of the fees to be charged for parking in the various Parking Facilities regulated by Division 90 and by subsequent, applicable administrative rules. The Department also may conduct more frequent rate reviews and may alter any parking fees or rates if it determines that reviewing the rates or changing the fees is justified by a consideration of the factors listed in OAR 125-090-0020.

(3) In addition to the rate review and adoption of rental rates described in sections (1) and (2) of this rule, the Department also may alter rental rates periodically or for periods the Department determines appropriate when parking lot occupancy exceeds expected levels. Such rental rate 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) After the Department completes an annual review of rates, or after it completes an interim review, it shall publish the rate schedule, stipulated in OAR 125-090-0020(4) and subsequent, applicable administrative rules regulating Parking Facilities. The new published rate schedule shall supersede all previously published rate schedules and the rental rates originally established in OAR 125-090-0140.

(a) Pursuant to section (3) of this rule, the published rate schedule shall include:

(A) Any revised long-term rental rate changes; and/or

(B) The magnitude and the proposed duration of any temporary rental rate change.

(b) The Department shall publish the revised rates by distributing a new rate schedule, in writing, to:

(A) All individuals who lease parking subject to the rate change; and

(B) All State Agencies which lease, or have employees who lease, parking subject to the rate change.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

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

**125-090-0010**

**Parking Facilities Subject to Department of Administrative Services Management and Control**

The provisions of this rule shall govern Parking Facilities:

(1) Provided at the expense of any State Agency of the State of Oregon, which are located:

(a) Within the Capitol Mall Area, except for the garage of the State Capitol and that parking in front of the Capitol but south of Court Street, or

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(b) At any other place managed, controlled or administered by the Department; and

(2) Designated by other state agencies to be managed, controlled or administered by the Department.

Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

**125-090-0020**

**Fees for Parking Automobiles**

(1) Except as provided in OAR 125-090-0100, parking subject to the provisions of these rules shall be leased by the Department on a monthly or daily fee basis. The Department shall establish the fees to be charged in accordance with the provisions of ORS Chapter 276. In doing so, the Department declares that there is a market for Commercial Parking in each of the Cities of Salem, Portland and Eugene. As such, the Department's charges for all Parking Facilities shall be calculated upon a base rate inclusive of the following elements:

(a) The Department's actual and anticipated expenses to operate, maintain and improve that parking owned or leased by the Department in the Cities of Salem, Portland and Eugene;

(b) Local market conditions and prevailing charges for commercial or other paid parking;

(c) Required depreciation and debt service expenditures;

(d) Revenue recoveries adequate to offset amounts foregone in discouraging the use of single occupancy vehicles, such as providing Car Pool incentive rates, under OAR 125-090-0030(1);

(e) Ad valorem property taxes as required by ORS 276.592; and

(f) Reasonable capital development funds.

(2) To the base rate developed under section (1) of this rule, and for each Parking Facility, the Department may add additional variable surcharges to recognize the following conditions:

(a) Reserved parking;

(b) Improved parking;

(c) Covered parking;

(d) Secured parking;

(e) Location of parking;

(f) Ease of access to parking; and/or

(g) Notwithstanding conditions specified in subsections (a) through (f) of this section, parking which is made available to persons who are not State Employees.

(3) Pursuant to the provisions of OAR 125-090-0005 and this rule, the Department shall annually review the base rate and schedule of surcharges authorized in sections (1) and (2) of this rule, and shall adopt and publish a rate schedule for distribution to all persons leasing parking subject to these rules, and to all State Agencies which occupy quarters located in the Capitol Mall Area, or elsewhere in the City of Salem, the Portland State Office Building and the Eugene State Office Building. Pursuant to OAR 125-090-0005 and this rule, the Department may, at its discretion, review and adjust the base rate and schedule of surcharges more frequently when it determines that reviewing or adjusting the base rate or the schedule of surcharges is justified by a consideration of the factors listed in this rule. Unless otherwise specified, the rate schedules published by the Department shall supersede all previously published schedules for parking subject to these rules.

Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

**125-090-0030**

**Car Pool Incentive Reductions**

(1) In order to discourage the use of single occupant vehicles and to encourage the use of Car Pools, the Department may offer Car Pool incentive reductions to the base rate established in OAR 125-090-0020(1). Such incentive reductions will be based upon the number of participating employees in each Car Pool. In order to qualify for an incentive reduction, each Car Pool must:

(a) Include at a minimum two employees, at least one of which must be a State Employee, and all of which must work in

the same locale, which is either the Capitol Mall Area and/or Downtown Salem Area, Lloyd District and/or Downtown Portland Area or Downtown Eugene Area; and

(b) Certify semi-annually in writing to the Department the composition of the Car Pool, and that the Car Pool operates with its full membership riding no fewer than two-thirds of the working days in each calendar month.

(2) Each certified Car Pool shall be registered by the Department in the name of one of the State Employee participants who shall be designated the principal participant, and who shall be individually responsible monthly to assure that the applicable fees are paid to the Department in a timely manner. Only the principal participant permit holder is eligible to receive a Car Pool incentive reduction on behalf of any member of his or her Car Pool.

(3) The principal State Employee participant shall be responsible to immediately report any changes in his or her Car Pool's composition to the Department.

(a) A Car Pool parking permit or assigned reserved parking space may be transferred to another bona fide State Employee participant if the participant has been a member of the Car Pool for a minimum of six months, and that individual becomes the principal participant in whose name the Car Pool is registered, so long as the group continues to meet the conditions outlined in section (1) of this rule. The new principal State Employee participant must submit in writing to the Department the composition of the new Car Pool membership at the time the parking permit or assigned reserved parking space is transferred.

(b) Subject to the discretion of the Department, which considers such factors as the wait list, a parking space previously assigned to a Car Pool may be retained by or transferred to an individual bona fide State Employee participant of the subject Car Pool, if:

(A) No transfer of the Car Pool parking permit or assigned reserved parking space, as described in subsection (a) of this section, is requested;

(B) That participant requests the retention of the parking space; and

(C) That participant has been a member of the subject Car Pool for at least the two immediately preceding years.

(c) Priority among two or more requesting eligible participants of the Car Pool, as outlined in subsections (a) or (b) of this section, is granted, in this order, to the participant who:

(A) Was the current principal participant of the subject Car Pool;

(B) Has been a continuous member of the subject Car Pool for the longest time; or

(C) Held the earliest Recognized Service Date with the state. The Department, within its discretion, shall make any further determinations of priority.

(4) The incentive reductions available for Car Pools shall be established and reviewed annually, and may be reviewed and adjusted more often by the Department, at its discretion, and be published as part of the schedule of the base rate and surcharges which the Department shall issue under the provisions of these rules.

(5) Any violation of these rules may subject the principal participant and/or any Car Pool participant to citation, prosecution and/or the cancellation of parking privileges.

Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

**125-090-0040**

**Fees for the Parking of Motorcycles**

The Department shall establish a single rate for the parking of motorcycles which is sufficient to recover:

(1) Departmental administrative expenses attributable to the registration of motorcycles; and

(2) A proportional share of Departmental expenses undertaken to operate, maintain and improve Parking Facilities being used for motorcycles; including debt service, depreciation, ad valorem property taxes and capital development, as appropriate.

(3) The Department shall annually review and adjust the rate

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established for parking of motorcycles, and may, at its discretion, make more frequent adjustments in the rate for parking of motorcycles, and shall include this rate in the schedule of rates and surcharges published pursuant to OAR 125-090-0020(4).

Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

**125-090-0050**

**Parking for Bicycles**

(1) The Department provides open bicycle racks at certain Parking Facilities in the Cities of Salem, Portland and Eugene. There is no charge for the use of these racks.

(2) The Department provides secured rooms containing bicycle racks in the Capitol Mall Area and in the City of Portland. The Department may also provide other bicycle racks or bicycle lockers. Rates for the parking of bicycles in these facilities shall be established by the Department, which is sufficient to recover:

(a) Departmental administrative expenses attributable to the registration of bicycles; and

(b) A proportional share of Departmental expenses undertaken to operate, maintain, and improve Parking Facilities being used for bicycles; including debt service, depreciation, ad valorem property taxes and capital development, as appropriate.

(c) The Department shall annually review and adjust the rate established for parking of bicycles in a secured room, and may, at its discretion, make more frequent adjustments in the rate for parking of bicycles, and shall include this rate in the schedule of rates and surcharges published pursuant to OAR 125-090-0005(4).

(3) Users shall be individually responsible to secure their bicycles from theft through the use of locks or chain devices.

Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

**125-090-0060**

**Terms Under Which Parking Facilities Shall be Leased**

(1) The Department permits parking of employee, visitor, commercial service, and state-owned vehicles at Parking Facilities for official business only, unless other arrangements are expressly made. Parking not required by such vehicles for official state business may be leased to the general public. Persons who fail to comply with this rule shall forfeit their parking privileges, and be subject to the enforcement provisions specified in OAR 125-090-0130.

(2) Registration for parking with the Parking Office allows the authorized vehicle to park in the assigned Parking Facility, and space, in the case of reserved parking, from 7 a.m. to 5 p.m. weekdays. The Department may issue permits which must be displayed in order to qualify the holder for specified parking privileges. The type of permit issued, if any, will be based upon the Parking Facility to which the user is assigned, and whether or not any parking surcharges under OAR 125-090-0020(2) are applicable. No motorcycle operator shall park his or her vehicle in any area except those specially designated for motorcycle parking, and a valid permit is properly displayed.

(3) Pursuant to ORS 811.635(3)(c), parking privileges for State Employees, including disabled and temporary employees, does not include the use of parking spaces, at the employees' Official Station, which are designated as being provided for visitors, whether disabled accessible or metered spaces. Employees parking at their Official Station may use metered visitor spaces, with proper coin deposit.

(4) Disabled State Employees are required to submit a copy of their DMV parking placard to the Department to obtain priority status, according to the assignment of priority specified in OAR 125-090-0110. DMV parking placard holders must resubmit a copy of the placard each time prior to expiration of the placard to retain priority status and their parking assignment. Disability parking privileges expire at the time the DMV parking placard expires, at which time the State Employee may be reassigned a parking space or placed on a waiting list, based on the assignment of priority specified in OAR 125-090-0110.

(5) The Department shall provide Disabled State Employees with Reasonable Accommodations. Disabled State Employees waiting for an assignment of a parking space, may park at a visitors' disabled accessible space or metered space, but are obligated to pay the monthly fee appropriate for the space for which the Disabled State Employee is waiting.

(6) In establishing the base rate for parking at each of the Parking Facilities, the Department 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 thereof, the Department may make certain of the availability of its Parking Facilities to State Employees and others for parking between the hours of 5 p.m. and 7 a.m. on weekdays, and on weekends. Rates established for such nighttime and weekend parking use shall reflect local market conditions for commercial parking. In those Parking Facilities where charges for evening or weekend parking have been established by the Department, employees and others, who have registered for parking with the Department's Salem Parking Office and have paid the appropriate fee for the specific facility, may park at night or on weekends without an additional charge. All other persons desiring to use this nighttime or weekend parking shall make the required payment as specified in the Department's schedule of rates. However, the following conditions shall apply to all nighttime and or weekend use of Parking Facilities under these rules:

(a) No individual reserved space assignments shall be honored;

(b) The Department expressly rejects any liability for the personal safety of any individual user or for any automobile or accessory; and

(c) Vandalism and loitering at all times are expressly prohibited.

(7) Except as specified in OAR 125-090-0030(3), parking permits issued by the Department are not transferable to any other person. Nor shall any assigned parking privilege be subleased to any other person.

(8) Replacement permits will be provided to monthly parking permit holders reporting their permits lost or stolen to the Department's Salem Parking Office, 1225 Ferry Street S.E., Salem, OR 97310. The Department shall charge \$10 per replacement request.

(9) The State of Oregon, Department of Administrative Services and its officers and employees are not responsible for any accident or damage to a vehicle, theft or personal injury resulting from the use of any Parking Facility under this rule.

(10) The Department reserves the right to issue and post rules at each Parking Facility which shall govern the specific use and operation of such facility.

(11) Any violation of these rules may subject the violator to citation, prosecution and/or the cancellation of parking privileges.

Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

**125-090-0070**

**Payment for Monthly Parking Privileges**

(1) State Employees, who are on the Oregon state payroll system, shall pay for parking by payroll deduction, when possible; otherwise, or if the Department chooses, through direct cash payments, as follows:

(a) Payroll deduction plan: By signing the forms prescribed by the Department at the commencement of parking privileges, the State Employee authorizes the deductions. This authorization shall remain in force until the employee cancels his or her parking privileges in writing or terminates his or her state employment. Deductions once authorized are automatically made monthly in arrears for parking charges. Monthly rates will be prorated to the nearest half-month for persons using payroll deduction who begin or stop his or her parking privileges;

(b) Cash payment method: State Employees who begin monthly parking privileges may, within the discretion of the Department, pay for those privileges by cash, check or money

order; however, the Department prefers to receive payment by check or money order. The Department shall only receive payment for the exact amount due. Payment is due by the first calendar day of each month. If payment is not received by the fifth calendar day of the month, parking privileges shall be cancelled. Such payment shall be made in person or by mail to the Department's Salem Parking Office, 1225 Ferry Street S.E., Salem, OR 97310. Monthly rates will be prorated to the nearest half-month for persons making cash payments who begin or stop his or her parking privileges.

(2) Persons who are not State Employees shall pay for monthly parking privileges by cash, check, or money order; however, the Department prefers to receive payment by check or money order. The Department shall only receive payment for the exact amount due. Payment is due by the first calendar day of each month. If payment is not received by the fifth calendar day of the month, parking privileges shall be cancelled. Such payment shall be made in person or by mail to the Department's Salem Parking Office, 1225 Ferry Street S.E., Salem, OR 97310. Monthly rates will be prorated to the nearest half-month for persons making cash payments who begin or stop his or her parking privileges.

Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

#### 125-090-0080

##### Payment for Daily Parking Privileges

(1) Persons who require daily parking privileges shall observe the following procedure for payment:

(a) In Parking Facilities in the City of Salem, the person parking shall obtain a daily parking permit from the Department's Salem Parking Office. Payment may be made in person or by mail in advance of need, in the form of cash, check or money order. The Department shall only receive payment for the exact amount due. If the requested daily parking is not available, the Department shall return the request and the payment to the person.

(b) At the Portland State Office Building and the Eugene State Office Building, the person parking shall utilize metered parking only.

(2) State Agencies which require daily parking for vehicles of board or commission members, volunteers, the agency or State Employees, in order to transact agency certified official state business, may obtain books of special one-day parking permits from the Department's Parking Office. The cost for these permit books shall be as specified in the Department's schedule of rates. When properly completed and displayed, such permits will entitle the bearer to park for the date of issue only, at any blue banded, metered space within the Parking Facilities located at the Eugene State Office Building or in the City of Salem, except those metered spaces in the underground Capitol Mall Parking Structure and certain metered spaces at the Mill Creek facility. Such metered spaces are limited to those in the General Services Building surface lot, Archives lot, Employment/State Lands lot, Executive Building lot, Public Utilities Commission lot, Veterans/Agriculture lot, Mill Creek lot and Water Resources lot. If such metered spaces are not available, the permit holder may park in any unreserved space on the Ferry Street structure rooftop or in the "Yellow", "Red", or "Green" lots controlled by the Department, except in the designated "Park and Pay" locations. Any other use constitutes a violation of these rules and shall subject the violator to the enforcement provisions of OAR 125-090-0130.

(3) Daily permits may be purchased in designated areas at the "Park and Pay" machines, which issues a daily parking permit. The permit is valid for the day of issue only, for the rows and/or spaces of parking indicated in the lot, provided the proper payment is given and the permit is properly displayed.

Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

#### 125-090-0090

##### Permit Cancellation

(1) Monthly permits may be cancelled by the permittee at any time, however, all cancellations shall be:

(a) Submitted in writing to the Department's Salem Parking Office;

(b) Accompanied by the actual permit/sticker which is being surrendered.

(2) Any refund due the individual surrendering a monthly permit shall be prorated to the nearest half-month, so that permits surrendered and received in the Parking Office on days 1 through 15 of the month will be refunded half the monthly rate paid by the user. Surrendered permits received between days 16 and 31 of the month will receive no refund of parking fees made. Individuals who do not surrender their cancelled permits are subject to a charge equivalent to the monthly rate for which the individual had been charged for the permit to park in the parking space.

(3) Individuals cancelling their use of any of the secured rooms for bicycle parking shall surrender the issued key and are not entitled to any prorated portion of the current year's annual fee. Individuals who do not surrender their key upon cancellation are subject to a fine equivalent to the current annual fee for such secured rooms.

Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

#### 125-090-0100

##### Other Parking Provided

Notwithstanding OAR 125-090-0010 through 125-090-0090, the Department may provide the following types of additional parking in the Parking Facilities:

(1) Specially marked or designated free parking for the temporary use of disabled visitors to state offices. Vehicles occupying such spaces shall bear a valid and properly placed parking placard issued by the DMV.

(2) Free parking for those statewide elected officials who park:

(a) In the Capitol Mall Area, but, whose principal offices are not located in the State Capitol; or

(b) At the Portland State Office Building and whose offices are located in the Portland State Office Building.

(3) Time-limited free or metered spaces for use by persons transacting business in state offices. No State Employee shall abuse this class of parking.

(4) Visitor parking, whether disabled accessible or metered, free of charge whenever:

(a) A Disabled State Employee visits a state facility,

(b) The visited state facility is not the employee's Official Station, and

(c) A valid DMV parking placard is properly displayed.

If the State Employee is not registered with the Department for a parking space in a Parking Facility, then this policy does not apply to Parking Facilities within three square blocks of the block on which the State Employee's Official Station sits.

(5) Free spaces designated for commercial loading and service vehicle use only.

Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

#### 125-090-0110

##### Assignment of Priority

The Department shall observe the following priority in leasing newly available parking spaces, except the Department shall exercise its own discretion of assigning space to independent contractors in a state-owned facility who provide service to all building tenants and to give building tenants, whether or not State Employees, priority over non-building tenants in Parking Facilities:

(1) Disabled State Employees;

(2) State Agency held state cars which receive frequent daily in and out use, or are regularly used by volunteers or field office personnel;

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(3) State Employees whose agency director, or designee, certifies that the employee must have a vehicle at the work site;

(4) State Employees currently parking with the Department who are either Displaced by the Department from another Parking Facility, transferring from another State Agency, wishing to be relocated within the same lot, returning from leave without pay or registered with the Department, for up to three months, to utilize an alternative mode of transportation;

(5) Car Pool vehicles with three or more State Employee riders;

(6) Car Pool vehicles with two State Employee riders;

(7) Car Pool vehicles with one State Employee rider;

(8) Car Pool vehicles with persons who are not State Employee riders;

(9) Single occupant State Employee vehicles; and

(10) Single occupant vehicles with no State Employees.

Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

**125-090-0120**

**Safety Rules**

The following safety rules shall be observed by all users of Parking Facilities:

(1) The Oregon Basic Rule governing the operation of motor vehicles applies to use of all vehicles in all Parking Facilities.

(2) Pedestrians have the right-of-way.

(3) Automobiles are to be headed into the parking space at metered parking and at diagonal parking unless parking in the area is designated otherwise.

(4) Maximum speed shall be ten miles per hour unless a slower maximum speed is posted.

(5) Users shall follow all directional arrows, signs and posted instructions.

(6) The State of Oregon, Department of Administrative Services and its officers and employees are not responsible for any accident or damage to a vehicle, theft or personal injury resulting from the use of Parking Facilities.

(7) The Department reserves the right to issue and post rules at each Parking Facility which shall govern the specific use and operation of such facility.

Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

**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. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

**125-090-0140**

**Schedule of Parking Rates and Surcharges**

Schedule of parking rates, subject to change as authorized by these rules, for the Parking Facilities is as follows:

(1) City of Salem:

(a) Automobile parking - State Employees:

(A) Uncovered unreserved parking (monthly), \$35;

(B) Uncovered reserved parking (monthly), \$40;

(C) Uncovered reserved parking - Stacked (monthly), \$25;

(D) Covered reserved parking (monthly), \$45;

(E) Covered reserved parking - Stacked (monthly), \$30;

(F) Parking permit (daily), \$3;

(G) Car Pool reductions applicable on reserved and unreserved parking spaces (monthly):

(i) Driver and one employee rider, \$5;

(ii) Driver and two employee riders, \$8;

(iii) Driver and three or more employee riders, \$11.

(H) Permit books for purchase by State Agencies for official state business-related parking (20 permits), \$60;

(I) Permit replacement (per occurrence), \$10.

(b) Automobile parking - persons who are not State Employees:

(A) Permit parking premium above State Employee rate (monthly), \$5;

(B) Parking permit (daily), \$3;

(C) Permit replacement (per occurrence), \$10.

(c) Motorcycle parking (State and persons who are not State Employees):

(A) Parking permit (monthly), \$5;

(B) Permit replacement (per occurrence), \$10.

(d) Bicycle parking (State and persons who are not State Employees):

(A) Open rack, No charge;

(B) Secured room (annually), \$10.

(e) Metered parking (hourly), \$50.

(f) City of Salem citation, As indicated on citation.

(2) Portland State Office Building:

(a) Automobile parking - State Employees:

(A) Reserved parking - covered and uncovered (monthly), \$56;

(B) Car Pool reductions (monthly):

(i) Driver and one employee rider, \$5;

(ii) Driver and two employee riders, \$8;

(iii) Driver and three or more employee riders, \$11.

(b) Automobile parking - persons who are not State Employees - parking permit (monthly), \$75.

(c) Motorcycle parking (State and persons who are not State Employees):

(A) Parking permit (monthly), \$10;

(B) Permit replacement (per occurrence), \$10.

(d) Bicycle parking (State and persons who are not State Employees):

(A) Open rack, No charge;

(B) Secured room (annually), \$10.

(e) Metered parking (hourly), \$50.

(f) Citation, As indicated on citation.

(3) City of Eugene:

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- (a) Automobile parking - State Employees:
    - (A) Reserved parking - State Office Building & County Structure (monthly), \$21;
    - (B) Unreserved parking - Eugene Motor Pool (monthly), \$12;
    - (C) Car Pool reductions applicable on reserved and unreserved parking spaces (monthly):
      - (i) Driver and one employee rider, \$5;
      - (ii) Driver and two employee riders, \$8;
      - (iii) Driver and three or more employee riders, \$11.
    - (D) Permit books for purchase by State Agencies for official state business-related parking (20 permits), \$60.
  - (b) Automobile parking - persons who are not State Employees - permit parking premium above State Employee rate (monthly), \$5.
  - (c) Motorcycle parking (State and persons who are not State Employees):
    - (A) Parking permit (monthly), \$5;
    - (B) Permit replacement (per occurrence), \$10.
    - (d) Bicycle parking (State and persons who are not State Employees):
      - (A) Open rack, No charge;
      - (B) Secured room (annually), \$10.
      - (e) Metered parking (hourly), \$.50.
      - (f) Citation, As indicated on citation.
- Stat. Authority: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100  
Stat. Implemented: ORS 98.805, 276.591, 276.594 & 276.601  
Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

**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 sub-sequently 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 Chapter 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 sub-section (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 sub-section (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 Ch. 283.060

Stats. Implemented: ORS

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, the term:

(1) "Administrator" means the administrator of the Facilities Division of the Department of Administrative Services.

(2) "Agency" or "Requesting 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) "Facilities Division" means the Facilities Division of the Department of Administrative Services.

(5) "Office Quarters" means office space, office buildings, and related service, storage, and parking facilities for state agencies, and includes factory-built, modular, or portable units.

(6) "Lease" means a lease between an agency and a lessor other than the Department, including an interagency lease and sublease.

Stat. Auth.: ORS 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

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**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: ORS

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**

When an agency requests office quarters, the Department shall first assign the agency to office quarters owned or managed by the Department, when available and feasible; when such office quarters are not available and feasible, the Department shall next assign the agency to other state-owned or state-leased office quarters when available or feasible. 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 the Department's space assignment.

Stat. Auth.: ORS Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

**125-120-0030**

**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: ORS

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**

For measuring office space Facilities Division will use the standards of the American National Standards Institute (ANSI) as adopted by the Building Owners and Managers Association (BOMA) standards and practices.

Stat. Auth.: ORS 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

**125-120-0050**

**Occupancy Agreement for Department-Owned Office Quarters**

(1) An agency assigned to Department-owned office quarters shall sign and comply with the Department's occupant agreement, or letter of tenancy.

(2) Facilities Division may charge and collect from any agency violating the rental agreement or conditions of tenancy the cost of correcting the damages resulting from the agency's violations.

Stat. Auth.: ORS 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

**125-120-0060**

**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.

Stat. Auth.: ORS 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

**125-120-0070**

**Leasing Authority (ORS 276.428)**

(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 determined by Facilities Division.

(2) Communications with build-to-suit lessors during construction, and with other lessors during remodeling or renovation of office quarters, will be made only by Facilities Division, unless delegated by the Facilities Division. State tenant agencies shall not communicate with such lessors until the construction, remodeling or renovation has been completed and the work accepted by Facilities Division.

(3) To be binding upon any agency, all leases and rental agreements entered into by an agency for office quarters must be approved by Facilities Division, pursuant to ORS 276.428.

Stat. Auth.: ORS Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

**125-120-0080**

**Subleases by an Agency (ORS 276.428)**

(1) Facilities Division must review and approve all subleases by or for all agencies.

(2) An agency shall not sublet any of its leased office quarters without prior written approval by Facilities Division.

Stat. Auth.: ORS Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

**125-120-0090**

**Leasing or Renting Involvement of a Requesting Agency (ORS 276.428)**

(1) When Facilities Division determines it to be in the best interests of the State, Facilities Division may allow a requesting agency to perform certain aspects of the leasing process under the guidance and supervision of Facilities Division.

(2) An agency may seek rental market information, but an agency shall not represent the State or Facilities Division or make commitments to rent or lease.

Stat. Auth.: ORS Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

**125-120-0100**

**Lease Renewal Inquiry (ORS 276.410)**

(1) Approximately one year before an agency's lease expires, Facilities 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 the receipt of the notice and inform the Facilities Division of its plans for office quarters.

Stat. Auth.: ORS Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

**125-120-0110**

**Agency Commitment**

(1) Before Facilities Division approves an agency's request for office quarters, the head of the requesting agency shall certify the availability of funds for the estimated cost of the requested office quarters. Facilities Division will help the requesting agency

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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 a request for office quarters during any stage of the leasing process and if, in Facilities Division's discretion, there was not a serious intent to lease.

(3) Once negotiations begin, Facilities Division may hold an agency withdrawing from the leasing process liable for any costs associated with or resulting from the agency's withdrawal from the leasing process, including legal costs, and for charges for services rendered to the agency by Facilities Division during that leasing process. Facilities Division may collect such costs from the agency, including interest at the rate of eight percent per annum, for such costs not paid within 45 days of the agency's receipt of an invoice from Facilities Division.

Stat. Auth.: ORS Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

### **125-120-0120**

#### **Locating Leases**

(1) Facilities 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. Facilities Division also reserves the right to reject, in the best interests of the State, any and all information received while conducting solicitation for information on leasable properties or facilities. Unless by exemption from the Administrator of Facilities Division for an emergency, Facilities Division will search for available office quarters to lease as follows:

(a) Through direct contact or through public advertisement, as needed, for office space smaller than 10,000 square feet or for other support space or facilities such as storage or parking spaces;

(b) Through public advertisement and selection process for major leases which are for 10,000 square feet or more of office space and for any new build-to-suit leases regardless of size.

(2) Extensions and amendments to existing leases are not subject to requirements of subsections (1)(a) and (b) of this rule.

Stat. Auth.: ORS Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

### **125-120-0130**

#### **Determining a Lease Search Area (ORS 276.426, 276.428)**

Facilities Division and the requesting agency shall determine the geographical boundaries for a lease search 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.

(4) Proper zoning and compatibility with local government comprehensive land use plans.

(5) The total rental or relative occupancy cost.

Stat. Auth.: ORS Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

### **125-120-0140**

#### **Leasing Directly from Trade List**

(1) Before leasing or renting office quarters smaller than 10,000 square feet, Facilities Division will refer to and, when feasible, select for direct negotiations, leasable properties on file at the Division submitted by qualified property owners and real estate professionals interested in developing and leasing office quarters for occupancy by the state. Alternatively, the Division may advertise publicly or conduct a search for a leasable facility, and negotiate directly with the owner for the lease.

(2) Facilities Division may publish its leasing requirements,

as needed, or inform those on the Division's trade list of qualified property owners, developers and real estate professionals interested in developing and leasing office quarters for occupancy by the state, to solicit leasable properties information.

(3) A property owner, developer or real estate professional may get on Facilities Division's trade list by contacting Facilities Division and submitting information on:

(a) Available or leasable properties to be included in the Division's file; and

(b) Information relating to the landlord, including references to his or her experience as a responsible and responsive landlord, and such other information as Facilities Division may require from time to time.

Stat. Auth.: ORS Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

### **125-120-0150**

#### **Giving Notice of Intent to Lease**

(1) When the geographic search area for siting office quarters has been established or when leasable properties have been identified, Facilities Division shall contact the community or communities which Facilities Division determines are likely to be affected by the requesting agency's location. Notice shall be given as applicable 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 Facilities Division; and

(g) Affected local neighborhood associations, as identified and determined by Facilities Division.

(2) A reasonable response period for notified parties will be specified in the notification letter.

(3) The Facilities Division and the requesting agency shall attempt to address the concerns of notified parties. The Facilities 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 proceed with siting.

(4) The Administrator of Facilities Division may waive or modify the notification process for:

(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 Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

### **125-120-0160**

#### **Lease Prospectus**

(1)(a) Facilities Division shall publish and make available a prospectus for any major lease;

(b) The lease prospectus shall include all information by which proposed leases or sites are to be accepted, evaluated and recommended. The lease or site prospectus shall include, but not be limited to the criteria established in OAR 125-120-0130 (Determining a Lease Search Area).

(2) The Administrator or designee shall establish a selection committee for leases solicited through public advertisement, with a representative of Facilities Division serving as chair.

(3) The selection committee shall include at least one representative from the requesting agency. Such representative shall be the head of the requesting agency or his or her designee



authorized to act on his or her behalf.

(4) The committee shall evaluate alternative facilities or sites according to the criteria stated in the lease prospectus. The Facilities Division chair shall guide the committee to ensure that the process is carried out properly.

(5) The chair of the selection committee shall ensure that the committee documents the evaluation process, justifies all lease or site selections, and recommends in writing a site or lease that best meets the criteria in the prospectus.

(6) The Administrator shall approve the committee's recommendation and authorize the Facilities Division to send out the selection notices and to proceed with the lease negotiations.

(7) The Facilities Division shall conduct the lease negotiations on behalf of the requesting agency unless otherwise determined by the Administrator. The Facilities Division may terminate the negotiation process if it determines that the negotiation process will not yield a satisfactory result.

(8) Notwithstanding any other provisions of these leasing rules, the Administrator may terminate a leasing process when it is determined that doing so is reasonable taking into account:

(a) Economy, efficiency, convenience to the public or centralization of office quarters; or

(b) The best interests of the state and the general advantage of the public.

Stat. Auth.: ORS Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

#### 125-120-0170

##### Construction Standards (ORS 276.428)

All build-to-suit leases or major remodeling of leased facilities shall comply with the 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 disabled persons, to the extent required by law. All build-to-suit leases shall comply, where applicable, with the prevailing wage rate laws.

Stat. Auth.: ORS Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

#### 125-120-0180

##### Providing for Non-Appropriation and Early Termination

(1) All leases approved by the Department shall include a non-appropriation clause that provides for termination of a lease by an agency when the agency no longer has available funds within its current appropriation or expenditure limitation with which to pay for the lease.

(2) All leases approved by the Department may additionally provide for an early termination of the lease by the requesting agency, specifying the financial terms or penalties under which the requesting agency may terminate the lease before the lease expires.

Stat. Auth.: ORS Ch. 276.428 & 283.060

Stats. Implemented: ORS

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

### 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 Ch. 278 & 283

Stats. Implemented: ORS

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 Ch. 283  
Stats. Implemented: ORS  
Hist.: GS 5-1982, f. & ef. 5-3-82

STATE VEHICLE USE AND ACCESS

**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 Ch. 283  
Stats. Implemented: ORS  
Hist.: GS 5-1982, f. & ef. 5-3-82

**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 ORS Chapter 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 un-enclosed 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

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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 Chapter 125, Division 155 for details.

Chief Condition:	Type of Vehicle:	Control:	At Risk/ Liable:
<b>Employee or Volunteer</b>			
State direction/control	State or state rental	State	Primarily state
State direction/control	Private on state business	State	Secondarily state
Any private use	Any vehicle	Employee	Employee
<b>Agent on Contract</b>			
State direction/control contract terms	State and state rental for agency need or benefit	State	Primarily state
	Private on state business	State	Secondarily state
Any private use	Any vehicle	Agent	Agent
<b>Non-agent Contractor</b>			
Contract terms	Any vehicle. State State vehicles prohibited.	Contractor	Contractor
<b>Client</b>			
Only as specified by law	State	Client	Varies
& agency agreement	Any private or rental	Client	Client
<b>OSSHE Student</b>			
OSSHE adopts rules & controls use	Any vehicle allowed by OSSHE or owning agency	OSSHE, owner	Same as for agent
<b>Spouse</b>			
Prohibited, as spouse	None on state business	Spouse	Spouse/employee
<b>Chauffeur</b>			
Need & agency approval	Any on state business	Employee	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

**125-155-0420**  
**Passengers**

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(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**

(1) 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 Chapter 125, Division 155 for details.

Chief Condition:	Type of Vehicle:	Control/At Risk:
<b>Generally</b>		
Needed to accomplish state business	State and state rental	Primarily state
Private on state business	Secondarily state	
<b>State guest, observer, minor or non-competent</b>		
Prior agency permission	Same	Same
<b>Employee's Aide</b>		
Prior agency permission	Any on state business	Aide or Employee
<b>Employee's Child</b>		
Agency permission & DAS order	Any on state business	Employee-parent
<b>Employee's Spouse</b>		
Only as employee's aide	Any on state business	Spouse or employee
<b>Hitchhiker</b>		
Prohibited	Any on state business	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

**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 Chapter 125, Division 155 for details.

**NOTE:** 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.

Use of Vehicle: vehicle	State vehicle:	State rental:Private status:
<b>Ordinary state business</b>		
On any travel status	On any travel status	On any travel status
<b>Non-urgent on the job injury</b>		
Overnight, full-time	Overnight	Private use, cost, risk
<b>Medical, personal</b>		
Overnight travel status	Private use, cost, risk	Private use, cost, risk
<b>Personal grooming</b>		
Overnight travel status	Overnight travel status	Private use, cost, risk
<b>Personal recreation</b>		
Overnight travel status	Private use, cost, risk	Private use, cost, risk
<b>Personal laundry</b>		
Overnight travel status	Overnight travel status	Private use, cost, risk
<b>Personal necessity shopping</b>		
Overnight travel status	Overnight travel status	Private use, cost, risk
<b>Family needs</b>		
Prohibited	Prohibited	Private use, cost, risk
<b>Food/Break enroute</b>		
On any travel status	On any travel status	On any travel status
<b>Emergency roadside aid</b>		
On any travel status	Private use, cost, risk	Private use, cost, risk
<b>Emergency on the job injury</b>		
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

**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 mis-use. 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 inter-governmental 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 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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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. The permanent disability award is calculated as two-thirds of the state minimum wage multiplied by the disability rating. The weekly amount is calculated in this manner. The hourly minimum wage established by ORS 653.025, 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 Corrections.

(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



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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 the Risk Management 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) "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.

(19) "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.

(20) "Physician" means a person licensed, in the state where he or she provides medical services, as a medical doctor, doctor of

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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.

(21) "Release" means the claimant's release from Corrections' confinement. When the context requires, release also means the date of release from any subsequent confinement.

(22) "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: The publication(s) referred to or incorporated by reference in this rule, are available from the Department of Administrative Services, Risk Management Division]

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

### **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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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:

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(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.

(6) 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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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**

(1) The following rules of evidence and construction shall apply to all issues bearing on a claim:

(a) 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.

(b) These rules shall be interpreted according to their plain meaning and not construed in favor of the claimant.

(c) 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.

(d) 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.

(e) Department's records shall be presumed true and shall suffice to prove all timing and procedural matters noted therein.

(f) 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.

(g) 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.

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(h) 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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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, hyper-sensitivity's, mental or emotional health, or psychological

reactions.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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.

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(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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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.

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Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525  
Stats. Implemented: ORS 655.505 to 655.525  
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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

**125-160-0940**

**Documents & 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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

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 & 655.525

Stats. Implemented: ORS 655.505 to 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

## DIVISION 300

## PUBLIC CONTRACT EXEMPTIONS

### Introduction

[ED. NOTE: Chapter 690, Oregon Laws 1983, Section 20 abolished the Public Contract Review Board (OAR Chapter 127) and *transferred* those responsibilities to the Department of Administrative Services.]

### 125-300-0000

#### Purpose and Statutory Authority

(1) Purpose: These rules establish public contract exemptions that may be used by the Department without the Department making and approving additional findings of fact pursuant to ORS 279.015(2)(a) and (b), except where an exemption expressly requires such additional findings. These rules are for use by:

(a) The Department;

(b) Other state agencies that have statutory authority or delegated purchasing authority to procure and contract for the products or services covered by a particular exemption; and

(c) Those local public agencies that have entered into an intergovernmental agreement with the Department to serve as such agencies' public contract review authority, as provided in OAR 125-10-005.

(2) Application. These rules may be adopted in whole or in part by any local public agency or public contract review authority. These rules do not, and shall not be construed to, confer delegated purchasing authority on other state agencies. State agencies that do not have authority under their substantive statutes to perform their own purchasing may request delegated purchasing authority from the Department pursuant to ORS 279.727. Delegated authority, when granted, is pursuant to OAR 125-030-0001(3).

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.015 & 279.017

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### 125-300-0010

#### Exemptions

All public contracts shall be based upon competitive bidding, except the following:

(1) Contracts which have been specifically exempted under ORS 279.015(2) or 279.017;

(2) Contracts for personal services;

(3) Contracts excepted under ORS 279.015 subsections (1)(a) through (g) and subsections (3) and (4); and

(4) Contracts covered by the class exemptions in Divisions 310 through 360 of this chapter.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.015 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

### 125-300-0050

#### Exemptions Requests

(1) An agency may request an order from the Department exempting a particular contract or contracts from competitive bidding where such contract or contracts are not otherwise exempted under these rules. The request shall contain the following:

(a) The nature of the project;

(b) Estimated cost of the project;

(c) A narrative description of the cost savings anticipated by the exemption from competitive bidding and the reasons competitive bidding would be inappropriate;

(d) Proposed alternative contracting and purchasing practices to be employed; and

(e) The estimated date by which it would be necessary to let the contract.

(2) The Department may require any additional information deemed necessary to determine whether a particular contract or contracts is (are) to be exempt from competitive bidding.

Stat. Auth.: ORS Ch. 279 & 283

**Chapter 125 Department of Administrative Services**  
**OREGON ADMINISTRATIVE RULES 1997 COMPILATION**

Stats. Implemented: ORS 279.015 & 279.019  
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-320

**125-300-0100**

**Brand Names or Products, "or Equal", Single Seller and Sole Source**

(1) Solicitation specifications for public contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections (2) and (3) of this rule.

(2) "Or Equal" Specification. An agency may specify a particular brand name, make or product suffixed by "or equal", "or approved equal", "or equivalent", "or approved equivalent", or similar language if there is no other practical method of specification

(3) Specifying a Particular Brand Name, Make, or Product. An agency having independent statutory authority or delegated authority to conduct its own procurement may specify a brand name, make, or product without an "or equal" or equivalent suffix if there is no other practical method of specification, after documenting the procurement file with the following:

(a) A brief description of the solicitation(s) to be covered including contemplated future purchases;

(b) The brand name, mark, or product to be specified; and

(c) The reasons the agency is seeking this procurement method, which shall include any of the following findings in the procurement file:

(A) It is unlikely that specification of the brand name, mark or product will encourage favoritism in the award of the public contracts or substantially diminish competition; or

(B) Specification of the brand name, mark or product would result in substantial cost savings to the agency; or

(C) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

(d) The agency shall make reasonable effort to notify all known suppliers of the specified product and invite such vendors to submit competitive bids or proposals; or shall document the procurement file with findings of current market research to support the determination that the product is available from only one seller.

(4) Purchasing From Sole Source, Single Seller. An agency having independent statutory authority or delegated authority to conduct its own procurement may purchase a particular product or service available from only one source, after documenting the procurement file with findings of current market research to support the determination that the product is available from only one seller or source. The findings shall also include:

(a) A brief description of the contract or contracts to be covered including contemplated future purchases;

(b) Description of the product or service to be purchased; and

(c) The reasons the agency is seeking this procurement method, which shall include any of the following:

(A) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment, supplies, or services; or

(B) The required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments; or

(C) The particular product is for use in a pilot or an experimental project.

(5) Single Manufacturer, Multiple Sellers. An agency may specify a product or service available from only one manufacturer but available through multiple sellers, after documenting the procurement file with the information required in (5)(a)-(c) of this rule, and subject to the following:

(a) If the total purchase is \$2,500 or more but does not exceed \$25,000, and a comparable product or service is not available under an existing state requirements contract, competitive quotes shall be obtained and retained in the procurement file;

(b) If the purchase does not exceed \$25,000, and the comparable product or service is available under an existing state

requirements contract, a state agency shall first request and obtain authorization from the Division to proceed with the acquisition. The acquisition process would then be subject to the requirements and documentation in this rule; or

(c) If the amount of the purchase exceeds \$25,000, the product or service shall be obtained through competitive bidding by the Division, unless the agency has independent purchasing authority or delegated purchasing authority.

(6) If an agency intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed two years, it may so state in the solicitation file and in the solicitation document, if any. Such documentation shall be sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed \$25,000, this shall be stated in the advertisement for bids or proposals.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.017

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; GS 12-1992, f. & cert. ef. 5-22-92; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-340-010, 125-340-030, 125-340-050, 125-340-060

**DIVISION 310**

**PUBLIC CONTRACT EXEMPTIONS**

**General Exemptions**

**125-310-0005**

**Advertising Contracts**

An agency having independent statutory or delegated purchasing authority may purchase advertising, regardless of dollar value, without competitive bidding.

Stat. Auth.: ORS 200.090, 279.015(2), 279.053, 279.840 & 283.060

Stats. Implemented: ORS 279.015 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-080

**125-310-0010**

**Contract Amendments (Including Change Orders and Extra Work)**

An amendment for additional work or product which is reasonably related to the scope of work under the original contract, including change orders, extra work, field orders, or other change in the original specifications that increases the original contract price, may be made with the contractor or without competitive bidding subject to the following conditions:

(1) The original contract was let by

(i) Competitive bidding or alternative procurement process;

(ii) Unit prices or additive alternates were provided that established the cost basis for the additional work or product; and a

(iii) Binding obligation exists on the parties covering the terms and conditions of the additional work; or

(2) The original contract was let pursuant to a declaration of emergency, in accordance with ORS 279.015(3)(a) and 279.015(4) and OAR 125-310-0030 or 125-310-0032; or

(3) The additional work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the original contract and such regulations or ordinances, as provided in ORS 279.318, either were not cited in the original contract or were enacted or amended after submission of the successful bid or proposal; or

(4) The original contract was for the renovation or remodeling of a building.

(5) Except for amendments entered into pursuant to sections (1) to (4) of this rule, the aggregate increase resulting from all amendments to a contract shall not exceed 20 percent of the initial contract price. Contracts for the renovation or remodeling of buildings may have aggregate amendments not exceeding 33 percent of the initial contract price. Provided, however, that amendments made pursuant to section (1) of this rule are not to be applied against either the 20 percent or the 33 percent aggregate

limit on contract amendments. Provided, further, that contracts amended pursuant to sections (2) or (3) of this rule are not subject to either the 20 percent or the 33 percent aggregate limit on contract amendments.

(6) If the original contract required the contractor to provide a performance and payment bond, and the agency has terminated the contract and notified the surety of such termination, the agency may allow the contractor's surety an opportunity to provide a substitute contractor to complete performance of the original contract. Such substitute performance, and any amendment of the original contract that makes a substitute contractor a party to the contract, and is not an award of a public contract for purposes of ORS 279.015(1), shall not be subject to the competitive procurement provisions of ORS 279.005 through 279.111.

Stat. Auth.: ORS 279.015(2) & 283.060

Stats. Implemented: ORS 279.015 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; GS 22-1990, f. & cert. ef. 11-14-90; GS 24-1990, f. & cert. ef. 11-27-90; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-150

### 125-310-0012

#### Contracts Under Certain Dollar Amounts

(1) Agencies may, in their discretion, let public contracts not to exceed \$25,000 for the purchase of goods, materials, supplies and services without competitive bidding, if the agency has determined that the awarding of the contract without competitive bidding will result in cost savings and the following conditions are met:

(a) The contract is for a single project, and is not a component of or related to any other project;

(b) When the amount of the contract does not exceed \$2,500, agencies are exempt from competitive bidding, pursuant to ORS 279.015(1)(d); however, an agency shall, where practical, obtain competitive quotes;

(c) When the amount of the contract is more than \$2,500, but less than \$25,000, the agency shall, at minimum, obtain three informally solicited, competitive quotes. The agency shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes;

(d) The required goods, materials, supplies or services are unavailable from a Qualified Rehabilitation Facility as provided in ORS 279.850; and

(e) The agency shall encourage Minority, Women-owned and Emerging Small businesses to participate in its purchasing processes, where applicable, by notifying the Advocate for Minority, Women and Emerging Small Business as required by ORS 200.035.

(2) Agencies may, in their discretion, let public contracts for trade-related projects, i.e., construction, maintenance, repair, or similar labor and materials contracts, without competitive bidding if the agency has determined that the awarding of the contract without competitive bidding will result in cost savings and the following conditions are met:

(a) The contract is for a single project, and is not a component of or related to any other project;

(b) When the amount of the contract does not exceed \$2,500, the agency should, where feasible, obtain competitive quotes;

(c) When the amount of the contract is more than \$2,500, but less than \$25,000, except as provided in subsection (d) of this section, the agency shall obtain a minimum of three competitive quotes. The agency shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes;

(d) When the contract is for maintenance or repair of roads, highways or parking lots and is less than \$25,000, the agency may let the contract without competitive bidding if at least three competitive quotes are obtained. The agency shall keep a written record of the source and amount of the quotes received and comply with the requirements, as applicable, of subsection (2)(f)

of this rule. If three quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain the quotes;

(e) When the contract is a public improvement contract of less than \$50,000, and the bidders are being drawn exclusively from a list of certified Emerging Small Businesses maintained by the Advocate for Minority, Women and Emerging Small Business, the agency may let the contract without formal competitive bidding after a good faith effort to obtain a minimum of three competitive quotes from Emerging Small Businesses. To obtain maximum exposure for all firms and guard against favoritism, care shall be taken to obtain quotes from different firms each time the list is used. The agency shall keep a written record of the source and amount of the quotes received and comply with the requirements, as applicable, of subsection (2)(f) of this rule. A lesser number of quotes will suffice provided a written record is maintained of the effort to obtain three quotes;

(f) When the contract is for a "public improvement" as defined in ORS 279.011(7) and/or for "public works" as defined in ORS 279.348(3), and the contract price exceeds \$10,000 but is less than \$25,000, the agency and the contractor shall comply with:

(A) The prevailing wage provisions of ORS 279.348 to 279.365, when applicable;

(B) The performance bond requirements of ORS 279.029;

(C) The contractor registration requirements of ORS 701; and

(D) Any other law applicable to such a contract.

(3) If more than one supplier may be available and the total purchase is estimated to exceed \$25,000, the agency shall select a contractor through competitive bidding. A state agency may submit a written request for delegation of authority from the Department, pursuant to ORS 279.727, to conduct this competitive bid selection process.

Stat. Auth.: ORS 200.090, 279.015(2), 279.053, 279.840, & 283.060

Stats. Implemented: ORS 279.015 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; GS 14-1990(Temp), f. & cert. ef. 6-5-90; GS 21-1990, f. & cert. ef. 11-14-90; GS 25-1990, f. & cert. ef. 11-27-90; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-020

125-310-0015 [Renumbered to 125-030-0100]

125-310-0020 [Renumbered to 125-310-0012]

125-310-0025 [Renumbered to 125-310-0200]

125-310-0026 [Renumbered to 125-310-0220]

### 125-310-0030

#### Emergency Contracts

(1) Pursuant to ORS 279.015(3)(a) and (4), an agency may, in its discretion, enter into a public contract without competitive bidding if an emergency exists and the emergency consists of circumstances creating a substantial risk of loss, damage, interruption of services or threat to public health or safety that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the condition.

(2) The governing body of an agency may, by order, resolution or other official action appropriate to its governing law and practices, declare the existence of the emergency stating with specificity, either in the order, resolution, or other documentation of official action, or in the minutes or record of its official proceedings, the emergency conditions that require prompt execution of the contract.

(3) The chief executive of an agency or another officer authorized by the agency may declare the existence of the emergency, which shall authorize the agency to enter into an emergency contract with a price under \$25,000. The officer must make written findings describing the emergency conditions that require prompt execution of the contract.

(4) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted pursuant to ORS 279.015(4).

**Chapter 125 Department of Administrative Services**  
**OREGON ADMINISTRATIVE RULES 1997 COMPILATION**

Stat. Auth.: ORS Ch. 279 & 283  
Stats. Implemented: ORS 279.015  
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; GS 2-1988, f. 6-22-88, cert. ef. 6-24-88; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

Stats. Implemented: ORS 279.015 & 279.019  
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-310-0032**

**Emergency Contracts Under ORS 279.015(2)**

(1) An agency may enter into a public contract without competitive bidding when circumstances that could not reasonably be anticipated, require prompt establishment and performance of the contract in order to preserve public funds, property, or the uninterrupted provision of government services. In exercising its authority under this class exemption (ORS 279.015 (2)), the agency shall:

(a) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;

(b) Make written findings describing the circumstances that require the prompt performance of the contract and of the harm anticipated to result from failing to establish the contract on an expedited basis; and

(c) Record the measures taken under subsection (a) of this section to encourage competition, the amounts of the quotes or proposals obtained, if any, and the reason for selecting the contractor.

(2) An agency shall not contract pursuant to this exemption in the absence of a substantial risk of loss, damage, or interruption of services that would occur if contract performance awaited the time necessary, given the complexity of the project, to solicit, receive and analyze bids or proposals.

Stat. Auth.: ORS Ch. 279 & 283  
Stats. Implemented: ORS 279.015  
Hist.: GS 3-1988, f. 6-22-88, cert. ef. 6-24-88; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-310-0035**

**Equipment Repair and Overhaul**

(1) An agency may enter into a public contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(a) Service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(b) Service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source and

(c) The agency purchases within the limits and pursuant to the methods in (2) of this rule.

(2) The following limitations apply to this rule:

(a) If the contract exceeds or is anticipated to exceed \$10,000, but less than \$25,000, the agency shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical, and may directly enter into the contract.

(b) If the agency anticipates the contract may exceed \$25,000, and the agency has independent statutory authority or delegated purchasing authority, the agency may directly enter into the contract after documenting in its procurement file the reasons why competitive bids were deemed to be impractical.

Stat. Auth.: ORS Ch. 279 & 283  
Stats. Implemented: ORS 279.015 & 279.019  
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-310-0040**

**Contracts for Price Regulated Items**

An agency having independent statutory authority or delegated purchasing authority may, regardless of dollar value and without competitive bidding, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

Stat. Auth.: ORS Ch. 279 & 283

**125-310-0044**

**Purchases Under Federal Contracts**

(1) When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, an agency may purchase the goods and services in accordance with the federal contract without subsequent competitive bidding. In exercising this authority under this exemption, the agency shall:

(a) Include in the contract file a letter or memoranda from the appropriate federal agency granting permission to the agency to purchase under the federal contract; and

(b) Include in the contract file documentation showing the cost savings to be gained from anticipated purchases from the federal contract.

(2) An agency shall not contract pursuant to this rule in the absence of a substantial cost savings to be realized by using this method. Additionally, a state agency shall not contract pursuant to this rule if there is an existing state price agreement for the same item(s), except as authorized in (3) of this rule.

(3) Purchases by a state agency may only be made under this rule if:

(a) Such purchases are within the contract limitation authority of OAR 125-310-012; or

(b) There has been a specific delegation of authority to do so granted to the agency by the Division.

Stat. Auth.: ORS 279.015(2) & 283.060  
Stats. Implemented: ORS 279.015  
Hist.: GS 4-1990(Temp), f. & cert. ef. 2-9-90; GS 11-1990, f. & cert. ef. 5-4-90; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-310 & 125-310-315

**125-310-0045** [Renumbered to 125-330-0045]

**125-310-0055** [Renumbered to 125-330-0150]

**125-310-0060**

**Copyrighted Materials**

An agency having independent statutory authority or that has been granted delegated purchasing authority from the Department to conduct its own procurement may, without competitive bidding and regardless of dollar amount, purchase copyrighted materials if there is only one known supplier available for such goods. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, new adopted textbooks, workbooks, curriculum kits, reference materials, audio and visual media, and non-mass-marketed software.

Stat. Auth.: ORS Ch. 279 & 283  
Stats. Implemented: ORS 279.015, 279.017 & 279.019  
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-310-0068** [Renumbered to 125-310-0160]

**125-310-0070** [Renumbered to 125-330-0750]

**125-310-0075** [Renumbered to 125-310-0500]

**125-310-0080** [Renumbered to 125-310-0005]

**125-310-0090**

**Investment Contracts**

An agency having independent statutory authority or that has been granted delegated purchasing authority from the Department to conduct its own procurements 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 agency when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

Stat. Auth.: ORS Ch. 279 & 283

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Stats. Implemented: ORS 279.015 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-310-0092** [Renumbered to 125-020-0130]

**125-310-0120** [Renumbered to 125-310-0400]

**125-310-0135**

**Food Contracts**

(1) The intent of this rule is to provide a method for 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").

(2) An agency having independent statutory authority or that has been granted delegated purchasing authority may procure an unlimited dollar value of food using a competitive bid or quote process when all of the following conditions are present:

(a) A non-exclusive requirements contract or regularly scheduled bid process already exists for the item being purchased;

(b) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item's price on an existing requirements contract or recent bid (as described in section (3) of this rule) and the amount saved exceeds any additional administrative costs incurred to purchase using this exemption;

(c) The product being purchased has limited availability (i.e., the product may no longer be available upon completion of normal bid processes);

(d) Any requirements contracts currently in place for the item being purchased contain clauses allowing for the use of this exemption; and

(e) The purchase does not jeopardize fulfillment of a guaranteed minimum volume under an existing requirements contract.

(3) Purchases may only be made under this exemption after the agency documents the following in its procurement file: the 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 shall be representative of current pricing available and shall have been obtained or confirmed no more than six (6) months prior to the current purchase. When practical, written quotes are recommended.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.015 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-310-0139** [Renumbered to 125-330-0260]

**125-310-0150** [Renumbered to 125-310-0010]

**125-310-0160**

**Periodicals**

(1) Agencies may purchase subscriptions for periodicals, including journals, magazines, and similar publications without competitive bidding. If there is only one known supplier available for such goods, the agency may make a direct purchase without notice, subject to the limitations in subsection (3) of this rule.

(2) If more than one supplier is available, the agency shall seek competitive quotes if the total purchase is estimated to be over \$2,500.

(3) If the total purchase is estimated to exceed the maximum dollar limitation stated in OAR 125-310-0012, the agency shall comply with the advertising requirements of ORS 279.025 and OAR 137-030-0015(1). A state agency may submit a written request for delegation of authority from the Department to conduct its own procurement.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.015, 279.017 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-068

**125-310-0180**

**Product Prequalification**

(1) When specific design or performance specifications must be met or such specifications are impractical to create or reproduce, for a type of product to be purchased, an agency may specify a list of approved or qualified products by reference to the prequalified product(s) of particular manufacturers or sellers in accordance with the following product prequalification procedure:

(a) Reasonable efforts have been made to notify all known manufacturers and vendors of competing products of the agency's intent to compile a list of prequalified products and of the opportunity to submit applications for including their product(s) on the list of prequalified products. Notice may be provided by advertisement in a trade journal of state-wide distribution, when possible; or, instead of advertising, an agency may provide direct written notice to manufacturers and vendors appearing on the appropriate list maintained by the agency; and

(b) Manufacturer and vendor applications to include products in the agency's list of prequalified products are accepted up to fifteen (15) calendar days (unless otherwise specified in the advertisement or the agency's written notice) prior to the initial advertisement for bids or proposals, on the type of product to be purchased.

(2) If an application for including a product in a list of prequalified products is denied, the agency shall promptly provide the applicant with written notice of the denial. The applicant may appeal to the designated agency authority, requesting review and reconsideration of the denial.

(3) An agency may adopt alternate prequalification rules or policies that parallel or exceed the requirements of this rule.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.015, 279.017, 279.019 & 279.729

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-340-040

**125-310-0200**

**Request for Proposal**

An agency having independent statutory authority or that has been granted delegated purchasing authority from the Department to conduct its own procurements may, at its discretion, use request-for-proposal competitive procurement methods subject to the following conditions:

(1) The procurement is advertised and a written solicitation document is issued that invites the submission of sealed, written offers to be opened publicly at a designated time and place; and

(2) Contractual requirements are stated clearly in the solicitation document; and

(3) Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation document. Criteria used to identify the proposal that best meets the agency's needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential; and

(4) The solicitation document clearly states all complaint processes and remedies available; and

(5) The solicitation document states the provisions for proposers to comment on any specifications that they feel limit competition.

Stat. Auth.: ORS 279.015(2) & 283.060

Stats. Implemented: ORS 279.005, 279.007, 279.015 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; GS 3-1990, f. & cert. ef. 1-12-90; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-025

**125-310-0205** [Renumbered to 125-330-0330 & 0400]

**125-310-0210** [Renumbered to 125-330-0070]

**125-310-0215** [Renumbered to 125-330-0400]

**125-310-0220**

**Request for Proposal - Construction Manager/ General Contractor**

An agency having independent statutory authority or that has

been granted delegated purchasing authority from the Department to conduct its own procurements may seek individual or class exemptions from the Director of the Department of Administrative Services to use request-for-proposal procedures, in accordance with the requirements of OAR 125-310-0200, for the selection of construction manager/general contractor firms (CM/GC) who will be required to establish guaranteed maximum prices for constructing public improvements, subject to the following conditions:

(1) Contractual requirements are stated clearly in the solicitation document. The contract shall describe the methods by which the CM/GC shall competitively select other contractors and subcontractors to perform the work of the improvement. Further, the contract shall describe completely the methods by which the CM/GC and its affiliated or subsidiary entities, if any, may compete to perform the work of the improvement; such methods shall include, at a minimum, public opening of sealed bids at a pre-announced time and place.

(2) Evaluation criteria to be applied in selecting the CM/GC firm are stated clearly in the solicitation document. Criteria used to identify the CM/GC firm which best meets the public contracting needs may include but are not limited to cost, quality, experience relevant to the improvement to be constructed, and time required to commence and complete the improvement.

(3) The agency shall prepare written findings to support the use of the CM/GC contracting method and submit them to the Director of the Department of Administrative Services for approval. The findings must show compliance with ORS 279.015(2)(a) and (b). The agency shall retain the findings and make them available upon request. These findings shall address as many of the following items as are applicable:

(a) The agency has competitively bid a public improvement project and failed to receive a responsive, responsible bid within the cost estimate established by the agency or its consultant. There are de facto cost savings from not redesigning and/or rebidding the project;

(b) There are expected substantial savings on direct construction costs;

(c) The owner needs to have use of the project within the stated project schedule and there will be program and cost consequences if the required use is delayed;

(d) The technical complexity or unique character of the project requires the coordination of multiple disciplines;

(e) The use of value engineering through cooperation among the architect/engineer, contractor and owner is important to the project's delivery on time and within budget;

(f) There are other factors which demonstrably affect cost.

(4) Notwithstanding the requirement to have the findings described in section (3) of this rule, approved by the Director of the Department of Administrative Services, the Director hereby finds that the Department of Administrative Services, the Department of Corrections and the Oregon State System of Higher Education possess the organizational capability to employ the Request for Proposal - Construction Manager/General Contractor method in their discretion. This discretion is subject to the following conditions: The above agencies shall prepare written findings to support the use of the CM/GC contracting method. The findings must show compliance with ORS 279.015(2)(a) and (b) and address section (3) of this rule. The agency shall retain the findings and make them available upon request. In all other respects, the Department of Administrative Services, the Department of Corrections and the Oregon State System of Higher Education shall follow the requirements of this rule as set forth above.

Stat. Auth.: ORS 279.015(2) & 283.060

Stats. Implemented: ORS 279.005, 279.015 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; GS 3-1991, f. & cert. ef. 1-15-91; GS 11-1992, f. & cert. ef. 4-27-92; ; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-026

**125-310-0225** [Renumbered to 125-330-0100]

**125-310-0230** [Renumbered to 125-330-0120]

**125-310-0240** [Renumbered to 125-330-0080]

**125-310-0300**

**Requirements Contracts**

Requirements contracts 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. An agency having independent statutory authority or that has been granted delegated purchasing authority from the Department to conduct its own procurements, may enter into requirements contracts whereby it is agreed to purchase goods or services for an anticipated need at a predetermined price provided the contract is let by a competitive procurement process pursuant to the requirements of ORS 279.005 to 279.111 and these rules.

(1) Agencies may purchase the goods and services from a contractor awarded a requirements contract without first undertaking additional competitive solicitation.

(2) State agencies shall use requirements contracts established by the Division unless otherwise specified in the contract, allowed by law or these rules, or specifically authorized by the Division.

(3) Notwithstanding section (2) above, state agencies are exempted from mandatory use of state requirements contracts for acquisition of the following, regardless of dollar amount:

(A) Commodities or services from another Oregon public agency or the federal government, provided that a formal, written interagency agreement is entered into between the parties;

(B) Personal property for resale through student stores operated by public educational agencies;

(C) Emergency purchases declared by an agency pursuant to ORS 279.015(4).

(4) State agencies are exempted from use of state requirements contracts, for transactions totaling \$2,500 to \$25,000 for the types of transactions described in this section (4). The agency shall obtain three quotes, or document the reasons quotes were not required or available, in the procurement file. Types of transactions may include but are not limited to:

(A) Equipment rental to meet short term, seasonal or emergency needs, three months maximum;

(B) Research equipment and supplies funded by grant monies;

(C) Registration fees, meals, lodging, and related expenses of attending or sponsoring conferences, workshops and training programs;

(D) Nonrepetitive freight and cartage expenses; and

(E) Nonrepetitive supply and capital outlay items.

(5) State agencies may be exempted from use of the Division's requirements contracts for transactions over \$25,000, upon request to and approval by the Division.

(6) One agency may use the requirements contract entered into by another agency when:

(A) the solicitation document or contract allows other agencies usage of the contract; and

(B) public agencies likely to purchase from the requirements contract are identified in the solicitation document; and

(C) the solicitation document informed bidders, with a reasonable degree of accuracy, of the potential or likely volume of total purchases under the requirements contract; and

(D) the administering agency, the additional agency and the contractor agree to purchases by the additional public agency; and

(E) a written interagency agreement shall be entered into when one or more of the agencies is a state agency. Agencies with independent statutory authority or who have been granted delegated purchasing authority from the Department to conduct their own procurements do not require prior approval of the Division to sign such agreements.

(7) The term of the contract including renewals, shall not exceed five years unless otherwise exempted pursuant to ORS chapter 279.

Stat. Auth.: ORS Ch. 279 & 283

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Stats. Implemented: ORS 279.005, 279.015, 279.019, 279.710, 279.712, 279.717 & 279.727  
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-310-0310** [Renumbered to 125-020-0130]

**125-310-0315** [Renumbered to 125-310-0044]

**125-310-0320** [Renumbered to 125-300-0050]

**125-310-0330** [Renumbered to 125-330-0200]

**125-310-0400**

**Single Seller of Product Required**

Subject to the requirements of OAR 125-340-0030, public contracting agencies may purchase without competitive bidding if there is only one seller of a product of the quality required, or if the efficient utilization of existing equipment or supplies requires specification of a compatible product for which there is only one seller.

Stat. Auth.: ORS Ch. 279 & 283  
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-120

**125-310-0500**

**Purchase of Used Personal Property**

(1) Subject to the provisions of this rule, an agency may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if the agency has determined that the purchase will result in cost savings to the agency and will not diminish competition or encourage favoritism. "Used personal property or equipment" is property or equipment which has been placed in use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of the agency purchase. "Used personal property or equipment" generally does not include property or equipment if the agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(2) For purchases of used personal property or equipment costing less than \$10,000, agencies shall, where feasible, obtain three competitive quotes, unless the agency has determined and documented that a purchase without obtaining competitive quotes will result in cost savings to the agency and will not diminish competition or encourage favoritism.

(3) For purchases of used personal property or equipment totaling \$10,000 or up to the maximum dollar limitation stated in OAR 125-310-0012, the agency shall 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.

(4) If the total purchase is estimated to exceed the maximum dollar limitation stated in OAR 125-310-0012, a state agency shall submit a written request for a written delegation of authority from the Department prior to making the purchase.

(5) State agencies, unless otherwise having independent statutory or delegated purchasing authority from the Department, shall use requirements contracts for such purchases, when requirements contracts have been established for such purchases by the Department.

Stat. Auth.: ORS Ch. 279 & 283  
Stats. Implemented: ORS 279.005, 279.015 & 279.019  
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-075

**DIVISION 320**

**PUBLIC CONTRACT EXEMPTIONS**

**Information Systems Contracts**

**125-320-0010**

**Data and Word Processing Contracts**

An agency having independent statutory authority or that has been granted delegated purchasing authority from the Department to conduct its own procurements may enter into a contract to acquire data and word processing hardware and systems software subject to the following conditions:

(1) If the contract amount does not exceed \$25,000, the agency shall, as a minimum, follow OAR 125-310-0012. Prior to selecting a contractor, reasonable efforts shall be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the agency.

(2) If the contract amount exceeds \$25,000, the agency shall determine and use the best procurement method, pursuant to ORS 279.005 through 279.111, and shall solicit written proposals in accordance with the requirements of the Model Public Contract Rules. The agency shall document the evaluation and award process, which will be part of the public record justifying the award.

(3) If the amount of the contract is estimated to exceed \$500,000 (or a lesser amount as specified in the RFP), in addition to the requirements of section (2) of this rule, the agency shall provide proposers an opportunity to review the evaluation of their proposals before final selection.

Stat. Auth.: ORS 279.015(2) & 283.060  
Stats. Implemented: ORS 279.005, 279.015, 279.019, 279.710, 279.712 & 279.727  
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; GS 12-1992, f. & cert. ef. 5-22-92; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-320-0020**

**Telecommunications Systems Contracts**

(1) An agency having independent statutory authority or that has been granted delegated purchasing authority from the Department to conduct its own procurements may enter into a contract to acquire telecommunications system hardware and software subject to the following conditions:

(a) If the contract amount does not exceed \$25,000, the agency shall as a minimum obtain competitive quotes. Prior to selection of a contractor, reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the agency.

(b) If the contract amount exceeds \$25,000, the agency shall determine and use the best procurement method, pursuant to ORS 279.005 through 279.111, and shall solicit written proposals in accordance with the requirements of the Model Public Contract Rules.

(2) The telecommunications solicitation authorized in subsection (1)(b) of this rule shall:

(a) State the contractual requirements in the solicitation document;

(b) State the evaluation criteria to be applied in awarding the contract and the roles of any evaluation committee. Criteria that would be used to identify the proposal that best meets the agency's needs may include, but are not limited to, cost, quality, service and support, compatibility and interconnectivity with the state's existing telecommunications systems, product or system reliability, vendor viability and financial stability, operating efficiency, and expansion potential;

(c) State the provisions made for bidders or proposers to comment on any specifications which they feel limit competition; and

(d) Be advertised in accordance with ORS 279.025 and OAR 137-030-0015.

Stat. Auth.: ORS 279.015(2) & 283.060  
Stats. Implemented: ORS 279.005, 279.015, 279.019, 279.710, 279.712 & 279.727  
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; GS 12-1992, f. & cert. ef. 5-22-92

**125-320-0025**

**Telecommunications Services**

(1) This rule is intended to allow agencies that have independent statutory authority or have been granted delegated purchasing

authority from the Department to conduct their own procurement, to secure the most competitive, cost-effective telecommunications services of the quality needed to meet all service performance requirements while minimizing administrative and service delivery costs.

(2) In determining the appropriate procurement method for telecommunications services, the agency shall (i) comply with the requirements of ORS 291.038 and (ii) determine whether competition exists. In determining whether competition exists, the agency may consider the following factors:

(a) The extent to which alternative providers exist in the relevant geographic and service market. The relevant market will vary with the geographic area and from service category to service category, depending upon changes in the regulatory environment and competitive marketplace. Thus, the relevant market will depend on the facts and circumstances of each case. For example, an alternative local access service or private line provider might offer services in Portland, but not in Medford, or the rest of the state;

(b) The extent to which alternative services offered are comparable or substitutable in technology, service provided, and performance. (For example, if the agency requires digital services, analog services are not comparable or substitutable, or if the agency requires fiber optic technology, then copper, microwave or satellite transmission technology may not be comparable or substitutable);

(c) The extent to which alternative providers can respond to the agency's interests in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management, and limiting agency liability. For example, to be considered as the state's telephone long distance provider, any long distance service vendor must be able to meet, support and interface with the state's centralized automated billing requirements. The agency must document for the record its findings on these factors or any other factors used in determining whether competition exists. In developing its findings, the agency may solicit the information either through informal telephone or written contacts, or through a formal Request for Information (RFI).

(3) Upon determining that competition does not exist for the relevant service and geographical area, the agency may proceed to secure the service on a sole source basis, as described in OAR 125-300-100, and follow all applicable rules and procedures.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.005, 279.015, 279.019, 279.710, 279.712 & 279.727

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; GS 5-1986(Temp), f. & ef. 6-26-86; GS 9-1986, f. & ef. 12-22-86

**125-320-0030** [Renumbered to 125-330-0450]

### DIVISION 330

### PUBLIC CONTRACT EXEMPTIONS

#### Specific Exemptions

**125-330-0010** [Renumbered to 125-330-0700]

#### **125-330-0030**

##### **Alcoholic Liquor, Purchase for Resale**

The Oregon Liquor Control Commission is exempt from (i) the competitive bidding requirements of ORS 279.015(1), and (ii) the specification restrictions of ORS 279.017(1) when purchasing spirituous liquors, wines, or alcoholic liquors pursuant to the authority granted the Commission in ORS 471.725 and 471.740 to 471.750.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.017 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**125-330-0040** [Renumbered to 125-330-0140]

**125-330-0050** [Renumbered to 125-330-0500]

**125-330-0060** [Renumbered to 125-330-0600]

#### **125-330-0070**

##### **Athletic Programs, Interscholastic**

(1) An agency may specify a product by brand name or make or the products of particular manufacturer or seller, when procuring equipment and supplies used in intercollegiate or interscholastic athletic programs.

(2) The Division shall solicit competitive bids or use an alternative competitive procurement method to purchase such products.

(3) State agencies may request delegated authority from the Department to process their own purchases under this rule. In any event, the solicitation shall be advertised in accordance with ORS 279.025 and OAR 137-30-015.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.017 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-210

#### **125-330-0080**

##### **Athletic Programs' Use of Radio and Television Contracts**

(1) State agencies are exempt, regardless of dollar amount, from the requirements of competitive bidding for radio and television services provided athletic programs. An agency having independent statutory authority or delegated authority from the Department shall use competitive bidding or an alternative competitive method and shall advertise any purchase totaling \$25,000 or more in accordance with ORS 279.025. The solicitation document shall include minimum qualifications specifications and may invite interested vendors to propose other ancillary services.

(2) Each ancillary service, if offered, shall be accompanied by a dollar value which reflects current purchase price for the service and a description of its use and application. Contracts may be awarded for the length of time allowed for a requirements contract under OAR 125-310-300.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.017 and 279.019.

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-240

#### **125-330-0100**

##### **Ballots, Ballot Pages, and Ballot Cards; Oregon Counties**

Oregon Counties are exempt, regardless of dollar amount, from competitive bidding requirements for the printing of ballots, including ballot pages and labeling of ballot cards.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.015 & 279.017

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-225

#### **125-330-0120**

##### **Purchases of Cadaveric Organs**

State agencies are exempt, regardless of dollar amount, from competitive bidding requirements for the purchase of cadaveric organs.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.015 & 279.017

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-230

#### **125-330-0140**

##### **Food Service Supplies, Perishable, for the Department of Human Resources**

The Mental Health and Developmental Disability Services Division of the Department of Human Resources is exempt, regardless of dollar amount, if it has independent statutory



authority to conduct its own procurement or delegated purchasing authority from the Department, from the requirements of competitive bidding when purchasing perishable food service supplies for the Sandwich Project operated by patients in the Psychiatric Program of the Oregon State Hospital.

Stat. Auth.: ORS 279.015(2), 279.019 & 283.060

Stats. Implemented: ORS 279.015, 279.017

Hist.: GS 5-1989(Temp), f. & cert. ef. 8-31-89; GS 7-1990, f. & cert. ef. 2-28-90

#### 125-330-0150

##### Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt

An agency having independent statutory authority or delegated purchasing authority from the Department, is exempt from competitive bidding requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts if the agency seeks competitive quotes from at least three vendors in the area, and accepts quotes from all vendors in the area who offer bids, and the agency makes its purchase from the least expensive source, and retains written justification for the purchase made. State agencies, unless otherwise having independent statutory or delegated purchasing authority from the Department, shall use requirements contracts for such purchases, when requirements contracts have been established by the Department for such purchases.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.005, 279.007, 279.015 & 279.017

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

#### 125-330-0200

##### Hazardous Material Removal; Oil Cleanup

(1) An agency having independent statutory authority or delegated purchasing authority from the Department to conduct its own procurement, may enter into public contracts without competitive bidding, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, especially ORS 466.605 through 466.680, and such DEQ order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an emergency condition. Comprehensive cleanup rules are set forth at OAR 340-122-0205 to 340-122-0360. In exercising its authority under this exemption the agency shall:

(a) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;

(b) Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup; and

(c) Record the measures taken under subsection (a) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.

(2) An agency shall not contract pursuant to this exemption in the absence of an order from the Department of Environmental Quality to cleanup a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.

Stat. Auth.: ORS

Stats. Implemented: ORS 279.015, 279.019

Hist.: GS 5-1990(Temp), f. & cert. ef. 2-9-90; GS 12-1990, f. & cert. ef. 5-4-90; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-330

#### 125-330-0260

##### Insurance, Employee Benefit

An agency having independent statutory authority or delegated purchasing authority from the Department to conduct its own procurements may purchase employee benefit insurance without competitive bidding, regardless of dollar amount.

Stat. Auth.: ORS Ch. 179 & 283

Stats. Implemented: ORS 279.015 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-139

#### 125-330-0330

##### Medical and Hospital Purchasing Cooperatives

An agency having independent statutory authority or delegated purchasing authority from the Department to conduct its own procurements, and which is a member of a legally established purchasing cooperative is exempt, regardless of dollar amount, from the requirements of competitive bidding and the requirements contract provisions of OAR 125-310-0300, for purchases of hospital and medical supplies and equipment through the cooperative.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.017 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-205

#### 125-330-0340

##### Medical and Laboratory Supplies

An agency having independent statutory authority or delegated purchasing authority from the Department to conduct its own procurements, is not required to purchase the following specified laboratory and medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding contracts, after competitive bidding, to the lowest responsible bidder for each brand. The laboratory and medical supplies affected by this rule include, but are not limited to:

- (1) Drugs, biologicals, blood fractions, and blood components;
- (2) Intravenous solutions and associated supplies for administration;
- (3) Microbiologicals, biochemicals, and diagnostic reagents;
- (4) Surgical dressings;
- (5) Heart valves;
- (6) E.E.G., E.K.G., electrodes, charts, and associated supplies;
- (7) Sterilizing wraps;
- (8) Catheters, medical tubes, and associated supplies;
- (9) Surgical and orthopedic instruments;
- (10) Hearing aids;
- (11) Pacemakers;
- (12) Dental supplies;
- (13) Laboratory small package chemicals;
- (14) Biology supplies; and
- (15) Therapeutic or cosmetic implants.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.017 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-045

#### 125-330-0400

##### Purchases for Ocean Going Vessels

State agencies having independent statutory authority or delegated purchasing authority from the Department to conduct their own procurements, are exempt, regardless of dollar amount, from the requirements of competitive bidding for purchases of supplies, maintenance and services for its ocean going vessels when the ships are in other than home port.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.015, 279.017 and 279.019.

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-070 and 125-330-400

#### 125-330-0450

##### Office Copier Purchases

(1) An agency having independent statutory authority or delegated purchasing authority from the Department to conduct its own procurement, may enter into multiple price agreements or requirements contracts for either the purchase, rental or lease of office copying equipment. Except for this multiple award

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exemption, such agreements shall otherwise conform to the requirements of OAR 125-310-0300.

(2) In exercising this exemption the agency shall fully consider the operating capabilities, limitations and cost of each brand or model and select the brand which will produce the best combination of performance and cost per copy for each application.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.017 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-320-030

**125-330-0500**

**Parks and Recreation Department Agreements with State Park Cooperative Associations**

The Oregon State Parks and Recreation Department is exempt, if possessing independent statutory authority or if granted delegated purchasing authority from the Department to conduct its own procurements, regardless of dollar amount, from the requirements of competitive bidding when entering into agreements with Cooperative Associations pursuant to ORS 390.121 through 390.150, ORS 184.619 and administrative rules specifically addressing this subject.

Stat. Auth.: ORS 279.015(2), 279.019 & 283.060

Stats. Implemented: ORS 279.005, 279.007, 279.015 & 279.019

Hist.: GS 8-1990, f. & cert. ef. 2-28-90; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-330-050

**125-330-0600**

**Sign Panel Purchase Program for Travel Information Council**

The Travel Information Council is exempt, regardless of dollar amount, from public contract competitive bidding requirements when acquiring logo sign panels and backboards to be installed on Oregon Highway right-of-ways to the extent such logo sign panels and backboards are paid for entirely by private businesses.

Stat. Auth.: ORS 279.015(2) & 283.060

Stats. Implemented: ORS 279.015 & 279.019

Hist.: GS 16-1990(Temp), f. & cert. ef. 7-24-90; GS 20-1990, f. 11-14-90, cert. ef. 12-14-90; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-330-060

**125-330-0700**

**Signs for Polling Places - Office of the Secretary of State**

The Office of the Secretary of State is exempt, regardless of dollar amount, from competitive bidding requirements for the purchase of signs for the identification of polling places.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.015 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-330-010

**125-330-0750**

**Student Stores at Public Educational Agencies**

Public educational agencies operating facilities that engage in resale to students and staff (student stores) may, without competitive bidding, purchase personal property for resale within the agency, if possessing independent statutory authority or if granted delegated purchasing authority from the Department to conduct its own procurements, regardless of dollar amount.

Stat. Auth.: ORS

Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.017 & 279.019

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-310-070

**DIVISION 340**

**PUBLIC CONTRACT EXEMPTIONS**

**Brand Names or Marks**

**125-340-0010** [Renumbered to 125-300-0100]

**125-340-0030** [Renumbered to 125-300-0100]

**125-340-0040** [Renumbered to 125-310-0180]

**125-340-0050** [Renumbered to 125-300-0100]

**125-340-0060** [Renumbered to 125-300-0100]

**DIVISION 360**

**WAIVER OF SECURITY BID AND PERFORMANCE BOND**

**125-360-0010**

**Bid Security Requirements**

An agency having independent statutory authority or delegated purchasing authority from the Department to conduct its own procurements, may, in its discretion, waive the bid security requirements of ORS 279.027 for contracts other than those for public improvements.

Stat. Auth.: ORS Ch. 279 & 283

Stats. Implemented: ORS 279.027 & 279.722

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

**Transportation, Purchasing & Print Services Division**

**125-360-0020**

**Public Improvement Contracts Under \$25,000**

An agency having independent statutory authority or delegated purchasing authority from the Department to conduct its own procurements, may, in its discretion, waive the bid security requirements of ORS 279.027 and performance bond requirements of ORS 279.029 if the amount of the contract for the public improvement is less than \$25,000.

Stat. Auth.: ORS 184.340, 279.033 & 279.722

Stats. Implemented: ORS 279.027, 279.033 & 279.722

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; DASII 3-1995(Temp), f. & cert. ef. 11-3-95; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; DASII 4-1996, f. & ef. 8-1-96

**125-360-0030**

**Emerging Small Business Contracts Under \$100,000**

(1) An agency may, in its discretion, pursuant to ORS 279.033 and this rule, waive the bid security requirements of ORS 279.027 and the performance bond requirements of ORS 279.029 when the public improvement project:

(a) Has estimated direct construction costs not exceeding \$100,000;

(b) Is being undertaken through a program where the bidders are drawn exclusively from a list of certified Emerging Small Businesses maintained by the Advocate for Minority, Women and Emerging Small Business; and

(c) The agency has been provided funds by the legislature for the purpose of assisting Emerging Small Businesses.

(2) An agency may waive bid security requirements and/or the performance bond requirements pursuant to this rule under the following conditions:

(a) There exists an emerging small business account or like source of funds containing an unexpended and unobligated balance;

(b) The agency has authority to encumber and make payments from the account; and

(c) agency encumbers an amount in the account to cover the total cost of each project wherein the bid security and/or the performance bond is waived.

Stat. Auth.: ORS Ch. 279.015(2), 279.033 & 283.060

Stats. Implemented: ORS 279.027, 279.033 & 279.722

Hist.: GS 15-1990(Temp), f. & cert. ef. 6-5-90; GS 6-1991, f. & cert. ef. 4-9-91; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95