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## Chapter 125 Department of Administrative Services

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### **DIVISION 1**

#### **PROCEDURAL RULES**

##### **125-001-0000**

##### **Notice of Proposed Rule**

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

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

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

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

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

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

(a) The Associated Press.

(b) State Agency Administrators; and

(c) The Capitol Building Press Room.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

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

##### **125-001-0005**

##### **Uniform and Model Rules of Procedure**

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

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

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

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

### **DIVISION 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 & ORS 279.055

Stats. Implemented:



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

## DIVISION 20

### PERSONAL SERVICES CONTRACTS

#### 125-020-0100

##### Introduction

(1) An Agency may, within the limits of its delegation under OAR 125-020-0600, 125-020-0620 and its legislatively-approved budget, contract for Personal Services with Independent Contractors.

(2) Within the parameters of employment, workers' compensation, other relevant state and federal laws and collective bargaining agreements, a Contracting Agency may contract for Personal Services when:

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

(b) The work cannot be done in a reasonable time with the 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) The Agency may not use Personal Services Contracts to obtain and pay for the services of an employee. If a Contractor is not an Independent Contractor, the Agency may not enter into a Personal Services Contract with the Contractor; instead, the Agency must follow personnel policies for employment options.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.712

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; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0005; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

#### 125-020-0110

##### Responsibilities

(1) The governing body of the Agency, its chief executive or another officer authorized by the Agency is responsible for ensuring the Agency's compliance with the rules in OAR 125, division 020.

(2) Each Agency's governing body, chief executive or another officer authorized by the Agency shall appoint a Personal Services Contracts Coordinator to represent the Agency. Written notice of the coordinator's name shall be provided to the Division. 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 have the contracting skills to proficiently represent the Agency.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0011; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

#### 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(15);

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

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

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 244.040 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0070; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

#### 125-020-0130

##### Personal Services Contract Definition

(1) A contract for "Personal Services" is a contract that calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Qualifications and per-

formance 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 125-065-0040 and are not covered by the provisions of these division 020 rules. OAR 125, division 065 governs the screening and selection procedures for the award of Architect, Engineer and Related Services contracts.

(2) The screening and selection procedures for the award of Personal Services Contracts are governed by ORS 279.712(3) and OAR 125, division 020. Personal Services Contracts are not considered "public contracts" as defined in ORS 279.011(6) and are not subject to the competitive procurement provisions of ORS 279.005 through 279.111.

(3) Pursuant to ORS 279.051(2), the Division 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 Division shall determine whether the work calls for the performance of Personal Services, or for services subject to the public contracting laws as defined in ORS 279.011(6).

(4) A Contracting 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) A Contracting 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:** A Contracting 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 Contracting Agency will control the means and manner of the performance.

(c) Selecting a Contractor primarily on the basis of qualifications, rather than price, in accordance with the provisions of OAR 125, division 020, would most likely meet a Contracting Agency's needs and result in obtaining satisfactory contract performance and optimal value for the State.

(5) The Agency should use a Public Contract, as defined in ORS 279.011(6), 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 the Agency obtaining, 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) Selecting a Contractor, in accordance with the competitive procurement provisions of ORS 279.005 through 279.111 and the applicable administrative rules (OAR 125, divisions 030 and 300-360, and OAR 137, divisions 030 and 040), would meet the Agency's needs and result in the 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 in a professional capacity including services of an accountant, attorney, physician or dentist, information technology consultant, or broadcaster;

(b) Contracts for services as an artist in the performing or fine arts including 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 190-020-0015.

(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 equipment, supplies or materials; e.g., a contract to supply all hardware and standard software is not a Personal Services Contract,

contract with a technology consultant to design or develop a new computer system is a Personal Services Contract;

(b) Contracts with a temporary service or personnel agency to supply labor, which is of a type that can generally be done by any skilled worker.

Stat. Auth.: ORS 184.305, 184.340, 279.051, 279.710 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; GS 3-1992, f. & cert. ef. 2-3-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 125-310-0092; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

## 125-020-0140

### Other Definitions

(1) "Agency" means any 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 279.710 (2)).

(2) "Clients" are individuals that the Agency has statutory responsibility to service, protect, oversee or provide care or custody.

(3) "Client services" means direct services on behalf of Clients, usually requiring prequalification or licensing by the government, for the performance of social services. Client services are more likely to involve not-for-profit contractors than are other services. Examples of Client services include, but are not limited to, day care, halfway houses, vocational rehabilitation, guidance counseling, employment services, etc. Client services primarily are for the benefit of the Client. Contracts which are awarded for the primary benefit of the Agency are not Client services contracts.

(4) "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.

(5) "Contracting Agency" means an Agency that has authority to procure, enter into and sign the contract. A Contracting Agency does not have approval authority except as provided by OAR 125-020-0600.

(6) "Contractor" means an Independent Contractor that performs a service(s) for the Agency, when the 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.

(7) "DAS Central Purchasing" means the Purchasing Section of the Transportation, Purchasing & Print Services Division of the Department of Administrative Services.

(8) "Department" means the Department of Administrative Services of the State of Oregon as defined in ORS 279.710(1).

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

(10) "Division" means the Transportation, Purchasing & Print Services Division of the Department of Administrative Services.

(11) "Effective date of contract" means the date established in the contract for the Contractor's work to begin, or the date the contract has been fully executed and received all required approvals, whichever date is later.

(12) "Emergency" means circumstances that were not reasonably foreseen by the governing body of the Agency, its chief executive or another officer authorized by the Agency, and create: a substantial risk of loss, damage or interruption of services; a threat to public health, safety or the environment that requires prompt execution of a contract to remedy the condition.

(13) "Evidence of competition" means Agency documentation demonstrating Competitive solicitation of responses from individuals or firms in selecting a Contractor in accordance with the rules in this Division.

(14) "Expert witness" means contracts for services of 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 a person possessing specialized knowledge, skills or experience of a particular subject or profession 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.

(15) "Gift" means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

(16) "Independent Contractor" means a person or business that provides services to an Agency in which the Agency neither controls nor has the right to control the means or manner by which work is performed. The Agency may control the results of the services, but not control the means or manner of Contractor's performance of the work.

(17) "Interagency, Intergovernmental, Interstate and International Agreements" have the meaning provided in OAR 125-022-0050.

(18) "Phased Development Project" means a software development project that is divided into separately staged units approved by DAS IRMD as a Phased Development Project.

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

(20) "Request for Proposals" (RFP) means a written document describing the 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(s) (see OAR 125-020-0320).

(21) "Request for Qualifications" (RFQ) means a written document describing the 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 and select a Contractor in accordance with OAR 125-020-0320.

(22) "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 source to provide the service(s).

(23) "Standard fee contract" means a contract awarded for services to be performed for a standard fee, when the standard fee is established by the Contracting Agency, and a like contract is available to qualified applicants.

(24) "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.

(25) "VIP System" means the on-line electronic Vendor Information Program administered through the Division.

(26) "Year 2000 Services" means services to remediate computer program date problems caused by the millennium change.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

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; 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 122-020-0010; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

## 125-020-0200

### Procedures and Assistance

These rules set forth procedures for an Agency to follow when entering into Personal Services Contracts. The Agency is encouraged to contact the Division for assistance and copies of required forms.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0007; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

## 125-020-0210

### Contract Forms

(1) Agencies shall use the form provided by the Division for contracts for Personal Services.

(2) If an Agency obtains approval in accordance with this rule, it may enter into a Personal Services Contract containing terms and conditions other than those in the approved form for one-time acquisitions of Personal Services. The Agency shall provide the Division with a copy of the proposed Personal Service Contract that shows the specific terms or conditions that the Agency wishes to revise. The Agency shall obtain the Division's approval of any revisions to the terms and conditions of the form, other than revisions to exhibits included with the form before it enters into the Personal Services Contract. The Division may approve such a revision to its form Contract for Personal Services by facsimile, email, letter or any other method that provides an objective means to verify the Division's approval.

(3) Upon an Agency's request, the Division may approve a revised form contract for repeated use for a specific class or classes of transactions.

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

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0025; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98; DAS 1-2000(Temp), f. 1-21-00 cert. ef. 1-22-00 thru 4-21-00; DAS 3-2000, f. & cert. ef. 4-21-00

## 125-020-0220

### Approvals for Personal Services Contracts

(1) The Division: Except as provided in OAR 125-020-0600, must approve all Personal Services Contracts before the Contracting Agency executes the contract.

(2) All requisite approvals must be obtained, including the approval of the Attorney General, if required, before any Personal Service Contract entered into by an Agency becomes binding upon the state and before any service may be performed or payment made under the contract, unless the contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6).

(3) Unless exempted by the Attorney General under ORS 291.045 and 291.047, the Division may not approve a Personal Service Contract calling for payment of more than \$75,000 before the Contract has been reviewed for legal sufficiency and approved by the Attorney General.

(4) Approvals:

(a) When Attorney General legal sufficiency approval is required under ORS 291.045, the Contracting Agency shall seek legal approval;

(b) When a Contracting Agency contracts for services normally provided by another Agency, or services for which another Agency has statutory responsibilities, the Contracting Agency is required to seek the other Agency's approvals, prior to final approval by DAS Central Purchasing. Examples of these special approvals include, but are not limited to:

(A) Department of Administrative Services, Risk Management Division for revising insurance coverages 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 (bond counsel services also require the approval of the Attorney General); and

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

(i) Assistance to the Agency in developing Statements of Work related to information system projects;

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

(iii) A listing of vendors that provide information system-related services.

(c) The Contracting Agency and Contractor execution;

(d) DAS Central Purchasing approval, when required, is last. DAS Central Purchasing shall use its best efforts to approve all Personal Services Contracts within five (5) business days. A longer period might be necessary for contracts that are incomplete or contracts where additional information must be acquired.

(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 184.305, ORS 184.340, ORS 279.712, 279.725 & ORS 279.727  
Stats. Implemented: ORS 279.712

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; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0015; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98; DAS 3-1999(Temp), f. 7-23-99, cert. ef. 7-26-99 thru 1-21-00; DAS 1-2000(Temp), f. 1-21-00 cert. ef. 1-22-00 thru 4-21-00; DAS 3-2000, f. & cert. ef. 4-21-00

## 125-020-0225

### Acquiring Services Before Obtaining Requisite Approvals

(1) Pursuant to ORS 279.712(3)(a), Personal Services may be performed before all requisite approvals are obtained under a Personal Services Contract if the Personal Service Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6). The process set forth in this rule is intended to allow Agencies to acquire services before obtaining all requisite approvals for those Personal Services contracts that call for payments of less than the threshold for legal sufficiency by the Attorney General, but are subject to ORS 297.712(3)(a).

(2) The Division may authorize a Contracting Agency to acquire services before obtaining all requisite approvals when circumstances exist that create substantial risk of loss, damage, interruption of services or threat to public health or safety and that require prompt action to protect the interests of the State of Oregon. A Contracting Agency may seek such authorization for a Personal Services Contract or a class of Personal Services Contracts to address specific recurring needs to acquire services on short notice. A Contracting Agency seeking the Division's authorization shall describe particular circumstances that make it impracticable to obtain all requisite approvals before acquiring services. The Division will only authorize an Agency to acquire services before obtaining all requisite approvals if the Agency follows the procedures set forth in this rule. Division authorization pursuant to this rule only allows the Contracting Agency to acquire services before obtaining all requisite approvals. It does not authorize the Contracting Agency to make any payments before obtaining all requisite approvals.

(3) The Contracting Agency seeking the Division's authorization to acquire services before obtaining all requisite approvals shall provide:

(a) Written findings to the Division that describe the specific recurring circumstances that require the Contracting Agency to take prompt action to protect the interests of the State of Oregon because they create substantial risk of loss, damage, interruption of services or threat to public health or safety. The Contracting Agency shall also describe why, under these specific circumstances, it will be impracticable to obtain all requisite approvals before acquiring services;

(b) The Personal Services Contract form that the Contracting Agency will use for the contract entered into after acquiring services, but before making payments.

(c) Documentation demonstrating that the Contracting Agency has established procedures to administer the Contract or class of Contracts, for which it seeks authorization.

(4) The Division, after review of the material required by section (3) above, may authorize the Contracting Agency to acquire the specific services under the specific circumstances described in response to section (3)(a) above before obtaining all requisite approvals. If the Division provides authorization, the Division will do so in writing, subject to any conditions or limitations the Division deems appropriate, including but not limited to the duration of the authorization, and



any other terms and conditions the Division may determine are appropriate.

(5) If Contracting Agency acquires services before obtaining all requisite approvals when authorized by the Division, the Contracting Agency, as soon as practicable after acquiring the services, shall enter into a written contract in the form submitted by the Contracting Agency and approved by the Division. The Contracting Agency shall not revise the terms of the approved Contract form submitted by Contracting Agency without Division approval.

(6) The Contracting Agency shall not make any payments for services before obtaining all requisite approvals.

(7) The Division authorization to perform services before obtaining all requisite approvals does not exempt the Contracting Agency from obtaining legal sufficiency review, if required under the provisions of ORS 291.047.

(8) A Contracting Agency authorized to perform services before obtaining all requisite approvals must follow all applicable screening and selection requirements unless otherwise exempt from those requirements.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.712 & OL 1999, Ch 264, Sec. 3

Hist.: DAS 1-2000(Temp), f. 1-21-00 cert. ef. 1-22-00 thru 4-21-00; DAS 3-2000, f. & cert. ef. 4-21-00

### 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 Division's policies and procedures for screening and selection of Contractors to perform Personal Services.

(2) The Contracting Agency shall comply with the procedures set out in these rules for screening and selecting Contractors to perform Personal Services Contracts.

(3) The Contracting Agency shall provide Evidence of competition for all contracts except for contracts entered into under OAR 125-020-0335. While qualifications are the primary criteria, whenever a Contracting 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 Contracting 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 Intergovernmental Agreement under OAR 125, division 022 if such action is expressly permitted under the original contract (between the Contracting Agency and Contractor) and if the original contract was solicited in accordance with OAR 125-020-0320, 125-020-0330 or 125-020-0335.

(5) Personal Services Contracts submitted to the Division for approval or filing must include a summary statement of the selection process. The Contracting Agency's contract file should include detailed documentation of the process.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0035; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

### 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 for a formal solicitation shall appear in the VIP System and, at the Contracting Agency's option, an additional advertisement may be placed in at least one newspaper of general circulation, and in as many additional issues and publications as may be necessary or desirable to achieve adequate competition. Any advertisement(s) for a formal solicitation shall be first published and appear at least once, no fewer than fourteen (14) calendar days before close of the solicitation, unless the governing body of the Agency, its chief executive or another officer authorized by the Agency declares in writ-

ing that a shorter period is deemed necessary in the public interest for a particular procurement. Conversely, the Contracting Agency shall broaden and extend public notice if deemed necessary to serve the public's interest for a particular procurement; and

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

(2) The RFP or RFQ must provide that the Contracting Agency may, at any time during the solicitation process, reject any or all Proposal 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 Contracting Agency is not responsible for any costs of any proposers incurred while submitting Proposal, and that all proposers who respond to solicitations do so solely at their own expense.

(4) The RFP or RFQ must:

(a) Notify proposers of potential contract amendments. Failure to provide such notice in any solicitation may prevent amendments to any resulting contract; and

(b) Include protest procedures for all formal solicitation and selection.

(5) Pursuant to ORS 200.035, the Contracting Agency shall notify, in writing, the Advocate for Minority, Women & Emerging Small Businesses of each solicitation and contracting opportunity of more than \$5,000. VIP advertisements will meet the mandatory OMWESB notification requirements when:

(a) The Contracting Agency has notified the Advocate's Office of the Contracting Agency's intent to use VIP as the official notification vehicle for contracting opportunities;

(b) The advertisement notice is placed on the VIP for a minimum of five (5) calendar days.

(6) Each RFP 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."

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712 & ORS 279.555

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

### 125-020-0320

#### Formal Selection Procedures

The Contracting Agency shall use a formal selection procedure whenever the cost of the services is estimated or anticipated to be more than \$75,000. 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 (see OAR 125-020-0140(21)).

**NOTE:** It is not mandatory that the Agency issue an RFQ; the 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. The RFQ shall include the date, time and place of the meeting(s).

(c) Unless the RFQ establishes that competition does not exist or unless the solicitation process is canceled or all qualification statements 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 a Contracting 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(20)). 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 shall 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 the Statement of Work within the scope of work described in the RFP;

(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) Contractual provisions that will be contained in the resulting contract;

(I) The possibility of any interviews; 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: 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. The RFP shall include the date, time and place of the meeting(s);

(c) An evaluation committee shall evaluate Proposals. The Contracting Agency's evaluation committee shall provide the evaluation committee with guidelines for completing evaluations consistent with the process described in the RFP. The evaluation committee may consist of state employees and, if desired, members of the community with experience in related services. Evaluators shall be selected on the basis of their ability to provide an objective, impartial evaluation of the Proposals. If there is a conflict of interest, the evaluator shall declare this in writing and shall be excluded from participating in the evaluation. Each member of the evaluation committee shall read and score all Proposals;

(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 the evaluation criteria consistent with the process described in the RFP. Price will be considered, but will not necessarily govern selection of the Contractor(s);

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

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: TSPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

## 125-020-0330

### Informal Selection Procedures

The Contracting Agency may use an informal selection process to obtain services if the estimated cost or contract price is not more than \$75,000.

(1) The informal selection process shall solicit responses/Proposals from at least three qualified contractors offering the required services. Prospective contractors may be drawn from the VIP System and from the certified list of the Office of Minority, Women and Emerging Small Business or its current list of contractors. The Contracting Agency may place the solicitation on the VIP System and use the system-generated potential proposer list to meet the three (3) responses/Proposals requirement for informal solicitations when:

(a) The Contracting Agency has notified vendors on the Agency's vendor list of the intent to advertise requests for solicitation electronically on the VIP; and

(b) The advertisement notice is placed on the VIP system for a minimum of five (5) calendar days.

(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 the 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) The VIP advertisement will meet the notification requirement of the Advocate for Minority, Women & Emerging Small Businesses when:

(a) The Contracting Agency has notified the Advocate's Office of the intent to use VIP as official notification vehicle for contracting opportunities;

(b) The solicitation notice is placed on the VIP System for a minimum of five (5) calendar days.

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

(5) If the scope of the services is revised to the extent that the estimated cost of the services is more than \$75,000 and the services are still required, the Contracting 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 the selection procedure is required under the provisions of OAR 125-020-0340.

(6) The Contracting Agency shall report to DAS Central Purchasing the number of firms solicited and the number of responses received when submitting a contract for approval. Written confirmation of solicitation attempts and responses with contractor names and addresses shall be maintained in the Contracting Agency's contract file, pursuant to OAR 125-020-0510.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

#### 125-020-0335

##### Selection by Negotiation

(1) The Contracting Agency may procure Personal Services with Contractors directly through negotiation, if the contract price is not more than \$5,000.

(2) If the scope of the services is revised to the extent that the estimated cost of the services is more than \$5,000, the Contracting Agency shall solicit for a new Contractor(s) using applicable selection procedures under these rules.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

#### 125-020-0340

##### Emergencies

(1) Regardless of the dollar value of the contract, an Agency may, in its discretion, enter into a Personal Services Contracts without complying with formal or informal solicitation requirements if an Emergency, as defined in OAR 125-020-0140(12), exists.

(2) The governing body of the Agency, its chief executive or another officer authorized by the Contracting Agency shall declare the existence of an Emergency in writing, which shall authorize the Contracting Agency to enter into an Emergency contract. The Contracting Agency shall to the extent reasonable under the circumstances, encourage competition by attempting to solicit responses/Proposals from qualified contractors. The officer or delegate must make written findings describing the Emergency conditions that require prompt execution of the contract. Such findings will describe the harm anticipated to result from failing to establish the contract on an expedited basis as well as record the measures taken under OAR 125-020-0330 to encourage competition, the number of responses/Proposals obtained, if any, and the reason for selecting the Contractor.

(3) The Contracting Agency shall not contract pursuant to this exemption in the absence of a substantial risk of loss, damage, or interruption of services or harm to public health, safety or the environment that would occur if contract performance awaited the time necessary, given the complexity of the project, to solicit, receive and analyze Proposals. The written declaration of an Emergency and resulting contract are solely entered into at the discretion of the Agency's chief executive or authorized officer. Emergency contracts are not approved or executed by the Division but shall be reported to the Division in accordance with OAR 125-020-0700.

(4) Declaration of an Emergency does not exempt the contract from Attorney General approval if required under ORS 291.045 and 291.047 and its implementing rules.

(5) For contracts greater than \$75,000, the Contracting Agency shall submit written documentation required in subsection (2) and (3) of this rule to the Division within a reasonable period of time or sixty (60) days, whichever is less, following the declaration of Emergency.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.712

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

#### 125-020-0350

##### Sole Source

Sole Source contracting, as defined in OAR 125-020-0140(22), is to be used as a tool to efficiently acquire services when only one Contractor provides the services.

(1) The Contracting Agency shall make the following findings for inclusion in the contract file:

(a) A brief description of the service(s), including contemplated future purchases;

(b) The reason the Contracting Agency is seeking this solicitation method, which shall include at least one of the following findings:

(A) It is unlikely that such a Sole source contract will substantially diminish competition; or

(B) There is only one provider of the quality or qualifications required.

(c) Documentation of current market research that support the findings in (1)(b).

(2) The written justification for a Sole source contract referenced in (1) shall be submitted to the Division by the Contracting Agency (see OAR 125-020-0700).

(3) If the cost of the services is more than \$75,000, the Contracting Agency may award a contract on a Sole source basis, only if prior to the award:

(a) Advertised notice of the Contracting Agency's intent to contract for the services, including the general specifications of the intended contract, is advertised on the VIP System and, if desired or determined by the Contracting Agency to be in the best interest of seeking competition for the required services, in at least one newspaper or trade journal of general circulation in the area where the services are to be performed;

(b) The advertised notice is published no fewer than five (5) calendar days before close of the solicitation to allow prospective contractors a reasonable opportunity to submit a protest of the Contracting Agency's intent to contract through the Sole source process; and

(c) The protest shall be submitted, in writing, to the Contracting Agency, by the closing date and time of the advertisement notice. It shall state the reason why the contract should be competitively solicited;

(d) The governing body of the Contracting Agency, its chief executive or another officer authorized by the Agency shall have the authority to settle or resolve the protest.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

#### 125-020-0360

##### Protest Procedures

All protests of formal solicitation documents 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 Contractors submitting a written protest or request for change of particular solicitation provisions, specifications, or contract terms and conditions to the Contracting 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 governing body of the Contracting Agency, its chief executive or another officer authorized by the Agency, 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 Contracting 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 Contracting 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 governing body of the Contracting Agency, its chief executive or another officer authorized by the Agency shall have the authority to settle or resolve a written protest submitted in accordance with subsections (1) or (2) above.

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

(5) There is no formal administrative protest process for an informal solicitation unless otherwise stated in the solicitation document.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

**125-020-0400****Contract Requirements**

(1) In addition to all applicable provisions that are required for legal sufficiency and for sound contract management, all Personal Services Contracts shall include the following:

(a) A measurable Statement of Work, within the scope of the solicitation, an established delivery schedule, Contractor and Agency duties and responsibilities;

(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 up to 10 percent of the total contract amount may be withheld until all required work is completed and accepted;

(d) A provision that payments will be made for completed work that is accepted by the Contracting Agency, unless other payment provisions are approved by DAS Central Purchasing;

(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 Contracting Agency;

(g) Provisions for termination by the Contracting 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; and

(h) Notice of any potential contract amendments, in accordance with the solicitation.

(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 Contracting 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) The Contracting Agency shall comply with any other federal law or regulation specific to the funding source supporting the contract.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

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; Renumbered from 122-020-0020; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0080; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

**125-020-0410****Independent Contractor Status**

(1) The Contracting Agency shall develop a Statement of Work for services that will not result in an employee relationship with the potential Contractor. The Contracting Agency and Contractor(s) shall complete the Independent Contractor Certification. 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 subsection 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, if the Contractor is a professional corporation, the Independent Contractor certification is required. A professional corporation is a corporation organized under ORS Chapter 58, or a similar statute in another state, and is used by certain professions. The corporation representative's certification of corporation status or a certification by the Contracting Agency verifying the Contractor's status with the Corporation Division of the Secretary of State's Office, must be submitted upon contract approval.

(2) If the nature of the services or project is such that an employee/employer relationship will exist, the Contracting 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 of the Independent Contractor Certification, the Contracting 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.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

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; Renumbered from 122-020-0020; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0050; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

**125-020-0430****Contracting Out for Services Provided by Employees**

(1) Where the Agency is contemplating contracting for work performed by Agency employees represented by a labor organization, the Contracting 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 the 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 the 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 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0060; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

**125-020-0440****Tax Compliance**

No contract or other agreement for more than \$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 305.385(6)(7).

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 305.385

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0075; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

**125-020-0500****Contract Administration**

The Division delegates contract administration to the Contracting Agency. The Contracting 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. The Division may revoke the Agency's delegation for substantial mismanagement of a contract(s) or class of contract.

(1) The Contracting Agency is required to:

(a) Follow the administrative rules in this division;

(b) Prepare a contract;

(c) Appoint a Contract Administrator to represent the Contracting 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;

(f) Complete and submit to the Division written justification that identifies the solicitation process or the use of emergencies, Sole source or negotiation. For contracts more than \$75,000 requiring DAS Central Purchasing approval, the Contracting Agency must submit at least one original contract and one copy for DAS Central Purchasing use;



(g) Maintain a record of the not to exceed amount under the contract in order to update the Division's Legislative report records on a fiscal year basis; and

(h) Maintain a complete file of the contracting records, in accordance with OAR 125-020-0510.

(2) DAS Central Purchasing will review the contract for compliance with applicable rules of this division. Upon approval, the contract will be returned to the Contracting Agency. Work may only begin on or after the effective date, as defined in OAR 125-020-0104(11).

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0085; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

## 125-020-0510

### Contract Files

(1) Each Contracting Agency's contract file shall contain an executed contract with the record of the actions used to develop and administer the contract, including a statement of justification for the Contractor selection.

(2) For all contracts, the contract files shall include the following:

(a) A copy of the solicitation and finding for justification of Sole source, Emergency 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, the results of the evaluation, and basis of selection;

(f) Record of negotiation of the Statement of Work 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) The Contracting Agency shall maintain contract files, including all documentation, for a period not less than six (6) years. Contract files shall be made immediately available for review upon the Division's request.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0040; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

## 125-020-0520

### Contract Amendments

(1) Contract amendments must be made in writing.

(2) Amendments to contracts must fall within the scope of the original solicitation, unless the amended contract is exempt under OAR 125-020-0610, including whether the contract consideration or term limit for performance may be increased (See OAR 125-020-0310(4)(b)). Amendments shall not be used to circumvent rules establishing approvals at certain monetary levels.

(3) DAS Central Purchasing must approve an amendment to a contract unless approval of the amended contract is not required under OAR 125-020-0220. 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 DAS Central Purchasing approval.

(4) Except for contracts related to Year 2000 services or Phased Development projects, amendments to perform additional work related to information technology shall not exceed 33% of the amount identified in the original contract.

(5) The Attorney General must approve an amendment to a Personal Services contract if the resulting contract calls for payments of more than \$75,000, unless exempted by the Attorney General under ORS 291.045 and 291.047.

(6) The Contracting Agency shall provide justification for any increase in time, compensation or other modification to DAS Central Purchasing.

(7) A contract amendment form(s) will be provided the Division. The Agency may create amendment form(s) as long as the amendment form is approved by the Division.

(a) For amendments, the Contracting Agency is 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 the Division approval, forward only the justification form to the Division.

(b) For contract amendments needing Division approval, the Contracting Agency shall submit the contract amendment package (one original and one copy of the contract amendment, a copy of the original contract, copies of any previous amendment(s), and the justification statement) to the Division;

(c) DAS Central Purchasing will review the contract amendment for compliance with applicable rules.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0030; DASII 1-1997, f. & cert. ef. 1-6-97; DAS II 4-1997(Temp), f. & cert. ef. 2-21-97; DAS II 6-1997(Temp), f. & cert. ef. 8-1-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

## 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 DAS Central Purchasing, provided that the following conditions are met:

(a) The original contract, if not exempt from DAS Central Purchasing and Attorney General approval requirements under other provisions of these rules, has been approved by DAS Central Purchasing 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 only authorizes one amendment to increase time for performance without DAS Central Purchasing's approval.

(3) Section (1) of this rule does not exempt the Contracting Agency from the reporting requirements in OAR 125-020-0700.

(4) 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 the Division or Attorney General approval under any other provisions of law, the Contracting Agency shall obtain the required approvals before the amendment becomes binding and before any services may be performed.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0032; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

## 125-020-0540

### Amendments for Cost Overruns

(1) Payments on contracts that exceed the maximum contract consideration require approval from DAS Central Purchasing and Department of Justice, except as provided in OAR 125-020-0220. 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 Statement of Work set out in the original contract;

(d) The cost overrun arose out of extraordinary circumstances or conditions encountered in the course of contract performance that were reasonably not anticipated at the time the original contract, or the most recent amendment, if any, was signed. Such circumstances include, but are not limited to, emergencies arising in the course of the contract that require prompt action to protect the work already completed, 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 DAS Central Purchasing within 60 days of the Agency's discovery of the overrun that states the reasons for the cost overrun and demonstrates to DAS Central Purchasing's satisfaction that the original contract and the circumstances of the overrun satisfy the conditions stated above; and

(h) The governing body of the Agency, its chief executive or another officer authorized by the Agency approves in writing the payment of the overrun, or such portion of the overrun amount as the governing body of the Agency, its chief executive or another officer authorized by the Agency determines may be paid consistent with the conditions of this rule. If the governing body of the Agency, its chief executive or another officer authorized by the Agency 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 law, the Contracting Agency shall obtain written approval from the Attorney General, as applicable, of the contract amendment before making any overrun payment.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0033; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

#### 125-020-0550

##### Reinstatement of Expired Contracts

(1) DAS Central Purchasing may approve reinstatement of an expired Personal Services Contract if the following conditions are met:

(a) The Contracting Agency demonstrates to DAS Central Purchasing, 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) Except as provided under OAR 125-020-0220, the written reinstatement is presented to DAS Central Purchasing and the Attorney General for approval within sixty (60) days after expiration of the original contract; and

(c) The Contracting Agency provides DAS Central Purchasing 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 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 Contracting 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.

(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 ORS 291.045 and 291.047, the Contracting Agency shall obtain such approval before the extension becomes binding and before any services may be performed under the reinstated contract.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0034; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

#### 125-020-0600

##### Delegation of Approval and Contract Authority

(1) The Division delegates approval and contract authority to the Agency for the following classes of contracts:

(a) Exempted contracts under OAR 125-020-0610;

(b) Standard fee contracts;

(c) Contracts calling for payment of no more than \$75,000;

(d) Contracts entered into under OAR 125-020-0340;

(e) Personal Services Contracts that are not subject to ORS 279.712(1).

(2) The Division upon an Agency's written request may grant delegation of approval and contract authority. Such delegation may be for a select class or classes of contracts. The Division shall evaluate the Agency's request based on, but not limited to:

(a) The Agency resources and trained contract officers;

(b) Agency contracting and solicitation performance; and

(c) The nature of the services to be rendered under this requested class or classes of contracts.

(3) Delegation of approval and contract authority does not exempt contracts from the requirements of these rules or all required approvals other than the Division approval. To the extent applicable, an Agency receiving delegated approval and contract authority is responsible for following these division 020 rules as if it were DAS Central Purchasing whenever the rules call for action or approval by DAS Central Purchasing.

(4) The Division may revoke delegated approval and contract authority, by written notice, to the Agency based upon, but not limited to:

(a) The Contracting Agency's failure to comply with the requirements of the delegation;

(b) Contract deficiencies evidenced by performance audit conducted by the Division, Secretary of State or the Legislative Assembly; or

(c) The Contracting Agency's failure to comply with Division Policy for training on solicitation and contracting practices.

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

(6) The Contracting Agency shall maintain copies of letters granting delegation of approval and contract authority. The Contracting Agency may contact the Division for information about delegation of approval and contract authority.

(7) The Contracting Agency is required to keep a record of the not-to-exceed amount of the contract and will update the Division records on a fiscal year basis.

(8) These contracts must be reported to the Division and included in the Division's annual report.

(9) When an Agency has authority pursuant to OAR 125-020-0600, the Contracting Agency's signature shall be deemed both the execution and approval of the contract.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0017 and 122-020-0027; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

#### 125-020-0610

### Exemptions

(1) This rule exempts Contracting Agencies, for certain classes of contracts, from the screening and selection rules only as described in OAR 125-020-0300 through 125-020-0335. The Contracting Agency shall competitively solicit to the extent practicable or justify entering into the contracts by direct negotiation. When the contract requires payments of more than \$75,000, this rule does not exempt the Contracting Agency from obtaining the approval of the Attorney General for legal sufficiency pursuant to ORS 291.045-047. This exemption applies to the following classes of contracts:

- (a) Client services, as defined in OAR 125-020-0140(3);
- (b) Expert witness services, as defined in OAR 125-020-0140(14);
- (c) Year 2000 services, as defined in OAR 125-020-0140(26);
- (d) Business assistance services, defined as services delivered directly to small or troubled businesses in Oregon, that are intended to assist business start-up or growth or to revitalize or stabilize a business. Such services include, but are not limited to, technical assistance services, feasibility evaluations, management consulting, basic business training (including elements of accounting, personnel management, marketing and tax compliance), counseling on business needs and problems, assistance in securing state or federal procurement contracts and assistance in securing Oregon suppliers for goods and services.

(2) The Division totally exempts the following types of Personal Services agreements: Federal Government, Intergovernmental, Interstate and International. This exemption exempts the Contracting Agency from all requirements of ORS 279.712(3) and these division 020 rules and allows the Contracting Agency to enter into such agreements by direct negotiation without Division approval.

(3) Upon an Agency's written request, the Division may exempt a contract for Personal Services or class of contracts for Personal Services from any requirements of ORS 279.712(3) 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 Division may consider the type, cost, amount of the contract, number of persons available and any other factors the Division deems appropriate.

(4) The Division may revoke the Contracting Agency's exempted authority by written letter to the Agency.

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

(6) The Contracting Agency is required to:

- (a) Follow all applicable rules except to the extent exempted by this rule;
- (b) Prepare the contract;
- (c) Assign an Agency number to the contract;
- (d) Obtain all required approvals; and
- (e) Maintain records as required by state laws and OAR 125-020-0510.

(7) Copies of these contracts are not filed with the Division; however, exempted contract data must be reported to the Division each fiscal year for inclusion in the Division's report to the Legislature.

(8) Screening and Selection Procedures for General or Special Counsel Authorized by the Attorney General.

(a) Under ORS 180.235 the Oregon Attorney General may authorize a public officer or agency to retain its own general or special counsel other than the Department of Justice. This rule governs the process for obtaining such counsel, together with the division 20 rules with the exceptions of: OAR 125-020-0210, 125-020-0220, 125-020-0300, 125-020-0310, 125-020-0320, 125-020-0330, 125-020-0335, 125-020-0340, 125-020-0520(3), (6) and (7), and 125-020-0530.

(b) Definitions. For purposes of this sub-section (8), these terms have the following meanings:

(A) "Attorney General" means the Attorney General of the State of Oregon.

(B) "Authorized Agency" means the public officer or agency that the Attorney General authorized to retain its own general or special counsel other than the Department of Justice under ORS 180.235.

(C) "Authorized Legal Services" means the legal services as authorized by the Attorney General for the particular matter or class of matters and as required by the Authorized Agency.

(D) "Outside Counsel" means general or special counsel selected by the Authorized Agency under this rule.

(E) "Firm" means the proprietorship, partnership or professional legal corporation engaged in the practice of law of which Outside Counsel is a partner, a shareholder, an associate, a member, or a lawyer serving as "of counsel."

(F) "Solicitation" means a written or oral request for offers, proposals, statements of qualifications, or other information from individuals or entities.

(c) Delegation of Approval and Contract Authority. The Division delegates approval and contract authority to the Authorized Agency to the extent authorized by the Oregon Attorney General.

(d) Selection Criteria:

(A) The Authorized Agency shall select the Firm it considers most advantageous based on the following factors:

(i) The knowledge, skills and ability of the Firm that will provide Authorized Legal Services. The Firm's ability to provide Authorized Legal Services includes the training and expertise of the Firm attorneys, including Outside Counsel. Outside Counsel must be a member of the Oregon State Bar pursuant to ORS 180.235(2);

(ii) The Firm's experience, level of expertise and suitability to perform the Authorized Legal Services;

(iii) Whether the Firm's available personnel possess any required licenses or certifications required to perform the legal services for the Authorized Legal Services, such as licenses to practice law in the appropriate jurisdiction, or to appear in a certain forum;

(iv) The Outside Counsel's availability and capability to perform the Authorized Legal Services and meet the Agency's needs;

(v) The commitment the Outside Counsel and Counsel's Firm can make to the Authorized Agency to meet the Agency's needs;

(vi) The value of the Firm's legal services, taking into account the cost of the Firm's legal services; and

(vii) Other factors the Authorized Agency considers relevant to accomplish an optimal, timely outcome.

(B) In weighing the evaluation factors, no single factor is determinative.

(e) Scope of Firms Considered. The Solicitation process may range from direct negotiation and contracting with a single firm to publication of a request for proposals. The Authorized Agency shall extend Solicitations to those firms that it considers reasonable and practical to solicit under the circumstances, and shall take into consideration the following factors:

(A) When the subject matter of the Authorized Legal Services requires specialized knowledge in a particular field of law, the Authorized Agency may limit the Solicitation to prospective Firms that have a reputation of subject matter expertise in that field of law;

(B) The Authorized Agency shall limit the number of Firms considered under the Solicitation as appropriate if the interests of the Authorized Agency would likely be adversely affected by delay in obtaining a Firm or through broad distribution of the Solicitation; and

(C) Other factors the Authorized Agency considers relevant to accomplish an optimal, timely outcome.

(f) Documentation of Selection:

(A) The Authorized Agency shall prepare a record of selection signed by an officer or an employee of the Authorized Agency designated to be responsible for the selection process. The record of selection shall include the officer's or employee's summary of:

(i) The Solicitation process used and the Firms considered in the Solicitation process;

(ii) Why the selected firm is considered most advantageous to the Authorized Agency; and

(iii) Why the scope of the Solicitation was reasonable and practical under the circumstances.

(B) As used in (f)(A) above, an officer includes a member of the Authorized Agency's board or commission.

(C) The record of solicitation shall be retained by the Authorized Agency with the contract file for the Firm.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 180.235, ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0018 and 122-020-0028; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98; DAS 3-1999(Temp), f. 7-23-99, cert. ef. 7-26-99 thru 1-21-00; DAS 5-2002(Temp), f. 8-22-02, cert. ef. 8-23-02 thru 2-



**125-020-0620**

**Delegation of Contract Authority**

(1) The Division delegates contract authority to the Agency for Personal Service Contracts calling for payments of more than \$75,000 within the limitations set forth by Division policy. The Division policy shall be available upon request to the Division.

(2) The Division upon an Agency's written request may grant delegation of contract authority. Such delegation may be for a select class or classes of contracts. The Division shall evaluate the Agency's request based on, but not limited to:

- (a) The Agency resources and trained contract officers;
- (b) Agency contracting and solicitation performance; and
- (c) The nature of the services to be rendered under this request-class or classes of contracts.

(3) The Contracting Agency shall maintain good contracting procedures and follow the rules provided in OAR 125 division 020.

(4) The Contracting Agency is required to keep a record of the not-to-exceed amount of the contract and will update the Division records on a fiscal year basis.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.712

Hist.: DAS 3-1998, f. & cert. ef. 4-1-98

**125-020-0700**

**Reporting Requirements**

(1) The Division maintains an electronic reporting system for the Agency. The Agency shall submit an electronic justification form to the Division for each contract. The justification form shall include the Agency name, not-to-exceed amount of the contract, the name of the Contractor, the duration of the contract, and its basic purpose. The Division will provide a copy of the justification form for an Agency without access to the electronic system.

(2) The Division shall submit a report to the Legislature concerning Agency use of Personal Services Contracts. The report, by statute, shall include the name of the Agency, the not-to-exceed amount of the contracts, the name(s) of Contractor(s), the duration of contract(s) and the basic purpose of the contract(s). The report shall also include the total dollar figure of all Personal Services Contracts for each fiscal year.

(3) The Division maintains an electronic file of Personal Services Contracts and relevant information for public review. The electronic file includes a justification statement and documentation of the selection process for each contract.

(4) The Contracting Agency keeps on file all Personal Services Contracts and the selection and justification statements for six years beyond each contract's expiration date. All such Contracting Agency files may be destroyed after six years.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0045 and 122-020-0065; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98

**DIVISION 21**

**FEES 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 192.440 & ORS 283.060

Stats. Implemented:

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

**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, ORS 184.340 & ORS 291.021

Stats. Implemented: ORS 184, ORS 279 & ORS 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, ORS 184.340 & ORS 291.021

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

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95, Renumbered from 122-020-0012

**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:

- (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, ORS 184.340 & ORS 291.021

Stats. Implemented: ORS 184, ORS 279 & ORS 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, ORS 184.340 & ORS 291.021

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

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0014

### DIVISION 25

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

#### 125-025-0000

##### Contracting Authority and Approval

The Department and all state agencies that are subject to Department authority under ORS 279.712 shall use these Division 025 contracting rules.

(1) Pursuant to Oregon Laws 1997, Chapter 802, the Department of Administrative Services authorizes Contracting Agencies to directly purchase Architectural, Engineering or Related Services, provided that, for all contracts that provide for total compensation to the consultant greater than \$75,000, contract review and approval is obtained from the Department prior to entering into such contract. This authorization does not relieve the Contracting Agency from complying with all other applicable laws and regulations, including approval for legal sufficiency by the Attorney General.

(2) Architectural, Engineering or Related Services contracts are a special class of personal services contracts. All other contracts for personal services are subject to the provisions of OAR 125, division 020. These division 025 rules have unique statutory requirements and are totally independent of the Division 020 rules.

(3) The model rules adopted by the Attorney General under ORS 279.049(2), for screening and selection of persons to perform architectural, engineering and land surveying personal services contracts, shall not apply to the Department or any other state agency that is subject to Department authority under ORS 279.712.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.055 & ORS 279.712

Stats. Implemented: ORS 279.049

Hist.: DASII 8-1997(Temp), f. 10-3-97, cert. ef. 10-4-97, DAS 2-1998, f. & cert. ef. 4-1-98, DAS 6-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-20-00; DAS 5-2000, f. & cert. ef. 4-21-00; DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02, Renumbered from 125-065-0029 & 125-065-0105

#### 125-025-0010

##### Responsibilities

(1) The governing body of the Contracting Agency, its chief executive or another officer authorized by the Contracting Agency is responsible for ensuring the Contracting Agency's compliance with the rules in OAR 125, division 025.

(2) Each Contracting Agency's governing body, chief executive or another officer authorized by the Contracting Agency shall establish procedures to ensure those responsible for carrying out the contracting activities, have demonstrated knowledge, and understanding of the applicable laws, rules, policies and procedures to proficiently represent the Contracting Agency when contracting for services under these rules.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712

Stats. Implemented: ORS 279.049

Hist.: DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02

#### 125-025-0030

##### 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 or Related Services required by the Contracting Agency. It is the policy of the Department, through the Contracting Agency, to select as expeditiously as possible the most qualified consultant, for a given solicitation, based on the consultant's demonstrated competence and qualifications to perform the professional services required at a fair and reasonable price.

(1) The Department has established the following selection procedures, which are generally 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 or Related Services personal service contracts.

(2) In administering or applying these rules, the Department and Contracting Agencies shall support the state goal of promoting a sustainable economy in rural areas.

Stat. Auth.: ORS 283.051

Stats. Implemented: ORS 279.712

Hist.: GS 3-1993, f. & cert. ef. 10-6-93; DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02, Renumbered from 125-065-0030

#### 125-025-0040

##### Definitions

For the purposes of rules 125-025-0000 through 125-025-0110, the following terms shall have the following meanings:

(1) "Architectural, Engineering 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 architectural services, landscape architectural services, engineering services, space planning services, land surveying services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, and project/construction management services as well as other professional services that must be performed by registered architects, registered professional engineers and registered professional land surveyors.

(2) "Agreement-To-Agree": a written document of understanding negotiated between a Contracting Agency and the consultant for the provision of services on a single project, or on more than one project, which contains contract clauses that will apply to future contracts during its term to be established through work orders and which will incorporate the required and applicable clauses of the Agreement-To-Agree.

(3) "Contracting Agency": an agency that has authority to procure, enter into and sign the contract as defined in ORS 291.002(7)

(4) "Department": the Department of Administrative Services created by ORS 184.305.

(5) "Design-Build": an alternative contracting method for the construction of public improvements where construction and design services are combined in a single contract.

(6) "Direct Appointment" or "Direct Appointment Procedure": the consultant selection method provided for under OAR 125-025-0080.

(7) "Director": the Director of the Department of Administrative Services or designee of the Director of Administrative Services.

(8) "Estimated Fee": the amount to be utilized for purposes of determining the appropriate solicitation method for the project, which reflects the amount specifically attributable to the professional services performed by the consultant under the contract. The Estimated Fee does not include reimbursable or other non-professional fee expenses that may be included in the consultant's total compensation allowed under the contract. The Estimated Fee is to be distinguished from the total compensation to the consultant, or the total payments under the contract, which is the amount to be utilized for purposes of direct purchasing authority under OAR 125-025-0000(1) or public contract approval under ORS 291.047.

(9) "Formal Selection" or "Formal Selection Procedure": the consultant selection method provided for under OAR 125-025-0060.

(10) "Informal Selection" or "Informal Selection Procedure": the consultant selection method provided for under OAR 125-025-0070.

(11) "Mixed Contract": a contract that requires the consultant to perform certain services and also provide the Contracting Agency with other kinds of services, goods, or products; the classification of a Mixed Contract as a contract for Architectural, Engineering or Related Services is determined by the Mixed Contract's predominate purpose. For a Mixed Contract to be considered a contract for Architectural, Engineering or Related Services, the majority of the payments made or received under the Mixed Contract must be for Architectural, Engineering or Related Services.

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

(13) "Public Improvement": a public improvement as defined in ORS 279.011(8).

(14) "Record of Past Performance": information including but not limited to price and cost data from previous projects, performance data from previous projects, quality of work, ability to meet schedules, cost control methods and contract administration.

(15) "Request for Proposals" or "RFP": a written document soliciting competitive written proposals and setting forth the criteria and method to be used to select the most qualified proposer. The RFP:

(a) Provides a general description of a proposed project or projects, including a proposed Statement of Work;

(b) Indicates the types of services needed; and

(c) Requests prospective consultants to submit written proposals that address the proposed Statement of Work

(16) "Request for Qualifications" or "RFQ": a written document that will not result in a contract, but is intended to establish a list of qualified consultants from which to seek proposals and which:

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

(b) Indicates the types 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.

(17) "Resources Available": information indicating, staff, specialized services, or other resources available for the project described in the RFQ or RFP.

(18) "Statement of Work": a written statement that describes the:

(a) Phases of work, major tasks, deliverables required and/or areas of responsibility to be performed by the consultant;

(b) For an individual project 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 Contracting Agency and the consultant.

(19) "VIP System": the on-line Vendor Information Program administered through the Central Purchasing Section of the Department of Administrative Services.

Stat. Auth.: ORS 184.340 & ORS 279

Stats. Implemented: ORS 279.712

Hist.: GS 3-1993, f. & cert. ef. 10-6-93; DAS 2-1998, f. & cert. ef. 4-1-98; DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02, Renumbered from 125-065-0040

## 125-025-0050 Solicitation

Responses shall be solicited by following one of the methods prescribed below:

(1) For Formal Selection, all projects shall be publicly advertised. 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 fourteen (14) calendar days before close of the solicitation. The advertisement(s) shall briefly describe:

(a) The project(s);

(b) The professional services sought;

(c) Where copies of the solicitation may be obtained; and

(d) The deadline for submitting a response.

(2) For Informal Selection or Direct Appointments, the Contracting Agency may biennially, or at other designated times, announce that it is interested in receiving, from professional consultants that perform Architectural, Engineering or Related Services, a statement of credentials, firm information and other data expressing interest in providing Architectural, Engineering or Related Services:

(a) The Contracting Agency may provide a standard form for this purpose. Materials received will be retained by the Contracting Agency in order to prepare a list of consultants 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 Contracting Agency may be purged following an updated announcement of interest in receiving such statements (whether biennially or at other designated times), unless the Contracting Agency is notified otherwise by professional consultants desiring to continue expressing interest in performing Architectural, Engineering, or Related Services or the laws applicable to the retention of public records requires retention of such records for a longer period of time.

(c) The Contracting Agency may also use the VIP system or public advertisement for any project.

(d) In the absence of an announcement by the Contracting Agency, consultants that perform Architectural, Engineering or Related Services may nevertheless submit such a statement to the Contracting Agency for inclusion on any list of consultants being maintained by the Contracting Agency.

(3) The Contracting Agency may at any time during the solicitation or negotiation process reject all 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 in the RFQ or RFP, under no circumstances shall the Contracting Agency be responsible for any consultant costs and expenses incurred in submitting responses to the RFQ or RFP under any part of these rules. 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) Unless the Architectural, Engineering or Related Services involve payment for services of an amount less than \$5,000, or are advertised on the VIP System for at least 10 days prior to award of the contract, the Contracting Agency shall provide prior written notification of all RFQs and RFPs to be issued to the Office of the Governor's Advocate for Minority, Women and Emerging Small Business.

Stat. Auth.: ORS 184.340 & ORS 279

Stats. Implemented: ORS 279.712, ORS 200.035

Hist.: GS 3-1993, f. & cert. ef. 10-6-93; DASII 8-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 2-1998, f. & cert. ef. 4-1-98; DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02, Renumbered from 125-065-0050

## 125-025-0060 Formal Selection Procedure

The Formal Selection Procedure shall be used whenever the Estimated Fee for Architectural, Engineering or Related Services is greater than \$75,000, or at the discretion of the Contracting Agency.

(1) Responses shall be solicited through public advertisement, in accordance with OAR 125-025-0050, and either an RFP process, which includes a combined request for a consultant's qualifications and Proposal or an RFQ to establish a list, followed by an RFP. If a



limited number of responses are anticipated, or if it is determined to be in the Contracting Agency's best interest, the Contracting Agency may proceed directly to an RFP and negotiation process with or without an interview.

(2) The RFQ, if used, shall, at a minimum, contain:

(a) A written request for a statement of the particular consultant qualifications required for the project;

(b) The evaluation criteria (including the weights or points applicable to each criterion); and

(c) The screening or evaluation method to be used.

(3) The RFQ may require any or all of the following:

(a) A statement of 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) A statement of the consultant's Resources Available for the project, including the number of the consultant's experienced staff available to perform the Architectural, Engineering or Related Services required by the project, such personnel's specific qualifications and experience and the proportion of their time by phase that would be spent on the project;

(c) A list of similar projects completed by the consultant with references concerning the consultant's Record of Past Performance; and

(d) A statement of the consultant's knowledge of the locality or the area where the services will be performed and the geographic proximity to the project location; and

(e) Any other information that is deemed reasonably necessary to evaluate consultant qualifications.

(4) Prior to the submission deadline for an RFQ, a 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. If the Contracting Agency determines that attendance at the meeting is mandatory, non-attendees will be precluded from submitting responses to the RFQ or RFP for the specific projects that are the subject of the meeting.

(5) For an RFQ, 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 Contracting Agency, and may include private practitioners of Architectural, Engineering or Related Services, and representatives of user groups. One member of the committee from the Contracting Agency shall be designated as the chairperson.

(6) Following screening and evaluation of responses to the RFQ, a list of at least three qualified professional consultants shall be established. Unless the RFQ is canceled, every consultant placed on the list shall receive a copy of the RFP and have an opportunity to submit a Proposal.

(7) An RFP shall describe or contain the following information:

(a) General background information, including a description of the project, the location 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 for receipt of RFP submissions 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 Contracting Agency, 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 RFP, 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 that is reasonably necessary to evaluate, rank and select consultants.

(8) For an RFP, a 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.

(9) For an RFP, an RFP consultant selection committee of no fewer than three, 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 Contracting Agency, and private practitioners of Architectural, Engineering or Related Services and user groups. One member of the committee from the Contracting Agency shall be designated as the chairperson.

(10) For an RFP, the consultant selection committee shall review, score and rank all responsive Proposals according to criteria that may include, but are not limited to, the following:

(a) Availability and capability to perform the services described in the RFP;

(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) Results from oral interviews, if conducted;

(i) Design philosophy and project approach;

(j) Geographic proximity of the project and knowledge of the locality of the project where services will be required;

(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.

(11) After the evaluation process under section (10) above is complete, 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 Contracting Agency, taking into account the estimated value, scope, complexity, and nature of the professional services.

(12) In the event the final scoring and ranking under section (10) above results in a tie, the Contracting Agency may further evaluate and rank all tied consultants according to the criteria set forth in the RFP, with or without requiring further submissions from the tied consultants and with or without further interviews of the tied consultants, to determine which of the tied consultants would provide the required Architectural, Engineering or Related Services in a manner most beneficial to the overall intent of the project and to the expectations of the Contracting Agency. Once the tie is broken, the Contracting Agency will then enter into negotiations with the highest ranked proposer, in accordance with section (11) above.

(13) Negotiations may be formally terminated with the highest ranked proposer, if the negotiations 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 and so on, until the negotiations result in a contract. If the subsequent rounds of negotiations fail to result in a contract within a reasonable amount of time, the solicitation may be formally terminated. Architectural, Engineering or Related Services of a qualified consultant may then be obtained through the Direct Appointment Procedure.

(14) When a Contracting Agency utilizes an RFP process which includes a combined RFQ and RFP, the Contracting Agency shall

comply with the requirements for RFPs set forth in sections (7), (8), (9), (10), (11), (12) and (13) of this rule set forth above. The Contracting Agency shall also comply with the requirements for RFQs set forth in sections (2) and (3), but only to the extent that such RFQ requirements do not conflict with the RFP requirements referenced in this section (14).

Stat. Auth.: ORS 184.340 & ORS 279

Stats. Implemented: ORS 279.712

Hist.: GS 3-1993, f. & cert. ef. 10-6-93; DASII 8-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 2-1998, f. & cert. ef. 4-1-98; DAS 3-2001(Temp) f. & cert. ef. 3-9-01 thru 9-4-01; Administrative correction 11-15-01; DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02, Renumbered from 125-065-0060

#### 125-025-0070

##### Informal Selection Procedure

The Informal Selection Procedure may be used to obtain Architectural, Engineering or Related Services if the consultant's Estimated Fee is no greater than \$75,000.

(1) A written solicitation inviting written proposals shall be sent to a minimum of five prospective consultants drawn from:

(a) The Contracting Agency's current list of consultants; or

(b) Among all consultants offering the necessary Architectural, Engineering or Related Services that the Contracting 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 that include, but is not limited to each consultant's:

(a) Particular capability to perform the Architectural, Engineering or Related Services for the project being considered;

(b) Resources Available to perform the Architectural, Engineering or Related Services required by the project, including each consultant's recent, current, and projected workloads;

(c) Record of Past Performance for public or private clients;

(d) Project approach and design philosophy; and

(e) Geographic proximity to the project. The Contracting Agency 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 that is consistent with the consultant's proposal and fair and reasonable to the Contracting Agency, taking into account the estimated value, scope, complexity, and nature of the professional services.

(5) In the event the final ranking results in a tie, the Contracting Agency may further evaluate and rank all tied consultants according to the criteria set forth in the written solicitation, with or without requiring further submissions from the tied consultants and with or without further interviews of the tied consultants, to determine which of the tied consultants would provide the required Architectural, Engineering or Related Services in a manner most beneficial to the overall intent of the project and to the expectations of the Contracting Agency. Once the tie is broken, the Contracting Agency will then enter into negotiations with the highest ranked proposer, in accordance with section (4) above.

(6) Negotiations may be formally terminated with the highest ranked proposer if negotiations 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 and so on, until the negotiations result in a contract. If the subsequent rounds of negotiations fail to result in a contract within a reasonable amount of time, the solicitation may be formally terminated. Architectural, Engineering or Related Services of a qualified consultant may then be obtained through the Direct Appointment Procedure.

(7) If the scope of a project is revised during negotiations so that the Estimated Fee of the consultant's services is greater than \$75,000, then the informal process shall be terminated and the Architectural, Engineering or Related Services of a qualified consultant for the project must be solicited using the Formal Selection Procedure. Notwithstanding the foregoing event, negotiations with the informally selected consultant may continue and the parties may enter into a contract,

if the Contracting Agency makes informal written findings that contracting with the consultant:

(a) Is not likely to encourage favoritism or substantially diminish competition in the awarding of Architectural, Engineering or Related Services personal service contracts; and

(b) Will result in substantial cost savings to the Contracting Agency; and

(c) Is in the best interest of the Contracting Agency.

Stat. Auth.: ORS 184.340 & ORS 279

Stats. Implemented: ORS 279.712

Hist.: GS 3-1993, f. & cert. ef. 10-6-93; DASII 8-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 2-1998, f. & cert. ef. 4-1-98; DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02, Renumbered from 125-065-0070

#### 125-025-0080

##### Direct Appointment Procedure

(1) A qualified consultant may be appointed directly from:

(a) The Contracting Agency's current list of consultants;

(b) Another Contracting Agency's list of consultants; or

(c) Among all consultants offering the necessary Architectural, Engineering or Related Services that the Contracting 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 Architectural, Engineering or Related Services required for the project meet the following requirements:

(A) Those services consist of Architectural, Engineering or Related Services, which have been substantially described, planned or otherwise previously studied or rendered in an earlier contract, as in continuation of a project;

(B) The selection procedure used for the contract was the Formal Selection Procedure (or a substantially equivalent procedure if the Architectural, Engineering or Related Services for the original contract were procured prior to adoption of these rules); and

(C) The Contracting Agency makes informal written findings that retaining the consultant:

(i) Is not likely to encourage favoritism or substantially diminish competition in the awarding of the Architectural, Engineering or Related Services personal service contracts;

(ii) Will result in substantial cost savings to the Contracting Agency; and

(iii) Is in the best interest of the Contracting Agency.

(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 section (2)(a) or (b) of this rule shall be competitive to the extent practicable and may be based on criteria that include but is not limited to:

(a) The consultant's availability, capabilities, staffing, experience, and compensation requirements; and

(b) The project's location.

Stat. Auth.: ORS 184.340 & ORS 279

Stats. Implemented: ORS 279.712

Hist.: GS 3-1993, f. & cert. ef. 10-6-93; DASII 8-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 2-1998, f. & cert. ef. 4-1-98; DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02, Renumbered from 125-065-0080

#### 125-025-0082

##### Contract Amendments

(1) Contracts or Agreements-To-Agree entered into under this rule may be amended, subject to the following conditions:

(a) The Architectural, Engineering or Related 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; and

(b) Each such amendment is in writing, signed by an authorized representative of the consultant and the Contracting Agency, and receives all necessary approvals before it becomes binding on the State of Oregon.

(2) A contract may also be amended to reflect necessary changes if the scope of the project has been materially altered due to unfore-

seen or unavoidable circumstances that have arisen in the course of performing the services that could not have been anticipated and subject to the following conditions:

(a) Informal written findings are submitted with the amendment to the Contracting Agency's officer with contract approval authority containing the following:

(A) A description of the circumstances that require the necessary contract changes;

(B) A finding that the amendment is not likely to encourage favoritism or substantially diminish competition in the awarding of Architectural, Engineering or Related Services personal service contracts;

(C) A finding that the amendment will result in substantial cost savings to the Contracting Agency; and

(D) A finding that the amendment is in the best interest of the Contracting Agency; and

(b) Each such amendment is in writing, signed by an authorized representative of the consultant and the Contracting Agency, and receives all necessary approvals before it becomes binding on the State of Oregon.

Stat. Auth.: ORS 184.340 & ORS 279

Stats. Implemented: ORS 279.712

Hist.: DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02

#### 125-025-0085

##### Contract Reinstatements

(1) When a Contract expires and is reinstated pursuant to this rule, the Contracting Agency may compensate the Consultant for Architectural, Engineering or Related Services performed in the interim between the expiration of the original contract and the reinstatement.

(2) When an Agreement-To-Agree expires and is reinstated pursuant to this rule, the Contracting Agency may compensate the Consultant for Architectural, Engineering or Related Services performed under a contract resulting from a work order issued under the Agreement-To-Agree, during the time period between the expiration of the Agreement-To-Agree and the reinstatement.

(3) Contracts or Agreements-To-Agree may be reinstated for any of the following reasons:

(a) When an administrative error or oversight is discovered, the Contracting Agency may submit, for approval, an amendment to reinstate the contract to the Department and, if applicable, the Attorney General within a ninety (90) days after the contract expiration date; or

(b) If the project for which the consultant has been selected and awarded becomes inactive, or is terminated, whether due to project phasing, and/or insufficient appropriations, the Contracting Agency may, if the project is reactivated, retain the same consultant to complete the Architectural, Engineering or Related Services required under the contract if the Contracting Agency makes informal written findings that retaining the consultant:

(A) Is not likely to encourage favoritism or substantially diminish competition in the awarding of Architectural, Engineering or Related Services personal service contracts;

(B) Will result in substantial cost savings to the Contracting Agency; and

(C) Is in the best interest of the Contracting Agency.

Stat. Auth.: ORS 184.340 & ORS 279

Stats. Implemented: ORS 279.712

Hist.: DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02

#### 125-025-0087

##### Alternative Contract Processes

(1) Consultants for Agreements-To-Agree shall be selected, and the Contracting Agency shall obtain Architectural, Engineering or Related Services by selecting a consultant or consultants in the following manner:

(a) The Contracting Agency selects one or more consultants under the applicable provisions of 125-025-0060, -0070, or -0080.

(b) The Contracting Agency develops a document that includes the general provisions required under 125-025-0100 and a specific Statement of Work for each anticipated contract under the Agreement-To-Agree document.

(c) When the Contracting Agency selects more than one consultant under the Agreement-To-Agree solicitation process, the Contracting Agency must identify a standard in the solicitation document and the Agreement-to-Agree to be used in assigning particular Archi-

tectural, Engineering or Related Services under the Agreements-To-Agree.

(2) Design-Build contracts involve the provision of both design and construction services for public improvements under one contract. Under most circumstances, Design-Build contracts are Mixed Contracts with the predominate purpose of the contract involving construction of the Public Improvement. If the predominate purpose of the contract is to obtain Architectural, Engineering or Related Services, selection may proceed under these Division 025 rules, so long as the requirements of 125-025-0100 are not violated. Otherwise, the selection process will require an exemption from competitive bidding under the provisions of OAR 137-040-0500, unless the Design-Build contract is to be awarded to the responsible bidder submitting the lowest responsive bid.

(3) Architectural, Engineering or Related Services contracts for local governments shall be selected following a two-tiered process when the following conditions are present:

(a) The Contracting Agency will serve as the lead public contracting agency and will execute personal service contracts with engineers, architects, and land surveyors to perform work on Public Improvement projects; and

(b) The Public Improvement is owned and maintained by a local government.

(4) The following two-tiered process shall be required for all contracts meeting the requirements of OAR 125-025-0087(3):

(a) Where feasible, the Contracting Agency shall select no fewer than the three most qualified consultants to perform the required Architectural, Engineering or Related Services, following the applicable selection method described in OAR 125-065-0060, 0070 or -0080;

(b) The local government shall be responsible for the final selection of the consultant from the list of qualified consultants selected by the Contracting Agency or through an alternative process adopted by the local government; and

(c) The Contracting Agency will then negotiate and enter into a contract with the selected consultant, pursuant to the applicable provisions of OAR 125-065-0060, -0070 or -0080.

(5) When a local government fails to select the consultant to perform the required Architectural, Engineering or Related Services pursuant to section (4)(b) of this rule, the Contracting Agency may recover its administrative costs incurred in accordance with the policies established by the Contracting Agency.

Stat. Auth.: ORS 184.340 & ORS 279

Stats. Implemented: ORS 279.047, ORS 279.712

Hist.: DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02

#### 125-025-0090

##### Contract and Performance Record

(1) A record of each consultant's performance, including information gained during an exit interview, may be compiled and maintained by the Contracting Agency. A copy of such record shall be made available upon request to the consultant, unless lawfully exempt from disclosure under state law.

(2) Contracting Agency shall keep a record of Architectural, Engineering or Related Services contracts. This record shall include the location of the work, location of the consultant, total direct contract expenses, and the total number of contracts entered into over a 10-year period for each consultant firm. The record for total direct expenses shall include the travel expenses of all personnel as a separate and identifiable expense on the contracts. Upon request, the Contracting Agency shall make these records available to the public, unless exempt from disclosure under state law.

Stat. Auth.: ORS 279, ORS 283.051, ORS 184.340

Stats. Implemented: ORS 279.712, ORS 279.057

Hist.: GS 3-1993, f. & cert. ef. 10-6-93; DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02, Renumbered from 125-065-0090

#### 125-025-0100

##### Contract Provisions

The Department of Administrative Services shall develop and maintain a standard contract form and an amendment form, which shall be used in completing all Architectural, Engineering or Related Services personal service contracts, which can be obtained from the Department. In using the standard contract form and standard amendment form, Contracting 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 entered into 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 Contracting Agency shall be sold by or purchased from any person or firm selected as a consultant by the Contracting Agency to provide Architectural, Engineering or Related Services under these rules.

Stat. Auth.: ORS 279, ORS 184.340, ORS 283.051

Stats. Implemented: ORS 279.712

Hist.: DASII 8-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 2-1998, f. & cert. ef. 4-1-98; DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02, Renumbered from 125-065-0100

## 125-025-0110

### 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 Contracting Agency 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 for Architectural, Engineering or Related Services, 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 Contracting Agency. 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 nonresponsive. The Contracting Agency 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 governing body of the Contracting Agency, its chief executive or another officer authorized by the Agency shall have authority to settle or resolve the protest in accordance with sections (1) or (2) of this rule.

(4) Judicial review of the Contracting Agency'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 279, ORS 184.340, ORS 283.051

Stats. Implemented: ORS 279.712

Hist.: GS 3-1993, f. & cert. ef. 10-6-93; DAS 7-2001, f. 12-31-01, cert. ef. 1-1-02, Renumbered from 125-065-0110

## DIVISION 30

### STATE PURCHASING

## 125-030-0000

### Definitions

Capitalized terms not defined herein shall have the same meaning as found in OAR 137-030-0000. The following definitions shall apply to all Oregon Administrative Rules contained in Divisions 030, 300, 310, 320, 330, and 360, unless the context requires otherwise:

(1) "Agency" means any 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 com-

mittees, and except the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

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

(3) "Bidder" has the meaning given that term in OAR 137-030-0000(4).

(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, as well as cashier's checks, certified checks, traveler's checks and 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 279.111, that involves an advertised public notice, issuance of a Solicitation Document inviting interested Entities to submit written, signed, and sealed Bids, that are received by DAS Central Purchasing 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" a solicitation establishing competition, in accordance with the provisions of OAR 125-310-0012. The solicitation may be accomplished by initiating a request to vendors to make an offer. The solicitation and the offer may be electronic, 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 or the project may require.

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

(10) "Contract Document" may include, but is not limited to the Solicitation Document and all addenda thereto; the accepted Bid or Proposal; a signed purchase order, price agreement, sales agreement, service or agreement, and all amendments thereto. For Public Improvements, "Contract Document" includes the Solicitation Document including all 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) "Cost" includes not only the product or service 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, travel expenses, and training.

(12) "DAS Central Purchasing" means the Purchasing Section of the Transportation, Purchasing & Print Services Division of the Department of Administrative Services.

(13) "DAS State Purchasing Manager" means the Purchasing Manager of DAS Central Purchasing.

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

(15) "Delegated Authority" means a process whereby the procurement authority given to the Department of Administrative Services by statute is granted in whole or in part to an Agency or an individual within the Agency, including purchasing authority exceeding any purchasing authority otherwise statutorily permitted (e.g., in an amount exceeding that stated in OAR 125-310-0012). Such authority is delegated through an Interagency Agreement signed by a representative of the Agency and the DAS State Purchasing Manager. See OAR 125-030-0001.

(16) "Design/Build" means a method of public contracting where the following functions are vested in a single Entity through a Contract with the Agency for a Guaranteed Maximum Price: responsibility for project team participation with the Agency, project design, value engineering, management of the design and construction process, and general contractor expertise.

(17) "Direct Labor" consistent with ORS 279.835(5), includes all work required for preparation, production, processing and packing, but does not include supervision, administration, inspection and shipping.

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

(19) "Disadvantaged Business Enterprise" (DBE) has the meaning provided in ORS 200.005(1).

(20) "Disabled Individual" consistent with ORS 279.835(2), 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.

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

(22) "Emergency" means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services, or threat to the public health or safety that require prompt execution of a Contract to remedy the condition (ORS 279.011(4)).

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

(24) "Exemption" is a formal process under ORS 279.015 or 279.017, and OAR 125, division 300, 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 300 through 360 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 DAS Central Purchasing and, depending on the circumstances, for use by other Agencies, as defined in OAR 125-030-0000(1).

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

(26) "Guaranteed Maximum Price" means the price provided to DAS Central Purchasing 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 phase to assist DAS Central Purchasing 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.

(27) "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.

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

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

(30) "Minority or Women Business Enterprise" (MBE or WBE) has the meaning provided in ORS 200.005(6).

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

(32) "Nonresident Bidder" has that meaning given in ORS 279.029(6)(c).

(33) "Personal Property" has that meaning given in ORS 307.020.

(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) "Proposal" means a competitive offer, binding on the Proposer and submitted in response to a Request For Proposals, where Proposal evaluation and Contract award are based on criteria in addition to Cost, as set forth in the Request for Proposal.

(37) "Proposer" means an Entity that submits a Proposal in response to a Request for Proposal. OAR 137-030-0028.

(38) "Public Contract" has that meaning given in ORS 279.011(6).

(39) "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 Agencies, the review authority is the Director of the Department of Administrative Services.

(40) "Public Improvement" has that meaning given in ORS 279.011(8).

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

(42) "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.

(43) "Qualified Rehabilitation Facility (QRF)" means a nonprofit community rehabilitation program or a vocational service provider whose purpose is to provide training and employment opportunities to 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; and

(c) Meets the definition given in ORS 279.835(4).

(44) "Reciprocal Preference" means a preference applied against the Bid of a Nonresident Bidder equivalent to the percent preference or other competitive advantage provided to the Nonresident Bidder by its home state.

(45) "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.

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

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

(48) "Recycled Product" has that meaning given in ORS 279.545(6).

(49) "Request for Proposals" means the solicitation of written, competitive Proposals, 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.

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

(51) "Responsible Offeror" (Responsible Bidder or Responsible Proposer, as applicable) is an Entity that has submitted a Bid or Proposal and meets the standards set forth in OAR 137-030-0100(2)(e), and that has not been disqualified by the Agency under OAR 137-030-0110.

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

(53) "Retainage" has that meaning given in ORS 279.410, and is subject to the provisions of ORS 279.420, 279.435 and OAR 137-040-0025(1).

(54) "Service Contract" means a Contract for all services except for personal services. Examples of service contracts are construction services; equipment repair and maintenance services; food services; collection and hauling services; janitorial services; landscaping services; temporary employment services; medical and laboratory services (such as parentage testing, drug and alcohol testing, etc.); commercially available computer hardware and software maintenance and support services; court reporting services; security services; conference services; data and collection surveys; and non-customized training services.

(55) "Small Business" has the same meaning given in ORS 200.005(8).

(56) "Telecommunications Services" means the lease, rental or purchase of: transmission facilities, services, and products; and central office services from the local telephone company, interexchange carrier, or any other provider to communicate voice, data, text, images or video over a distance using electrical, electronic, any radio or electromagnetic frequency spectrum, satellite, or lightwave transmission media. It shall include acquisition of telecommunications switching, PABX/PBX, or customer premise equipment, and purchase of customer premise wire, cable, fiber, or other transmission media.

(57) "Trade Services" means all services, except for personal services, which are defined in OAR 125, division 020. (Also see definitions in this rule for "Service Contract.")

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 190.003, 200.005, 279.005 - 279.111, 279.348, 279.410, 279.420, 279.435, 279.545, 279.550, 279.555, 279.710, 279.712, 279.717, 279.723, 279.725, 279.727, 279.835, 279.845, 283.140, 291.038 & ORS 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;

DASII 2-1997, f. & cert. ef. 1-6-97; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

**125-030-0001**

**Authority of State Purchasing**

(1) The Division shall purchase or otherwise provide for the acquisition or furnishing of all supplies, materials, equipment and services for Agencies, 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 Division shall direct all purchasing of Agencies, including time, manner, authentication, the form of making requisitions, and written approval by the Division, pursuant to ORS 279.723, 279.725, and 279.744.

(3) The Division may authorize a person in an Agency or an Agency to purchase directly, pursuant to ORS 279.727, provided the Agency follows the competitive procurement requirements of ORS 279.005 to 279.795. 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 DAS State Purchasing Manager and the Agency; or

(c) Administrative Rule, such as OAR 125-310-0012.

(4) In accordance with ORS 279.727, any Agency may request of the DAS State Purchasing Manager delegated purchasing authority for conducting:

(a) Class exemptions as identified in OAR 125, division 310;

(b) Agency-specific exemptions not found in OAR 125, division 310;

(c) Interagency, intergovernmental, interstate, international agreements or use of federal contracts; or

(d) Other classes or categories of contracts not identified above.

(5) The DAS State Purchasing Manager may delegate authority or may revoke authority. The DAS State Purchasing Manager may also authorize the delegate to further delegate authority within the Agency. Factors to consider in making the decision to delegate include:

(a) The expertise of the potential delegate or the delegate's designee in terms of procurement knowledge pertinent to the authority delegated;

(b) The past experience of the potential delegate or the delegate's designee;

(c) The available resources of the State Purchasing Manager to exercise the authority if it is not delegated;

(d) Resources of the Agency requesting delegation, including qualified staff, Agency experience and expertise, staff time available, and the degree of economy and efficiency to be achieved in meeting the state's requirements if authority is delegated; and

(e) Value-added by the delegate in conducting the procurement, including costs/pricing of goods, services and Public Works, and savings of time.

(6) Agencies shall maintain good contracting procedures and follow ORS 279 and Division administrative rules provided in OAR 125, divisions 030 through 360. Delegation of purchasing authority does not exempt Contracts from the requirements of these rules or all required approvals. To the extent applicable, an Agency or individual receiving delegated purchasing authority is responsible for following the rules as if it were DAS Central Purchasing whenever the rules call for action or approval by DAS Central Purchasing.

(7) The DAS State Purchasing Manager may revoke delegated purchasing authority, by written notice, to the delegate based upon, but not limited to any of the following:

(a) Failure to comply with the requirements of the delegation;

(b) Deficiencies evidenced by performance audits performed by the Division, Secretary of State, or the Legislative Assembly;

(c) Failure to comply with Division Policy for training on solicitation and contracting practices;

(d) Lack of adequate experience in terms of procurement knowledge and any specialized knowledge pertinent to the authority delegated;

(e) The available resources of the State Purchasing Manager to conduct the purchasing activities if authority is revoked; and

(f) The degree of economy and efficiency to be achieved in meeting the state's requirements if authority is revoked.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.712 & ORS 279.727

Hist.: TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; DASII 2-1997, f. & cert. ef. 1-6-97; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

**125-030-0002**

**Model Public Contracting Rules**

(1) The Department adopts chapter 137 divisions 030 and 040 of the Attorney General's Model Public Contracting Rules except for the following rules:

(a) OAR 137-030-0015 in its entirety;

(b) OAR 137-030-0055(2); and

(c) OAR 137-030-0115(2).

(2) The Department adopts OAR 125-030-0007 as filed with the Secretary of State, to govern the types of notice referenced in the above chapter 137 rules for all Public Contracts, including Public Improvement Contracts, awarded and entered into by the Department and any Agencies subject to Department authority under ORS 279.712.

(3) In the event of any apparent conflict or ambiguity between the provisions of these division 030 rules and either division 030 or 040 of chapter 137, interpretation shall be resolved in a manner that gives effect to the provisions of each Division rule, if possible. In the event conflict or ambiguity remains, interpretation of any affected rule in this division of chapter 125 shall be resolved in favor of the interpretation given to the relevant rule(s) in division 030 and/or 040 of chapter 137.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

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; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-1999(Temp), f. 7-23-99, cert. ef. 7-26-99 thru 1-21-00; DAS 5-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 1-21-00; DAS 8-1999(Temp), f. 12-30-99, cert. ef. 1-1-00 thru 1-21-00; DAS 2-2000(Temp), f. 1-21-00 cert. ef. 1-22-00 thru 4-21-00; DAS 4-2000, f. & cert. ef. 4-21-00; DAS 1-2002(Temp), f. & cert. ef. 1-31-02 thru 7-30-02; DAS 3-2002, f. & cert. ef. 7-30-02

**125-030-0003**

**Responsible Bidders/Proposers; Responsibility Investigation**

(1) A Responsible Offeror is one who:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;

(b) Has a satisfactory record of contract performance. An Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Agency shall make its basis for determining an Offeror nonresponsible under this paragraph part of the solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if an Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to an Agency. An Agency may find an Offeror nonresponsible based on the lack of integrity of any Entity having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Entity). The standards for Conduct Disqualification under OAR 137-030-0110 may be used to determine an Offeror's integrity. The Agency shall make its basis for determining that an Offeror is nonresponsible under this paragraph part of the solicitation file;

(d) Is qualified legally to contract with the Agency;

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Agency concerning responsibility, the Agency shall base the determination of responsibility upon any available information, or may find the Offeror nonresponsible; and

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

(2) DAS Central Purchasing has the right, prior to awarding any Public Contract, to make such investigation as is necessary to determine whether an Offeror is responsible. This investigation may include, but is not limited to:

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



(b) Requiring an Offeror to demonstrate its financial ability to perform the Contract, as provided in subsection (1)(a) of this rule. In exercising this right, DAS Central Purchasing shall notify the apparent successful Offeror in writing to submit such documentation as DAS Central Purchasing deems necessary to complete a thorough evaluation of the Offeror's financial ability; and

(c) By submitting a Bid or Proposal, an Offeror authorizes DAS Central Purchasing to request any credit report information that DAS Central Purchasing deems necessary to investigate and evaluate whether the Offeror is sufficiently financially responsible to perform the Contract(s).

(3) If an Offeror fails to promptly supply, or have supplied, information requested by DAS Central Purchasing during its responsibility investigation, such failure shall be grounds for a finding of non-responsibility.

(4) Only Bids and Proposals from Responsible Offerors shall be eligible for Contract award. Bids or Proposals from nonresponsible Offerors shall be rejected as provided in OAR 137-030-0100.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.029 & ORS 279.035

Hist.: GS 18-1992, f. & cert. ef. 10-5-92; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

#### 125-030-0004

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

(1) A "Responsive Bid or Proposal" is one that 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 137-030-0075(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 DAS Central Purchasing's acceptance of terms and conditions different from those contained in the ITB or RFP;

(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;

(g) Does not conform in all material respects to Solicitation Document requirements, including all prescribed public procurement procedures and requirements;

(h) The supply, service, or construction item offered in the Bid or Proposal is unacceptable by reason of its failure to meet the requirements of the Solicitation Documents or permissible alternates or other acceptability criteria set forth in the Solicitation Documents;

(i) Bid or Proposal security has not been submitted or properly executed as required by the Solicitation Documents;

(j) The Offeror did not attend the Agency's required mandatory pre-offer conference; or

(k) The Offeror did not meet the conditions set forth in OAR 137-030-0010(3)(d)(B) for a Public Improvement Contract.

(3) DAS Central Purchasing shall accept, and consider for award, only those Bids or Proposals that are responsive, as defined in this rule. Nonresponsive Bids or Proposals shall be rejected, as provided in OAR 137-030-0100.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.029 & ORS 279.035

Hist.: GS 18-1992, f. & cert. ef. 10-5-92; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

#### 125-030-0005

##### Bidder Qualification for Public Contracts

(1) The prequalification procedures described herein apply to Public Improvement projects. DAS Central Purchasing may require construction contractors to prequalify prior to bidding on Public Contracts for Public Improvements as defined in ORS 279.011(8), when such Public Contracts are competitively bid in accordance with ORS 279.015(1). When prequalification is required, DAS Central Purchasing will notify prospective Bidders of the prequalification requirement in accordance with the following procedures:

(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 area where the contract is to be performed, and in as many additional issues or publications, if any, as DAS Central Purchasing 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 Entities may obtain prequalification applications, information about 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 (which will generally be 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 applications.

(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 DAS Central Purchasing 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) DAS Central Purchasing 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 DAS Central Purchasing determines that the applicant is not qualified, or that the prequalified status of an Entity 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 137-030-0110(4), 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 whether the applicant has or can reasonably obtain through subcontractors all licenses and registrations necessary for use and operation of the equipment or technology.

(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 DAS Central Purchasing; and

(B) The identity and experience of the key personnel to be assigned to the Public Improvement project(s).

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

(A) The applicant's approach to Public Improvement projects, including planning, phasing and scheduling techniques, in general, and, to the extent possible, particularly as applicable to the Public Improvement project for which prequalification is required;

(B) The applicant's safety programs and safety record, as evidenced by the contractor's experience modifier issued by the Department of Consumer and Business Services, Workers' Compensation Division;

(C) The applicant's experience and record complying with Emerging Small Business Enterprise requirements and/or using Minority or Women's Business Enterprises, as defined in ORS 200.005;

(D) 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

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

(6) DAS Central Purchasing shall have sole discretion in assigning point values to the prequalification evaluation criteria for each Public Improvement project for which prequalification is deemed appropriate. Prequalification criteria shall be given equal point values unless different values are assigned in the advertised notification of required prequalification.

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

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.039 & ORS 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; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

## 125-030-0007

### Required Notices for Solicitations, Advertisements, Addenda, and Cancellations

An Agency subject to Department authority under ORS 279.712 that is required to advertise, shall furnish the notices required under this rule by the following methods:

(1) Notice of Availability of Solicitation Documents. The Agency shall furnish notice to a sufficient number of Entities for the purpose of fostering and promoting competition. The notice shall indicate where, when, how, and for how long the Solicitation Document may be obtained, and shall generally describe the work or goods to be acquired. The notice may contain any other appropriate information. The Agency may provide such notice by:

(a) Mailing notice of the availability of Solicitation Documents to Entities that have expressed an interest in the Agency's procurements; or

(b) Placing notice on the Oregon Department of Administrative Services' electronic procurement system known as the Vendor Information Program ("VIP"); or

(c) Placing notice through public print media, as set forth in OAR 125-030-0007(3).

(2) Advertisements for Bids and Proposals. The Agency shall advertise every solicitation for Bids and Proposals, unless the Department has exempted the solicitation from the advertisement requirement.

(a) All advertisements for Bids and Proposals shall set forth:

(A) Where, when, how, and for how long the Solicitation Documents may be obtained;

(B) The date and time after which Bids or Proposals will not be received, which shall not be less than 5 days after the date of the last publication of the advertisement;

(C) The date that Entities must file applications for prequalification, if prequalification is a requirement, and the class or classes of work for which Entities must be prequalified;

(D) A general description of the work to be performed or the goods to be purchased;

(E) The office where Contract terms, conditions and specifications may be reviewed;

(F) The name, title and address of the Agency person designated to receive the Bids or Proposals;

(G) The date, time and place where the Bids or Proposals will be publicly opened; and

(H) If applicable, that the Contract is for a Public Work subject to ORS 279.348 to 279.380 or the Davis-Bacon Act (40 U.S.C. 276(a)).

(b) The Agency shall post a copy of each advertisement at the principal business office of the Agency and provide a copy upon request.

(c) The Department finds that electronic advertisement on VIP is likely to be cost-effective. Therefore, Agencies shall advertise all Bids and Proposals on the VIP system, and may, in addition, use any other method of advertisement that fosters and promotes competition, including the methods set forth in OAR 125-030-0007(1) above. When an Agency advertises electronically on the VIP system, it must have:

(A) Published a notice that it may publish future advertisements for Bids or Proposals by electronic advertisement on the VIP system. The Agency shall publish such notice weekly, for no less than 4 consecutive weeks, in at least one newspaper of general circulation in the area where the business office of the Agency is located and in as many additional issues and publications as the Agency may determine to be necessary or desirable to provide notice to potential Bidders or Proposers. The Agency notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) or telnet application for the VIP system; and

(B) Posted in its business office a notice that the Agency will publish advertisements for Bids or Proposals by electronic advertisement on the VIP system. The notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) or telnet application for the VIP system; and

(C) Published advertisements for Bids or Proposals in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000. (See OAR 137-040-0010(1)).

(d) When an Agency advertises through the public print media, the Agency shall publish the advertisement for Bids or Proposals at least once in at least one newspaper of general circulation in the area where the Contract is to be performed, and in as many additional issues and publications as the Agency may determine to be necessary or desirable to foster and promote competition. Additionally, if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000, the Agency shall publish the advertisement for Bids or Proposals in at least one trade newspaper of general statewide circulation.

(3) Notice to Minority, Women and Emerging Small Business. In accordance with ORS 200.035, State agencies shall provide timely notice of all solicitations to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract price exceeds \$5,000.

(4) Notice and Distribution of Addenda. The Solicitation Document shall specify how the Agency will provide notice of addenda and how the Agency will make the addenda available. (See OAR 137-030-0010(3)(a)(N).) For example a Solicitation Document may contain the following language: "Agency will not mail notice of Addenda, but will publish notice of any Addenda on the State's VIP system. Addenda may be downloaded off the VIP system. Offerors should check the VIP system until date and time of solicitation closing." In the event the Solicitation Document does not specify notice procedures, the Agency shall notify prospective Bidders or Proposers of addenda in accordance with the procedures set forth in section (2)(c) above.

(5) Notice of Cancellation. If the Agency cancels a solicitation prior to the scheduled public opening, the Agency shall provide notice of cancellation in accordance with the procedures set forth in section (2)(c) above. Such notice of cancellation shall:

(a) Identify the solicitation;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

Stat. Auth.: ORS 184.340, ORS 279.025 & ORS 279.712,

Stats. Implemented: ORS 279.007, ORS 279.025, ORS 279.035 & ORS 200.035

Hist.: DAS 4-1999(Temp), f. 7-23-99, cert. ef. 7-26-99 thru 1-21-00; DAS 8-1999(Temp), f. 12-30-99, cert. ef. 1-1-00 thru 1-21-00; DAS 2-2000(Temp), f. 1-21-00, cert. ef. 1-22-00 thru 4-21-00; DAS 4-2000, f. & cert. ef. 4-21-00

## 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 and 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 practically 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 and pre-Proposal conference, if such Bidder or Proposer would be the primary contractor or equal partner upon award of the Contract.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

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; DAS 4-2000, f. & cert. ef. 4-21-00

## 125-030-0014

### Drug Testing

(1) A Contract award for a Public Improvement shall not be final until the prospective Contractor certifies to the Agency that it has a drug-testing program in place for its employees that includes, at a minimum, the following:

(a) A written employee drug-testing policy,

(b) Required drug testing for all new Subject Employees or alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and

(c) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

(2) A drug-testing program that meets the above requirements will be deemed a "Qualifying Employee Drug-testing Program." For the purposes of this rule, an employee is a "Subject Employee" only if that employee will be working on the Public Improvement project job site.

(3) The Contractor shall represent and warrant to the Agency in the Public Improvement Contract that the Qualifying Employee Drug-testing Program is in place at the time of Contract execution and will continue in full force and effect for the duration of the Contract. Further, the Agency's performance obligation (which includes without limitation, the Agency's obligation to make payment) is contingent on Contractor's compliance with this representation and warranty.

(4) The Public Improvement Contract shall contain Contractor's covenant that it will require each subcontractor providing labor for the project to:

(a) Demonstrate to the Contractor that it has a Qualifying Employee Drug-testing Program for the subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug-testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract; or

(b) Require that the subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug-testing Program for the duration of the subcontract.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.312 & ORS 279.712

Hist.: DAS 4-2000, f. & cert. ef. 4-21-00

## 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(7) 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 provisions of this rule.

(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:

(a) Identify contractual opportunities in the public sector;

(b) Insure QRF programs meet the standards set forth in ORS 279.895-279.855; and

(c) Assist and facilitate Agencies to enter into contractual relationships with QRF's for the provision of products and services.

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

(4) The Division will establish and publish a directory of sources, or potential sources, of products or services provided by qualified QRF's which the Division determines to be suitable for procurement

by Agencies. The Division shall distribute this directory or otherwise make it available to all Agencies.

(5) Determination of Suitability. For a product or service to be suitable for addition to the directory of sources, each of the following criteria must be satisfied:

(a) Qualified Rehabilitation Facility (QRF). The QRF proposing to furnish the product or service item must be a qualified nonprofit agency for persons with disabilities as defined in ORS 279.835.

(b) Contract Authority. The Division and other Agencies must contract directly with the QRF for the contract to qualify for the exception, in ORS 279.015(1)(b), to competitive bidding requirements.

(c) Ownership. The QRF must own the product or directly provide the service that the QRF proposes to provide to Oregon public agencies through the Division.

(d) A QRF's contract to provide a service cannot obligate an Agency to buy a product tied to that service unless the product is incidental to, or consumed in, the performance of the service.

(e) Purpose, Value, Capability. The QRF desiring to furnish the product or service must demonstrate to the Division that the QRF meets the purpose of the Products of Disabled Individuals Law and DAS quality standards and delivery schedules. The QRF must demonstrate capability by submitting to the Division a written plan that addresses:

(A) Purpose of the Law. The purpose of the law is to further the policy of this state 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 sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self support and minimizing their dependence on welfare and need for costly institutionalization. To ensure that a QRF achieves this goal, the QRF must demonstrate:

(i) The extent of the labor operations to be performed; and

(ii) That appreciable value will be added to the product or service by persons with disabilities; the term "appreciable value" means a measurable value added to the final product or service.

(B) The QRF must disclose subcontractor utilization, partnerships or planned joint ventures, if any.

(C) DAS's Quality Standards and Delivery Schedules. The QRF must demonstrate that the QRF has the capability to meet the Division's specifications and delivery schedules required for supplying Oregon public agencies.

(D) Additional Information. The Division may require other pertinent data in the QRF plan such as the projected employment potential, start up costs and estimated cost recovery, product/service pricing, market research conducted by the QRF for the product or service, if any, identification of business space dedicated to the product or service, and other pertinent information that may be requested by DAS.

(f) The amendment to OAR 125-030-0015 made by this temporary rule shall first apply to applications for QRF listings presented to the Division on or after October 1, 2002. Neither the adoption of this rule nor anything in the provisions of this rule shall apply to or otherwise affect the validity of any QRF listing made or contract entered into prior to the effective date of this rule.

(6) 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.

(7) 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 vendor 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.

(8) 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 during which the QRF would be expected to provide the product or service;

(b) The QRF shall submit its proposed Price to the Agency and Division, utilizing costing methods 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 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 to be 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 verify the QRF's costing and economic and social benefits calculations;

(e) At the DAS State Purchasing Manager'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: the private sector, the 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.

(9) 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 (6)(a), (6)(b), (6)(c), and (7)(e) of this rule, 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 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 (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 DAS State Purchasing Manager'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: the private sector, the 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 specified 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 that was the basis for establishing the existing Price. The Agency shall not pay or agree to pay the QRF any amount other than the Price approved by the Division.

(10) 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.

(11) QRF's may purchase equipment, materials, supplies and services through the Division in the same manner as 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.

(12) 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.

(13) All Agency Contracts with QRF's shall include a provision requiring a QRF whose total annual public agency contract value exceeds \$20,000 to conduct an audit of direct labor to determine compliance with ORS 279.835(4)(c).

(a) The audit shall be conducted by an independent Certified Public Accountant at the same time the QRF's annual financial audit is performed.

(b) The independent Certified Public Accountant that conducted the annual audit shall sign an attestation that the QRF complied or did not comply with the requirements of ORS 279.835(4)(c) during the fiscal year period for which the annual financial audit was conducted.

(c) The QRF must submit the direct labor audit attestation report, signed and dated by the independent Certified Public Accountant, to the Division.

(d) Failure to comply with the requirements of this section by a QRF may result in suspension or termination of the Contract with the Agency.

(e) Failure to comply with the direct labor requirements of ORS 279.835(4)(c) may result in suspension or removal from the list of sources or potential sources of products and services kept by the Division and required under ORS 279.845(c)(2).

(f) The cost of an audit required by this provision shall be considered an overhead expense.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.845, ORS 279.712

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

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; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00; DAS 6-2002(Temp), f. 9-24-02, cert. ef. 9-27-02 thru 3-25-03

## 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 shall apply to all Agencies, and also to the Legislative Assembly, the courts, their officers, committees, and the constitutional state officers, pursuant to ORS 279.545(8) (for purposes of this rule, referred to collectively as "State Agencies")

(2) Pursuant to ORS 279.555, when purchasing supplies, materials or equipment, State Agencies shall:

(a) Review the procurement specifications currently utilized in order to eliminate, wherever economically feasible, discrimination against the procurement of recovered resources or Recycled Materials;

(b) Develop purchasing practices that, to the maximum extent economically feasible, assure purchase of materials which are recycled or which may be recycled or reused when discarded. The Division will make Recycled Products and Materials available to State Agencies whenever they can be obtained;

(c) Provide incentives for the maximum possible use of recovered resources and Recycled Materials, wherever economically feasible, in all procurement specifications issued.

(A) 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 twelve percent (12%) preference pursuant to OAR 125-030-0030(2).

(B) 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 non-paper products containing verifiable recycled contents.

(d) All Contracts shall require contractors to use, in the performance of the Contract work, to the maximum extent economically feasible, Recycled Paper;

(e) All the Contracts shall require contractors to use, in the performance of the Contract work, to the maximum extent economically feasible, recycled PETE products (as defined in ORS 279.545 (5)), as well as other recycled plastic resin products;

(f) All State Agencies shall include the following language in any Invitation to Bid or Request for Proposal: "Vendors shall use Recyclable Products to the maximum extent economically feasible in the performance of the Contract work set forth in this document."

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

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; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

## 125-030-0029

### Recycled Materials Preference

(1) Bidders and Proposers, in their Bids or 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 Materials 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 that 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)-(d).

(3) A preference under ORS 279.570 will only be applied to those products offered in a Bid or Proposal that contain verifiable recycled content.

(4) Bids that contain false information about (i) the percentage of Recycled Product, post-consumer and secondary waste content, or (ii) 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 DAS Central Purchasing 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;

(b) Contract termination; or

(c) Both (a) and (b), or such other remedies DAS Central Purchasing deems appropriate.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.545 & ORS 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; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

## 125-030-0030

### Recycled Paper and Paper Products Policy

(1) The Division promotes the use of Recycled Paper and paper products, pursuant to ORS 279.555. This rule applies to all Agencies and also to the Legislative Assembly, the courts and their officers and committees, and the constitutional state officers, pursuant to ORS 279.545(8) (for purposes of this rule, collectively referred to as "State Agencies"). Only those activities or facilities exempted by the Governor under ORS 279.560(3) are exempt from this rule.

(2) Paper and paper products that contain significant quantities of Recycled Materials will be made available to Agencies in all grades where it can be obtained. Purchase of Recycled Paper and paper products is mandatory when the cost of such Recycled Paper or paper products is no more than twelve percent (12%) higher than the cost of the same quality paper or paper products containing little or no Recycled Paper. DAS Central Purchasing 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 non Recycled Paper and paper products if the fitness and quality of the Recycled Paper content paper meet specification requirements and the type of Recycled Paper content is equivalent to the same type of virgin material.

(3) Except as provided in this rule, Recycled Paper and paper products, regardless of cost, will be available to State Agencies on a Recycled Paper agreement. State Agencies that find it economically feasible to exceed the incentive in section (2) of this rule for Recycled Paper may do so either by use of agreements for Recycled Paper or by indicating on their purchase request the percentage of Recycled Paper incentive which is economically feasible for them.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

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; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

## 125-030-0033

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

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

(2) This rule applies to all Agencies and also to the Legislative Assembly, the courts and their officers and committees, and the constitutional state officers, pursuant to ORS 279.545(8) (for purposes of this rule, referred to collectively as "State Agencies").

(3) The five percent (5%) preference in ORS 279.570(2)(d) shall apply to purchases of Recycled Products for food service and packaging that 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) State Agencies are required to purchase recyclable or biodegradable food service and packaging products when purchasing supplies.

(6) DAS Central Purchasing 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) DAS Central Purchasing shall encourage its suppliers to provide biodegradable or Recycled Products as substitutes.

(8) DAS Central Purchasing 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 184.305, ORS 184.340 & ORS 279.712

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; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

#### 125-030-0060

##### Procuring Supplies or Services from Governmental Sources

(1) Agencies may, regardless of dollar value, purchase goods or services from other Agencies or Oregon local government units without competitive Bids.

(2) An Agency may procure goods and Trade Services from Contractors who are under contract with another Agency pursuant to an interagency or intergovernmental agreement under OAR 125, 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.

(3) 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.

(4) An Agency shall not contract pursuant to this rule in the absence of a substantial Cost saving to be realized by using this method. Additionally, an Agency shall not contract pursuant to this rule if there is an existing agreement for the same item(s).

(5) This rule does not exempt Agency Agreements from all required approvals.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 190.110 & ORS 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; DASII 2-1997, f. & cert. ef. 1-6-97; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

#### 125-030-0070

##### Reciprocal Preference Law Guidelines

(1) ORS 279.029(2) requires DAS Central Purchasing 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 compensate for such preferences by applying a penalty to the Nonresident Bidder equal to the preference that would be applied in favor of that Bidder in its state of residence. 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 to determine 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 by DAS Central Purchasing;

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

(g) If it is determined that a Nonresident Bidder would receive a percentage preference in its resident state, add that percent to its Bid. The following are examples:

(A) If DAS Central Purchasing requests a price offer, multiply the price offered by the a Nonresident Bidder by the percentage pref-

erence the Nonresident Bidder receives in its home state and add that sum to the price offered by the Nonresident Bidder. Example: Resident Bidder's price is \$103. Nonresident Bidder's price is \$100. Percentage preference (from Summary) is five (5) percent. Multiply .05 x \$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 a tie Bid occurs, the Contract shall be awarded to the Resident Bidder, 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 of In-state Preferences 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 DAS Central Purchasing decides to award the Contract to the Nonresident Bidder, the Contract price is the price bid, not the adjusted price.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

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; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

#### 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 Businesses 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 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.015 & ORS 279.053

Hist.: GS 4-1991, f. & cert. ef. 4-9-91; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; DAS 4-2000, f. & cert. ef. 4-21-00

#### 125-030-0081

##### Minority and Women Business Enterprise Requirements

(1) As used in this rule:

(a) "Affirmative Action" 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 certified by the Office of the Advocate for Minority, Women and Emerging Small Business;

(c) "Competitive" means the subcontract bid submitted by the Minority or Women 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 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 the 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 Entities while ensuring that subcontractor bids are received for the entire scope of work;

(i) "Reasonable Number" means at least three (3) of those Minority or Women Business Enterprises certified by the Advocate for Office of Minority, Women and Emerging Small Business. 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 its geographic area. Fewer than three (3) certified Entities may be contacted if fewer than three (3) are available in the specialties required for the project or in the geographic area of the project;

(j) "Rebuttable Presumption" means a presumption that 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 DAS Central Purchasing exceeds \$100,000, and in the determination of DAS Central Purchasing 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 section (2) of this rule:

(a) Bidder attended any presolicitation or pre-Bid meetings scheduled by DAS Central Purchasing 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 or trade-oriented, women-focus publications. The advertisement must announce subcontracting or material supply opportunities;

(d) The Bidder notified in writing a reasonable number of Minority or Women Businesses, identified from a list of certified Minority or Women Businesses provided by the Office of Minority, Women and Emerging Small Business. The notice must include the same information conveyed in subsection (c) of this section and must 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 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 DAS Central Purchasing or Bidder requires bonding, lines of credit or insurance, the Bidder notified the Minority or Women Business Enterprise of this requirement and referred 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 Office of Minority, Women and Emerging Small Business 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 Businesses.

(4) Bid invitations will contain a checklist for the convenience of the Bidder for recording and documenting the completion of the above listed actions. Documentation of the actions listed in subsections (3)(a)-(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 Businesses 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 Businesses. 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 Businesses 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 Businesses. Example of certifying statement: By signing this document Bidder hereby certifies that Bidder has not discriminated against Minority or Women Businesses 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 Businesses in this project, in compliance with this OAR 125-030-0081(5).

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.015, ORS 279.053, ORS 279.111 & ORS 200.055

Hist.: GS 4-1991, f. & cert. ef. 4-9-91; TSPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; DASII 2-1997, f. & cert. ef. 1-6-97; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

## 125-030-0082

### Emerging Small Business Good Faith Effort Requirements

(1) As used in this rule:

(a) "Capable" means an Emerging Small Business 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 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 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 the 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 Bids/Proposals, and the work for which a Bid/Proposal 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 that may be rebutted or disproved by evidence;

(i) "Reasonable Number" means at least three (3) of those Emerging Small Businesses 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 its 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 DAS Central Purchasing exceeds \$100,000, and in the determination of DAS Central Purchasing, 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 Businesses. The goals shall be set out in the specifications which accompany the project's Invitation to Bid, the Request for Proposals, 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) The Bidder attended any presolicitation or pre-Bid meetings scheduled by DAS Central Purchasing to inform Emerging Small Businesses 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 Businesses;

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

(d) The Bidder notified in writing a reasonable number of Emerging Small Businesses, identified from a list of certified Emerging Small Businesses provided by the Office of Minority, Women and Emerging Small Business. The notice must include the same information conveyed in subsection (c) of this section and must 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 enterprises either by telephone, post card or 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 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 Businesses submitting Bids and did not reject any Bids without justification. Bid shopping is prohibited;

(h) If DAS Central Purchasing or Bidder requires bonding, lines of credit or insurance, the Bidder notified the Emerging Small Businesses of this requirement and referred 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 Office of Minority, Women and Emerging Small Business that assist in the recruitment and referral of Emerging Small Businesses 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 Businesses.

(4) Bid invitations will contain a checklist for the convenience of the Bidder for recording and documenting the completion of the actions listed in subsection (3) of this rule. Documentation of the

actions listed in subsections (3)(a)–(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 non-responsive. The Department of Administrative Services Director or designee shall determine, if necessary, whether good faith efforts have been met pursuant to the criteria of said subsections by verifying the documentation of the Lowest Responsible Bidder.

(5) A Bidder who contracts with an Agency shall not discriminate against Emerging Small Businesses in the awarding of subcontracts. A contractor's good faith efforts must be reasonably expected by the contractor to produce participation by Emerging Small Businesses. 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 Businesses in obtaining any required subcontracts, and that the contractor reasonably expected the above-documented good faith efforts to result in participation by Emerging Small Businesses. Example of certifying statement: By signing this document Bidder hereby certifies that Bidder has not discriminated against Emerging Small Businesses 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 Businesses in this project, in compliance with this OAR 125-030-0082(5).

(6) Any Bidder whose Bid has been rejected for noncompliance with the requirements of this rule may, within three (3) days of the rejection of the Bid, request DAS Central Purchasing 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 DAS Central Purchasing within three (3) business days of the date of rejection.

(7) The head of the Agency or such person's designee shall determine whether the request for reconsideration should be granted. The head of the Agency or such person's 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) DAS Central Purchasing 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 DAS Central Purchasing for a period of up to three (3) years. Before DAS Central Purchasing 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 DAS Central Purchasing to contract for Public Improvements, DAS Central Purchasing shall require in its Solicitation Document that each Offeror certify its good faith attempts to negotiate with Emerging Small Businesses in a manner similar to those efforts outlined in section (3) of this rule in order to satisfy the requirements set out in section (2) of this rule.

(10) DAS Central Purchasing will evaluate annually the effects of this rule.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.015, ORS 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; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

## 125-030-0100

### Life Cycle Costing

(1) In determining the lowest Bid or best Proposal, in the award of a Contract, DAS Central Purchasing 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, DAS Central Purchasing 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 184.305, ORS 184.340 & ORS 279.712  
 Stats. Implemented: ORS 279.005 & ORS 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 125-310-0015; DAS 1-1998, f. & cert. ef. 4-1-98; DAS 4-2000, f. & cert. ef. 4-21-00

## 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 297  
 Stats. Implemented:  
 Hist.: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed & Readopted by PCRB 6, f. & ef. 4-8-76; Renumbered from OAR 127-050-0030 (pursuant to Ch 690, OL 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 279  
 Stats. Implemented:  
 Hist.: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed & 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 127-050-0040 (pursuant to Ch. 690, OL 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 279.420 & ORS 283.060  
 Stats. Implemented:  
 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 279.420 & ORS 283.060  
 Stats. Implemented:  
 Hist.: PCRB 1, f. 12-23-75, ef. 1-1-76; Renumbered from 127-050-0050 (pursuant to Ch 690, OL 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**.

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

Stat. Auth.: ORS 279 & ORS 283  
 Stats. Implemented:  
 Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94



**125-035-0010****Designation of the State Agency**

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

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

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

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

**125-035-0015****Inventory Controls and Accounting Systems**

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

(1) Inventory Controls:

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

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

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

- (i) Oregon List number;
- (ii) Item number;
- (iii) Unit acquisition cost;
- (iv) Description, including serial number, if applicable;
- (v) Unit of measure;
- (vi) Unit service and handling charge.

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

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

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

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

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

**125-035-0020****Return of Donated Property by Donee**

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

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

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

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

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

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

**125-035-0025****Financing and Service Charges**

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

(2) The service charge is based on the pro-rated expenses incurred annually by the SASP including but not limited to the following major cost areas: personnel, transportation, utilities, fuels, telephone, warehousing, storage, compliance, insurance, printing, supplies and travel. Service charges shall be assessed at a rate designed to cover all direct and indirect costs involved in acquiring and distributing Federal surplus property.

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

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

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

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

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

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

- (A) Acquisition Cost \$0-\$5,000, Percent Charge 0-30%;
- (B) Acquisition Cost \$5,001-\$20,000, Percent Charge 0-25%;
- (C) Acquisition Cost Above \$20,000, Percent Charge 0-15%;
- (e) Federal surplus property made available to eligible non-profit 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

biliterate Federal surplus property, except when such property is received by the donee directly from the Federal holding agency.

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

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

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

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

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

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

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

(7) Service charge payments remitted to SASP by donees shall be used to cover the direct and indirect costs of operations and, indirectly, for the benefit of the participating donees, and for no other use or purpose. SASP's costs of operation include, as provided by state law, acquiring and/or improving offices and warehouse facilities.

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

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

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

## 125-035-0030

### Terms and Conditions on Donated Property

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

## 125-035-0035

### Non-Utilized Donated Property

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

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

(b) Sell the property by public sale; or

(c) Abandon or destroy the property.

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

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

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

## 125-035-0040

### Fair and Equitable Distribution

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

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

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

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

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

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

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

(b) Ability to utilize:

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

## 125-035-0045

### Eligibility

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

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

(A) Public Agencies:

(i) Listings of cities and towns;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[ED. NOTE: The Exhibits referenced in this rule are available from the agency]  
[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

## 125-035-0050

### Compliance and Utilization

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

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

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

(4) During the physical review, a SASP representative shall ascertain whether the donee is complying with any special handling conditions or use limitations imposed on items of property by General



Services Administration in accordance with **FPMR 101-44.108**. The review shall include a survey of donee compliance with the statutory requirements that all items of property acquired by the donee have been placed into use within one year of acquisition and used for one year thereafter. Written reports on utilization and compliance reviews shall be made and placed on file.

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

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

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

#### 125-035-0055

##### Consultation with Advisory Bodies and Private Groups

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

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

#### 125-035-0060

##### Audit

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

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

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

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

#### 125-035-0065

##### Cooperative Agreements

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

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

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

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

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

#### 125-035-0070

##### Liquidation

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

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

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

#### 125-035-0075

##### Records

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

Stat. Auth.: ORS 279 & ORS 283

Stats. Implemented:

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

## DIVISION 40

### MAIL/DELIVERY SERVICES

#### 125-040-0001

##### Definitions

As used in this chapter unless the context requires otherwise:

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

(2) "Interagency Mail" means:

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

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

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

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

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

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

Stat. Auth.: ORS 283

Stats. Implemented:

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

#### 125-040-0005

##### Mail Services

(1) Customers. The Department of Administrative Services provides pick up and delivery of U.S. mail, and interagency mail and parcels for state agencies, as defined in ORS 291.002. These services may be extended to local governments by intergovernmental agree-

ment. Private persons and organizations may not use interagency mail and parcel delivery services.

(2) Private mail:

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

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

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

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

Stat. Auth.: ORS 283

Stats. Implemented:

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

#### 125-040-0010

##### Delivery Disclaimer

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

Stat. Auth.: ORS 283

Stats. Implemented:

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

### DIVISION 45

#### DISPOSITION AND ACQUISITION OF REAL PROPERTY INTERESTS

#### 125-045-0100

##### Purpose and Application

(1) **Purpose.** These rules are adopted under the authority of ORS 270.015 and 270.100. These rules set forth certain procedures that must be followed by State Agencies that intend to acquire, sell, transfer or exchange real property, including transfers of fee title, options and certain long-term leasehold interests.

(2) **Application.** Unless stated elsewhere in these rules, these rules apply to all State Agencies seeking the Acquisition or Terminal Disposition of a Real Property Interest, except:

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

(b) Any other State Agency that may be subject to constitutional or statutory obligations that supersede all or some of the following rules. Any State Agency that believes that an Acquisition or Terminal Disposition of a Real Property Interest is exempt from all or a part of these rules as a result of such a superseding constitutional or statutory requirement shall, at least thirty (30) days prior to the Acquisition or Terminal Disposition, provide notice to the Division, identifying the specific Real Property Interest or defined class of Real Property Interests the Acquisition or Terminal Disposition of which is subject to such superseding constitutional or statutory requirement. Such notice shall also include the following information:

(A) The Real Property Interest to be acquired or disposed of;

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

(C) The constitutional or statutory authority that the State Agency believe supersedes such rule or rules.

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

Stats. Implemented: ORS 244.010 & ORS 270.010

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

#### 125-045-0105

##### Definitions

As used in this Division 45, the following definitions shall apply, unless the context requires otherwise.

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

(2) **"Acquisition"** means the obtaining by a State Agency of a Real Property Interest, including, but not limited to, a purchase, exchange, conveyance, donation, or other transfer of that Real Property Interest.

(3) **"Appraisal"** means a written report by a competent real estate appraiser estimating the fair market value of a Real Property Interest prepared in accordance with OAR 125-045-0120 or, for Acquisitions of Real Property Interests having an estimated fair market value of less than \$100,000, a letter of opinion from a licensed real estate professional.

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

(5) **"Department"** means the Oregon Department of Administrative Services.

(6) **"Director"** means the Director of the Department.

(7) **"Division"** means the Facilities Division of the Department.

(8) **"Division Administrator"** means the Administrator of the Division.

(9) **"Disposing State Agency"** means a State Agency that will be disposing of a Real Property Interest.

(10) **"Exempt Acquiring State Agency"** means every State Agency that, pursuant to ORS 270.100(2), is not required to report to the Department its intent to acquire a Real Property Interest, which at the time of the adoption of these rules are:

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

(b) The State Parks and Recreation Department, if acquiring park properties; and

(c) The Department of Higher Education, if acquiring property within the approved projected campus boundaries of institutions subject to its authority. An Exempt Acquiring State Agency shall comply with all other requirements of these rules.

(11) **"Exempt Disposing State Agency"** means every State Agency that, pursuant to ORS 270.100(4), is exempt from having to secure Department approval of the intended Terminal Disposition of State Real Property Interests, unless such Terminal Disposition will be for less than the State Real Property Interest's Appraised Fair Market Value. At the time of the adoption of these rules, the Exempt Disposing State Agencies are:

(a) The State Department of Fish and Wildlife;

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

(c) The Department of Transportation;

(d) The Division of State Lands;

(e) The Department of Higher Education;

(f) Any legislative or judicial branch of the State; and

(g) The State Parks and Recreation Department. An Exempt Disposing State Agency shall comply with all other requirements of these rules.

(12) **"Governing Body"** means a board or commission, with constitutional or statutory governing authority over a State Agency, including the authority to approve the Acquisition or Terminal Disposition of a Real Property Interest by such State Agency. The term "Governing Body" includes but is not limited to the following bodies:

(a) The State Land Board;

(b) The Oregon Board of Forestry;

(c) The State Board of Higher Education;

(d) The Oregon Transportation Commission;

(e) The State Parks and Recreation Commission; and

(f) The Oregon Fish and Wildlife Commission.

(13) **"Improvements"** means any and all structures on or attachments to Real Property Interests, but excluding public improvements as defined in ORS 279.011.

(14) **"Office Quarters"** has the definition set forth in OAR 125-120-0100(8).

(15) **"PLAC"** means the Public Lands Advisory Committee.

(16) **"Political Subdivision"** means any local governmental unit, including, but not limited to, a county, city, town, port, dock, com-

mission or district, that exists under the laws of Oregon and that has the power to levy taxes.

(17) “**Proposal**” means a written offer to purchase a State Real Property Interest, including all necessary attachments, submitted in response to a Request for Proposals.

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

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

(20) “**Real Property Interest**” means any legal or equitable interest in land together with any and all Improvements thereon, including fee title, options, and leasehold interests with a term of more than twenty (20) years. A Real Property Interest does not include the leasing of Office Quarters regardless of the term of the lease. A Real Property Interest does not include an easement, unless the easement has an estimated Appraised Fair Market Value of \$100,000 or greater.

(21) “**Request for Proposals**” means a solicitation of offers to acquire a State Real Property Interest made pursuant to OAR 125-045-0160.

(22) “**Right of First Refusal**” means the conditional privilege that the Disposing State Agency, in the exercise of its discretion, consistent with the its and the Department’s, or their officers and employees, Trust Responsibilities, may grant to a qualifying Proposer under OAR 125-045-0170 to match the best Proposal for purchase of a State Real Property Interest. The Right of First Refusal shall contain such conditions and terms as the Department, subject to legal sufficiency approval of the Attorney General’s office, may determine to be necessary or desirable.

(23) “**State**” means the State of Oregon.

(24) “**State Agency**” means every board, commission, department or agency of the State of Oregon, whose costs are paid, in whole or in part, from funds held in the State Treasury and which is authorized by statute or rule to acquire or dispose of real property that is or will become a State Real Property Interest.

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

(26) “**Terminal Disposition**” means the relinquishment by the Disposing State Agency of a State Real Property Interest, including, but not limited to, a sale, exchange, conveyance, donation, or other transfer of that State Real Property Interest.

(27) “**Trust Responsibility**” means the full range of fiduciary responsibilities, including any statutory or constitutional responsibilities, that the Department and the Acquiring or Disposing State Agency, or their officers and employees, have regarding Real Property Interests proposed to be acquired or State Real Property Interests offered for Terminal Disposition including but not limited to, the responsibility of the Department and a Disposing State Agency, or their officers and employees, to conduct a Terminal Disposition in a commercially reasonable manner that will ensure a full and reasonable consideration for the State Real Property Interest being sold.

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

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

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

#### 125-045-0110

##### Declaration of Intent to Transfer or Acquire a Real Property Interest

(1) **Declaration of Intent to Transfer.** Prior to the Terminal Disposition by a State Agency of a State Real Property Interest, the State Agency shall first declare in writing to the Division its intent to dispose of such property. Such written declaration shall include the following:

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

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

(c) An explanation of the reason for disposal;

(d) An Agency Surplus Real Property Notification Form; and

(e) Any other information the Division may request.

(2) **Declaration of Intent to Acquire.** Except for Exempt Acquiring State Agencies, before a State Agency offers to acquire a Real Property Interest, it shall first declare to the Division in writing its intent to acquire such property. Such written declaration shall include the following:

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

(b) A description of the location of the Real Property Interest, including a map showing the location;

(c) An explanation of the reason for the Acquisition;

(d) An Agency Real Property Acquisition Notification Form; and

(e) Any other information the Division may request.

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

Stats. Implemented: ORS 270.100

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

#### 125-045-0120

##### Appraisal and Determination of Value of Real Property Interests

(1) **In General.** Prior to Acquisition from or Terminal Disposition to a party other than a State Agency of a Real Property Interest, the Acquiring or Disposing State Agency shall obtain an Appraisal, as defined in OAR 125-045-0105(3), of the State Real Property Interest.

(2) **Interests Valued at \$500,000 or Greater.** If the estimated fair market value of the Real Property Interest is \$500,000 or greater, the Division Administrator:

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

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

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

(d) Upon written request by a State Agency, the Division Administrator may preapprove the State Agency’s appraisal process, provided such process is consistent with the rule stated herein.

(3) **Terminal Disposition for Less Than Appraised Fair Market Value.** Except for transfers from one State Agency to another, in no event may any State Agency sell or dispose of any State Real Property Interest for less than its Appraised Fair Market Value without complying with OAR 125-045-0190(2).

(4) **Consideration of Values.** Regardless of the Appraised Fair Market Value of the State Real Property Interest, and prior to Terminal Disposition of a State Real Property Interest to a party other than a State Agency, the Disposing State Agency shall consider all the values of such State Real Property Interest to the people of the State, including values for fish and wildlife habitat and public access to other real property.

(5) **Public Comment on Values.** If the Appraised Fair Market Price of the State Real Property Interest is greater than \$100,000, consideration of the value of the State Real Property Interest under OAR 125-045-0120(4) above shall include inviting public comment on such values. Public comment shall be solicited in the manner set forth in OAR 125-045-0160(3) or in such other manner as the Division may approve.

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

Stats. Implemented: ORS 270.100 & ORS 270.105

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

#### 125-045-0125

##### PLAC Advice

The PLAC shall advise the Department on all Acquisitions or Terminal Dispositions valued at \$100,000 or more for which the Department is required to give its consent. The Division and the State Agency shall consider, but need not follow, the advice of the PLAC.

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

Stats. Implemented: ORS 270.120

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01

#### 125-045-0130

##### Acquisition of a Real Property Interests

(1) **Notice to State Agencies of Intended Acquisition.** After receipt of a declaration to acquire a Real Property Interest as set forth in OAR 125-045-0110(2) and before an Acquiring State Agency other than an Exempt Acquiring State Agency may unconditionally offer to acquire any Real Property Interest, the Division shall provide written notification of the intended Acquisition to all other State Agencies authorized by statute to own Real Property Interests in the name of the State. Such notification shall be directed to the office of the State Agency official who is responsible for an agency’s Real Property Interest transactions (e.g., “Facilities Coordinator,” “Senior Property



cialist,” or other comparable positions). Such written notification shall include the following:

(a) A request that the State Agency give the Division written notification if such State Agency has a State Real Property Interest that may match the needs of the Acquiring State Agency that it no longer needs;

(b) The information required to be provided under OAR 125-045-0110(1);

(c) The deadline for the State Agency to inform the Division in writing of any matching State Real Property Interest it controls and which it no longer needs. Such deadline shall not be less than thirty (30) days from the date of mailing the notification to State Agencies by the Division, unless the Division Administrator determines that a shorter period is in the State’s interest; and

(d) Any other information that the Division or the Acquiring State Agency deems desirable.

**(2) Negotiation with State Agencies.**

(a) If a State Agency timely responds to the written notice described in OAR 125-045-0130(1)(a) above, such responding State Agency shall thereafter negotiate with the Acquiring State Agency to determine if an Acquisition and transfer can be consummated.

(b) The Acquiring State Agency may not reject a bona fide offer by another State Agency to transfer a matching State Real Property Interest to the Acquiring State Agency, without Division approval.

(3) Final Acquisition. The Acquiring State Agency may proceed with an Acquisition of a Real Property Interest upon satisfaction of the requirements of OAR 125-045-0110 to 125-045-0130, provided such Acquisition is consistent with other applicable provisions of law.

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

Stat. Implemented: ORS 270.100

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

**125-045-0140**

**Notice to State Agencies of Intended Terminal Disposition of State Real Property Interests and First Opportunity to Acquire**

(1) **Notice to State Agencies.** After receipt of a declaration to dispose of a State Real Property Interest as set forth in OAR 125-045-0110(1) above, and before a Disposing State Agency may unconditionally offer the State Real Property Interest for sale, long-term lease or other transfer, the Division shall provide written notification of the intended Terminal Disposition to all State Agencies authorized by law to acquire Real Property Interests. Such notification shall be directed to the office of the State Agency official who is responsible for an agency’s Real Property Interest transactions (e.g., “Facilities Coordinator,” “Senior Property Specialist,” or other comparable positions). Such written notification shall include the following:

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

(b) The information required to be provided under OAR 125-045-0110(1);

(c) The deadline for the State Agency to provide written notification to the Division of its interest in acquiring the State Real Property Interest. Such deadline shall not be less than thirty (30) days from the date of mailing the notification to State Agencies by the Division, unless the Division Administrator determines that a shorter period is in the State’s interest; and

(d) Any other information that the Division or the Disposing State Agency deems desirable.

**(2) Negotiation with State Agencies.**

(a) If one or more State Agencies timely respond to the written notice described in OAR 125-045-0140(1) above, such responding State Agencies shall thereafter negotiate with the Disposing State Agency to determine if a sale, assignment, lease or other transfer can be consummated.

(b) Without Division approval, the Disposing State Agency may not reject another State Agency’s *bona fide* offer to acquire the State Real Property Interest.

(c) In the event two or more State Agencies make *bona fide* offers to acquire the State Real Property Interest of a Disposing State Agency, the Division and the Disposing State Agency shall determine, in their reasonable discretion, which, if any, offer is most advantageous to the State and the Disposing State Agency. Prior to making such determination, the Division may solicit the advice of the PLAC.

(d) Neither the Division nor the Disposing State Agency must utilize a competitive bidding process in connection with the Terminal

Disposition of a State Real Property Interest to another State Agency.

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

Stat. Implemented: ORS 270.100 & ORS 270.120

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

**125-045-0150**

**Notice to Political Subdivisions of Intended Terminal Disposition of State Real Property Interests and Right of Second Opportunity to Acquire**

(1) **Notice to Political Subdivisions.** Before a Disposing State Agency may unconditionally dispose of a State Real Property Interest to other than another State Agency, the Division shall first provide notification of the intended Terminal Disposition to Political Subdivisions. Written notification shall be given by mail to each city, county and school district within whose boundaries the State Real Property Interest is located. Notification shall be given to all other Political Subdivisions by at least one of the following methods:

(a) Posting notification of the intended Terminal Disposition on the Division’s Web site; or

(b) Publication meeting the requirements set forth in OAR 125-045-0160(3).

(2) **Contents of Notice.** All such notifications shall include the following:

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

(b) The information required to be provided under OAR 125-045-0110(1);

(c) The deadline for the Political Subdivision to provide written notification to the Division of its interest in acquiring the State Real Property Interest. Such deadline shall not be less than thirty (30) days from the date of the first notification, unless the Division Administrator finds a shorter period is in the State’s interest;

(d) A Reservation of the right of the Disposing State Agency and the Division to reject any offers;

(e) Notice to Political Subdivisions that a Political Subdivision’s right to acquire the State Real Property Interest is subject and subordinate to the right of State Agencies to acquire the State Real Property Interest (this notice is unnecessary if the procedure described in OAR 125-45-0140 has been fully completed without a transfer to another State Agency); and

(f) Any other information that the Division or the Disposing State Agency deems desirable.

**(3) Transfer to Political Subdivisions.**

(a) If no State Agency indicates an interest in acquiring the State Real Property Interest, or if a sale or other transfer to another State Agency cannot be finalized, any Political Subdivision that has timely responded to the notice described in OAR 125-045-0150(1) above may negotiate with the Disposing State Agency to determine if a sale or other transfer can be consummated.

(b) The Disposing State Agency shall consider any *bona fide* offer submitted by a Political Subdivision, but shall have no obligation to sell or otherwise transfer the State Real Property Interest to the Political Subdivision.

(c) No sale or other transfer of a State Real Property Interest to a Political Subdivision for less than the Appraised Fair Market Value shall be permitted without the written approval of the Division or Director in accordance with OAR 125-045-0190(2).

(d) In the event of two or more Political Subdivisions make *bona fide* offers to acquire the State Real Property Interest of a Disposing State Agency, the Division and the Disposing State Agency shall determine, in their reasonable discretion, which, if any, offer is acceptable to the State.

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

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

(B) That such State Real Property Interest not be resold to a private purchaser without the consent of the State.

(f) Neither the Division nor the Disposing Agency must utilize a competitive bidding process in connection with the Terminal Disposition of State Real Property Interest to a Political Subdivision.

Stat. Auth.: ORS 270.100(1)(d)  
 Stats. Implemented: ORS 270.100  
 Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

**125-045-0160**

**Terminal Dispositions of State Real Property Interests to Other Individuals or Entities**

**(1) General Rule; Exceptions.**

(a) If a Disposing State Agency does not sell or transfer a State Real Property Interest to either a State Agency or a Political Subdivision pursuant to the provisions outlined above, then the Disposing State Agency may dispose of such State Real Property Interest to any other party subject to the rules and procedures set forth below.

(b) The provisions of OAR 125-045-0160 apply to sales and leases of State Real Property Interests only. Exchanges of Real Property Interests are excluded from this rule, provided that the State Real Property Interest is being transferred in exchange for a unique, specific parcel of real property desired by the Disposing State Agency in the conduct of its agency mission and the Division has been notified.

(2) **Right of First Refusal Determination.** Prior to proceeding with the public notice and solicitation procedures below, the Disposing State Agency shall determine, with the advice and consent of the Division, whether any party is entitled to a Right of First Refusal pursuant to OAR 125-045-0170 below. If a Right of First Refusal is granted, the provisions of OAR 125-045-0170 shall apply.

(3) **Notice.** The Disposing State Agency or the Division shall provide published notice of the proposed Terminal Disposition of the State Real Property Interest. Such notice shall be published in one or more newspapers of general circulation in the county or counties in which the State Real Property Interest is located, and in any other newspapers the Disposing State Agency or the Division deems advisable. The notice shall be published not less than once a week, for three successive weeks. The published notification shall include the following:

(a) A general description of the State Real Property Interest subject to Terminal Disposition, including a legal subdivision description, if any;

(b) The minimum asking price;

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

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

(e) A requirement that a security deposit in the amount and form required by OAR 125-045-0160(4) shall be submitted with the Proposal;

(f) If applicable, a notice that the Terminal Disposition of the State Real Property Interest may be subject to a Right of First Refusal granted pursuant to OAR 125-045-0170 below; and

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

(h) Any other information the Disposing State Agency or the Division deems desirable.

(i) If the Appraised Fair Market Value is more than \$100,000, the notice may also invite public comment on the values of the State Real Property Interest as set forth in OAR 125-045-0120(4) above.

**(4) Proposals for Purchase of Property.**

(a) All Proposals submitted in response to the published notice described in OAR 125-045-0160(3) above, shall be accompanied by a deposit, in the form of:

(A) A certified check; or

(B) Sufficient bond furnished by a surety company authorized to do business in this State, in favor of the State of Oregon, in a sum not less than ten percent (10%) of the total amount of the value of the Proposal.

(b) Deposits will be refunded to all unsuccessful Proposers after:

(A) The closing of the sale to a successful Proposer; or

(B) Rejection of all Proposals.

(c) Each Proposal shall clearly set forth the amount offered for the purchase of the State Real Property Interest, and shall include the following additional matters:

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

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

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

(d) If the Disposing State Agency finds any Proposal to be ambiguous, it may request that the Proposer submit further information in order to clarify the Proposer's Proposal. If the Disposing State Agency does not request any such clarification, the ambiguous Proposal may be rejected.

(5) **Opening of Proposals.** After the date and time for submitting Proposals has passed, the Disposing State Agency shall open all Proposals that have been timely delivered and that have the required deposit. All responsive Proposals shall be evaluated by the Disposing State Agency and/or the Division in order to determine the Proposal most advantageous to the State. The determination of the most advantageous Proposal shall be final and conclusive and shall not be subject to review by any court.

(6) **Negotiations.** The Disposing State Agency shall notify the apparent successful Proposer and shall negotiate to determine if the Proposal that have been timely delivered and that have the required deposit, the Disposing State Agency shall notify the next highest ranking, acceptable Proposal and shall similarly attempt to negotiate the Terminal Disposition of the State Real Property Interest.

(7) **Sale or Other Transfer of State Real Property Interest.** If the Disposing State Agency and a Proposer reach a final agreement with regard to the disposal of the State Real Property Interest and (if required) such agreement is approved by the Attorney General pursuant to ORS 291.047, the State Real Property Interest shall be transferred to such successful Proposer in accordance with the terms of such agreement.

(8) **Rejection of All Proposals.** The Disposing State Agency, in its sole discretion, may reject any or all Proposals.

(9) **Continued Marketing of Real Property Interest After Rejection of All Proposals.** If all Proposals are rejected, the Disposing State Agency may market and sell the Real Property Interest in any manner the Disposing State Agency deems appropriate, including by and through a real estate licensee as set forth in ORS 696.007, provided that:

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

(b) If no agreement of sale is executed within 18 months of the publication of the first public notice of sale described in OAR 125-045-0160(3) above, no agreement of sale may be accepted without again first publishing a public notice of sale and complying with the provisions of OAR 125-045-0160 et. seq.

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

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

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02; DAS 2-2003, f. & cert. ef. 4-7-03

**125-045-0170**

**Rights of First Refusal.**

(1) **Policy.** It is the policy of the State of Oregon, to the extent consistent with the Department's and the Disposing State Agency's, or their officers and employees, Trust Responsibilities, for the Disposing State Agency to offer a Right of First Refusal to the parties described in ORS 270.010(2).

(2) **Determination of Whether to Grant Right.** Consistent with OAR 125-045-0160(2), the Disposing State Agency shall determine whether to grant a Right of First Refusal. Any determination by the Disposing State Agency regarding whether the grant of a Right of First Refusal is consistent with its Trust Responsibilities is final and conclusive and shall not be subject to review by any court.

(3) **Notice.** If a Right of First Refusal is granted, the Disposing State Agency shall attempt to locate and notify the party or parties entitled to such Right, and shall notify them in such manner as the Division may direct. The failure of a person granted a Right of First Refusal to actually receive such notice shall not be grounds to protest any subsequent Terminal Disposition of the State Real Property Interest.

(4) **Prerequisites to Exercising Right of First Refusal.** The Disposing State Agency and the Division may place any conditions on the Right of First Refusal that they deem desirable provided that any conditions are approved for legal sufficiency by the Attorney General's Office. In addition, unless the Division expressly exempts such requirement in writing, no Right of First Refusal may be exercised unless the holder of the Right timely submits a responsive Proposal to acquire the State Real Property Interest for an amount no less than the minimum asking price, if any.

(5) **Multiple Grants of Right of First Refusal.** If more than one Right of First Refusal is granted, the holder of the Right that submits the highest Proposal shall be given the first right to exercise. If there is a tie between high bidders, the first to file its Proposal shall be given the first right to exercise the Right of First Refusal. Once a party exercises a Right of First Refusal, all other Rights of First Refusal shall be extinguished.

(6) **Cancellation of Right of First Refusal.** A grant of a Right of First Refusal hereunder is not necessarily final and conclusive. The Right may be cancelled if, during the regular course of events in the planned Terminal Disposition, either the Division or the Disposing State Agency discover facts and circumstances that establish a conflict between the Right of First Refusal and the Trust Responsibility.

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

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

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01

## 125-045-0180

### Transfer of Property with Deed Restrictions

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

Stat. Auth.: ORS 270.015(2)

Stats. Implemented: ORS 270.110

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01

## 125-045-0190

### Department Approval

#### (1) Terminal Dispositions for Fair Market Value or Greater.

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

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

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

#### (2) Terminal Dispositions for Less than Fair Market Value.

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

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

(b) The Director if:

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

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

(3) **Exemption.** Notwithstanding ORS 125-045-0190(2), a Disposing State Agency need not obtain the consent of the Division Administrator or Director, as the case may be, prior to the Terminal Disposition of a State Real Property Interest for less than the Appraised Fair Market Value if the Governing Body of the Disposing State Agency has expressly approved the Terminal Disposition for less than the Appraised Fair Market Value.

(4) **Notice Requirements.** A State Agency disposing of a State Real Property Interest pursuant to ORS 125-045-0190(3) shall within thirty (30) days following such Terminal Disposition notify the Division Administrator of:

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

(b) The Appraised Fair Market Value of the Interest;

(c) The value received for the Interest; and

(d) Any other information requested by the Division Administrator.

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

Stats. Implemented: ORS 270.100

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01

## 125-045-0195

### Certification of Alternative Rules for Acquisition and Terminal Disposition of Real Property Interests by State Agencies

(1) **In General.** Any State Agency subject to a Governing Body may adopt alternative rules for the Acquisition and Terminal Dispo-

sition of Real Property Interests, if such rules are certified by the Division pursuant to ORS 125-045-0195 and approved by the Governing Body of the State Agency.

#### (2) Certification of Program.

(a) Any State Agency desiring to adopt rules for the Acquisition or Terminal Disposition of Real Property Interests shall, prior to adoption, submit such proposed rules to the Division for certification. The Division shall determine whether the proposed alternative rules are consistent with the terms and policies of ORS 270.005 through 270.140 and these rules. If the proposed alternative rules are found to be consistent, the Division shall notify the State Agency that such rules have been certified by the Division.

(b) As of the date of adoption of these rules, the following alternative rules have been certified by the Division as consistent with the terms and policies of ORS 270.005 through 270.140 and these rules:

(A) OAR 141-067-0005 through 141-067-0120 (Division of State Lands, Sale of Common School Grazing Lands);

(B) OAR 141-070-0000 through 141-070-0170 (Division of State Lands, Leases of Onshore Oil and Gas Rights);

(C) OAR 141-082-0000 through 141-082-0210 (Division of State Lands, Leases of Submerged and Submersible Lands).

(3) **Effect of Certification.** Upon obtaining certification by the Division and after obtaining approval by the Governing Body, the State Agency shall be authorized to acquire and dispose of Real Property Interests in accordance with such alternative rules, rather than pursuant to ORS 125-045-0100 through 125-045-0195.

(4) **Review of Certifications.** Notwithstanding OAR 125-045-0195(3), the Division may from time to time reexamine its rules, policies and certifications or a State Agency's compliance with its certified alternative rules and, upon thirty (30) days prior notice, withdraw its certification of a State Agency's alternative rules. In such event, the State Agency shall thereafter comply with OAR 125-045-0100 through 125-045-0195 until new or revised alternative rules have been certified by the Division.

(5) **Amendment to Alternative Rules.** No amendment to a State Agency's certified alternative rules may be adopted until such amendment has itself been certified by the Division in accordance with this rule.

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

Stats. Implemented: ORS 270.015, 270.100, 270.105, 270.110, 270.120, 270.130, 270.135 & 270.140

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01

## 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 stepchildren, 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:

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

#### 125-050-0020

##### Eligibility of State Agencies, Political Subdivisions 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:

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 181, ORS 279, ORS 283.060, ORS 351 & ORS 358

Stats. Implemented:

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 125-030-0035

#### 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 181, ORS 279, ORS 283.060, ORS 351 & ORS 358

Stats. Implemented: ORS 279.805, ORS 279.820, ORS 279.828 & ORS 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 125-030-0040; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

## DIVISION 55

### STATE PURCHASING

#### 125-055-0005

#### Definitions for Purchasing Policies Governing the Acquisition of Goods and Services from Qualified Rehabilitation Facilities

(1) As used in OAR 125-055-0005 to 125-055-0045:

(a) "Accredited Vocational Consultant" means an individual who is accredited as:

(A) A Certified Rehabilitation Counselor (CRC) by the Certification of Disability Management Specialists Commission;

(B) A Certified Insurance Rehabilitation Specialist (CIRS) by the Certified Insurance Rehabilitation Specialist Commission; or

(C) A Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist (CWA) by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.

(b) "Agency" means a public agency, as defined in ORS 279.011(7).

(c) "Competitive Employment" means work performed by an individual in the competitive labor market on a full-time basis with no more than reasonable accommodation (as required by the Americans with Disabilities Act, 42 USC §§12101 to 12213) for which the individual is compensated within the range of customary wages and levels of benefits paid in the community for the same or similar work performed by individuals who are not disabled.

(d) "Disabled Individual," as defined in ORS 279.835(3), means a person who has a physical or mental impairment (a residual, limiting condition resulting from an injury, disease or congenital defect) that so limits the person's functional capabilities (such as mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is not able to engage in normal competitive employment over an extended period of time and, as a result, must rely on the provision of specialized employment opportunities by qualified nonprofit agencies for disabled individuals.

(e) "Price" means the cost to Agencies of the products and services under contracts procured under the Products of Disabled Individuals Law, as determined under OAR 125-055-0030.

(f) "Procurement List" means a listing of those nonprofit agencies for Disabled Individuals that currently are qualified, under OAR 125-055-0015, to participate in the program created by ORS 279.835 to 279.850 and includes, as required by ORS 279.850(1), a list of the products and services offered by QRFs and determined by the State Procurement Office, under OAR 125-055-0020, to be suitable for purchase by Agencies.

(g) "QRF" means an activity center or rehabilitation facility, certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services, that the State Procurement Office has determined to be qualified under OAR 125-055-015.

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

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835-279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03

#### 125-055-0010

#### Policy

(1) As required by ORS 279.850(1), Agencies that intend to procure a product or service that is listed on the Procurement List must procure that product or service, at the Price determined by the State

Procurement Office, from a Qualified Rehabilitation Facility if the product or service is of specifications appropriate to the Agency's procurement needs and is available within the time required by the Agency.

(2) It is the policy of the Department to assist Qualified Rehabilitation Facilities (hereinafter referred to as QRFs) by administering a program to:

(a) Identify contracting opportunities in the public sector for QRFs;

(b) Ensure that QRF programs meet the standards set forth in ORS 279.835 to 279.850; and

(c) Assist and facilitate Agencies in entering into contractual relationships with QRFs for the provision of products and services.

(3) In administering the program created by ORS 279.835 to 279.850, the State Procurement Office, Agencies and QRFs 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 sheltered workshop and activity center products and services.

(4) In promoting the policy of this section and ORS 279.850(2), the Chief Procurement Officer may appoint uncompensated volunteer members to serve on an advisory council for purchases from qualified rehabilitation facilities to review available information on QRF programs and to make recommendations to the Chief Procurement Officer concerning the facilitation and administration of the program under ORS 279.835 to 279.850. The Chief Procurement Officer's authority to appoint advisory council members includes the authority to remove and replace members in the Chief Procurement Officer's sole discretion. Meetings of the advisory council for purchases from qualified rehabilitation facilities are not subject to the public meetings law (ORS 192.610 to 192.710). However, to facilitate attendance by members of the public, the State Procurement Office will post, at least two business days prior to each meeting, notice of the times and places of meetings of the advisory council on a web-site maintained by the State Procurement Office. However, the State Procurement Office reserves the right to change the meeting time and place after the posting of notice of a meeting to address scheduling needs or for the convenience of participants.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835-279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03

#### 125-055-0015

#### Application for QRF Participation

(1) Initial Application. A nonprofit activity center or rehabilitation facility that seeks to participate in the program created by ORS 279.835 to 279.850 must submit a completed application to the State Procurement Office on forms prescribed by the State Procurement Office.

(2) Subsequent Annual Reapplications.

(a) A QRF that seeks to continue participation in the program after having initially been approved as qualified and placed on the Procurement List under this rule must submit a completed reapplication to the State Procurement Office each year on forms prescribed by the State Procurement Office. The QRF must submit the reapplication within 120 calendar days of the close of the QRF's fiscal year.

(b) All QRFs who have had, in the previous fiscal year of the QRF, contracts with Agencies that yielded payments to the QRF that in the aggregate exceeded \$20,000 (Twenty Thousand Dollars) in that fiscal year, must also submit the audit report required by OAR 125-055-0035 for that fiscal year with their annual reapplications. A QRF who must file an annual reapplication must submit the reapplication, together with the audit report, within 120 days of the close of the QRF's fiscal year.

(3) The information to be submitted on or as part of the application or annual reapplication must contain all information required by the application or reapplication form, including:

(a) Corporate or organizational information, including legal name, business or mailing address and other information to permit communication with the organization, name of the executive director or other chief managing officer, federal tax identification number and documentation of the organization's status as a nonprofit entity.

(b) Information concerning the organization's status as an activity center or rehabilitation facility that is certified as a community reha-

bilitation program or as a vocational service provider through the Oregon Department of Human Services.

(c) Information concerning the organization's certification status under the federal Javits-Wagner-O'Day Act program operated under 41 USC §§46 to 48c.

(d) For initial applications, information concerning the organization's employment of Disabled Individuals during the organization's last fiscal year, if the organization has operated as a QRF throughout the last fiscal year, including information sufficient to determine whether the organization qualifies or will qualify as a nonprofit agency for Disabled Individuals under the direct labor requirement of ORS 279.835(5). If the applicant has not operated as a QRF throughout its last fiscal year, then the applicant must submit information concerning its planned employment of Disabled Individuals in the next fiscal year of the applicant, including the measures it will take to ensure that the applicant will comply with the direct labor requirement of ORS 279.835(5) in the next fiscal year of the applicant.

(A) To qualify under this subparagraph, an applicant is required, during the applicant's fiscal year, to employ Disabled Individuals for not less than 75 percent of the total work hours of direct labor required for the manufacture or provision of the products or services produced by the applicant. The 75 percent direct labor requirement need not be met with respect to each product or service provided by the applicant, or with respect to each contract the applicant enters into under this program.

(e) If the applicant has contracts with Agencies that yield payments to the applicant that in the aggregate exceed \$20,000 (Twenty Thousand Dollars) in the applicant's fiscal year, information concerning whether the applicant has had an independent audit of the applicant's direct labor and, if so, the date of the most recently conducted audit and a true and correct copy of the audit report. An applicant who must submit an annual reapplication must submit a true and correct copy of the audit report for the preceding fiscal if the applicant's contracts exceeded the \$20,000 threshold in that fiscal year.

(f) A listing of all contracts that exceed \$500 (Five Hundred Dollars) the applicant has with Agencies that includes the identity of each contracting Agency, the type of product or service provided under each contract, the annual contract amount for each contract year and the estimated contract amount for the current contract year.

(g) Certifications by an authorized officer of the applicant that:

(A) The applicant qualifies as a "nonprofit agency for disabled individual" as defined in ORS 279.835;

(B) All individuals claimed to be employed as Disabled Individuals by the applicant have been determined to be Disabled Individuals as documented by information maintained by the applicant in its file on each such individual.

(C) The applicant complies with all applicable occupational health and safety standards required by the laws of the United States or of the State of Oregon.

(D) The applicant will conduct an annual direct labor audit by an independent certified public accountant to determine the applicant's compliance with ORS 279.835(5)(c), if the payments to the applicant under Agency contracts in the aggregate exceed \$20,000 (Twenty Thousand Dollars) annually;

(E) The applicant will comply, if any of its products or services are placed on the Procurement List, with the applicable requirements of ORS 279.835 to 279.850 and OAR 125-055-0005 to 125-055-0040; and

(F) The applicant has submitted no false or misleading information in connection with the application and will submit no false or misleading information in connection with the submission of information concerning the applicant's continuing qualifications to maintain the listing of its products or services on the Procurement List.

(4) The State Procurement Office will evaluate each application submitted by an entity seeking a determination of its QRF status and addition to the Procurement List. The State Procurement Office reserves the right to require applicants to provide information in addition to the information required by this rule that is pertinent to making the determination whether an applicant is qualified.

(5) In conducting the evaluation, the State Procurement Office will consider the particular facts and circumstances in each case to determine whether the applicant is qualified for QRF status and addition to the Procurement List under the following standards:

(a) The applicant must be organized under the laws of the United States or of the State of Oregon and must be operated in the interest of Disabled Individuals;

(b) The net income of the applicant must not inure, in whole or in part, to the benefit of any shareholder or other individual;

(c) The applicant must comply with all applicable occupational health and safety standards required by the laws of the United States or of the State of Oregon; and

(d) The applicant must satisfy the direct labor requirement of ORS 279.835(5) or, in the case of a start-up applicant, demonstrate that it will satisfy the direct labor requirement of ORS 279.835(5) in the ensuing fiscal year of the applicant.

(6) If the State Procurement Office determines that the entity is qualified, it shall send notice of QRF status to the applicant and add the applicant to the Procurement List. If the State Procurement Office does not find the applicant qualified for QRF status, it shall reject the application and notify the applicant in writing of the criteria the applicant did not satisfy or adequately demonstrate.

(7)(a) Within thirty (30) calendar days from the date of the State Procurement Office's notice of the rejection of an application or reapplication, the applicant may appeal the decision by submitting a written appeal to the State Procurement Office. The appeal shall include a copy of the State Procurement Office's notice and shall state the applicant's grounds for appealing the decision. If the applicant does not appeal the State Procurement Office's decision within the 30-day period from the date of the State Procurement Office's notice of the rejection of the application or reapplication, the applicant shall not be placed on the Procurement List or, in the case of a reapplication, on the 31st day, the applicant shall be removed from the Procurement List.

(b) On appeal, if the State Procurement Office determines that the applicant is then qualified, it shall send the applicant notice of qualification for QRF status and add the applicant to the Procurement List. If the State Procurement Office does not find the applicant qualified, it shall provide the applicant a written decision that states the reasons for that determination and that denies the applicant placement on the Procurement List or, in the case of a reapplication, removes the applicant from the Procurement List. The State Procurement Office's written decision under this subsection constitutes a final order under ORS 183.484.

(8) The State Procurement Office may re-evaluate the decision to grant approval for QRF status if the State Procurement Office discovers pertinent information that was not available when the initial decision was made. If the State Procurement Office determines that there is sufficient cause to revoke QRF status, it shall issue notice to cure to the QRF. If the QRF does not satisfactorily effect cure within 30 calendar days of the date of the State Procurement Office's notice or such longer time as may be permitted by the State Procurement Office, the State Procurement Office may then initiate proceedings to revoke QRF status by providing written notice of the proposed revocation and removal of the entity from the Procurement List. An entity may appeal the notice to cure or the proposed revocation and removal by submitting a written appeal to the State Procurement Office in the manner provided in subsection (7) of this rule.

(9) If a QRF is removed from the Procurement List under subsections (5) to (8) of this section, no Agency shall award or renew a contract made with that QRF under ORS 279.835 to 279.850, and the removal from the Procurement List shall constitute sufficient grounds for an Agency to terminate any outstanding contract with the QRF that was established under ORS 279.835 to 279.850. The State Procurement Office will post, on a web-site or other accessible on-line posting address administered through the State Procurement Office, notice of the removal of a QRF from the Procurement List.

(10) Nothing in this rule shall be construed as prohibiting the State Procurement Office and an applicant or QRF from resorting to informal dispute resolution measures such as non-binding arbitration or mediation in addition to the appeal procedures prescribed by subsections (7) and (8) of this rule.

(11) The State Procurement Office will publish and maintain a Procurement List that identifies the nonprofit activity centers and rehabilitation facilities the State Procurement Office determines, under this section, to be qualified to participate in the program. The State Procurement Office shall distribute this Procurement List or make it available, electronically or otherwise, to all Agencies.

(12) After a denial or revocation of an applicant's or QRF's qualified status and listing on the Procurement List, the applicant or QRF may re-apply only after one year from the date the denial or revocation determination became final.



(13) Once listed on the Procurement List, a QRF will remain listed, subject to the State Procurement Office's re-examination of the QRF's qualified status each year, based on the information provided with the QRF's annual reapplication. Additionally, the State Procurement Office may terminate the listing under the procedures provided by this rule as the result of the State Procurement Office's discovery of pertinent information that was not available when the initial, or any subsequent reapplication decision was made, or if the QRF ceases to do business as a QRF.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835-279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03

## 125-055-0020

### Determination of Suitability of Product or Service

(1) The State Procurement Office will publish and maintain a Procurement List that identifies the products and services of QRFs the State Procurement Office has determined to be suitable for procurement by Agencies under this section. No Agency shall enter into or renew a contract under the QRF program created by ORS 279.835 to 279.850 for products or services that are not on the Procurement List. No QRF shall offer to contract to provide, or renew any contract to provide, under the program created by ORS 279.835 to 279.850, products and services that are not on the Procurement List.

(2) A QRF proposing to offer one or more products or services under ORS 279.835 to 279.850 shall deliver a written request to the State Procurement Office that specifies the products or services proposed to be offered.

(3) For a product or service to be suitable for addition to the Procurement List, each of the following criteria must be satisfied:

(a) Qualified Rehabilitation Facility (QRF). A QRF proposing to furnish a product or service must be a qualified nonprofit agency for disabled individuals approved under OAR 125-055-0015.

(b) Ownership. A QRF must own the product or directly provide the service that the QRF proposes to provide to Agencies through the program created by ORS 279.835 to 279.850. For example, a product or service will not be determined to be suitable for procurement by Agencies where the QRF operates merely as a broker, distributor, licensor or sales agent for another person or entity in providing a product to an Agency.

(c) Tied Products. A QRF's contract to provide a service cannot obligate an Agency to buy a product tied to that service unless the product is incidental to, or consumed in, the performance of the service.

(d) No Excessive Prices. The pricing proposed to be charged by the QRF for the product or service must not be excessive. In cases in which proposed pricing appears arguably excessive, as determined in the discretion of the State Procurement Office, the State Procurement Office may require the QRF to demonstrate that the proposed pricing is not excessive. The QRF's demonstration may include reliable evidence of comparative pricing in the market for the same or similar products or services.

(e) Purpose, Value, Capability. The QRF desiring to furnish the product or service must demonstrate to the State Procurement Office that the QRF meets the purpose of the Products of Disabled Individuals Law and State Procurement Office quality standards and delivery schedules. The QRF must demonstrate capability by submitting to the State Procurement Office a written plan that addresses:

(A) Purpose of the Law. The purpose of the law is to further the policy of this state 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 sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self support and minimizing their dependence on welfare and need for costly institutionalization. To ensure that a QRF achieves this goal, the QRF must demonstrate:

(i) The extent of the labor operations to be performed in connection with the QRF's provision of the product or service; and

(ii) That appreciable value will be added to the product or service by Disabled Individuals; the term "appreciable value" means a measurable addition of value, or an objectively observable improvement, enhancement or change, to the final product or service. No product or service may be determined to be suitable for addition to the Procurement List where the process of the manufacture, assembly or production of the product or of the rendition of the service contains or is affected by any procedure, device or artifice under which the

work of Disabled Individuals does not contribute, in a substantial, economically meaningful manner, to the value of the product or to the performance of the service, or under which the work of Disabled Individuals is not a logical element of the chain of production.

(iii) The range of salaries, rates of pay or other applicable measure of compensation that the QRF will pay for work performed in providing the product or services proposed.

(B) Subcontractor Disclosure. The QRF must disclose subcontractor utilization, partnerships or planned joint ventures, if any, the character and portion of the labor to be performed by, and the equipment to be used or supplied by, any subcontractor, partner or joint venturer (collectively, "subcontractor"). If a subcontractor performs direct labor or provides personnel that perform direct labor in the manufacture or assembly of a product or in the provision of a service to be provided to an Agency under the program created by ORS 279.835 to 279.850, the QRF must submit reliable documentation that demonstrates that:

(i) The combined productive activities of that subcontractor and the QRF in the performance of the subcontract between them together meet the standards of OAR 125-055-0015(3)(d) and 125-055-0020(3)(e)(A)(ii); and

(ii) The performance of work by non-QRF participants and persons who are not Disabled Individuals will not cause the QRF that participates in such a combination to violate the direct labor requirement of OAR 125-055-0015(3)(d) or result in a violation of OAR 125-055-0020(3)(e)(A)(ii). For purposes of this subparagraph, a person or entity that merely serves as a supplier of raw materials, parts or components of a product, or of supplies that are used or consumed in the performance of a service, is not a subcontractor. A person or entity that only leases facilities or productive equipment to a QRF, and provides no labor or personnel that participate in the manufacture or assembly of a product or in the provision of a service, is not a subcontractor.

(C) Quality Standards and Delivery Schedules. The QRF must demonstrate that the QRF has the capability to meet the applicable specifications and to make the product or services available within the time required for supplying Agencies.

(D) Additional Information. The State Procurement Office may require other pertinent data in the QRF plan such as the projected employment potential, start up costs and estimated cost recovery, product/service pricing, market research conducted by the QRF for the product or service, if any, identification of business space dedicated to the product or service, and other pertinent information that may be requested by the State Procurement Office. In conducting determinations of suitability, the State Procurement Office may conduct on-site investigations of the QRF's work-sites and production processes.

(4) Based on the request, including the written plan required by subparagraph (3)(e) of this rule, and any additional information submitted in response to the State Procurement Office's request under subparagraph (3)(d)(D), the State Procurement Office will determine whether the proposed product or service satisfies the criteria in subsection (3). If the State Procurement Office determines that the product or service satisfies the criteria in subsection (3), it shall record that determination on a form prescribed by the State Procurement Office. If the State Procurement Office determines that the product or service does not satisfy the criteria in subsection (3), it shall notify the requesting party in writing of the criteria the QRF did not meet or adequately demonstrate that it met.

(5) Within ten (10) calendar days from the date of the State Procurement Office's notice of the criteria that a requested product or service failed to meet or that the QRF failed to satisfactorily demonstrate that it met, the QRF may appeal the decision by submitting a written appeal to the State Procurement Office. The appeal shall include a copy of the State Procurement Office's notice and shall state the QRF's grounds for appealing the decision. On appeal, if the State Procurement Office determines that the product or service satisfies the criteria, it shall send notice to the QRF of its decision and add the product or service to the Procurement List. If the State Procurement Office does not find that the product or service satisfies the criteria, it shall provide the QRF a written decision that states the reasons for that determination. The State Procurement Office's written decision under this subsection shall constitute a final order under ORS 183.484.

(6) At least fourteen (14) calendar days prior to the effective date of the listing of a product or service on the Procurement List, the State Procurement Office shall give notice of the proposed listing on an accessible on-line posting address administered through the State Procurement Office. A person or entity who will be adversely affected by

the listing in its ability to compete for public contracts for the product or service proposed to be listed may, within the fourteen-day period, submit a written protest of the listing of the product or service to the State Procurement Office. The written protest must state the facts that demonstrate how the listing will adversely affect the person's or entity's ability to compete for public contracts for the product or service proposed to be listed and must demonstrate how the product or service to be listed fails to satisfy the criteria stated in subsection (3) of this rule. If the State Procurement Office receives no protest concerning the proposed listing by the close of business on the fourteenth day after the first day on which the State Procurement Office first posted the form, then the listing shall automatically become effective on the next business day after the fourteenth day.

(7) If the State Procurement Office receives a written protest concerning the proposed listing of a product or service from a person or entity who has demonstrated in writing that it will be adversely affected by the listing in its ability to compete for public contracts for the product or service proposed to be listed, the State Procurement Office will consider the protest and issue a written response to the protest. The State Procurement Office will not consider a protest not made in writing and received by the State Procurement Office by the close of business on the fourteenth day after the first day on which the State Procurement Office first posted the proposed listing under subsection (6) of this rule. In considering a timely protest, the State Procurement Office may request further information and comment from the complaining party and from the QRF that submitted the application for the listing of the product or service.

(a) The State Procurement Office's response to the protest will confirm the listing of the product or service, modify the listing of the product or service, or withdraw the proposed listing of the product or service. The State Procurement Office will make its written determination available, by mail or by electronic means, to the complaining party and to the QRF whose product or service is the subject of the protest.

(b) A protester or QRF who is adversely affected or aggrieved by the State Procurement Office's response under this subsection may request that the State Procurement Office institute contested case proceedings under ORS 183.413 to 183.470 by delivering to the State Procurement Office a written request for a contested case within fourteen (14) calendar days of the date of issuance of the response. The written request for a contested case must describe how the requesting party is adversely affected or aggrieved by the response and why the Division's response is incorrect. The contested case will be limited to the issues raised before the State Procurement Office in the protest proceedings.

(8) Nothing in this rule shall be construed as prohibiting the State Procurement Office, a QRF and a protester from agreeing to resort to informal dispute resolution measures such as non-binding arbitration or mediation in addition to the appeal procedures prescribed by subsections (5) and (7) of this section.

(9) No determination under this section that a product or service is suitable and no placement of a product or service on the Procurement List shall act to displace a contractor under an existing public contract with an Agency for the same product or service prior to the expiration or other termination of the contractor's contract with the Agency.

(10) Once a product or service has been placed on the Procurement List, it will remain on the list until:

(a) Five years have elapsed from the date of the listing of the suitability determination, or such earlier time as the State Procurement Office may prescribe for expiration of the listing at the time it makes the determination of suitability;

(b) The State Procurement Office has determined, under OAR 125-055-0020 or 125-055-0025, that the product or service is not suitable for procurement by Agencies;

(c) The product or service no longer is offered by the QRF that requested a determination of its suitability; or

(d) The QRF is removed from the Procurement List.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835-279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03

## 125-055-0025

### Review of Suitability Determinations

(1) The State Procurement Office reserves the right, to be exercised in its sole discretion, to review suitability determinations as

changes in pertinent circumstances, which include but are not limited to changes in rules, laws, market conditions and QRF contractor performance, occur. Should the State Procurement Office identify information that was not available during the initial determination that negatively impacts a previous determination of suitability, it may notify the QRF and conduct a review of the determination. The review may result in removal of the product or service from the Procurement List. A QRF may appeal a decision to remove a product or service from the Procurement List in the manner provided in OAR 125-055-0020(5).

(2) The State Procurement Office may review a determination that a product or service is suitable if the State Procurement Office discovers pertinent information that was not available when the initial decision was made. Within 10 calendar days after the receipt of written notice from the State Procurement Office of a determination to remove a product or service from the listing, the affected QRF may appeal the determination by submitting a written appeal to the State Procurement Office. The appeal shall include a copy of the State Procurement Office's notice, and the QRF's grounds for appealing the determination. If the State Procurement Office determines, on reconsideration, that the product or service is suitable for procurement by public agencies, the State Procurement Office shall send notice of approval to the QRF and maintain the publication of the product or service on the Procurement List. If the State Procurement Office finds the product or service not suitable for procurement by public agencies under the criteria of OAR 125-055-0020(3), the State Procurement Office shall give written notice to the QRF of the criteria that were not satisfied. The State Procurement Office's written decision under this subsection shall constitute a final order under ORS 183.484.

(3) In no event may an Agency and a QRF agree to change the specifications in, or amend, a contract established under the program created by ORS 279.835 to 279.850 in a manner that alters the character or scope of the product or service so that the product or service no longer is essentially the same product or service that was the subject of the determination of suitability. In cases where such a change is sought, the Agency and the QRF must first request and receive from the State Procurement Office a new or revised determination that the product or service, as changed, is suitable under this section. In cases where the change in specifications or amendment appears to affect the Price of a product or service as determined under OAR 125-055-0030, the State Procurement Office also may conduct a new Price determination in response to the request.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835-279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03

## 125-055-0030

### Determination of Price

(1) Under ORS 279.845(1)(a), the State Procurement Office shall determine the Price of products and services offered for sale to Agencies that the State Procurement Office has determined to be suitable for procurement by Agencies and placed on the Procurement List.

(2) Determination of Price. The Price determined by the State Procurement Office shall be a reasonable and adequate Price that will recover for the QRF the cost of:

(a) Raw materials;

(b) Labor;

(c) Overhead that is allocable to the particular product or service for which the Price determination is being made, including the actual, reasonable costs of complying with the independent audit requirements of OAR 125-055-0040(1) (For purposes of this subparagraph, overhead cost is allocable to a particular product or service to the extent the overhead costs are chargeable to the production of the product or the performance of the service in accordance with the relative benefits received by the product or service program as compared to the overall activities of the QRF);

(d) Delivery costs; and

(e) An amount held in reserve for inventory and equipment replacement.

(3) Initial Price Determination Procedures:

(a) For products or services the State Procurement Office has determined to be suitable for purchase by Agencies, an Agency or the State Procurement Office shall provide the QRF with a solicitation document and an annotated pricing tabulation that covers the period of the proposed contract for those products or services, the expiring contract, or the most recent solicitation. Additionally, an Agency or the State

Procurement Office shall provide the QRF with the scope of work and specifications, if any, that will cover the initial period during which the QRF expects to provide the product or service.

(b) The QRF shall submit its proposed Price to the Agency or the State Procurement Office, based on the volume or scope of the work and specifications acceptable to the Agency, as prescribed in the proposed contract between the QRF and an Agency. The contract may propose to serve a single Agency or multiple Agencies. Where the contract proposes to serve multiple Agencies, the QRF's disclosure of costs under subparagraph (c) of this subsection must address the costs of serving all Agencies the QRF proposes to serve under the contract. The State Procurement Office reserves the right to review and amend a Price determination in light of reductions in or additions to the Agencies served under a multiple Agency contract.

(c) In submitting its proposed Price to the Agency or the State Procurement Office, the QRF must make full disclosure of known costs. The disclosure must include documentation, on a form prescribed by the State Procurement Office, that the costs proposed will result in a Price that will permit the QRF to recover the amounts prescribed in subsection (2) of this section and ORS 279.845(1)(a).

(d) As part of the disclosure, an authorized officer of the QRF must certify that the costs claimed are, to the best of the officer's knowledge, reasonable and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in subsection (2) of this section.

(e) If the QRF and the Agency agree on the terms and conditions of a proposed contract and the price for the products or services to be provided under the proposed contract, the QRF and the Agency must present the proposed contract (including the agreed price) to the State Procurement Office for review and a determination of the Price.

(4) Based on the volume or proposed scope of work and the costs disclosed by the QRF under subsection (3) of this section, the State Procurement Office will determine a Price for the products or services offered under the proposed contract. If the State Procurement Office regards the determined Price to be reasonable and adequate to permit the QRF to recover the amounts prescribed in subsection (2) of this section, then it will notify the QRF and the Agency of the Price.

(5) In determining a reasonable and adequate Price of a product or service, the State Procurement Office may consider:

(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 by government agencies from responsible contractors engaged in the business of selling similar products or services;

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

(d) Prices of products or services of similar specifications and quantities purchased by Agencies from QRFs under the program created by ORS 279.835 to 279.850.

(6) A QRF and an Agency shall not execute or implement any contract under the program created by ORS 279.835 to 279.850 until the State Procurement Office has transmitted notice of the Price determined by the State Procurement Office to the Agency and the QRF.

(7) Re-determinations of Price. A Price established by the State Procurement Office shall apply for the initial term or period of the contract unless otherwise approved by the State Procurement Office. The State Procurement Office may re-determine a Price at the request of a QRF or Agency, or at the discretion of the State Procurement Office. Until the State Procurement Office approves a new Price, the QRF shall continue to provide, at the established Price, the service or product in accordance with the scope of work that was the basis for establishing the existing Price. The Agency shall not pay or agree to pay the QRF any amount other than the Price approved by the State Procurement Office. The State Procurement Office reserves the right, during the process of re-determining a Price, and subject to existing contract rights of the QRF and Agency, to suspend the Price and set an interim Price; such action may trigger a review of the suitability determination for the affected product or service under OAR 125-055-0025.

(a) In re-determining Price, the State Procurement Office will consider the factors in subsections (2) and (3) of this rule. The State Procurement Office also may take into consideration changes that have

taken place since the last Price determination that are pertinent to re-determining Price.

(b) Each re-determination or adjustment of Price shall be based on changes in the scope of work, changes in the costs of producing the product or performing the service, or both. If the proposed adjustment is based on changes in QRF cost factors, the QRF shall submit to the State Procurement Office and the Agency a request for a Price change showing a breakdown of cost changes with appropriate documentation, as requested by the State Procurement Office or Agency. As part of the request and documentation, an authorized officer of the QRF must certify that the proposed changes in costs are, to the best of the officer's knowledge, genuine, reasonable, and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in subsection (2) of this section and ORS 279.845(1)(a). The Price established by the State Procurement Office for a product or service shall remain in effect until the State Procurement Office approves a new Price.

(c) Agencies and QRFs may not make material changes (changes that affect the cost of providing the products or services in more than a negligible manner) to the specifications of a contract entered into under the program created by ORS 279.835 to 279.850 unless the changes are in writing and have been submitted to the State Procurement Office for a re-determination of Price. The following information reporting is required of the Agency in order to assist the State Procurement Office in Price re-determinations based on changes in contract specifications:

(A) In the event that the Agency or State Procurement Office wishes to change specifications from the most recent solicitation for the product or service, the Agency or State Procurement Office shall notify the QRF in writing of the 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 under subparagraph (7)(b) of this section to the Agency and State Procurement Office for review and a re-determination of the Price by the State Procurement Office.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835-279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03

## 125-055-0035

### Audits

(1) To maintain qualifications and listing on the Procurement List under OAR 125-055-0015, all QRFs whose total annual Agency contract value exceeds \$20,000 must conduct an annual audit of direct labor to determine compliance with ORS 279.835(5)(c). Each such QRF must submit to the State Procurement Office an audit report and letter of attestation, on forms prescribed by the State Procurement Office, regarding each annual audit. Under the annual reapplication requirement of OAR 125-055-0015(2), a QRF must submit, with each reapplication, an audit report and letter of attestation for the preceding fiscal year of the QRF. Each QRF shall ensure that each of its contracts entered into with an Agency under the program created by ORS 279.835 to 279.850 includes a provision that requires the QRF, if the QRF's total annual value of contracts with Agencies exceeds \$20,000, to conduct an annual audit of direct labor.

(2) The audit shall be conducted by an independent certified public accountant for the same fiscal year as the QRF's annual financial audit.

(3) The audit shall consist of an auditor's examination of the QRF, conducted in accordance with generally accepted auditing principles.

(4) For purposes of subsection (5) of this section:

(a) "Direct labor" means all work required for the manufacture, preparation, processing and packing of products produced by a QRF and all work performed in the rendition of services by a QRF, but does not include supervision, administration or shipping. "Direct labor" also does not include client-type services provided by a QRF to Disabled Individuals served by the QRF, such as job training and therapeutic services.

(b) "Supervision" means the direction, assignment, instruction and oversight of individuals performing direct labor, and inspection of work performed or products for quality assurance.

(c) "Administration" means the management activities of a QRF that include acquisition of equipments, parts, supplies and inventory,



handling of the entity's payroll, personnel and accounting activities, executive decision-making and other business activities, generally of a centralized nature, that do not entail the "hands-on" production of a product or the performance of a service.

(d) "Shipping" means the transportation of a product to the site designated by the acquirer of the product or the transportation of workers to site at which they will perform services for a customer.

(5) The examination and resultant audit report must be based on the following records and information:

(a) A listing of all products and services provided by the entity in the QRF's fiscal year, including those products and services were procured by Agencies under ORS 279.015 and 279.835 to 279.850 and those which were procured outside the program created by those statutes.

(b) A list of all individuals covered by the audit scope employed by the QRF who are Disabled Individuals who provided direct labor required for the production of products or the performance of services during the fiscal year that is the subject of the audit examination, including employee name, unique employee identification number, job description and disability status.

(c) A list of all individuals covered by the audit scope employed by the QRF, whether paid or unpaid, who are not Disabled Individuals and who provided direct labor required for the production of products or the performance of services during the fiscal year that is the subject of the audit examination, including employee name, unique employee identification number and job description.

(d) A compilation of the total hours of direct labor actually performed by the QRF during the fiscal year.

(e) Payroll reports for all individuals covered by the audit scope employed by the QRF during the fiscal year, including employee name, social security number, work hours paid, and vacation hours, sick leave hours, and training hours. Hours worked must be segregated from hours paid but not worked.

(f) Time and billing records showing direct hours worked by each employee in the manufacture or provision of goods and services.

(g) Disability status documentation. The QRF must have documentation on file for each employee who is or who is claimed to be a Disabled Individual. The file must include documentation from an officially accredited source that each such person has been determined to be a Disabled Individual as defined in OAR 125-055-0005. The acceptable forms of disability documentation are:

(A) Department of Human Services/Seniors and People with Disabilities Office of Licensing and Quality Care referrals;

(B) Commission for the Blind referrals;

(C) Department of Human Services/Community Human Services, Office of Vocational Rehabilitation Services referrals;

(D) Competitive Employment statements signed by a physician or other Accredited Vocational Consultant stating that the employee is a Disabled Individual as defined in OAR 125-055-0005;

(E) Certifications that the employee is legally deaf and is a Disabled Individual as defined in OAR 125-055-0005;

(F) Certifications that the employee is eligible for Supplemental Security Income (SSI) or Social Security for the Disabled (SSDI) benefits.

(6) The audit report must address the following elements:

(a) A determination whether the QRF's time, billing and payroll records are sufficiently complete and reliable to demonstrate compliance with the 75 percent direct labor requirement of ORS 279.835(5)(c). The records must permit segregation of direct labor hours from other hours worked and paid, and allow for assessment of direct hours worked by employees with disabilities, as well as by employees without disabilities.

(b) If the certified public accountant finds the records to be sufficiently complete and reliable, the certified public accountant must test the QRF's calculation, for the entire applicable fiscal year, of the portion of total direct labor hours that were worked by employees with disabilities. Only direct hours worked shall be included in the calculation. Vacation, sick leave, holiday, training hours, and any other hours paid but not worked by the employee are to be excluded from the calculation.

(c) The certified public accountant must apply sufficient statistical sampling techniques to obtain an eighty percent level of confidence with a precision of plus or minus ten percent that:

(A) The direct labor by Disabled Individuals during the QRF's fiscal year satisfied the 75 percent direct labor requirement under ORS 279.835(5) and OAR 125-055-0015(2)(d)(A); and

(B) The hours reported as worked by persons with disabilities were worked by persons whose disabilities were documented under subparagraph (5)(g) of this rule.

(d) A determination whether adequate actions have been taken to resolve any prior adverse audit report findings or recommendations.

(e) The independent certified public accountant that conducted the annual audit shall sign an attestation that the QRF complied or did not comply with the 75 percent direct labor requirement of ORS 279.835(5)(c) during the fiscal year period for which the annual financial audit was conducted. If the Certified Public Accountant attests that the QRF did not comply with the requirement of ORS 279.835(5)(c), the report must include a concise description of the character and extent of the noncompliance.

(7) Within 120 calendar days after the close of the QRF's fiscal year, each QRF must submit the direct labor audit attestation report for the preceding fiscal year, signed and dated by the independent Certified Public Accountant and by an officer of the QRF's board of directors, to the State Procurement Office. A QRF that must submit an annual reapplication under OAR 125-055-0015(2) must submit the reapplication with its most recent annual direct labor audit report and letter of attestation.

(8) Failure to comply with the requirements of this section by a QRF shall constitute sufficient grounds to terminate the QRF's listing on the Procurement List under OAR 125-055-0015 and shall constitute sufficient grounds for an Agency to terminate, or to suspend performance of the work under, a contract with the QRF.

(9) Failure to comply with the 75 percent direct labor requirement of ORS 279.835(5)(c) shall constitute sufficient grounds to terminate the QRF's listing on the Procurement List under OAR 125-055-0015 and shall constitute sufficient grounds for an Agency to terminate, or to suspend performance of the work under, a contract with the QRF.

(10) The cost of the annual audit required by this rule shall be considered an overhead expense that the QRF may recover and which must be taken into account in determining the Price under OAR 125-055-0030.

(11) If the State Procurement Office determines that a QRF is in material noncompliance with any requirement imposed on it by OAR 125-055-0015 to 125-055-0040, including the qualifications requirements of OAR 125-055-0015, subsection (7) of this rule, or the direct labor requirement of ORS 279.835(5)(c), the State Procurement Office will issue, to the non-complying QRF, a written notice to cure the non-compliance. The written notice will identify the requirement or requirements with which the QRF does not comply, state the reasons that the QRF is not in compliance with the requirements, and prescribe a time period of not less than ninety (90) calendar days, or such other time as may be permitted by the State Procurement Office, within which the QRF must achieve compliance.

(a) A QRF receiving notice of noncompliance under this subsection must respond in writing, within thirty (30) calendar days of the date of the State Procurement Office's notice, to the State Procurement Office. The response may:

(A) State the reasons, with supporting documentation, why the QRF is not out of compliance with the requirements, if the QRF believes that it is in compliance;

(B) Present a plan of action to be taken by the QRF to achieve compliance and propose a date within which it will achieve compliance;

(C) Request an extension of the time within which the QRF will achieve compliance;

(D) Report that the QRF has achieved compliance and state the actions the QRF has taken to achieve compliance.

(b) If the QRF does not submit a written response within the 30-day period from the date of the written notice issued under subsection (11) of this rule or such additional time as may be permitted by the State Procurement Office, the State Procurement Office may terminate the QRF's listing on the Procurement List under OAR 125-055-0015 by issuing to the QRF written notice of the proposed termination and removal of the QRF's products and services from the Procurement List.

(c) The State Procurement Office reserves the right to require a QRF, as part of the required cure or as part of a plan of action to attain compliance, to submit to the State Procurement Office quarterly audit reports concerning the QRF's compliance with the direct labor requirement of ORS 279.835(5)(c). If a QRF that is subject to this requirement satisfies the direct labor requirement in the first two consecutive quarterly audits, the State Procurement Office may waive the quarterly

audit requirement for that QRF. However, if the QRF next succeeding annual audit discloses that the QRF failed to satisfy the direct labor requirement, the State Procurement Office will institute disqualification proceedings by issuing to the QRF a notice of termination under subparagraph (d) of this subsection.

(d) If the QRF fails to achieve compliance with the violated requirements within the time prescribed in the State Procurement Office's written notice issued under subsection (11) of this rule, within the time proposed in a QRF's plan of action approved by the State Procurement Office, or within the time permitted under any extension of time granted by the State Procurement Office, the State Procurement Office will terminate the QRF's listing on the Procurement List under OAR 125-055-0015 by issuing to the QRF written notice of that termination and of the removal of the QRF's products and services from the Procurement List.

(e) After any termination of a QRF's listing on the Procurement List under OAR 125-055-0015, the QRF shall not enter into or renew any contracts under the program created by ORS 279.835 to 279.850. Any termination of a QRF's listing on the Procurement List also shall constitute sufficient grounds for any Agency to terminate any contract with the QRF.

(f) If the QRF requests, within ten (10) calendar days of its receipt of notice of termination, an informal hearing concerning the validity of the grounds for termination stated in the notice, the termination will not become effective until the conclusion of the informal, non-contested case hearing process. If the QRF fails to request a hearing within this ten-day period, the termination shall become effective on the eleventh day.

(A) As the result of the hearing process, the State Procurement Office may either reach written agreement with the QRF or, if no agreement is reached, issue an order that resolves the issues raised by the QRF and, if no resolution satisfactory to the State Procurement Office results from the hearing process, the order may provide for termination of the QRF's listing on the Procurement List under OAR 125-055-0015 and removal of the QRF's products and services from the Procurement List.

(B) After any hearing, the State Procurement Office may issue an order that resolves the issues raised by the QRF and, if the determination is adverse to the QRF, the order may provide for termination of the QRF's listing on the Procurement List under OAR 125-055-0015 and removal of the QRF's products and services from the Procurement List. The State Procurement Office's written decision under this subsection shall constitute a final order under ORS 183.484.

(g) After any termination of a QRF's listing on the Procurement List under OAR 125-055-0015, the QRF shall not enter into or renew any contracts under the program created by ORS 279.835 to 279.850. Any termination of a QRF's listing on the Procurement List also shall constitute sufficient grounds for any Agency to terminate any contract with the QRF.

(h) After the passage of one year after the effective date of a termination of a QRF's listing on the Procurement List under this section, a terminated QRF may again make an application to be listed as a QRF under OAR 125-055-0015.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835-279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03

## 125-055-0040

### General Provisions

(1) Contracting Authority. The Department of Administrative Services and other Agencies must contract directly with a QRF for a contract to qualify for the exception from the competitive procurement requirement in ORS 279.015(1)(b) for contracts under the program created by ORS 279.835 to 279.850. Contracts between multiple Agencies and a QRF satisfy this requirement that the Agencies must contract directly with a QRF.

(2) Contract Disputes. Contract performance issues and disputes arising out of contracts entered into under the program created by ORS 279.835 to 279.850, such as disputes concerning timely delivery of products or performance of services or compliance with specifications, must be resolved exclusively between the QRF and the Agency that is a party to the contract, and will not be resolved by the State Procurement Office (except where the Department of Administrative Services is a party to the contract with the QRF).

(3) Temporary Services. In each contract for the provision of temporary services entered into by a state agency under the program

created by ORS 279.835 to 279.850, the QRF must monitor the prior and current work assignments of its employees who work under the contract to ensure that no employee performs services for a state agency in excess of a total of 1,040 hours during any consecutive twelve-month period. Contracts for the provision of temporary services by QRFs may be used only to meet temporary, emergency, non-recurring, unexpected, or short-term workload demands of state agencies.

(4) Competitive Public Contract Bidding by a QRF. If a QRF submits, to any Agency, a competitive bid, proposal, quote or other offer ("offer") in a competitive procurement for a public contract, then regardless of whether the offer was accepted, that QRF may not, at any time during the initial term of the contract for which the QRF submitted a bid, proposal or offer, make any claim to the Agency that instituted the procurement for the public contract that the product or service that was the subject of the offer should have been subject to the set-aside program created by ORS 279.835 to 279.850.

(5) A QRF shall not enter into a public contract with an Agency under the program created by ORS 279.835 to 279.850 unless the contract complies with OAR 125-055-0005 to 125-055-0040 and the products or services that are the subject of the contract are listed on the Procurement List. Any liabilities or expenses that may arise from the establishment of a contract that violates this subsection shall be those exclusively of the QRF and Agency, respectively, that purports to enter into such a contract.

### (6) QRF Records.

(a) Each QRF shall maintain accurate and correct records of the direct labor hours performed in the nonprofit agency by each worker in a manner sufficient to determine compliance with the 75 percent direct labor requirement of ORS 279.835(5)(c).

(b) Each QRF shall make its records available, at any reasonable time, for inspection by the State Procurement Office, the Office of the Oregon Secretary State, and their officers and representatives.

### (7) Application of These Rules.

(a) OAR 125-055-0015 shall apply to applications and annual reapplications for participation in the program created by ORS 279.835 to 279.850 that are presented to the State Procurement Office, or which are due, after August 31, 2003. OAR 125-055-0020 shall apply to requests for determinations that a product or service is suitable for addition to the Procurement List that are presented to the State Procurement Office after August 31, 2003. OAR 125-055-0030 shall apply to determinations of Price first submitted to the State Procurement Office after August 31, 2003. OAR 125-055-0035 shall apply to direct labor audit reports that are due under OAR 125-055-0035(7) after August 31, 2003.

(b) For determinations of suitability of a product or service that were made prior to the effective date of these rules, the maximum five-year term of determinations of suitability under OAR 125-055-0020(10)(a) shall expire five years from the effective date of these rules.

(c) The adoption of these rules shall not affect the validity of:

(A) Any determination that a QRF was qualified for participation in the program;

(B) Any determination that a product or service was suitable for addition to the Procurement List; or

(C) Any determination of Price; made prior to the effective date of these rules.

(8) The State Procurement Office reserves the right to extend any deadline or time within which a QRF or a party to any proceedings under OAR 125-055-0015 to 125-055-0040 must take any action under those rules if the affected party applies in writing for relief to the State Procurement Office and demonstrates in writing that special circumstances warrant the grant of such relief. For the purpose of this subsection, special circumstances that warrant the grant of relief include practical exigencies that reasonably can be regarded as imposing a substantial, practical impediment to the QRF's or party's ability to meet the deadline or achieve the correction of a violation of rules. Special circumstances are circumstances beyond the reasonable control of the organization including, but not limited to, the illness or other incapacity of key officers of the organization seeking relief, emergency reorganizations or replacements of the corporate structure, board of directors or executive officers of the organization, acts of God and comparable practical impediments to a person or organization's ability to meet a deadline or achieve the correction of a violation of rules. The grant or denial of relief under this subsection must be determined by the Chief Procurement Officer or, in the absence of the Chief Procurement Officer, by an officer of the State Procurement Office who

specifically has been delegated that task. The State Procurement Office also reserves the right to waive or to permit the correction of minor or technical violations of OAR 125-055-0015 to 125-055-0040.

Stat. Auth.: ORS 279.845(1), ORS 184.340  
Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835-279.855  
Hist.: DAS 4-2003, f. & cert. ef. 9-8-03

#### 125-055-0045

##### Purchases under ORS 279.855

(1) Policy. QRFs, residential programs and public benefit corporations recognized by ORS 279.855 may acquire equipment, materials, supplies and services under the same conditions as state agencies that, under ORS 279.712(2), are not subject to the requirement that the Oregon Department of Administrative Services provide for their acquisition of such items. Accordingly, QRFs, residential programs and public benefit corporations must enter into an agreement with the department in order to participate in the Oregon Cooperative Purchasing Program. The agreement must have substantially the same form, content and obligations as the standard agreement prescribed by the State Procurement Office that state agencies must execute in order to participate. In addition, QRFs, residential programs and public benefit corporations must comply with the applicable subsections of this rule to acquire equipment, materials, supplies or services under ORS 279.855.

(2) QRFs that currently are approved under OAR 125-055-0015 may purchase equipment, materials, supplies and services through the State Procurement Office in the same manner as state agencies, as provided in ORS 279.545 to 279.746 and 279.820 to 279.824.

(3) A residential program seeking to purchase equipment, materials, supplies or services through the State Procurement Office under ORS 279.855 must make a written request to the State Procurement Office to which is attached a true and correct copy of its currently effective contract with the Department of Human Services to provide services to youth in the custody of the state. In addition, the residential program must submit a letter from the Oregon Department of Human Services, on the letterhead of that department or of a division of that department that contains the following information:

(a) The services the residential program must provide, including the scope of those services, under the currently effective contract with the Department of Human Services;

(b) The Department of Human Services contract number;

(c) The starting date and expiration date of the contract; and

(d) The name, original signature, mailing address and telephone number of the Department of Human Services' Contract Administrator for the contract.

(4) A public benefit corporation seeking to purchase equipment, materials, supplies or services through the State Procurement Office under ORS 279.855 must make a written request to the State Procurement Office to which is attached:

(a) A certification by an authorized officer of the public benefit corporation that the applicant qualifies as a public benefit corporation under ORS 65.001;

(b) A true and correct copy of documentation, which may include the corporation's currently effective articles of incorporation, that demonstrates that the corporation is tax exempt under §501(c)(3) of the Internal Revenue Code and that the corporation is not a religious corporation as defined in ORS 65.001;

(c) A true and correct copy of at least one currently effective contract between the public benefit corporation and a state agency or unit of local government by which the corporation's contract performance is funded at least in part with state funds; and

(d) A letter from the state agency or unit of local government that confirms the existence and effectiveness of the contract submitted under subparagraph (c) of this subsection, on the letterhead of the state agency or unit of local government, that contains the following information:

(A) The services the public benefit corporation must provide, including the scope of those services, under the contract submitted under subparagraph (c) of this subsection;

(B) The contract number;

(C) The starting date and expiration date of the contract; and

(D) The name, original signature, mailing address and telephone number of the state agency or unit of local government's Contract Administrator for the contract.

(5) Neither the State Procurement Office nor the State of Oregon shall be liable for any obligation or debt entered into on behalf of a

QRF, a residential program or a public benefit corporation, and likewise shall not be liable for any obligation or debt incurred by a QRF, a residential program or a public benefit corporation, in making purchases under subsections (1) to (3) of this rule.

(6) Each residential program and public benefit corporation that makes any purchase of equipment, materials, supplies or services through the State Procurement Office under ORS 279.855 must notify the State Procurement Office in writing whenever a contract that is necessary for the organization to qualify under ORS 279.855 expires, is terminated, or is not renewed, and whenever the organization otherwise ceases to qualify under ORS 279.855 or this rule.

Stat. Auth.: ORS 279.845(1), ORS 184.340  
Stats. Implemented: ORS 279.855  
Hist.: DAS 4-2003, f. & cert. ef. 9-8-03

#### 125-055-0100

##### Purpose – HIPAA Privacy Rule Implementation

The purpose of these rules is to set forth the contract requirements to comply with the Business Associate provisions of The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d –1320d-8, Public Law 104-191, sec. 262 and sec. 264 and the implementing Privacy Rule at **45 CFR part 160 and 164**, subparts A and E. The Privacy Rule requires a Covered Entity to obtain certain written assurances from a Business Associate before the Business Associate may disclose, use, or create Protected Health Information. This Rule contains the written assurances that an Agency must include in its Contract with a Business Associate. Before applying this Rule, Agencies must determine if a Business Associate relationship exists between the Contractor and the Agency as defined in HIPAA and the Privacy Rule. The requirements contained in this Rule apply both to Contracts for trade services, as defined in OAR 125-030-0000(57), and to Contracts for personal services, as defined in OAR 125-020-0130

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

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d –1320d-8, PL 104-191, sec. 262 & sec. 264.

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

#### 125-055-0105

##### Definitions

For purposes of rules 125-055-0100 through 125-055-0130 the following terms shall have the meanings set forth below. Capitalized terms not defined herein shall have the same meaning as those terms in the Privacy Rule.

(1) **"Agency"** means any state officer, board, commission, department, institution, branch or agency of the state government that is a Covered Entity under the Privacy Rule and 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.

(2) **"Business Associate"** means a person or entity who performs or assists a Covered Entity in performing the specific services listed in the HIPAA Privacy Rule, 45 CFR 160.103, where the provision of services involves the use, disclosure, or creation of Protected Health Information by the Contractor. The workforce, as defined in 45 CFR 160.103, of the Covered Entity is not considered to be a Business Associate nor do their activities create a Business Associate relationship with their employer.

(3) **"Contract"** means the written agreement between an Agency and a Business Associate setting forth the rights and obligations of the parties.

(4) **"Covered Entity"** means a health plan, a clearinghouse or a health care provider who transmits any health information in electronic form in connection with a transaction.

(5) **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d – 1320d-8, Public Law 104-191, sec. 262 and sec. 264.

(6) **"Privacy Rule"** means the Standards for Privacy of Individually Identifiable Health Information at **45 CFR part 160 and 164**, subparts A and E (2002).

(7) **"Rule"** means this Oregon Administrative rule 125-055-0100 through 125-055-0130.

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

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712



Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.  
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

## 125-055-0110

### References to Privacy Rule

For purposes of this Rule, references to the Privacy Rule mean the final rule published on December 28, 2000 in 65 Fed. Reg. 82,462-82,829, as amended on May 31, 2002 in 67 Fed. Reg. 38,009-38,020 (Part 160) and as amended on August 14, 2002 in 67 Fed. Reg. 53,182-53,273 (Part 160 and 164).

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

## 125-055-0115

### Business Associate Contract Provisions

A Contract that is subject to the Business Associate requirements of the Privacy Rule shall contain the following provisions, effective April 14, 2003:

(1) **Obligations and Activities of Business Associate:** Business Associate agrees to:

(a) Not use or disclose Protected Health Information other than as permitted or required by this Rule and the Contract, or as Required By Law.

(b) Use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Rule and the Contract.

(c) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Rule and the Contract.

(d) Report to Agency, as promptly as possible, any use or disclosure of the Protected Health Information not provided for by this Rule and the Contract of which it becomes aware.

(e) Ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Agency agrees to the same restrictions and conditions that apply through this Rule and the Contract to Business Associate with respect to such information.

(f) Provide access, at the request of Agency, and in the time and manner designated by Agency, to Protected Health Information in a Designated Record Set, to Agency or, as directed by Agency, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) Make any amendment(s) to Protected Health Information in a Designated Record Set that the Agency directs or agrees to pursuant to 45 CFR 164.526 at the request of Agency or an Individual, and in the time and manner designated by Agency.

(h) Make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Agency available to Agency and to the Secretary, in a time and manner designated by Agency or the Secretary, for purposes of the Secretary determining Agency's compliance with the Privacy Rule.

(i) Document such disclosures of Protected Health Information and information related to such disclosures as would be required for Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) Provide to Agency or an Individual, in a time and manner to be designated by Agency, information collected in accordance with subparagraph (i) of this section 1, to permit Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(2) **Permitted Uses and Disclosures by Business Associate:**

(a) **General Use and Disclosure Provision.** Except as otherwise limited in this Rule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Agency as specified in the Contract and this Rule, provided that such use or disclosure would not violate the Privacy Rule if done by Agency or the minimum necessary policies and procedures of the Agency.

(b) **Specific Use and Disclosure Provision.**

(A) Except as otherwise limited in this Rule, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(B) Except as otherwise limited in this Rule, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Business Associate may use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

(D) Business Associate may not aggregate or compile Agency's Protected Health Information with the Protected Health Information of other Covered Entities unless the Contract permits Business Associate to perform Data Aggregation services. If the Contract permits Business Associate to provide Data Aggregation services, Business Associate may use Protected Health Information to provide Data Aggregation services requested by Agency as permitted by 45 CFR 164.504(e)(2)(i)(B) and subject to any limitations contained in this Rule. If Data Aggregation services are requested by Agency, Business Associate is authorized to aggregate Agency's Protected Health Information with Protected Health Information of other Covered Entities that the Business Associate has in its possession through its capacity as a business associate to such other Covered Entities provided that the purpose of such aggregation is to provide Agency with data analysis relating to the Health Care Operations of Agency. Under no circumstances may Business Associate disclose Protected Health Information of Agency to another Covered Entity absent the express authorization of Agency.

(3) **Obligations of Agency:**

(a) Agency shall notify Business Associate of any limitation(s) in its notice of privacy practices of Agency in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information. Agency may satisfy this obligation by providing Business Associate with Agency's most current Notice of Privacy Practices.

(b) Agency shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Agency shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Agency has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(4) **Permissible Requests by Agency.** Agency shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Agency, except as permitted by section 2(b) above.

(5) **Termination of Contract:**

(a) **Termination for Cause.** Upon Agency's knowledge of a material breach by Business Associate of the requirements of this Rule, Agency shall either:

(A) Notify Business Associate of the breach and specify a reasonable opportunity in the notice for Business Associate to cure the breach or end the violation, and terminate the Contract if Business Associate does not cure the breach of the requirements of this Rule or end the violation within the time specified by Agency;

(B) Immediately terminate the Contract if Business Associate has breached a material term of this Rule and cure is not possible in Agency's reasonable judgment; or

(C) If neither termination nor cure is feasible, Agency shall report the violation to the Secretary.

(D) The rights and remedies provided herein are in addition to the rights and remedies provided in the Contract.

(b) **Effect of Termination.**

(A) Except as provided in paragraph (B) of this subsection (b), upon termination of the Contract, for any reason, Business Associate shall return or destroy all Protected Health Information received from

Agency, or created or received by Business Associate on behalf of Agency. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(B) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Agency notification of the conditions that make return or destruction infeasible. Upon Agency's written acknowledgement that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Rule to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

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

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

## 125-055-0120

### Order of Precedence

In the event of a conflict between this Rule and the provisions of the Contract, this Rule shall control. In the event of a conflict between this Rule and the Privacy Rule or the provisions of the Contract and the Privacy Rule, the Privacy Rule shall control. The requirements set forth in this Rule are in addition to any other provisions of law applicable to the Contract. Provided, however, this Rule shall not supercede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. Any ambiguity in the Contract shall be resolved to permit Agency and Business Associate to comply with the Privacy Rule.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

## 125-055-0125

### Methods of Compliance

In addition to incorporating the Business Associate requirements contained in this Rule in its Contracts with Business Associates, Agency may comply with this Rule in either of the following ways:

(1) **Memorandum of Understanding.** If Agency's Business Associate is also a government entity, the parties may comply with the requirements of this Rule by entering into a memorandum of understanding that accomplishes the objectives of this Rule and meets the Business Associate requirements of the Privacy Rule.

(2) **Amendment.** Agency may comply with the requirements of this Rule by executing an amendment or rider that amends Agency's Contract with its Business Associate and that contains the contract provisions required by this Rule.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

## 125-055-0130

### Standards in Individual Contracts

(1) Agency and Business Associate may enter into a Contract that contains more stringent standards than those set forth in this Rule as long as such standards do not violate the requirements of the Privacy Rule.

(2) State agencies subject to ORS 279.712 shall use the form Contract provided by the State Procurement Office of the Procurement, Fleet, and Surplus Services Division of the Department of Administrative Services (Division). A state agency may request the Division to approve a revised form Contract for repeated use for a specific class or classes of transactions.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

## DIVISION 60

### HOUSING AND RENTALS

#### 125-060-0000

#### State Agency Housing Provided to State Officers or Employees

(1) As required by ORS 182.415 to 182.425, every state agency that provides housing for its officers or employees shall collect a rental for such housing. An exception is allowed in cases where employment contracts, signed prior to December 1, 1977, provide for free housing, until such original contracts expire or the incumbent leaves the position; or where express statutory authority exists which provides exemptions from ORS 182.425.

(2) Definitions: As used in this rule, unless the context requires otherwise:

(a) "Furnishings" includes furniture usually used in connection with occupancy of a household but does not include rugs, draperies, range, refrigerator, washer, dryer or any item of furnishings received by the state or one of its agencies as a gift, nor does it include any furniture purchased for the state-owned residence required in relation to the official duties of an institutional executive or the Chancellor of the Department of Higher Education prior to September 9, 1971;

(b) "Housing" includes single and multiple family dwellings, apartments, and mobile homes and mobile home pads, available for tenancy on a monthly or other basis but does not include guard stations maintained by the State Forestry Department or dormitory facilities at any state institution or at any state institution of higher education;

(c) "Dormitory" includes any facility which houses students and those facilities used primarily for sleeping purposes by the employees of the Mental Health Division;

(d) "State Agency" means every state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held in the State Treasury, except the Legislative Assembly, the courts and their officers and committees, and except the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices;

(e) "Utilities and Services" include heat, electricity, gas, oil, telephone, water, sewer, garbage, lawn care, laundry, linens, bedding, and towels used for any state agency provided housing.

(3) Every state agency that provides housing for its officers or employees shall:

(a) Examine and periodically re-examine the fair market rental value as determined by a qualified appraiser certified under ORS 308.010, when the agency determines that market conditions have changed to require it, but not less frequently than once every five years. In determining the fair market rental value, the appraisal shall consider all market factors unique to each housing unit including the value of utilities and services if provided or paid for by the owning agency;

(b) Collect a rental for such housing based on the fair market rental value, subject to any applicable rental reductions authorized under the schedule provided in this rule;

(c) Deposit such rental collected to the agency's account;

(d) Review the net rental rate annually and make such adjustment, if any, as may be determined from changes in the local rental housing market conditions;

(e) Provide no furnishings as a part of any housing provided by the agency;

(f) Determine whether or to what extent the agency will provide utilities and services for each housing unit.

(4) Whenever a state agency provides housing to anyone of its officers or employees, it shall notify the Facilities Division, Department of Administrative Services, on the appropriate form, of these arrangements, including the basis for rental charge and such rental rate reductions as may be applicable. Thereafter, annually on July 1, the agency shall report to the Facilities Division the following information:

(a) A listing of all housing provided by the agency to its officers and employees;

(b) A copy of the most recent rental appraisal report for each housing unit if a new appraisal has been made subsequent to the last annual report;

(c) The rental reductions, if any, applied to determine the net rental charge. Each rent reduction made under subsection (a) or (b) in sections (7) to (9) and under section (10) of this rule requires a justification;

(d) The net rental rate to be charged by the agency.

(5)(a) Each agency providing housing to its officers or employees shall employ an independent auditor selected by the Department of Administrative Services to determine the agency's compliance with this rule. The expense of such review shall be paid by the state agency being audited;

(b) Such audit shall be conducted at least once every three years. The written report of the independent auditor shall be filed by the agency with the Department of Administrative Services within 45 days of agency receipt of the report, together with an indication of actions taken or expected to be taken by the agency to correct any deficiencies cited in the auditor's report. Also, each agency shall implement any supplemental corrective actions which may be ordered by the Department of Administrative Services to comply with this rule.

(6) In determining whether reductions are necessary, each state agency that provides housing for its officers or employees shall consider factors such as isolation, invasion of the officer or employee's privacy, the agency's justifiable need for having its officers or employees occupy the housing in a specific location and inequities between the fair rental value as determined under 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)–(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)–(10) of this rule, when combined, may be up to 100 percent of the fair market rental value, when justified.

Stat. Auth.: ORS 182 & ORS 283

Stats. Implemented:

Hist.: GS 46, f. & ef. 12-1-77; GS 5-1983, f. 4-29-83, ef. 5-2-83; GS 8-1983, f. & ef. 12-2-83

## 125-060-0005

### Management of the Capitol Mall Housing Units

(1) Pursuant to ORS 276.028 and 276.046, the Department may purchase or acquire by agreement or donation, for development as a part of the Capitol area, the land lying in the area of the City of Salem bordered by Capitol and Winter Streets on the east and west and by Court Street on the south to D Street on the north.



(2)(a) The Department may operate housing units acquired under section (1) of this rule as state office quarters, or as rental properties for any appropriate private commercial use or as rental houses and apartments;

(b) For any Mall housing units leased to private persons for use as private residences or for housing any lawful commercial enterprise and the housing unit designated as the Governor's residence, the Department's rules OAR 125-075-0005, 125-075-0010 and 125-075-0015 shall not apply and the use access thereto shall be totally at the control of the persons leasing or residing in such housing units.

(3) For each Mall housing unit used as a rental housing or as a private commercial rental unit, the Department may:

(a) Set rental rates, security deposits and fees at par with the prevailing comparable market rates, and apply such rate schedule for the year with some adjustments allowed taking into consideration the prevailing market conditions or the condition of repairs of the rental unit;

(b) Enter into a written rental agreement with tenants on a month-to-month tenancy basis or a longer term lease, when appropriate;

(c) Conduct periodical inspections to ensure the tenant performance of the responsibilities under the rental agreement;

(d) At any time during the tenancy the Department may order the tenant to repair or correct the conditions listed below to be performed within a reasonable period of time specified, or in case the tenant does not apply, the Department may undertake the repair or the corrective action required, and charge the tenant for the costs. The conditions for such action shall include, but not be limited to, any damage to the premises above and beyond normal wear and tear, excessively unclean and unkept conditions which present health or fire hazards requiring a major cleaning work or a disposal of garbage and rubbish, any apparent pet damages, and any seriously neglected maintenance of the lawn and landscape.

(4) For Mall housing units used as state office quarters, the Department may manage the units in accordance with other appropriate policies of the Department.

(5)(a) For minor repairs and improvements on any rental Mall housing unit used as a residential unit, when the tenant offers to do such work for free of charge which the Rental Housing Coordinator recognizes such work as being needed and as being within the tenant's capability, the Department may furnish to the tenant the necessary materials to complete the work;

(b) Tenants of Mall housing units shall not be compensated for any work in the form of rent reduction.

(6) For all residential rental agreements, the Department may charge appropriate amounts for security deposits and special fees at the time such agreements are signed. Such deposits and special fees are refundable at the end of tenancy, less the amount sufficient to correct any deficiencies which are the responsibility of the tenant. When the deposit amount is not sufficient to correct the deficiencies, the Department may pursue appropriate methods to collect the additional amount from the tenant or former tenant.

(7) The procedures relative to this rule are as follows:

(a) Tenants or Applicants:

(A) Contact the Rental Housing Coordinator, Facilities Division, Department of Administrative Services at 1225 Ferry Street SE, Salem, OR 97310 to arrange for tenancy in any Mall housing units;

(B) Complete an application form of the Department providing references, social security number, former addresses and such other information as the Department may require;

(C) Complies with the terms of the rental agreement.

(b) Rental Housing Coordinator, Facilities Division — Action:

(A) Makes selections of tenants for the Mall housing units following the normal practices of the private rental housing industry, and signs rental agreements;

(B) Annually for each rental housing unit, establishes the rental rate and the amounts to be charged for deposits and fees to be applicable in renting during the year, and applies such rental — deposit — fee schedule with some adjustments allowed taking into consideration the prevailing market conditions or the condition of repairs of the rental unit;

(C) Conducts periodic inspections of the Mall housing rental units during and at the end of each tenancy, and determines the amount to be billed to the tenant or to be charged against the deposits and fees. The chargeable items include the following: Damages above and

beyond normal wear and tear, cleaning, garbage disposal, lawn and landscape maintenance, disposal of any rubbish, pet damage, loss of keys and lock changes, as needed, and final rent due, if any;

(D) Within 30 days, prepares and transmits an itemized accounting of any deficiencies, an estimated cost to correct the deficiencies and the amount to be refunded to the former tenant;

(E) When claims against the security deposit exceed the amount of the deposit, pursues appropriate methods to collect the remaining claim amount from the tenant or former tenant.

Stat. Auth.: ORS 276 & ORS 283

Stats. Implemented:

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

## DIVISION 70

### GIFTS AND DONATIONS

#### 125-070-0000

##### Gifts and Donations for the Benefit of the Programs of the Real Property Division

(1) As authorized under ORS 276.005(3), the Department may accept on behalf of the State of Oregon any gifts, grants and donations from public and private sources for the purposes set out in ORS 276.005(1). Any prospective donor may contact the Facilities Division Administrator or the Director of the Department to consult or to propose making gifts, grants or donations of any value stipulating conditions or limitations, if any. Such proposals may be addressed to: Director, Department of Administrative Services, 155 Cottage Street N.E., Salem, OR 97310.

(2) Gifts, grants and donations approved under section (1) of this rule will be received by the Director or a designee. Funds will be deposited by the Department in appropriate separate trust accounts to be used for the purposes for which the gifts, grants or donations are made. When no specific designations are made by the donor, the Department shall deposit such amounts in the Capital Projects Account established under ORS 273.004(2), subject to any limitations imposed by the donor. When the Department determines that any stipulation or limitation imposed by the donor will result in violation of any applicable law or is contrary to any rules or policies of the state, the Department shall decline acceptance of such donation or gift. All donations or gifts, except landscape donations, must be approved by the Director before such an offer can be accepted by the Department.

(3) All proposed landscape donations are subject to review and approval by the Administrator of the Facilities Division or the Administrator's designee. Proposed donations may be incorporated into the landscape or the facilities only if the following criteria are satisfied:

(a) Compatibility with the Department's master plans or, in areas not covered by such plans, compatibility with existing facilities;

(b) Compatibility with the local conditions;

(c) Age and the anticipated general condition of the donation;

(d) Anticipated maintenance requirements.

(4) Memorial or donation plaques associated with any landscape donation are discouraged by the Department in order to simplify the environment and minimize maintenance. However, in case any such plaque is stipulated by the donor and approved by the Department, the donor shall provide the cost for the purchase of such plaque. The size and type of such plaque shall be determined by the Department. The Department may provide the mounting post and the necessary labor for the installation.

Stat. Auth.: ORS 276 & ORS 283

Stats. Implemented:

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

## 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 Ore-

gon Aeronautics Division and the Federal Aviation Administration. No one may use this Heliport without first receiving permission to use it from the Department of Administrative Services. The use of this Heliport is restricted and permission for use is given only for official state business or emergencies in following instances:

(a) Official state business use by the Governor, the President of the Senate, the Speaker of the House or the Chief Justice of the Supreme Court;

(b) Emergencies (e.g., air ambulance, catastrophes, etc.) to be so defined and approved by the Manager, Operations & Maintenance Section, Facilities Division, Department of Administrative Services.

(2) All requests for the Heliport use, with no exception, must be directed to and approved by: Manager, Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone: 378-2865.

(3) All users of the Heliport must inform the Department in advance of the estimated time of landing and lift-off so that the Department can notify the Capitol Mall Area Security personnel to clear the Heliport area to ensure safety.

(4) All Capitol Mall Heliport air traffic shall contact the Salem Airport FAA Control Tower to receive advisories in approaching or departing the Heliport.

(5) Any unauthorized use of the Heliport shall be reported to the State of Oregon Aeronautics Division and may be prosecuted under ORS 276.990 and other applicable provisions of law.

Stat.: Auth.: ORS 276 & ORS 283

Stats. Implemented:

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

#### 125-075-0005

##### Use of the Capitol Mall Area Parks and Grounds

(1) The State Capitol grounds including Willson Park, Capitol Park, and other parks and grounds in the Capitol area as defined in ORS 276.010, save and except that property used for residential purposes located in the northern portion of the Capitol area, are open to the public for use, subject to restrictions specified in this rule.

(2) The restrictions specified in the **City of Salem Code 94.010**, as adopted by Salem City Council on October 25, 1955, are hereby adopted by the Department of Administrative Services and, except for the modifications set forth in section (5) of this rule, are made a part of this rule governing the use of the State Capitol area parks and grounds.

(3) Any request for information, applications for permits or reservations for a park or a portion thereof for use should be sent to: Manager, Operations and Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310.

(4) Any use of the Capitol area parks and grounds for the following activities shall require use authorization by the Department:

(a) Sales and solicitations, as provided under the **City of Salem Code 94.100**;

(b) Public demonstration, as provided under the **City of Salem Code 94.090**;

(c) Any organized or group activity, as referenced in the **City of Salem Code 94.200**.

(5) Enforcement of this rule shall be carried out by the Department's Capitol area security personnel in cooperation with the City of Salem Police Department with the following stipulations modifying the **City of Salem Codes 94.010 to 94.990** for the purposes of this rule:

(a) For the purposes of **City Code 94.070** on throwing objects, frisbees are exempted from the prohibited category of "other missile";

(b) For the purposes of **City Code 94.100** on sales and solicitations, the Department may follow the Department's rule OAR 125-080-0000 and 125-080-0010 for granting permits;

(c) For the purposes of **City Code 94.110**, no bathing, wading or swimming shall be allowed in fountains, water displays or systems, with the exception of the Wall of Water Fountain on the Capitol Mall Plaza, in front of the Capitol Building, where wading is allowed;

(d) For the purposes of **City Codes 94.160 to 94.180** relative to use of motor vehicles and parking, the Department may follow the Department rules OAR 125-095-0000 through 125-095-0065;

(e) For the purposes of **City Code 94.190**, the Department shall not permit any overnight use of the parks and grounds subject to this rule;

(f) For the purposes of **City Code 94.195** on the use of alcoholic beverages, the Department shall follow the Department's rule OAR 125-075-0015(2), and prohibits use of any illegal drugs or controlled substances by law in addition to any alcoholic beverages;

(g) For the purposes of **City Code 94.200**, the Department may choose not to set or post any signs for public information on opening and closing hours of the Capitol grounds. However, as provided under section (4) of this rule, the Department will regulate organized activities to minimize traffic congestion in the Capitol Mall area, disruption of state business by noise, such as by high amplification equipment, and informal use of the parks;

(h) No posters or placards may be placed on public grounds except those authorized by the Facilities Division for the conduct of public business;

(i) The State Capitol Building and the Supreme Court Building including their respective entrance areas are outside the jurisdiction of the Department. For any proposed use thereof, inquiries should be directed to the Administrative Services, Legislative Administration Committee, S401 State Capitol, Salem, OR 97310; or the office of State Court Administrator, Supreme Court Building, Salem, OR 97310, respectively.

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

Stat. Auth.: ORS 276 & ORS 283

Stats. Implemented:

Hist.: GS 3-1983, f. & ef. 1-19-83; GS 14-1992(Temp), f. & cert. ef. 7-1-92; GS 19-1992, f. 11-23-92, cert. ef. 1-1-93

#### 125-075-0010

##### Public Use of Meeting Rooms in State Buildings Under the Department of Administrative Services' Control

(1) Pursuant to ORS 276.440 and other related provisions of ORS Chapter 276, the Department may permit and schedule the occasional use of certain meeting rooms in the Department-controlled state office buildings by the public on space available basis, subject to restrictions and payment of fees where applicable under this rule. Any interested person or organization may call or write to the Department for information on available meeting rooms or to make reservations. The address and the phone number are as follows: Meeting Room Reservations, Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone: 378-2865.

(2)(a) The Department shall refuse to permit the use of such meeting rooms when it determines that doing so is contrary to any applicable law or policies of the state, or disrupt the operations of the building or the working of the state government;

(b) The use of the meeting rooms shall not be permitted under this rule for the following types of activities:

(A) Activities which generally produce excessive noise, such as music performances with high amplification;

(B) Activities which will tend to create traffic congestions in the Capitol Mall area in Salem;

(C) Activities considered by the Department as likely to endanger public safety or property;

(D) Activities at which alcoholic beverages are served or used.

(3) Fees for the use of meeting rooms shall be set by the Department. Where applicable, the minimum space rental shall be \$15. In addition, a service fee will be charged for any use after 5:00 p.m. on weekdays, and any time on weekends and holidays for security, clean up and other support needs. Whenever special custodial services are required, a fee therefor shall be for not less than two hours.

(4) State agency tenants in Department-owned or controlled office buildings are exempted from the space rental charges. When tenant agency use requires special custodial services, an applicable service fee will be charged. All other users will be charged a space rental charge, and a service fee when applicable.

(5) All non-state users must reserve meeting rooms early, at least seven days in advance and pay all applicable use fees in advance of the dates or times reserved. Any cancellation must be made as soon in advance as possible to allow rescheduling. When a scheduled user fails to cancel the reservation at least three business days in advance, the scheduled user may forfeit charges for the period reserved for use.

(6) Scheduling of such meeting rooms will be done in order of priority first to state agencies, second to other public agencies, and third to private citizens or organizations.

(7) The Division reserves the right to cancel or alter any scheduled or reserved use of any meeting room when it considers necessary for public safety under emergencies.

(8) All users of meeting rooms shall leave the rooms in a reasonably clean condition after each use. In case an excessive clean up by the Department's personnel is necessary, the user may be billed for the additional custodial services for the cleanup.

Stat. Auth.: ORS 276 & ORS 283

Stats. Implemented:

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 276 & ORS 283

Stats. Implemented:

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 276 & ORS 283

Stats. Implemented:

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

#### 125-080-0005

#### **Cafeterias in State Office Buildings Under the Department of Administrative Services' Control**

(1) Pursuant to ORS 276.431(2), the Department of Administrative Services may lease any suitable space in state office buildings owned or leased by the Department to restaurateurs to establish and operate cafeterias or snack bars for a term not to exceed five years.

(2) No person, firm or state agency may establish or operate any cafeteria or snack bar in any state office building owned or leased by the Department without a specific authorization from the Department or by a contract with the Department. Any inquiry therefore should be addressed to: Manager, Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone 378-2865.

(3) Determinations as to whether to establish or to continue operating any cafeteria or snack bar in any Department controlled building shall be within the discretion of the Department, and terms and conditions for operating such facility shall be specified in a written contract made between the restaurateur and the Department. The Department may furnish such facility to the extent necessary or to the extent customarily provided for such facility, subject to negotiation with the restaurateur, and may set a rental rate for such facility at par with prevailing commercial rates for nearby comparable facilities used for similar purposes.

(4)(a) For any available opportunity to enter into a new contract with a restaurateur such as when opening a new cafeteria or snack bar or when a contract for an existing facility is due to expire or being terminated, the Department will inform in writing the Commission for the Blind about the available opportunity and offer to the Commission the right of first refusal to contract on the terms and conditions set forth by the Department;

(b) The Commission for the Blind shall respond in writing within 30 days to accept or to decline the offer made by the Department under subsection (a) of this section, and the Commission may commence negotiating with the Department for a contract should the Commission decide to accept the offer, subject to conditions stipulated under section (5) of this rule;

(c) In case the Commission for the Blind fails to respond within the 30 days specified under subsection (b) of this section, or declines to accept the Department's offer, the Department may proceed to select other restaurateurs either by an open competitive bid or by negotiating with one or more restaurateurs without competitive bid under certain circumstances, subject to any applicable provision of law.

(5) The Department reserves the right to reject any and all bids and proposals. The Department's decision in awarding all contracts will be based upon any or all of the following conditions:

(a) Restaurateur's experience and competence in managing and operating food service facilities of the similar nature;

(b) The proposed menu, food prices and service levels;

(c) The quality of food and service at other establishments owned or managed by the restaurateur;



(d) Terms of contract and considerations offered to the Department.

(6) No alcoholic beverages shall be allowed in any cafeteria or snack bar in any state buildings under the Department's control.

(7) The Department reserves the right to make periodic inspections of any contracted facility to insure the lessee-restaurateur performance of the terms and conditions of the contract.

Stat. Auth.: ORS 276 & ORS 283

Stats. Implemented:

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

#### 125-080-0010

##### Sales or Solicitations in State Office Buildings Under the Department of Administrative Services' Control

(1)(a) In any state office building premises under the jurisdiction of the Department of Administrative Services, any temporary walk-in sales activity or solicitations by any person who is not a state employee shall be restricted and require permits issued by the Department of Administrative Services;

(b) Such temporary sales or solicitation activities restricted under this rule shall include, but not be limited to, hawking, peddling, vending or selling goods, wares, merchandise, foods, beverages or services; soliciting donations or signatures; or distributing handbills or posting posters on any wall space designated for such purposes by the agency leasing the space;

(c) Any wall space designated for posting information on bulletin boards are for state business and related purposes only.

(2) Permits for any restricted activity under section (1) of this rule may be issued by the Department provided a written request for a permit is received by the Department at least seven days in advance, and such proposed activity is determined by the Department as not likely to interfere with the normal operation of the building or working conditions of the building residents. No sales or solicitations shall be permitted at workstations of the building residents.

(3) All permit applicants shall specify in the application or request for permission the time, place, type of activity being proposed and state the organizational affiliations, if any.

(4) The Department may issue permits under this rule for the following activities specifying the time and place where the permitted activity may be conducted:

(a) Sales of products or other activities which are in the judgment of the Department to be of some significant benefit or relevance to the residents of the state office building in conducting their official business, or in the general public interest; and; in addition;

(b) When such sales of products or other activities referred to under subsection (a) of this section are conducted by members of and on behalf of any nonprofit organization whose primary mission is for services for youth, charitable organizations or services for the public.

(5) State employees shall not engage in any sales or solicitation activities in any Department controlled premises, except when so authorized by their own employing agency.

(6) Any inquiry or permit applications under this rule should be addressed to: Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone 378-2865.

Stat. Auth.: ORS 276 & ORS 283

Stats. Implemented:

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

#### DIVISION 85

#### RECYCLING

#### 125-085-0000

##### State Recycling Program

(1) The Department of Administrative Services shall operate the state agencies recycling program established under ORS 279.560 by contracting with persons or firms for the collection, processing, and marketing of such recyclable products. Terms and conditions of such contract may include provisions for the following specifications:

(a) The acceptable waste paper products for the collection may include:

- (A) White ledger or bond paper;
- (B) Stationery and letterheads;
- (C) Plain bond machine copies;
- (D) Computer printouts;
- (E) Envelopes;

(F) Colored paper;

(G) Newspapers;

(H) Cardboard.

(b) Other acceptable products for collection may include but are not limited to, plastic, glass and metal, as determined for acceptability by the Department's recycling program;

(c) The collection schedule and the method of accounting for quantities collected;

(d) The rates and the payment schedule.

(2) In selecting contractors under section (1) of this rule, the Department may, under ORS 279.015, and 279.835 to 279.855, give preference to nonprofit organizations which provide opportunity to persons with disabilities who reside in the State of Oregon, but awarding of contracts will be based on contractor's experience, capability and payment arrangements offered to the Department.

(3) All inquiries concerning the Department's recycling program for state agencies and all collection accounting reports or other contact from contractors should be addressed to: State Recycling Coordinator, State Recycling Program, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, Oregon 97310.

Stat. Auth.: ORS 276, ORS 279 & ORS 283

Stats. Implemented: ORS 279.545, ORS 279.550 & ORS 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) "Division" means the Facilities Division of the Department of Administrative Services.

(8) "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.

(9) "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.

(10) "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.

(11) "DMV" means Driver and Motor Vehicle Services of the Oregon Department of Transportation.

(12) "Lloyd District" means that area within the City of Portland bounded by Broadway on the north, N.E. 16th on the east, I-84 on the south and Martin Luther King Jr. Blvd. on the west.

(13) "Official Work Station" means the building, office, assembly point or other similar location to which a State Employee is:

(a) Permanently assigned; or

(b) Scheduled to report for work for five or more consecutive business days, only if a State Employee is not permanently assigned, as described in subsection (a) of this section.

(14) "Parking Facilities" means any lot, grounds, structure, area or other property managed, controlled or administered by the Department.

ment 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.

(15) "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 Work Station of the State Employee. Each parking space assigned to a Disabled State Employee shall be appropriately striped, including access aisles, if necessary.

(16) "Recognized Service Date" means the date reflecting an employee's time in state service as officially determined by their Personnel Department.

(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 98.805-818, 184.340, 190.240, 276.591-601, 283.100 & 283.110  
Stats. Implemented ORS 98.805, ORS 190.240, ORS 276.591 & ORS 283.110  
Hist.: GS 3-1981(Temp), f. 8-28-81, ef. 10-1-81; GS 7-1981, f. 11-23-81, ef. 1-1-82; GS 1-1992, f. 1-28-92, cert. ef. 2-1-92; GS 13-1992(Temp), f. 6-22-92, cert. ef. 7-1-92; GS 17-1992, f. & cert. ef. 8-27-92; DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

## 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, ORS 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, ORS 276.591 & ORS 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

(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. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 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 available within five blocks of the office facility 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)-(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. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

## 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 other 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. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

#### 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 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. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 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. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 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 Work Station, which are designated as being provided for visitors, whether disabled accessible or metered spaces. Employees parking at their Official Work Station may use metered visitorspaces, 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 97301-4281. 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. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 276.601  
Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

#### 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 dollar 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 97301-4281. Monthly rates will be prorated to the nearest dollar 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 97301-4281. 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. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 276.601  
Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

#### 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 the Veterans'/Agriculture lot and certain metered spaces at the Mill Creek facility. Such metered spaces are limited to those in the Archives lot, Employment/State Lands Lot, Executive Building lot, Public Utilities Commission lot, Mill Creek lot, Commerce lot and the 1200 block of Ferry Street SE. 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" lot controlled by the Department. 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 at the "Park and Pay" machine in the "Yellow" lot, which issues a daily parking permit. The permit is valid for the day of issue only, provided the proper payment is given and the permit is properly displayed.

Stat. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 276.601  
Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 6-2001, f. & cert. ef. 11-1-01; DAS 2-2002, f. & cert. ef. 7-30-02

#### 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 dollar. 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. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 276.601  
Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

#### 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 Work Station, and

(c) A valid DMV parking placard is properly displayed. Any Disabled State Employee who is not assigned parking with the Department of Administrative Services is not authorized to use their DMV placard at a Parking Facility within three blocks of their official workstation.

(5) Free spaces designated for commercial loading and service vehicle use only.

Stat. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 276.601  
Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

### 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;

(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:

(a) Moved to another location within the Capitol Mall Area (Salem), the Eugene State Office Building and/or the Portland State Office Building;

(b) Who transfer from one State Agency to another within Capitol Mall Area (Salem), the Eugene State Office Building and/or the Portland State Office Building;

(c) Who request to be relocated within the same parking lot;

(d) Who return from leave within less than one year; or

(e) Who request the use of alternative modes of transportation for a maximum of three months.

(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. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 276.601  
Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 6-2001, f. & cert. ef. 11-1-01

### 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. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 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. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 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) — \$48;

(B) Uncovered reserved parking (monthly) — \$53;

(C) Covered reserved parking (monthly) — \$63;

(D) Parking permit (daily) — \$6;

(E) 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.

(F) Permit books for purchase by State Agencies for official state business-related parking (20 permits) — \$120;

- (G) 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) — \$6;
- (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) — \$0.80.
- (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) — \$78 uncovered; \$103 covered;
- (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) — \$25 monthly premium above state employee rate.
- (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) — \$0.80.
- (f) Citation, As indicated on citation.
- (3) City of Eugene:
- (a) Automobile parking — State Employees:
- (A) Reserved parking — State Office Building, County Structure & Eugene Motor Pool (monthly) — \$40;
- (B) Car Pool reductions applicable on reserved 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.
- (C) Permit books for purchase by State Agencies for official state business-related parking (20 permits) — \$120.
- (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) — \$0.65.
- (f) Citation, As indicated on citation.
- Stat. Auth.: ORS 98.805 - 98.818, ORS 184.340, 276.591 - 276.601 & 283.100 Stats. Implemented ORS 98.805, ORS 276.591, ORS 276.594 & ORS 276.601 Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 6-2001, f. & cert. ef. 11-1-01

## DIVISION 110

## LAND USE COORDINATION

**125-110-0001**

## Land Use Program Coordination Rules

(1) This division is applicable to the approval of projects under the following Department programs. These programs are:

- (a) Capital Construction and Improvement Program;
- (b) State Office Facility Leasing Program;
- (c) Surplus Public Service Land Management Program;
- (d) Conservation of Department-Owned Historic Real Property Program; and

(e) Any other Department program subsequently determined to affect land use pursuant to OAR 660-030.

(2) In order to approve or undertake a project under a program listed in subsections (1)(a)–(e) of this rule, the Department shall find that the project complies with the Statewide Planning Goals and is compatible with acknowledged city and county comprehensive plans and land use regulations. To make its goal compliance and plan compatibility findings, the Department shall comply with sections (2)–(6) of this rule and shall also adhere to the procedures in the Department’s state agency coordination program which is hereby adopted by reference.

(3) The Department shall satisfy its goal compliance and plan compatibility findings for a project approved under the Capital Construction Program in the Salem metropolitan area and subject to the jurisdiction of the Capitol Planning Commission (CPC) by adhering to the CPC's land use coordination rules in OAR 110, division 10, and the procedures contained in the CPC's certified State Agency Coordination Program.

(4) The Department shall make its goal compliance and plan compatibility findings for each project approved under the State Office Facility Leasing Program based on information provided to the Department by the project's lessor or developer.

(5) A Lessor or developer seeking approval of a project under the State Office Facility Leasing Program shall provide the Department information documenting the project's compliance with the statewide planning goals and compatibility with applicable acknowledged comprehensive plans and land use regulations. Such documentation shall include one or more of the following:

(a) A copy of the local land use permit, building permit or occupancy permit from the city or county planning agency, building department or governing body that the project has received the jurisdiction's approval; or

(b) A copy of a letter from the local planning agency, building department or governing body stating that the project in question is permitted under the jurisdiction's comprehensive plan, land use regulations and development codes, but does not require specific approval by the jurisdiction; or

(c) A copy of the lessor's covenant in the project's lease agreement that attests to the fact that the proposed use of the leased premises as a state office facility complies with all applicable federal, state and local statutes, regulations, ordinances and codes, including the acknowledged comprehensive plan and land use regulations of the city or county in which the leased facility is located; or

(d) Other information and documentation provided to the Department equivalent to subsection (5)(a), (b) or (c) of this rule including, but not limited to, written testimony presented to the Department from an authorized representative from the affected city or county.

(6) The Department shall make goal compliance and plan compatibility findings for each project approved under the Surplus Public Service Land Management Program and the Conservation of Department-Owned Historic Real Property Program. Such findings shall be based on information and documentation from one or more of the following:

(a) A copy of the local land use permit from the city or county planning agency or the local governing body that the project has received land use approval; or

(b) A copy of a letter from the local planning agency or governing body stating that the project in question is permitted under the jurisdiction's comprehensive plan and land use regulations, but does not require specific approval by the jurisdiction;

(c) Other information and documentation provided to the Department equivalent to subsection (6)(a) or (b) of this rule, including, but not limited to, written testimony presented to the Department from an authorized representative from the affected city or county.

Stat. Auth.: ORS 283.060

Stats. Implemented:

Hist.: GS 3-1989, f. 8-11-89, cert. ef. 9-1-89



**DIVISION 120**

**RENTING OR LEASING OFFICE QUARTERS**

**125-120-0000**

**Definitions**

For the purposes of OAR 125-120-0000 through 125-120-0200, to be referred to as the “Leasing Rules,” the term:

(1) “Administrator” means the Administrator of the Facilities Division of the Department of Administrative Services.

(2) “Agency” or “state agency” means any state officer, board, commission, department, institution, branch, or agency of the state government.

(3) “Department” means the Department of Administrative Services.

(4) “Director” means the Director of the Department of Administrative Services.

(5) “Facilities Division” or “Division” means the Facilities Division of the Department of Administrative Services.

(6) “Lease” means a lease for office quarters between an agency and a lessor other than the Department, including interagency and intergovernmental lease or sublease.

(7) “Major Leasing Project” means a project for leasing privately owned office quarters for use by any agency when the project is for more than 10,000 usable square feet, or when the project is for a build-to-suit facility regardless of the size.

(8) “Office quarters” means office space, office buildings and associated service, storage and parking facilities for state agencies, and may include factory-built, modular, or portable units, but excludes stand alone storage and parking facilities.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

**125-120-0010**

**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 & ORS 283.060

Stats. Implemented:

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

**125-120-0020**

**Assignment of Office Quarters**

(1) When an agency requires an assignment of office space or leased office quarters, the agency shall first estimate the space requirements, in accordance with the Department’s Office Space Standards, DAS Policy 125-6-100, and submit a completed Space Assignment Request form to the Division.

(2) Facilities Division shall review and approve Space Assignment Requests and shall allocate office quarters in the following order of priority: first, office quarters owned or managed by the Department, when available and feasible; second, other state-owned or state-leased office quarters when available and feasible; third, and only if neither of the foregoing office quarters is available and feasible will the Department consider approving any lease for office quarters. The State Capitol and the Supreme Court Building are not subject to space assignment by the Department.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.410

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

**125-120-0030**

**Allotment of Space in Office Quarters (ORS 270.410)**

Allotment of space in all leased office quarters shall be guided by the Department’s Office Space Standards (Policy #125-6-100).

Stat. Auth.: ORS 276.428 & ORS 283.060

Stats. Implemented:

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

**125-120-0040**

**Measuring Office Quarters**

The Division will use the standards of the American National Standards Institute (ANSI) as adopted by the Building Owners and Managers Association (BOMA) as a guide in measuring office space.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.410

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

**125-120-0050**

**Space Allocation/Rental Agreement**

(1) Agencies occupying Department-owned office quarters shall sign and comply with the Department’s Space Assignment/Rental Agreement.

(2) The Division may charge and collect from any agency violating the terms of such Agreement, the cost of correcting the damages resulting from the agency’s violations.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

**125-120-0060**

**Complying With Local Policies**

All facility siting shall comply with local land use plans, and if possible, community development policies, pursuant to Department of Administrative Services’ OAR 125-110-0001 (the Land Use Coordination Rule).

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

**125-120-0070**

**Leasing Authority**

(1) The Department, acting through its Facilities Division, shall supervise and conduct negotiations for all leases, rental agreements and related site selections for office quarters, unless otherwise authorized by the Division in writing.

(2) No lease or rental agreement shall be binding upon the state or any agency unless such lease or rental agreement has been approved by the Division in accordance with ORS 276.428.

(3) The tenant agency Representative, as identified by the Division to the lessor, may communicate with build-to-suit lessors during construction, and with other lessors during remodeling or renovations of office quarters. The tenant agency representative shall not communicate changes in the scope or specifications of lessor’s work directly with lessor’s contractor(s), unless so authorized by the lessor. In any case, all change orders must be processed through Facilities Division.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

**125-120-0075**

**Technical Assistance and Leasing Services for Non Office Quarters**

(1) Leases for facilities other than office quarters (such as prisons, medical clinics, dormitories, laboratories) are not subject to the Departments’ supervision and approval and are exempted from complying with OAR 125-120-0000 through 125-120-0200 (the Leasing Rules).

(2) Upon written request from an agency, the Facilities Division may provide leasing services and technical assistance in any manner it deems appropriate to best serve the interests of the state.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

**125-120-0080**

**Subleases by an Agency**

(1) Facilities Division must review and approve all subleases by or for all agencies subject to the Leasing Rules.

(2) Any agency that has office space that is not needed for agency purposes, which the agency believes it is feasible to backfill, shall

inform the Division. The Division will provide assistance to the agency in back filling the surplus space.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

#### 125-120-0090

##### Leasing or Renting Involvement of a Requesting Agency

(1) When the Division determines it to be in the best interests of the state, the Division may delegate to a requesting agency, in writing, certain aspects of the leasing process under the guidance and supervision of the Division.

(2) An agency may seek rental market information, but an agency shall not make commitments to lease or negotiate a lease unless authorized in writing by the Division.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

#### 125-120-0100

##### Lease Renewal

(1) Approximately 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 receipt of the notice and inform Facilities Division of its plans for office quarters.

(3) Before approving any agency lease extension exceeding three years, Facilities Division shall consider other alternatives, if any, which would meet the agency's need more economically for the state. If such an alternative is available and feasible, Facilities Division shall advise the agency of the projected benefits and costs for the relocation.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

#### 125-120-0110

##### Agency Commitment

(1) Before Facilities Division approves an agency's request for office quarters, the head of the requesting agency, or designee, shall certify that legislatively approved funds are available to meet the obligations under the proposed lease for the current biennium and that the Agency intends to request funding to continue the lease for the full term of the lease. Facilities Division will assist the requesting Agency to compile a cost estimate for suitable office quarters.

(2) Facilities Division may charge and collect for leasing services provided to an Agency if the agency withdraws its request for office quarters during any stage of the leasing process, except when such withdrawal is due to unanticipated causes beyond the Agency's control.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.429

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

#### 125-120-0120

##### Locating Office Quarters

(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 interest of the state, any and all offers received while conducting solicitation for offers on leaseable properties or facilities. Unless exempted by the Administrator, Facilities Division will search for available office quarters to lease as follows:

(a) Through direct contact or through public advertisement, as needed, for existing office space smaller than 10,000 usable square feet or for other non-office space or special purpose facilities such as storage, parking spaces, medical clinics, laboratories, and the like, regardless of size.

(b) Except as exempted by OAR 125-120-0075, through public advertisement and selection process for Major Leasing Projects which are for 10,000 usable square feet or more of office space or for any 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.

(3) Office quarters and other types of space to be leased from or shared with other governmental entities may be negotiated directly, or through a public search process, as may be appropriate.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.426

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

#### 125-120-0130

##### Determining a Lease Search Area

Facilities Division and the requesting agencies 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 including state services such as telephone, data, communication and mail services;

(4) Proper zoning and compatibility with local government comprehensive land use plans; and

(5) Applicable directives of the State of Oregon such as the Governor's Executive Order 94-07, or of the local government pertaining to locating state office facilities.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.426 & ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

#### 125-120-0140

##### Leasing Directly

(1) Before leasing or renting office quarters smaller than 10,000 usable square feet, Facilities Division may refer to and, when feasible, select for direct negotiations, leaseable properties on file at Facilities Division which have been submitted by property owners and real estate professionals interested in developing and leasing office quarters for occupancy by the state. Alternatively, Facilities Division may advertise publicly or conduct a search for a leaseable facility, and negotiate directly with the owner or owner's representative for the lease.

(2) To solicit offers of leaseable properties, Facilities Division may publish its leasing requirements, or inform those on the Division's trade list of property owners, developers and real estate professionals who have expressed interest in developing and leasing office quarters to the state.

(3) A property owner, developer or real estate professional may be added to Facilities Division's trade list by contacting Facilities Division.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

#### 125-120-0150

##### Giving Notice of Intent to Lease

(1) When the geographic search area for siting office quarters has been established or when leaseable 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 proposed 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 whether or not to proceed with the proposed geographic siting location.

(4) The notification requirement under subsection (1) above is waived in the following cases:

- (a) Emergency need;
  - (b) Lease renewals with no significant change in the use or amount of space;
  - (c) Interagency rental agreements for established state facilities housing agencies with similar state functions;
  - (d) Leases with other political subdivisions; or
  - (e) Storage space or other non-office space.
- Stat. Auth.: ORS 184.340  
 Stats. Implemented: ORS 276.428  
 Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

**125-120-0160****Procedures for Major Leasing Projects**

(1)(a) Except as exempted in 125-120-0120 Facilities Division shall communicate to the public and make available a Project Announcement for any Major Leasing Project;

(b) The Project Announcement shall include all the necessary information by which proposed leases or sites are to be accepted, evaluated and recommended. The Project Announcement shall include, but need not be limited to the criteria established in OAR 125-120-0130 (Determining a Lease Search Area).

(2) The Facilities Division shall establish an advisory committee for each Major Leasing Project, with a representative of Facilities Division serving as chair.

(3) The advisory committee shall include at least one representative from the requesting agency. Such representative shall be authorized to act on the agency's behalf.

(4) The committee shall evaluate offers on facilities or sites according to the criteria stated in the Project Announcement. The Facilities Division chairperson shall guide the committee to ensure that the process is carried out in accordance with the Leasing Rules.

(5) The chair of the advisory committee shall ensure that the committee documents the evaluation process, justifies the facility or site selected, and recommends in writing to the requesting agency head or the designee, a site or facility offered for lease that best meets the criteria established in the Project Announcement.

(6) If the requesting agency head or the designee accepts the committee's recommendation, Facilities Division will send out the selection notices and proceed with the lease negotiations. Such a selection notice shall make it clear that it is to be considered only a letter of intent to commence lease negotiations, and that the final lease agreement is subject to the parties reaching a mutually satisfactory agreement on all terms of the lease.

(7) Facilities Division shall conduct the lease negotiations on behalf of the requesting agency unless otherwise determined by the Facilities Division in writing. 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 Facilities Division may terminate a leasing process and authorize actions reasonable and necessary to meet the Agency's space need 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; or

(c) Emergency situations.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

**125-120-0170****Tenant Improvements**

(1) All build-to-suit leases or major remodeling of leased facilities shall comply with Facilities Division's "Leased Facilities Construction Standards," and with all applicable law and rules, including those requirements for making leased state office quarters accessible to and usable by disabled persons, to the extent required by law.

(2) Before having any tenant improvement work performed on leased premises, the tenant Agency shall consult with the Facilities Division for appropriate procedures.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

**125-120-0180****Providing for Non-Appropriation and Early Termination**

(1) All leases subject to approval by the Department under ORS 276.428 shall provide for termination of the lease in the event the Agency is abolished or its funding is so reduced by the Legislature that it cannot continue the lease.

(2) A lessee Agency shall consult with Facilities Division before sending any notice to the lessor for an early termination of a lease so that the Department may explore other alternatives to terminating the lease or advise the Agency of appropriate procedures.

(3) The provision for early termination of the lease, as required under subsection (1) of this rule, may, under some circumstances as determined by the Division and with the written approval of the Administrator and the Director of the lessee Agency, provide for a lease termination settlement amount to be paid by the lessee Agency which shall not be greater than the unamortized tenant improvement cost.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

**DIVISION 140****CONFIDENTIALITY AND INADMISSIBILITY OF MEDIATION COMMUNICATIONS****125-140-0010****Confidentiality and Inadmissibility of Mediation Communications**

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8)–(9) of this rule, medi-



ation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) **Exceptions to confidentiality and inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the

record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Director or designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 36.224 & ORS 184.340

Stats. Implemented: ORS 36.224, ORS 36.228, ORS 36.230 & ORS 36.232

Hist.: DAS 1-1999, f. 4-30-99, cert. ef. 5-1-99

**125-140-0020**

**Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications**

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) **Exceptions to Confidentiality and Inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and

does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.230(4)

Hist.: DAS 2-1999, f. 5-25-99, cert. ef. 5-26-99

## DIVISION 150

### RISK MANAGEMENT

#### 125-150-0000

##### Claims Against the State Liability Fund

(1) The Department of Administrative Services, Risk Management Division, administers the Liability Fund established by ORS 278.100 to cover the tort liability of the state and its officers, employees, or agents acting within the scope of their employment under ORS 30.260 to 30.300.

(2) An individual intending to make a claim against the Liability Fund must follow the notice requirements under ORS 30.275, as amended by Chapter 350, Oregon Laws 1981.

(3) Under ORS 30.275, formal notice of a claim against a state officer, employee, or agent may be given by mail or personal delivery to the Director of the Department of Administrative Services. By this policy, the Director delegates responsibility for receipt of liability claims to the Risk Management Division, Department of Administrative Services.

(4) A claimant or representative may file a claim in the following manner:

(a) Send or deliver a *written* statement to the Risk Management Division, including the following information:

(A) A statement that a claim for damages will be asserted against a *named* state agency, officer, employee, or agent;

(B) A description of the time, place and circumstances giving rise to the claim;

(C) The name of the claimant and the mailing address to which correspondence concerning the claim may be sent. Send or present the notice to: Claims Section, Risk Management Division, Department of Administrative Services, 155 Cottage Street N.E., Salem, OR 97310.

(b) To give actual notice of a claim as provided under ORS 30.275, provide the same information as required above for formal notice, orally to: Claims Section, Risk Management Division, (503) 373-7475.

Stat. Auth.: ORS 278 & ORS 283

Stats. Implemented:

Hist.: GS 1-1982, f. 1-29-82, ef. 2-1-82

**125-150-0005**

**Selection of Insurance Agent of Record**

(1) The Department of Administrative Services may appoint an Agent of Record to assist in the procurement of commercial insurance.

(2) Selection of an Agent(s) of Record will follow guidelines established by the Public Contract Review Board in OAR 127-010-0140.

(3) Prior to the selection of an Agent of Record, the Department shall make reasonable efforts to inform known insurance agents in the competitive market area of its intent to choose an Agent of Record.

(4) The Agent of Record will be selected according to the following procedure:

(a) Risk Management Division:

(A) Establishes bid specifications for Agent of Record;

(B) Places public advertisement in at least one local newspaper of general circulation and trade periodical soliciting open bids;

(C) Through Transportation, Purchasing & Print Services Division, distributes bid specifications to insurance agents requesting copies in competitive market area of applicable coverages.

(b) Commercial Insurance Agencies:

(A) Review bid specifications and prepare sealed bid presentation in accordance with bid procedure guidelines;

(B) Submits bid to Department of Administrative Services, Transportation, Purchasing & Print Services Division, in accordance with bid specifications.

(c) Risk Management Division:

(A) Review bids at time stipulated in bid notice;

(B) May invite acceptable bid applicants for oral presentation of proposal;

(C) Evaluates written bids and oral presentations, grading bid proposals upon standards previously established in bid specifications;

(D) Makes final selection of Agent of Record;

(E) Informs all applicants (bidders) of successful awarding of contract for Agent of Record selection;

(F) Prepares and issues Agent of Record contract;

(G) Retains information for Public Contract Review Board on: Agent of Record selected; names of agents submitting bids; summary of evaluations of each applicant.

Stat. Auth.: ORS 283

Stats. Implemented:

Hist.: GS 5-1982, f. & ef. 5-3-82

**125-150-0010**

**Purchase of Professional Services**

(1) The Department is authorized under ORS 278.130 to purchase necessary technical and professional services.

(2) Examples of services that may be required include, but are not limited to, claims adjusting, property appraisal and Risk Management and actuarial audits to augment services provided by the Risk Management Division.

(3) Services will be acquired by one of the following methods:

(a) Services valued over \$5,000:

(A) Service requirements that are continuous or for which the amount of the contract is over \$5,000, shall be open for competitive bids according to procedures outlined by the Public Contract Review Board (PCRB);

(B) OAR 125-150-0005, Agent of Record, provides specific guidelines for the purchase of commercial insurance and related services;

(C) The Risk Management Division will make a reasonable effort to notify all independent contractors known by the Division to be qualified to provide the required services. The Division shall also place at least one public advertisement in a west coast insurance trade publication;

(D) Contractors interested in submitting a proposal should request a copy of the bid specifications from the Division;

(E) The Risk Management Division will evaluate the proposals of all respondents. Selection will be based on the experience and qualifications of contractor and scope, completeness and schedule of work

plan. Among equally qualified contractors and work plans, selection will be based on the lowest cost;

(F) The Risk Management Division reserves the right to reject any and all proposals.

(b) Services valued under \$5,000:

(A) One-time or emergency services will be secured as situations require. A minimum of two independent contractors, known by the Risk Management Division to be qualified and available to offer such services, will be contacted and asked to quote a fee for the required services either by a written letter or telephone conversation;

(B) A record of contractors contacted, service requirements, and corresponding quotes will be retained on file by the Risk Management Division, open to public inspection during regular business hours, 8 a.m. to 5 p.m., Monday through Friday;

(C) Of those independent contractors participating, selection will be based on experience, professional qualifications, work plan and time schedule. Among equally qualified contractors and work plans, selection will be based on the lowest cost;

(D) The Risk Management Division reserves the right to reject any and all proposals.

(4) The following procedure should be followed:

(a) Risk Management Division:

(A) Recognizes need for additional technical or professional expertise;

(B) Composes bid specifications or obtains at least two estimates;

(C) Notifies appropriate technical and/or professional vendors of intention to secure proposals or estimates.

(b) Independent Contractors: Prepare and submit proposals according to established procedure of Department;

(c) Risk Management Division: Awards contract to selected independent contractor according to rules specified by Department of Administrative Services, Transportation, Purchasing & Print Services Division and Public Contract Review Board.

Stat. Auth.: ORS 283

Stats. Implemented:

Hist.: GS 5-1982, f. & ef. 5-3-82

**DIVISION 155**

**STATE VEHICLE USE AND ACCESS**

**125-155-0000**

**Purpose**

These rules set standards for use, operation and access to state vehicles, including private vehicles in use for state business.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

**125-155-0010**

**Definitions**

As used in this Chapter, unless the context requires otherwise, the following words, phrases, and abbreviations have the meanings listed:

(1) "DAS" means Department of Administrative Services.

(2) "DAS-RMD" means Risk Management Division of DAS.

(3) "DAS-TPPSD" means Transportation, Purchasing, and Print Services Division of DAS.

(4) "ODOT-DMV" means Driver and Motor Vehicle Services, Department of Transportation or, if the context requires, its equivalent in another jurisdiction.

(5) "OSSHE" means Oregon State System of Higher Education.

(6) "Agency" means an agency, board, commission, or branch of the State of Oregon that is subject to ORS Chapter 283 or 278.

(7) "Agent" means a person or legal entity that is appointed in writing by a state agency to perform specified work. An agent is not an independent contractor. Agents, paid or unpaid, are subject to the direction and control of the Agency. An Agency may not call people agents for the primary purpose of justifying their transportation in a state vehicle.

(8) "Duty station" means the location designated in writing by the Agency from which an employee normally carries out his or her duties.

(9) "Employee" means any person employed by the state to do state business for whom the state withholds income tax, provides workers' compensation coverage, and pays the workers' compensation hour-tax. Under this definition, the following are not employees: work-



ers provided by a temporary employment services agency, Department of Corrections inmates, and OSSHE students unless the student meets the terms of this definition.

(10) "Official state business" or "state business" means any activity conducted in conformance to these rules and directed and controlled by a state agency to advance the lawful policies and purposes of the agency. State law requires a narrow interpretation of this term. Therefore, agencies' policies and purposes are only those that are official, in writing, and within statutory authority. These may be written in statutes, orders, rules, policy manuals, procedural guides, and position descriptions. They may be written in official statements of agency missions, goals, objectives, and performance measurement plans. They may be written in Oregon Benchmarks and OSSHE rules defining its officially sanctioned programs.

(11) "Private vehicle" means a motor vehicle that is owned, rented, borrowed, leased, or otherwise lawfully in the possession and control of any private person or any entity other than the state. A commercial rental vehicle is a private vehicle if it is rented or used for a mix of private and state uses. Private vehicles, while in use for state business, are treated as state vehicles in these rules unless the context clearly requires otherwise. While any motor vehicle is being used to transport family or for any other personal purpose, it is not on state business. An independent contractor's vehicle being used for contract services is on the contractor's business, not on state business. "Private off-road vehicle" means a private motor vehicle that is unlicensed or not designed for use on public roads. It includes unenclosed vehicles designed for just one or two riders, all-terrain recreational vehicles, two or three wheeled vehicles.

(12) "Private specialty vehicle" means a private vehicle that is a motorcycle or other two or three wheeled vehicle designed for one or two riders.

(13) "Satisfactory agency record" means an agency has annual rates of risk markers that are normal, compared to statewide rates. Risk markers include rates per mile of collisions, of related losses, of citizen reported dangerous driving, and of bodily injuries. Rates, norms, and deviations shall be as calculated by RMD. An agency may conclude that its record is satisfactory until notified otherwise in writing by RMD.

(14) "Spouse" means the husband or wife of the authorized driver.

(15) "State vehicle" means a motor vehicle owned, rented, borrowed, leased, or otherwise under the possession and control of the state. It is licensed for highway use. A rental vehicle is a state vehicle if it is rented by a duly authorized employee at the cost of the state, solely for official state business. A vehicle, owned by DAS and lawfully rented to a local government or other non-state entity, is not a state vehicle for purposes of these rules. Unless the context clearly requires otherwise, "state vehicle" refers to private vehicles while in use for official state business.

(16) "Volunteer" means an unpaid person appointed by a state agency to work on its behalf. Volunteers are appointed in writing to do state business under agency direction and control. They receive no remuneration. An agency may not call people volunteers for the primary purpose of justifying their transportation in a state vehicle. Volunteer and agent may be used interchangeably unless the context requires otherwise.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 278.405  
Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 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, ORS 184.340 & ORS 278.405  
Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 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, ORS 184.340 & ORS 278.405  
Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 283.395  
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

### 125-155-0200 Voluntary and Compulsory Driver Standards

(1) Agencies that maintain a satisfactory agency record may develop their own standards for training and driving records. Alternatively they may use the standards that are compulsory for agencies on trial status. Agencies may apply their standards to any reasonable class: new drivers, problem drivers, passenger carriers, high risk driving, or all drivers.

(2) DAS-RMD may place on trial status an agency that fails to maintain a satisfactory agency record. During trial status, the following minimum standards are compulsory:

(a) Within 12 months of notice of its trial status, an agency shall assure that its drivers have at least the driving records and training described in this section. The agency shall continue to do so until

DAS-RMD gives notice that it has held a satisfactory record for two fiscal years.

(b) The trial status agency shall verify driver's license, training, and driving record upon learning of a driver's moving-vehicle traffic citation, vehicular collision on state business, request for a hardship permit, or request for exception or extension of any of these rules.

(3) An agency on trial status may find a driver's record acceptable if the driver has not forfeited bail or been convicted for any of the following, or reasonably similar, driving violations. The listed periods begin at the later date of violation, forfeiture, or conviction. The following kinds of driving records shall be unacceptable:

(a) A major traffic offense in the last 24 months. This includes reckless driving, driving under the influence of intoxicants, failing to perform the duties of a driver, criminal driving while suspended or revoked, fleeing or attempting to elude a police officer, and others;

(b) Felony revocation of driving privileges or felony or misdemeanor driver license suspension within the last 24 months;

(c) More than three moving traffic violations in the last 12 months;

(d) A careless driving conviction in the last 12 months; or

(e) A Class A moving traffic infraction in the last 12 months.

(4) An agency on trial status may consider its driver training acceptable if:

(a) All new drivers complete safe driver training before driving a state-owned vehicle.

(b) All drivers complete a safe driver training course at least once in every five years.

(c) The agency accepts verified training previously taken by a driver.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 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, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 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, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

#### 125-155-0410

##### Authorized Driver Summary

The following table summarizes many issues from these rules dealing with who may drive for the state at whose risk. Private vehicles on private business are not subject to these rules. See the remainder of OAR 125, division 155 for details. Chief Condition:

(1) **Employee or Volunteer:**

(a) State Direction/Control:

(A) State vehicle or state rental:

(i) Control: State;

(ii) At Risk/Liable: Primarily state.

(B) Private vehicle on state business:

(i) Control: State;

(ii) At Risk/Liable: Secondly state.

(b) Any Private Use — Any vehicle:

(A) Control: Employee;

(B) At Risk/Liable: Employee.

(2) **Agent on Contract:**

(a) State Direction/Control — Contract Terms:

(A) State vehicle and state rental for agency need or benefit:

(i) Control: State;

(ii) At Risk/Liable: Primarily state.

(B) Private vehicle on state business:

(i) Control: State;

(ii) At Risk/Liable: Secondly state.

(b) Any Private Use — Any vehicle:

(A) Control: Agent;

(B) At Risk/Liable: Agent.

(3) **Non-Agent Contractor:** Contract Terms — Any vehicle (State vehicles prohibited.)

(a) Control: Contractor;

(b) At Risk/Liable: Contractor.

(4) **Client:** Only as Specified by Law and Agency Agreement:

(a) State vehicle:

- (A) Control: Client;
  - (B) At Risk/Liable: Varies.
  - (b) Any private vehicle or rental:
  - (A) Control: Client;
  - (B) At Risk/Liable: Client.
  - (5) **OSSHE Student:** OSSHE Adopts Rules and Controls Use — Any vehicle allowed by OSSHE or owning agency:
  - (a) Control: OSSHE, owner;
  - (b) At Risk/Liable: Same as for Agent.
  - (6) **SPOUSE:** Prohibited, as Spouse — Vehicle: None on state business:
  - (a) Control: Spouse;
  - (b) At Risk/Liable: Spouse/employee.
  - (7) **Chauffer:** Need and Agency Approval — Any vehicle on state business:
  - (a) Control: Employee;
  - (b) At Risk/Liable: Employee.
- Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 278.405  
 Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 283.395  
 Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95; Administrative Reformating 11-29-97

**125-155-0420  
Passengers**

- (1) Agencies may permit drivers to transport people, animals, or things to the extent needed to accomplish state business.
- (2) No driver may give a ride in a state-owned vehicle to anyone except as permitted by these rules or necessary to accomplish official state business. Hitch hikers shall not be allowed in any state vehicles or private vehicles on state business.
- (3) All passengers shall follow these rules and all reasonable directions of their drivers.
- (4) Drivers shall obtain prior agency approval and conditions for the following passengers:
- (a) Guests of the government. These include official visitors from any entities in which the state has any interest. They include local government officials traveling to the same area or near the route of the state driver. Guests may be cost-sharing or courtesy passengers.
- (b) Observers or ride-a-longs;
- (c) Driver's or passenger's aides; or
- (d) Minors and others who are not legally liable for themselves and their agreements.
- (5) The following drivers shall obtain prior agency approval to transport any passengers on state business: any authorized driver whose license is a hardship permit and all agents, volunteers, temporary employees, students, and inmates. Agencies may impose conditions.
- (6) Family members, friends, and pets of drivers and working passengers shall not ride in state vehicles or in private vehicles on state business except under the following conditions and requirements:
- (a) Friends, family, and pets may not ride in state vehicles or in private vehicles on state business except as permitted by these rules and then only with prior agency permission. Agencies may impose any conditions.
- (b) Medical aid animals may be taken along as necessary without advance permission, but remain subject to reasonable agency conditions.
- (c) Their children under age 18 may ride with them only with advance agency approval and a DAS order allowing children to ride for special occasions. Friends under the age of 18 are prohibited.
- (d) Family members, whether riding with agency permission or without and whether in compliance with these rules or not, shall ride at their own risk or at the personal risk of the driver, employee, or person to whom they relate. The state shall not insure or indemnify friends or family nor insure or indemnify the employee against any claims brought by friends or family.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 278.405  
 Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 283.395  
 Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

**125-155-0430  
Passengers Summary**

The following table summarizes many issues from these rules dealing with who may ride in a state vehicle or a vehicle on state business

and at whose risk. Private vehicles on private business are not subject to these rules. See the remainder of OAR 125, division 155 for details. Chief Condition:

- (1) **Generally:** Needed to Accomplish State Business:
- (a) State Vehicle and State Rental — Control/At Risk: Primarily state;
- (b) Private on State Business — Control/At Risk: Secondarily state.
- (2) **State Guest, Observer, Minor or Non-Competent:** Prior Agency Permission — Vehicle: Same — Control/At Risk: Same.
- (3) **Employee's Aide:** Prior Agency Permission — Any vehicle on state business — Control/At Risk: Aide or Employee.
- (4) **Employee's Child:** Agency Permission and DAS Order — Any vehicle on state business — Control/At Risk: Employee-parent.
- (5) **Employee's Spouse:** Only as Employee's Aide — Any vehicle on state business — Control/At Risk: Spouse or employee.
- (6) **Hitchhiker:** Prohibited — Any vehicle on state business — Control/At Risk: Employee.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 278.405  
 Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 283.395  
 Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95; Administrative Reformating 11-29-97

**125-155-0500  
General Use of Vehicles**

- (1) By law, state vehicles shall be used only for official state business and not for any personal purposes. This applies to state owned vehicles. It also applies to private or rental vehicles while being used for state business or at state cost or risk. Vehicle uses contrary to the law or these rules shall mean the driver is acting outside the definition of official state business, is not an authorized driver, and is acting outside the course and scope of his or her employment or duties. "Contrary to these rules" includes making prohibited uses of a state vehicle or a private vehicle purportedly on state business, carrying prohibited passengers or materials, and allowing an unauthorized person to drive. When a private or rental vehicle is used contrary to these rules the driver and vehicle shall not be covered by state insurance or self-insurance coverages. When a state vehicle is used contrary to these rules, the vehicle and its use shall be the personal liability of the driver. The driver shall be personally liable for any damage to the state vehicle or harm to any other parties or property. State tort liability indemnification or self-insurance shall not apply.
- (2) The law requires that "official state business" be narrowly construed. No diversion from state use to serve a personal purpose is permitted. However, a necessary state business use may coincide with a personal purpose. Stopping for meals or breaks enroute is an example where state and personal uses are both served.
- (3) A state vehicle may not be used by an employee to the private financial benefit of the employee or any member of his or her household. No one has authority to permit anyone to make personal or family use of a state vehicle or any vehicle driven at state risk.
- (4) It is the responsibility of all agencies and drivers to assure that the requirements of the law and these rules are followed in all situations.
- (5) Drivers of state vehicles and private vehicles on state business shall comply with the following safe use requirements:
- (a) Drivers shall transport material that is dangerously explosive, flammable, radioactive, or extremely toxic only within the precautions required by law. Passengers shall be transported with the material only with their informed consent.
- (b) Drivers shall require appropriate safety restraints to be worn. They shall require children to ride in any legally required car seats. Animals shall be in secured carriers. Agencies may approve any lawful exceptions.
- (c) Drivers shall not consume alcohol in vehicles nor operate a vehicle under the influence of intoxicants. They shall not transport alcohol in state vehicles unless required by their agency to do so for official state business and then only as permitted by law.
- (d) Drivers shall not transport illegal drugs or contraband of any kind in vehicles except as necessary to carry out their assigned duties of official state business.
- (e) Drivers shall not transport firearms in vehicles unless required to do so by their agency under its authorization by state law. An agency



cy 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, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 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, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 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, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 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, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

## 125-155-0540

### Vehicle Use Summary

Following is a summary table. It lists some examples of uses or activities that may or may not be made of a vehicle, depending on the vehicle's type and travel status. See the remainder of OAR 125, division 155 for details. **Each listed use is allowed during the state travel status shown below or it is prohibited or constitutes a private use, also, as shown below.**

#### (1) Ordinary state business:

- (a) State vehicle: On any travel status;
- (b) State rental: On any travel status;
- (c) Private vehicle status: On any travel status.

#### (2) Non-urgent on the job injury:

- (a) State vehicle: Overnight, full-time;
- (b) State rental: Overnight;
- (c) Private vehicle status: Private use, cost, risk.

#### (3) Medical, personal:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Private use, cost, risk;
- (c) Private vehicle status: Private use, cost, risk.

#### (4) Personal grooming:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Overnight travel status;
- (c) Private vehicle status: Private use, cost, risk.

#### (5) Personal recreation:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Private use, cost, risk;
- (c) Private vehicle status: Private use, cost, risk.

#### (6) Personal laundry:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Overnight travel status;
- (c) Private vehicle status: Private use, cost, risk.

#### (7) Personal necessity shopping:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Overnight travel status;
- (c) Private vehicle status: Private use, cost, risk.

#### (8) Family needs:

- (a) State vehicle: Prohibited;
- (b) State rental: Prohibited;
- (c) Private vehicle status: Private use, cost, risk.

#### (9) Food/Break enroute:

- (a) State vehicle: On any travel status;
- (b) State rental: On any travel status;
- (c) Private vehicle status: On any travel status.

#### (10) Emergency roadside aid:

- (a) State vehicle: On any travel status;

- (b) State rental: Private use, cost, risk;
- (c) Private vehicle status: Private use, cost, risk.

(11) **Emergency on the job injury:** On any travel status if necessary and emergency services are not available.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 283.395  
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95; Administrative Reformatted 11-29-97

## 125-155-0600

### Storing State Vehicles

(1) The state's vehicles shall be stored at sites owned, leased, or controlled by the state except during travel or the conditions listed in these rules. When practical, a state vehicle at a home, hotel, or motel shall be parked off the public street in a reasonably secure setting.

(2) An agency may allow a state vehicle to be parked at home when a task or trip requires a driver to depart so early or return so late that it is impractical to pick up or return the vehicle to state parking on the same day. For long-term assignment of a vehicle to home, the agency must do a cost-benefit analysis. The analysis must consider the costs and risks of daily travel to the home, the frequency of call-outs, parking risks, any salary savings, and other factors. The analysis should weigh reasonable alternatives such as the cost of reimbursing private vehicle mileage. An agency may allow an employee to park a state vehicle at home when one of the following conditions requires and it is to the benefit of the state to provide its vehicle.

(a) Assigned, normal duties require the driver to frequently travel to urgent, unscheduled field work after hours. The mere possibility of being called-out is not sufficient. Call-outs must actually occur with justifiable frequency.

(b) The driver's home is his or her official duty station from which he or she engages in virtually full-time field work away from the office or motorpool.

(c) It will clearly reduce state paid time to permit a driver to park a state vehicle at home while on temporary assignment away from the duty station.

(d) Other circumstances caused by state business in which home garaging will clearly reduce direct costs of the agency.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 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, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 283.395  
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

## 125-155-0800

### Rules Enforcement

(1) For purposes of all state insurances or self-insurance coverages, while transporting prohibited passengers or material in a private vehicle or otherwise using a private vehicle contrary to these rules, the driver shall be deemed in all respects to be driving on personal business; not official state business. The private car driver shall not be subject to discipline for making personal use of his or her vehicle unless the driver is acting in violation of his or her agency's policies or supervisory directives.

(2) For purposes of all state insurances or self-insurance coverages, while transporting prohibited passengers or material in the state's vehicle or otherwise using a state vehicle contrary to these rules, the driver shall be deemed in all respects to be driving on personal business; not official state business. The driver shall be liable to the state for the value of the use of the vehicle and for any damage to the vehicle arising out of the misuse. The driver may also be subject to any other discipline or penalty of any kind provided by law or contract.

(3) These rules shall have no effect on a driver's qualifying for salary, employment benefits, or state reimbursement of mileage, meals, lodging, or expenses for which the driver otherwise qualifies.

(4) The agency employing a driver shall apply and enforce these rules. The agency owning the state vehicle may enforce these rules as they relate to its vehicles. Nothing in these rules shall limit an agency's ability to apply any kind of personnel or disciplinary action or to exercise any of its specific rights or duties under existing contracts with vendors and agents. Agencies may make additional provisions.

(5) Regardless of any agency actions, any violation of these rules may result in DAS exercising any of its rights and authorities. These may include:

(a) Imposing fines and withholding pay as provided in ORS 291.990; or

(b) Conditionally restricting a driver or agency from any or all access to or from certain uses of DAS Fleet vehicles.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 283.395  
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

## 125-155-0900

### Extensions and Exemptions

(1) State and federal law shall supersede any provision of these rules to the extent that complying with the provision would violate the law.

(2) Agencies that are not subject to ORS Chapter 283.310 shall notify DAS-RMD in writing if they elect that these rules shall not apply to their own vehicles and personnel. Otherwise, these rules shall apply to them by virtue of ORS 278.405. Their notice shall be delivered to DAS-RMD within 120 days following the effective date of these rules. Thereafter, notice that the agency wishes to cease being covered by these rules shall be delivered 120 days before the agency's election shall take effect. The agency shall provide DAS-RMD with its notice, a copy of the rule or policy it will use in place of these rules. Regardless of election, these rules shall apply to any state use of any vehicle owned by an agency that is subject to these rules.

(3) These rules shall not apply to a state-owned vehicle used by federal, local, other state government, or other entities when that vehicle is furnished and used under the terms of an intergovernmental agreement, instate or intergovernmental compact, or similar agreement.

(4) If an officer or employee fails to meet any new driving records requirement on the day it takes effect, the agency shall grant the minimum time necessary to meet the new requirement. Agencies shall not extend time to anyone who made materially false statements to the agency about his or her related driving record or qualifications.

(5) An agency that is notified it is on trial status may propose, for DAS-RMD approval, a plan of action as an alternative to the compulsory standards set by these rules.

(6) If an agency finds it is reasonable and necessary for essential state business, it may permit an employee to drive temporarily after he or she ceases to meet training or records standards. The agency shall impose in writing appropriate restrictions and a plan to achieve driver qualifications in minimum time. Restrictions shall be designed to reduce risk to the agency, passengers, and the public. A temporary permission under this rule shall not be renewed or extended. No agency shall extend time or in any way excuse any driver from any driver license requirements or any requirement imposed by law.

(7) Vehicle sales and repair contractors may drive state vehicles, at their own risk and as necessary, for pick-up, delivery, and test drives.

(8) To the extent noted here, state agencies may permit:

(a) Their criminal law enforcement employees and emergency public safety drivers to disregard provisions of these rules to the extent necessary to prevent interference with law enforcement and emergency duties;

(b) Detection dog handlers to use specially equipped detection dog vehicles for home to work travel as necessary for work involving the dog or for the benefit of the dog; or

(c) Undercover criminal investigators to disregard provisions of these rules as necessary to carry out lawful undercover assignments, protect identities, and assure personal security.

(9) The Governor, the Director of the Department of Corrections, the Adjutant General of the Military Department, and the Superintendent of State Police may use specially equipped vehicles at all times and places. These state officers are on duty at all times. The safety, security, and welfare of the public depend on their personal safety, security, and accessibility. What constitutes appropriate use of those vehicles within the law shall be determined by each of them in their own discretion.

(10) An agency may apply to the Director of DAS for a variance from any of these rules. The request shall be submitted by the agency, not by an affected driver or passenger, to DAS-RMD. The RMD administrator shall review the request and submit it to the director with a recommendation. DAS-RMD shall then convey the director's decision to the agency. Requests shall be made at least 30 days in advance of the needed effective date.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 278.405

Stats. Implemented: ORS 283.310, ORS 283.340, ORS 283.345 & ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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 OAR 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 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 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 referenced are available from the agency.]  
Stat. Auth.: ORS 184.340, ORS 278.405, ORS 655.520 & ORS 655.525  
Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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:

(a) Received by Department within the time limits set by these rules.

(b) On the forms or in the formats prescribed by the Department.

(c) Completely filled out and accompanied by all required attachments or information.

(d) Signed by the claimant to whom any benefit would be rendered.

(4) The following claims shall be filed within the times and conditions noted:

(a) Inmate's initial claim for a covered injury shall be received within 90 days after the date of injury.

(b) Claimant's request for reaffirmation of initial estimate shall be received between 60 days prior to release and 180 days after release. It shall identify the claim, claimant, and initial estimate. It shall provide the claimant's expected or actual release date, post-release residence and mailing addresses, and all other information requisite to the payment of benefits. Upon verifying the validity of the request, Department shall commence the payments in its initial estimate as provided by these rules. Department shall defer payments for investigation if it has reason to believe claimant is no longer disabled as estimated.

(c) Claimant's request for modification of initial estimate shall be received between 60 days prior to release and 180 days after release. A request for modification of an initial estimate is commenced when claimant notifies Department that claimant intends to seek a re-evaluation of the disability rating by the attending physician. Department shall give its notice of approval for re-evaluation to claimant and attending physician. The physician shall then have 60 days to re-evaluate the claimant, including the review of any advisory or consulting physician's reports. The attending physician shall report to Department the extent and explanation of any change in the disability rating due to the covered injury and no other cause. Department shall treat the attending physician's current report as required by these rules, making appropriate increase or decrease from its initial estimate of permanent disability benefits and commencing payment.

(d) Claimant's request for Department approval of attending physician shall be received shortly before, or not later than two weeks after, release and before the physician's services commence. Only a claimant whom Corrections medical staff finds not to be medically stationary at time of release shall make this request.

(e) Claim for burial benefit shall be received within 90 days after claimant's covered death. It shall be made only by the legal representative of the estate.

(f) Initial claim for death benefit shall be received within 90 days after claimant's covered death. Request to start deferred death benefit payments shall be received between 60 days prior, and 180 days after, the date the benefits may start under these rules.

(g) Claim for payment from a medical provider to be paid under these rules shall be received within 90 days of the qualifying service provided.

(h) Claim for any other approval, right, award, payment, or benefit permitted under these rules shall be received within 30 days after the date that the thing claimed accrues or becomes payable or eligible to request.

(5) To reduce paperwork, the Department may combine any of the claims, responses, or steps for determining any claim, initial estimate, final award, and death benefits.

Stat. Auth.: ORS 184.340, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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

The following rules of evidence and construction shall apply to all issues bearing on a claim:

(1) It shall be the claimant's burden to prove, by a preponderance of the evidence, all facts necessary to sustain a claim. Should a claimant make false statements or supply false information in the claim, in prior claims, or in letters, testimony or materials submitted to Department or hearings officer, Department or hearings officer may direct that the claimant's standard of proof shall increase to clear and convincing evidence. Department may also provide its evidence of falsehood to Corrections and the District Attorney for further action. Clear and convincing evidence shall also be required to overcome any evidence which these rules say shall be presumed true or a rebuttable presumption.

(2) These rules shall be interpreted according to their plain meaning and not construed in favor of the claimant.

(3) The attending physician's reports written and delivered to Department and containing the items required by these rules, shall be presumed true and shall suffice to prove the medical findings reported therein.

(4) The records, computer and others, of any agency shall be presumed true and shall suffice to prove the facts reported therein, as they bear on questions of fact necessary to sustain or deny a claim for benefits.

(5) Department's records shall be presumed true and shall suffice to prove all timing and procedural matters noted therein.

(6) Corrections records shall be presumed true and shall suffice to prove all dates, assignments, medical services, discipline, violations, release dates, and any other matters occurring during confinement and subject to Corrections legal control.

(7) Claimant's failure to report any covered injury to the work or training supervisor before leaving the alleged injury scene or the work or training site, shall create the rebuttable presumption that the injury was not a covered injury.

(8) Claimant's failure to apply for Corrections' medical treatment as soon as the medical need is, or should be known, shall create the rebuttable presumption that the injury is not a covered injury.

Stat. Auth.: ORS 184.340, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, hypersensitivity's, mental or emotional health, or psychological reactions.

Stat. Auth.: ORS 184.340, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525  
Stats. Implemented: ORS 655.505 - ORS 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.

(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, ORS 278.405, ORS 655.520 & ORS 655.525  
Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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.

Stat. Auth.: ORS 184.340, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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, ORS 278.405, ORS 655.520 & ORS 655.525

Stats. Implemented: ORS 655.505 - ORS 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 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 DAS Central Purchasing without the Division 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) DAS Central Purchasing;

(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 inter-governmental agreement with the Department to serve as such agencies' public contract review authority, as provided in OAR 125-010-0005.

(2) Application. These rules may be adopted in whole or in part by any local public agency 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 Division pursuant to ORS 279.727. Delegated authority, when granted, is pursuant to OAR 125-030-0001(3).

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.015 & ORS 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; DAS 1-1998, f. & cert. ef. 4-1-98

## 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 excepted under ORS 279.015 subsections (1)(a)–(h) and subsections (4) and (5); and

(3) Contracts covered by the class exemptions in divisions 310 through 360 of this chapter.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.015 & ORS 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; DAS 1-1998, f. & cert. ef. 4-1-98

## 125-300-0050

### Exemptions Requests

(1) An agency may request an order from the Director exempting a particular contract or contracts from competitive bidding where such contract or contracts are not otherwise exempted under these rules.

(2) Exemption requests shall contain the following:

(a) The nature of the project;

(b) Estimated cost of the project;

(c) Findings supporting the substantial cost savings anticipated by the exemption from competitive bidding;

(d) Findings supporting why it is unlikely that an exemption from competitive bidding would encourage favoritism or diminish competition for the public contract;

(e) Information regarding the follow:

(A) Operational, budget and financial data;

(B) Public benefits;

(C) Value engineering;

(D) Specialized expertise required;

(E) Public safety;

(F) Market conditions;

(G) Technical complexity;

(H) Funding sources.

(f) Proposed alternative contracting and purchasing practices to be employed; and

(g) The estimated date by which it would be necessary to let the contract.

(3) If the agency is requesting an exemption from competitive bidding for public improvements, the agency shall:

(a) Follow the procedures required in sections (1) and (2) of this rule; and

(b) Hold a public hearing in accordance with ORS 279.015 (3)(a)-(e) prior to the submission of the finding to the division.

(4) The Division may require any additional information deemed necessary to determine whether a particular contract or contracts is (are) to be exempt from competitive bidding.

(5) The Exemption Order is effective only after the Director's approval of the findings.

(6)(a) Upon completion of and final payment for any public improvement contract in excess of \$100,000 for which the agency did not use the competitive bidding process, the agency shall prepare and deliver to the Director an evaluation of the public improvement project. The evaluation shall include but not be limited to the following matters:

(A) Actual project cost as compared with original project estimates;

(B) Amount of any guaranteed maximum price;

(C) Number of project change orders issued by the agency;

(D) Narrative description of successes and failures during the design, engineering and construction of the project;

(E) Objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279.015.

(b) Evaluations shall be made available for public inspection;

(c) The evaluations must be completed within thirty (30) days of the date that the agency accepts the public improvement project.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.015, ORS 279.019 & ORS 279.103

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 125-310-0320; DAS 1-1998, f. & cert. ef. 4-1-98

## 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. DAS Central Purchasing 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. DAS Central Purchasing 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. DAS Central Purchasing may purchase a particular product or service available from only one source, after documenting the procurement file with Agency's findings of current market research to support the determination that the product is available from only one seller or source. The Agency's 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. DAS Central Purchasing may specify a product or service available from only one manufacturer but available through multiple sellers, after documenting the procurement file with the Agency's information required in (5)(a)-(c) of this rule, and subject to the following:

(a) If the total purchase is \$5,000 or more but does not exceed \$75,000 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 \$75,000, 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 \$75,000, the product or service shall be obtained through competitive bidding by DAS Central Purchasing, 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 five 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 \$75,000, this shall be stated in the advertisement for bids or proposals.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

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 125-340-0010, 0125-340-0030, 125-340-0050, 125-340-0060; DASII 2-1997, f. & cert. ef. 1-6-97; DASII 9-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 1-1998, f. & cert. ef. 4-1-98

## DIVISION 310

### GENERAL EXEMPTIONS

#### 125-310-0005

##### Advertising Contracts

An agency delegated purchasing authority pursuant to OAR 125-030-0001 may purchase advertising, regardless of dollar value, without competitive bidding.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.015, ORS 279.019 & ORS 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; Renumbered from 125-310-0080; DAS 1-1998, f. & cert. ef. 4-1-98

#### 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
  - (a) competitive bidding or alternative procurement process;
  - (b) unit prices or additive alternates were provided that established the cost basis for the additional work or product; and
  - (c) 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(4)(a) and 279.015(5) and OAR 125-310-0030; 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 subsections (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 subsection (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 subsections (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 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.015 & ORS 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 125-310-0150; DAS 1-1998, f. & cert. ef. 4-1-98

## 125-310-0012

### Contracts Under Certain Dollar Amounts

(1) Agencies may, in their discretion, let public contracts not to exceed \$75,000 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 \$5,000, 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 \$5,000, but less than \$75,000, 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 \$5,000, the agency should, where feasible, obtain competitive quotes;

- (c) When the amount of the contract is more than \$5,000, but less than \$75,000, 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 \$75,000, 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 \$75,000, and the bidders are being drawn exclusively from a list of certified Emerging Small Businesses maintained by the Office of Minority, Women and Emerging Small Business, the 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; and

- (f) When the contract is for a "public improvement" as defined in ORS 279.011(8) or for "public works" as defined in ORS 279.348(3), and the contract price exceeds \$25,000 but is less than \$75,000, 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) Agencies may place requests for quotes on the VIP system and use the system-generated potential bidder list to meet the three (3) quote requirement for informal solicitations when:

- (a) The agency has notified the vendor list of the agency's intent to advertise requests for quotes electronically on the VIP; and

- (b) The advertisement notice is placed on the VIP system for a minimum of five (5) calendar days.

(4) If more than one supplier may be available and the total purchase is estimated to exceed \$75,000, the agency shall select a contractor through competitive bidding. A state agency may submit a written request for delegation of authority from the Division, pursuant to ORS 279.727, to conduct this competitive selection process.

(5) All State Agencies authorized to purchase directly pursuant to OAR 125-030-0001(3), for public contracts, shall not exceed the dollar amounts stated in this rule for goods and services. The Division may revoke this delegation pursuant to 125-030-0001(7).

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 200.035, ORS 279.015, ORS 279.019 & ORS 279.727

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 125-310-0020; DASII 9-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 1-1998, f. & cert. ef. 4-1-98

## 125-310-0030

### Emergency Contracts

(1) Pursuant to the requirements of this rule, an agency, may in its discretion, enter into a public contract without competitive solicitation

if an emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a contract to remedy the condition.

(2) Regardless of the dollar value of the contract, an agency entering into an emergency contract shall:

(a) Make a written declaration of emergency, including findings describing the emergency circumstances that require the prompt performance of the contract, stating the anticipated harm from failure to establish the contract on an expedited basis; and

(b) Encourage competition to the extent reasonable under the circumstances; and

(c) Record the measures taken under subsection (b) of this section to encourage competition, the amounts of the bids, quotes or proposals obtained, and the reason for selecting the contractor.

(3) Pursuant to ORS 279.0150(4) and (5), the governing body of a state agency, its chief executive or another officer authorized by the agency shall declare the existence of the emergency, as required by subsection (2) of this section, which shall authorize the agency to enter into an emergency contract.

(4) A State Agency has delegated purchasing authority to enter into an emergency contract pursuant to ORS 279.727.

(5) Any contract awarded under this exemption and delegation shall be awarded within 60 days following declaration of the emergency unless an extension is granted by the Director, pursuant to ORS 279.015(5) and 279.727.

(6) For contracts greater than \$75,000, the Agency shall submit a copy of the written documentation required in subsection (2) of this rule to the Department within a reasonable period of time or sixty (60) days, whichever is less, following the declaration of an emergency.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.727  
Stats. Implemented: ORS 279.011, ORS 279.015 & ORS 279.727  
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; DASII 2-1997, f. & cert. ef. 1-6-97; DASII 9-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 1-1998, f. & cert. ef. 4-1-98

#### 125-310-0035

##### Equipment Repair and Overhaul

(1) An agency, having delegated purchasing authority pursuant to OAR 125-030-0001, may enter into a public contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(a) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(b) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(c) The 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 is less than \$75,000, 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 \$75,000, 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 184.305, ORS 184.340, ORS 279.712 & ORS 279.727  
Stats. Implemented: ORS 279.015, ORS 279.019 & ORS 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; DASII 2-1997, f. & cert. ef. 1-6-97; DASII 9-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 1-1998, f. & cert. ef. 4-1-98

#### 125-310-0040

##### Contracts for Price Regulated Items

An agency having delegated purchasing authority pursuant to OAR 125-030-0001 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 184.305, ORS 184.340 & ORS 279.712  
Stats. Implemented: ORS 279.015 & ORS 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; DAS 1-1998, f. & cert. ef. 4-1-98

#### 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).

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.015  
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 125-310-0310 & 125-310-0315; DAS 1-1998, f. & cert. ef. 4-1-98

#### 125-310-0060

##### Copyrighted Materials

An agency having delegated purchasing authority pursuant to OAR 125-030-0001 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 184.305, ORS 184.340, ORS 279.712 & ORS 279.727  
Stats. Implemented: ORS 279.015, ORS 279.017, ORS 279.019 & ORS 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; DAS 1-1998, f. & cert. ef. 4-1-98

#### 125-310-0090

##### Investment Contracts

An agency having delegated purchasing authority pursuant to OAR 125-030-0001 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 184.305, ORS 184.340, ORS 279.712 & ORS 279.727  
Stats. Implemented: ORS 279.015, ORS 279.019 & ORS 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; DAS 1-1998, f. & cert. ef. 4-1-98

#### 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 delegated purchasing authority pursuant to OAR 125-030-0001 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 subsection (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 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.015, ORS 279.019 & ORS 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; DAS 1-1998, f. & cert. ef. 4-1-98

### 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 279 & ORS 283

Stats. Implemented: ORS 279.015, ORS 279.017, ORS 279.019 & ORS 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 125-340-0040

### 125-310-0200

#### Request for Proposal

DAS Central Purchasing 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, proposer qualifications and experience; and

(4) The solicitation document clearly states all complaint processes and remedies available; and

(5) The solicitation document states the provisions for proposers to comment on any specifications that they feel limit competition.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.005, ORS 279.007, ORS 279.015 & ORS 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 125-310-0025; DAS 1-1998, f. & cert. ef. 4-1-98

### 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 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 279.011(5), 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 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, and the Department of Corrections 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 for each occurrence. The findings must show compliance with ORS 279.011(5), 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 shall follow the requirements of this rule as set forth above.

(5) Agencies shall hold a public hearing in accordance with ORS 279.015(3) prior to submission of the finding to the Department.

(6) Upon completion of and the final payment for any CM/GC contract in excess of \$100,000, the Agency shall prepare and deliver to the Director an evaluation of the project in accordance with ORS 279.103.

Stat. Auth.: ORS 184.305, 184.340, 279.712, 279.015 & ORS 279.103

Stats. Implemented: ORS 279.005, 279.103, 279.015 & ORS 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 125-310-0026; DAS 1-1998, f. & cert. ef. 4-1-98

### 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 Division 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 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) State agencies may be exempted from use of the Division's requirements contracts upon request to and approval by the Division.

(5) The term of the contract including renewals, shall not exceed five years unless otherwise exempted pursuant to ORS 279.015.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712  
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; DASII 2-1997, f. & cert. ef. 1-6-97; DASII 9-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 1-1998, f. & cert. ef. 4-1-98

#### 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 279 & ORS 283  
Stats. Implemented:  
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 125-310-0120

#### 125-310-0500

##### Used Personal Property, Purchase of

(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 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 its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of the 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 \$75,000, agencies having delegated purchasing authority pursuant to OAR 125-030-0001, 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 \$75,000 or up to the maximum dollar limitation stated in OAR 125-310-0012, DAS Central Purchasing 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 may sub-

mit a written request for a written delegation of authority from the Division prior to making the purchase.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.727  
Stats. Implemented: ORS 279.005, ORS 279.015, ORS 279.019 & ORS 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; Renumbered from 125-310-0075; DASII 2-1997, f. & cert. ef. 1-6-97; DASII 9-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 1-1998, f. & cert. ef. 4-1-98

## DIVISION 320

### PUBLIC CONTRACT EXEMPTIONS

#### Information Contracts

##### 125-320-0010

##### Information Technology Contracts

An agency having delegated purchasing authority pursuant to OAR 125-030-0001 may enter into a contract to acquire information technology hardware and software, without competitive bidding, subject to the following conditions:

(1) If the contract amount does not exceed \$75,000, 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 \$75,000, 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, the agency shall provide proposers an opportunity to review the evaluation of their proposals before final selection.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712  
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; DASII 2-1997, f. & cert. ef. 1-6-97; DASII 9-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 1-1998, f. & cert. ef. 4-1-98

##### 125-320-0020

##### Telecommunications Systems Contracts

(1) An agency having delegated purchasing authority may enter into a contract to acquire telecommunications system hardware and software, without competitive bidding, subject to the following conditions:

(a) If the contract amount does not exceed \$75,000, 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 \$75,000, 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 (OAR 137, division 030).

(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.

(3) Agencies shall receive approval from the Department of Administrative Services Information Resource Management Division, in accordance with ORS 283.505, prior to soliciting.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 283.505  
 Stats. Implemented: ORS 279.005, 279.015, 279.019, 279.710, 279.712, 279.727 & 283.505  
 Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84; GS 12-1992, f. & cert. ef. 5-22-92; DASII 2-1997, f. & cert. ef. 1-6-97; DASII 9-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 1-1998, f. & cert. ef. 4-1-98

## 125-320-0025

### Telecommunications Services

(1) This rule is intended to allow DAS Central Purchasing 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 125-300-0100, and follow all applicable rules and procedures.

(4) Agencies shall receive approval from the Department of Administrative Services Information Resource Management Division, in accordance with ORS 283.505, prior to soliciting.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 283.505 & ORS 279.712  
 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; DAS 1-1998, f. & cert. ef. 4-1-98

## DIVISION 330

### SPECIFIC EXEMPTIONS

## 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 279 & ORS 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

## 125-330-0140

### 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 delegated purchasing authority, from the Division pursuant to OAR 125-030-0001, 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 184.305, ORS 184.340, ORS 279.712 & ORS 279.727  
 Stats. Implemented: ORS 279.015, ORS 279.017 & ORS 279.727  
 Hist.: GS 5-1989(Temp), f. & cert. ef. 8-31-89; GS 7-1990, f. & cert. ef. 2-28-90; DAS 1-1998, f. & cert. ef. 4-1-98

## 125-330-0200

### Hazardous Material Removal; Oil Cleanup

(1) An agency having delegated purchasing authority pursuant to OAR 125-030-0001 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 184.305, ORS 184.340, ORS 279.712 & ORS 279.727  
 Stats. Implemented: ORS 279.015, ORS 279.019 & ORS 279.727  
 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 125-310-0330; DAS 1-1998, f. & cert. ef. 4-1-98

## 125-330-0260

### Insurance, Employee Benefit

An agency having delegated purchasing authority pursuant to OAR 125-030-0001 may purchase employee benefit insurance without competitive bidding, regardless of dollar amount.

Stat. Auth.: ORS 184.305, ORS 184.340 & ORS 279.712  
 Stats. Implemented: ORS 279.015 & ORS 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 125-310-0139; DAS 1-1998, f. & cert. ef. 4-1-98

## 125-330-0330

### Medical and Hospital Purchasing Cooperatives

An agency having delegated purchasing authority pursuant to OAR 125-030-0001 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 184.305, ORS 184.340, ORS 279.712 & ORS 279.727  
 Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.017, 279.019 & 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; Renumbered from 125-310-0205; DAS 1-1998, f. & cert. ef. 4-1-98

## 125-330-0340

### Medical and Laboratory Supplies

An agency having delegated purchasing authority pursuant to OAR 125-030-0001 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 low-

est 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 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.017, 279.019 & 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; Renumbered from 125-310-0045; DAS 1-1998, f. & cert. ef. 4-1-98

### 125-330-0450

#### Office Copier Purchases

(1) An agency having delegated purchasing authority pursuant to OAR 125-030-0001 may enter into multiple requirements contracts for either the purchase, rental or lease of office copying equipment. Except for this multiple award exemption, such contracts 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 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.017, 279.019 & 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; Renumbered from 125-320-0030; DAS 1-1998, f. & cert. ef. 4-1-98

### 125-330-0500

#### Parks and Recreation Department Agreements with State Park Cooperative Associations

The Oregon State Parks and Recreation Department is exempt, if granted delegated purchasing authority to conduct its own procurements pursuant to OAR 125-030-0001, 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 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.005, ORS 279.007, 279.015, 279.019 & 279.727

Hist.: GS 8-1990, f. & cert. ef. 2-28-90; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; Renumbered from 125-330-0050; DAS 1-1998, f. & cert. ef. 4-1-98

### 125-330-0600

#### Sign Panel Purchase Program for Travel Information Council

The Travel Information Council has delegated purchasing authority pursuant to OAR 125-030-0001 and 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 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.015 & ORS 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 125-330-0060; DAS 1-1998, f. & cert. ef. 4-1-98

### 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 279 & ORS 283

Stats. Implemented: ORS 279.015 & ORS 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 125-330-0010

## DIVISION 360

### WAIVER OF SECURITY BID AND PERFORMANCE BOND

#### 125-360-0010

##### Bid Security Requirements

An Agency having delegated purchasing authority pursuant to OAR 125-030-0001 may, in its discretion, waive the bid security requirements of ORS 279.027 for contracts other than those for public improvements.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.027, ORS 279.722 & ORS 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; DAS 1-1998, f. & cert. ef. 4-1-98

#### 125-360-0020

##### Public Improvement Contracts Under \$100,000

An Agency having delegated purchasing authority pursuant to OAR 125-030-0001 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 \$100,000.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712 & ORS 279.727

Stats. Implemented: ORS 279.027, ORS 279.033, ORS 279.722 & ORS 279.727

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. & cert. ef. 8-1-96; DASII 2-1997, f. & cert. ef. 1-6-97; DAS 1-1998, f. & cert. ef. 4-1-98

#### 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 Office of 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 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 184.305, ORS 184.340 & ORS 279.712

Stats. Implemented: ORS 279.027, ORS 279.033 & ORS 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; DAS 1-1998, f. & cert. ef. 4-1-98

## DIVISION 400

### PROVISIONS FOR EXTENDING TELECOMMUNICATIONS SERVICES TO QUALIFIED PUBLIC AND PRIVATE ENTITIES

#### 125-400-0000

##### Purpose, Applicability, and Effective Date

(1) The Legislative Assembly has declared the following provisions to be part of the policy of the State of Oregon regarding information technology:

(a) Use information technology in education, health care, economic development and government services to improve economic opportunities and quality of life for all Oregonians regardless of location or income.

(b) Encourage collaboration between Communities of Interest by geographic area and economic sector.

(c) Encourage competition among technology and service providers.



(2) The Department of Administrative Services ("Department") for the State of Oregon is the agency responsible for a statewide mandate to coordinate the development of and access to or delivery of telecommunications services to all state agencies and public or private entities that primarily operate for the public benefit in the areas of education, economic development, health care, human services, public safety, library or other similar public services related to the improvement of economic opportunities and quality of life in Oregon.

(3) The Information Resources Management Division ("Division") is the division within the Department through which the Department exercises its authority and privileges and discharges its duties and obligations related to the statewide information technology policy.

(4) The provisions of ORS 283.510 and 283.520, subsection (1), permit the Department to establish a statewide advanced digital communication network, and authorize the Department to execute contracts for the telecommunications equipment and services needed to establish such network.

(5) The provisions of ORS 283.520, subsection (2), authorize the Department to exercise its discretion in deciding to extend the benefits of state telecommunications contracts for networks, equipment and services to nonprofit organizations designated as Communities of Interest under the provisions of ORS 291.038, subsection (7).

(6) The provisions of ORS 291.038, subsection (5)(a), authorize the Department to exercise its discretion in deciding to furnish or deliver Statewide Integrated Video Conferencing and Statewide On-line Access Service to public and private entities that primarily conduct their activities for the direct good or benefit of the public or community-at-large in providing educational, economic development, health care, human services, public safety, library or other public services.

(7) The purposes of these rules are to:

(a) Define essential terms.

(b) Describe the application, review and appeal process regarding Community of Interest designation.

(c) Describe the application, review and appeal process regarding the furnishing or delivery of Statewide Integrated Video Conferencing and Statewide On-line Access services.

(8) These rules apply after January 1, 2000, to:

(a) Public or private entities seeking one or both of the following:

(A) Community of Interest designation, redesignation or appeal of denial of designation.

(B) Approval, reapproval or appeal of denial of application for Statewide Integrated Video Conferencing or Statewide On-line Access services.

(b) Local Established Providers seeking inclusion in the Division's listing of Internet access service providers.

(c) The renewal provisions of 125-400-0050(3) do not apply to subscribers of Internet Access services provided by the Data and Video Services Unit who have active accounts as of the effective date of these rules and there is no break in service by the subscriber subsequent to the effective date of rules.

Stat. Auth.: ORS 283.500, ORS 283.510, ORS 283.520 & ORS 291.038

Stats. Implemented: ORS 283.520 & ORS 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

## 125-400-0010

### Definitions

As used in OAR 125, division 400, unless the context requires otherwise:

(1) "Advanced Digital Communication Network" means a network of equipment, facilities and services capable of distributing digital communications signals for the transmission of voice, data, image and video over distances.

(2) "Affiliation" means a current relationship formalized in writing between two or more entities conducting activities in Oregon.

(3) "Break in Service" means the subscriber elects to not renew an Internet Access service account within 30 days of expiration.

(4) "Community of Interest (COI)" means an organization or organizations designated to receive available benefits from state telecommunications contracts based upon its satisfaction of all statutory requirements under ORS 291.038, subsection (7) and regulatory requirements under these rules.

(5) "Data and Video Services Unit" is the organizational unit in the Division that is responsible for offering access to an integrated telecommunications network capable of transmitting video, voice and data communications to support the delivery of Statewide Integrated Video Conferencing and Statewide On-line Access services to any

public or private entity qualified under the provisions of ORS 291.038, subsection (5)(a) and these rules.

(6) "Department" refers to the Department of Administrative Services for the State of Oregon.

(7) "Division" refers to the Information Resources Management Division that is the division within the Department that manages the state's telecommunications networks.

(8) "Entity" includes any natural person capable of being legally bound, a sole proprietorship, a limited liability company, a corporation, foreign corporation, nonprofit corporation, profit and nonprofit unincorporated association, business trust, partnership, two or more persons having a joint or common economic interest, or a government or governmental subdivision.

(9) "Incidental Beneficiary" means:

(a) Any entity that derives some incidental benefit from a contract to which it was not a donee, creditor or other party;

(b) Did not pay or otherwise contribute any value;

(c) Was not treated in any manner as an intended party; and

(d) Is not entitled to any action.

(10) "Internet Access Service" means the component of Statewide On-line Access that provides electronic connectivity to the Internet and its services.

(11) "IRMD Web Site" refers to the publicly accessed Internet site maintained by the Division.

(12) "Local Established Provider" means Internet access service providers who satisfy all of the following criteria:

(a) Registration with the state of Oregon to do business within the state and the subject Local Exchange Telecommunications Service Area.

(b) Registration with the Division as an Internet access service provider for the subject Local Exchange Telecommunications Service Area.

(c) Acquisition, establishment, maintenance and current commercial use of operational dial-up equipment physically located within the subject Local Exchange Telecommunications Service Area.

(13) "Local Exchange Telecommunications Company" means a private entity with the capacity to deliver hardware, software or services for transmitting voice, data, video or images over distance; currently engaged in the business of such delivery of hardware, software or services; and registered with the State of Oregon Business Registry to conduct business for such purposes within the Local Exchange Telecommunications Service Area.

(14) "Local Exchange Telecommunications Service Area" is the geographically and legally defined area in which a person may access telecommunications information through a Local Exchange Telecommunications Company, without imposition of long distance telephone charges.

(15) "Nonprofit Organization" means an organization that can establish current satisfaction of all requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986.

(16) "Statewide Integrated Video Conferencing" means the Division-operated statewide electronic system with the capacity to transmit video, voice and data communications.

(17) "Statewide On-line Access" means the Division-operated electronic connectivity to information resources such as computer conferencing, electronic mail, databases and Internet Access.

(18) "State Telecommunications Contracts" are contracts negotiated by the Department on behalf of state agencies, as authorized under ORS 283.520, subsection (1). These contracts are for basic telecommunications services as well as long distance telecommunications services.

(19) "Telecommunications" means the hardware, software and services for transmitting voice, data, video and images over a distance.

Stat. Auth.: ORS 283.520 & ORS 291.038

Stats. Implemented: ORS 283.520 & ORS 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

## 125-400-0020

### Benefits from State Telecommunications Contracts Extended to Communities of Interest

(1) The Department is responsible for establishing and maintaining a statewide advanced digital communications network; and has the authority to contract with telecommunications service providers and equipment manufacturers in constructing, maintaining and operating such network.

(2) In keeping with the statewide information technology policy, and to encourage collaboration between Communities of Interest by geographic area and economic sector, the Department has discretionary authority to act through the Division to extend benefits from state telecommunications contracts for networks, equipment and services to designated Communities of Interest.

(3) Designated Communities of Interest may contact the Division by mail at 155 Cottage Street N.E. in Salem, Oregon 97310-0315 or in person, at 955 Center Street N.E., Room 470, Salem, Oregon, for current information on available state telecommunications contract benefits.

(4) Designated Communities of Interest receiving benefits from these state telecommunications contracts for networks, equipment and services are not deemed parties to the subject contracts. Their enjoyment of any available state telecommunications contract benefits is merely incidental, is not guaranteed and is not intended to and does not confer any contract rights upon them. Communities of Interest are neither donee nor creditor third party beneficiaries, but merely Incidental Beneficiaries who are not entitled to any action on the contract. The particular state telecommunications contract benefits are personal to each Community of Interest recipient, and recipients shall not use these benefits for resale. Failure to adhere to these guidelines could result in cancellation of Community of Interest designation and forfeiture of contract benefits.

Stat. Auth.: ORS 283.520 & ORS 291.038  
Stats. Implemented: ORS 283.520 & ORS 291.038  
Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

#### 125-400-0030

##### **Designation of Communities of Interest; Application; Approval; Cancellation; Redesignation**

(1) The Division may designate an organization or organizations as a Community of Interest upon the applicant's full and complete compliance with these rules and its full and complete satisfaction of all statutory criteria under the provisions of ORS 291.038, subsection (7).

(2) Applications for Community of Interest designation shall be made on forms provided by the Division. These forms are available online at IRMD Web Site or from the office of the Division's Data and Video Services Unit located at 155 Cottage Street N.E., Salem, Oregon 97310-0315 or in person, at 955 Center Street N.E., Room 470, in Salem, Oregon. Completed application forms shall be submitted to the Network Communications Section Manager or designee either by mail addressed to 155 Cottage Street N.E. in Salem, Oregon 97310-0315 or personal delivery either to the Division office at 955 Center Street, N.E., Room 470, in Salem, Oregon. Application forms are not complete and will not be considered unless and until they include all of the following items and required information:

(a) Applicant's name, home and office addresses and telephone numbers.

(b) Applicant's mailing address, if different from its listed home and office addresses.

(c) Evidence of applicant's nonprofit and tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (a copy of the Internal Revenue Service determination letter, or advance ruling, indicating that applicant is a section 501(c)(3) tax exempt organization shall meet this requirement).

(d) Evidence that applicant has complied with the relevant provisions of ORS 65.001 to 65.990, and is registered with the Oregon Secretary of State to do business in Oregon as a nonprofit corporation.

(e) Statement and supporting evidence that applicant's mission is primarily to conduct activities for the direct benefit or good to the public or community-at-large in Oregon in one or more of the following public service areas:

- (A) Educational.
- (B) Economic Development.
- (C) Health Care.
- (D) Human Services.
- (E) Public Safety.
- (F) Library.
- (G) Other public services.

(f) Identification of the community-at-large served, if not readily apparent from the applicant's mission and activity statement and description.

(g) Evidence of applicant's current affiliation with a federal, state or local governmental unit within the State of Oregon.

(h) Identification of those particular state telecommunications contracts from which applicant seeks extension of benefits, if known.

(i) Signature of applicant or its authorized representative.

(3) The Network Communications Section Manager shall approve or deny a submitted application within twenty (20) working days from actual receipt of the application. Following the Division's approval of a submitted application, a written Community of Interest designation ("Designation") shall be issued to the successful applicant. Upon receipt of the Designation, and at the discretion of the Division, a Community of Interest may enter into a formal agreement with the Division to extend to the Community of Interest certain benefits of telecommunications contracts for networks, equipment and services negotiated and executed by the State of Oregon under the provisions of ORS 283.520.

(4)(a) A Community of Interest Designation is a privilege, not a right. Designation expires one (1) year from the date of issuance. However, the Division may cancel a Designation prior to its normal expiration for cause based upon clear and convincing evidence of either of the following:

(A) A finding that the designee is abusing, or has abused, its status as a Community of Interest.

(B) A finding that the designee can no longer satisfy the statutory criteria under the provisions of ORS 291.038(7) to continue qualifying as a Community of Interest.

(b) Abuse of Community of Interest status includes, but is not limited to, the designee's resale of extended state telecommunications contract benefits. Cancellations for cause are reviewable under the process described in OAR 125-400-0080 below.

(5) Organizations seeking Community of Interest redesignation must follow the same process and are subject to the same eligibility requirements as if applying for an initial designation. Organizations seeking redesignation must submit their completed applications thirty (30) working days prior to the annual expiration date for their current Designation. Timely submissions will operate to extend the current Designation to cover the period necessary to review and take action on the new application for redesignation.

Stat. Auth.: ORS 283.520 & ORS 291.038  
Stats. Implemented: ORS 283.520 & ORS 291.038  
Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

#### 125-400-0040

##### **Denial of Community of Interest Designation; Reconsideration; Appeal**

(1) An unsuccessful applicant for Designation shall receive a written notice that articulates the basis for denial of Community of Interest Designation.

(2) A dissatisfied applicant may appeal denial of Designation as follows:

(a) Timely submit a written appeal through the Network Communications Section Manager to the Chief Information Officer within twenty (20) working days from the date of notice of denial of Designation. Appellants may submit appeal packets either by mail addressed to 155 Cottage Street N.E. in Salem, Oregon 97310-0315, or personal delivery at 955 Center Street N.E., Room 470, in Salem, Oregon.

(b) Appellant must include the following items with the appeal packet:

(A) A letter or memorandum in which appellant explains the basis of appeal, identifies the relief sought and discusses the rationale in support of the requested relief.

(B) Any documentation or other evidence in support of the appeal.

(C) A copy of the notice of denial of Designation.

(D) A copy of the subject application for Designation and any attachments thereto.

(E) Any other matter requested by the Network Communications Section Manager or Chief Information Officer.

(c) The Network Communications Section Manager shall have five (5) working days from actual receipt of the submission of appeal to either reconsider the denial decision and approve the underlying application for Designation, or forward the appeal to the Chief Information Officer for further review.

(d) The Chief Information Officer shall review and take action on the appeal within twenty (20) working days from actual receipt of the submission from the Network Communications Section Manager. Completed action on the appeal includes submission of a written

response to appellant. Such response shall take the form of a grant or denial of appeal. Any notice of denial of appeal shall state the reasons therefore.

(e) An applicant who has first exhausted these administrative remedies and is still dissatisfied with the decision of the Chief Information Officer may pursue the matter through the Circuit Court of the State of Oregon for Marion County.

(f) Failure to meet the timelines in this section will forfeit an applicant's rights to appeal at any level.

Stat. Auth.: ORS 283.520 & ORS 291.038

Stats. Implemented: ORS 283.520 & ORS 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

#### 125-400-0050

##### Access to Statewide Integrated Video Conferencing and Statewide On-line Access Services

(1) In keeping with the statewide information technology policy the Department has discretionary authority to act through the Division to furnish and deliver available Statewide Integrated Video Conferencing ("Video") and Statewide On-line Access ("On-line Access") services to those qualified to purchase these services under the provisions of ORS 291.038, subsection (5)(a) and these rules.

(2) Current information regarding user fees and rates is available online at IRMD Web Site or from the office of the Division's Data and Video Services Unit located at 155 Cottage Street N.E., Salem, Oregon 97310-0315 or in person, 955 Center Street N.E., Room 470, Salem, Oregon.

(3) Internet Access Service is a component of Statewide On-line Access Service. In compliance with the provisions of ORS 291.038, subsection (5)(c), the Department and Division shall not furnish or deliver this component of Statewide On-line Access to private entities where furnishing or delivering such service would directly compete with two or more Local Established Providers of such service within the Local Exchange Telecommunications Service Area. In communities with fewer than two Local Established Providers of such service within the Local Exchange Telecommunications Service Area, the Department and Division may furnish or deliver this component of Statewide On-line Access Service to public or private entities. The Division may refer private entities who are denied Internet Access Service under this section to a list of Internet access service providers conducting business in the subject Local Exchange Telecommunications Service Area. Internet access service providers may seek inclusion on this list through the process described in OAR 125-400-0090 below.

Stat. Auth.: ORS 283.520 & ORS 291.038

Stats. Implemented: ORS 283.520 & ORS 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

#### 125-400-0060

##### Application Process for Video and On-line Access Services

(1) The Division may furnish and deliver available Video and On-line Access services to public and private entities qualified under ORS 291.038, subsection (5)(a).

(2) Current Community of Interest designees are automatically qualified to purchase Video and On-line Access services.

(3) All applications for Video and On-line Access services shall be made on forms provided by the Division. These forms shall request information pertinent to the Division's determination that the applicant primarily conducts its activities for the direct good or benefit of the public or community-at-large in providing education, economic development, health care, human services, public safety, library or other public services in satisfaction of the qualifying criteria listed under ORS 291.038, subsection (5)(a). The forms are available online at the IRMD Web Site or from the office of the Division's Data and Video Services Unit located at 800 N.E. Oregon Street, Portland, Oregon 97232. Completed application forms shall be submitted to the Data and Video Services Unit Manager, or designee, electronically, by mail or personal delivery.

(4) The Data and Video Services Unit Manager, or designee, shall approve or deny a submitted application for Video or On-line Access services within twenty (20) working days from actual receipt of the submission. Following approval, the applicant is deemed a qualified subscriber and may purchase the identified services at the designated levels of service.

(5) Use of Video and On-line Access services is a privilege, not a right. Services furnished and delivered to subscribers are personal to them, and subscribers shall not use them for resale. The Division

may cancel a subscription prior to its normal expiration for cause based upon clear and convincing evidence of any of the following:

(a) A finding that the subscriber is abusing, or has abused, its privilege as a subscriber.

(b) A finding that the subscriber can no longer satisfy the statutory criteria under the provisions of ORS 291.038, subsection (5)(a) to continue qualifying as a subscriber.

(c) Violating the terms of the User Agreement Form.

(6) An entity seeking to renew its subscription must follow the same application process and be subject to the same eligibility requirements as if applying for an initial subscription. Entities seeking subscription renewal must submit their completed applications thirty (30) working days prior to the expiration date for their current subscription. Timely submissions will operate to extend the current subscription to cover the period necessary to review and take action on the new application for subscription renewal.

Stat. Auth.: ORS 283.520

Stats. Implemented: ORS 283.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

#### 125-400-0070

##### Denial of Application for Video or On-line Access Services; Reconsideration; Appeal

(1) An unsuccessful applicant for Video or On-line Access services shall receive a written notice from the Data and Video Services Unit Manager that articulates the basis for denial of application.

(2) A dissatisfied applicant may appeal this denial as follows:

(a) Timely submit a written appeal through the Data and Video Services Unit Manager to the Network Communications Section Manager within twenty (20) working days from the date of the notice of denial. Appellants may submit appeal packets either by mail addressed to 155 Cottage Street N.E., Salem, Oregon 97310-0315, or personal delivery at the Data and Video Services Unit office at 955 Center Street N.E., Room 470, Salem, Oregon.

(b) Appellant must include the following items with the appeal packet:

(A) A letter or memorandum in which appellant explains the basis of appeal, identifies the relief sought and discusses the rationale in support of the requested relief.

(B) Any documentation or other evidence in support of the appeal.

(C) A copy of the notice of denial.

(D) A copy of the subject application for Video or On-line Access services and any attachments thereto.

(E) Any other matters requested by the Data and Video Services Unit Manager or the Network Communications Section Manager.

(c) The Data and Video Services Unit Manager shall have five (5) working days from actual receipt of the submission of appeal to either reconsider the denial and approve the underlying application for Video or On-line Access services, or forward the appeal to the Network Communications Section Manager for further review.

(d) The Network Communications Section Manager shall review and take action on the appeal within twenty (20) working days from actual receipt of the submission from the Data and Video Services Unit Manager. Completed action on the appeal includes submission of a written response to appellant. Such response shall take the form of a grant or denial of appeal. Any notice of denial of appeal shall state the reasons therefore.

(e) An applicant who has first exhausted these administrative remedies and is still dissatisfied with the decision of the Network Communications Section Manager may pursue the matter through the Circuit Court of the State of Oregon for Marion County.

(f) Failure to meet the timelines in this section will forfeit an applicant's rights to appeal at any level.

(3) Private entities who are denied Internet Access Service under ORS 291.038, subsection (5)(c) and OAR 125-400-0050(3) may request review of such denial under the reconsideration and appeal process described in this section.

Stat. Auth.: ORS 283.520

Stats. Implemented: ORS 283.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

#### 125-400-0080

##### Cancellation of Community of Interest Designation and Approval for Video or On-line Access Services; Right to Contested Case; Collaborative Dispute Resolution

(1) The Division shall adhere to the dispute guidelines and procedural rules as established under OAR 125-001-0005.



(2) To the extent possible, the Division shall encourage the use of alternative and collaborative dispute resolution procedures.

Stat. Auth.: ORS 283.520 & ORS 291.038

Stats. Implemented: ORS 283.520 & ORS 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

#### 125-400-0090

##### Listing of Internet Access Service Providers

(1) Under the authority of ORS 291.038, subsection (5)(c) and OAR 125-400-0050(3) above, the Division shall not provide Internet Access Service to private entities where furnishing or delivering such service would directly compete with two or more Local Established Providers of such service within the subject Local Exchange Telecommunications Service Area. The Division may refer these private entities to its central list of Local Established Providers who are currently conducting business and providing Internet access service in the subject Local Exchange Telecommunications Service Area.

(2) Internet access service providers may submit a written request for inclusion in this central list of Local Established Providers. They must submit such requests on forms provided by the Division. These request forms are available online at IRMD Web Site or from the office of the Division's Data and Video Services Unit located at 800 N.E. Oregon Street, Portland, Oregon 97232. Completed request forms shall be submitted either electronically or by mail addressed to the Data and Video Services Unit, or delivered in person. Request forms are not complete and will not be considered unless and until they include all of the following items and required information:

(a) Applicant's business name, address, mailing address, electronic mail address, and telephone and facsimile machine numbers.

(b) Names and addresses of all principal owners.

(c) Identification of principal contact.

(d) Proof that the applicant is registered with the Oregon Secretary of State to do business as an Internet access service provider in Oregon.

(e) Date of business establishment and current number of employees.

(f) A complete list of all Oregon cities and towns where applicant's Internet access service is available without imposition of long distance charges.

(g) Length of time applicant's business has been offering Internet access service in the subject Local Exchange Telecommunications Service Areas.

(h) Applicant's business support desk/help line telephone number.

(i) Type of services offered.

(3) The central list of Local Established Providers may be posted electronically on a web page maintained by the Division.

(4) The central list of Local Established Providers shall contain a disclaimer that reads:

"The State of Oregon maintains this listing as a courtesy and does not make recommendations on specific qualifications of listed companies. Consumers who choose to use the list as a reference to contact any listed companies agree that: (i) such use is purely voluntary on their part, (ii) they use the list at their own risk, (iii) they shall defend, save, hold harmless and indemnify the State of Oregon, Department and Division and their officers, employees and agents from and against any claims, suits, or actions of any nature whatsoever for losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to consumers' contacts and subsequent relationships with any listed companies, and (iv) the State of Oregon, Department and Division and their officers, employees and agents shall not be liable for any direct, indirect, incidental, consequential or special damages of any sort resulting from, arising out of, or relating to consumers' contacts and subsequent relationships with any listed companies. Consumers are encouraged to examine the proposed services of more than one company before subscribing to a single service. Listings posted here are voluntary and may not include all Internet access service providers doing business in Oregon."

(5) At least once every six months, the Division shall attempt to contact all Internet access service providers listed in the Division's central list of Local Established Providers to verify their eligibility for continued inclusion in the list. Such contact may be made electronically. If a listed provider fails to respond to such inquiry within thirty (30) days, the Division may remove it from the central list. In such circumstance, the state shall be held harmless and indemnified from any harm that is or could be caused to any provider who is removed from the list and who is in fact still operational.

(6) If Internet access service providers are ever dissatisfied either with the Division's decision not to include them in the central list of Local Established Providers, or with a Division decision to furnish and deliver Internet Access Service to private entities within a particular

Local Exchange Telecommunications Service Area under ORS 291.038(5)(c) and OAR 125-400-0050(3) above, and the provider desires to complain about either Division action, then they shall first use the administrative appeal process described in OAR 125-400-0070 above.

Stat. Auth.: ORS 283.520 & ORS 291.038

Stats. Implemented: ORS 283.520 & ORS 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

## DIVISION 500

### NATURE OF THE STATE OF OREGON ENTERPRISE NETWORK

#### 125-500-0000

##### Definitions

(1) The "State of Oregon Enterprise Network" ("SOEN") is the State's "Advanced Digital Communications ("ADC") Network" that provides for the transmission of voice, data, image and video over distance on a single network. SOEN is a backbone network consisting of high capacity switching devices and transmission facilities providing shared communication paths for clusters of dispersed users. SOEN is comprised of switched services procured from telecommunications providers and provisioned on devices and facilities that are generally available to the public and other customers.

(2) "Department of Administrative Services" ("DAS") means the state agency that is authorized to acquire ADC network services for the provision of SOEN pursuant to ORS 283.500 to 283.520 and 291.038.

(3) "Eligible Purchasers" include the entities eligible under:

(a) The Oregon Cooperative Purchasing Program ("ORCPP") which includes:

(A) Cities, Counties, School Districts, Special Districts, or Other Units of Local Government;

(B) U.S. Government Agencies;

(C) Indian Tribes or Agencies;

(D) Qualified Rehabilitation Facilities ("QRF");

(E) Residential Programs;

(F) Certain Qualified Public Benefit Corporations; and

(b) "Communities of Interest" approved in accordance with Oregon Administrative Rules § 125-400-0000 through § 125-400-0060.

(4) "E-Rate" means a program administered by the Universal Service Administrative Company to make discounted telecommunications and Internet services available to classrooms or other places of instruction at schools and libraries that meet the federal statutory definition of an eligible institution.

(5) "Telecommunications Systems" mean devices, components, facilities and applications that provide telecommunications services for the state and its agencies and enable the aggregation and transmission of voice, video or data between and among state agency users. Telecommunications Systems include gateway devices that enable clusters of users to access SOEN for the purpose of transmitting voice, data, image or video over distance. Telecommunications Systems may include gateway devices used to connect to private telecommunications networks or the Internet.

Stat. Auth.: ORS 291.038

Stats. Implemented: ORS 283.500-283.520

Hist.: DAS 6-2000(Temp), f. & cert. ef. 9-11-00 thru 3-4-01; DAS 2-2001, f. & cert. ef. 3-1-01; DAS 4-2002(Temp), f. 8-13-02 cert. ef. 8-15-02 thru 2-10-03; DAS 7-2002, f. & cert. ef. 12-27-02

#### 125-500-0005

##### Objectives of State of Oregon Enterprise Network

In planning for, acquiring, implementing and managing SOEN, the Department of Administrative Services shall be guided by the following objectives:

(1) SOEN shall provide high quality, reliable, and advanced digital communications network services for subscribing state agencies and Eligible Purchasers at the best value.

(2) SOEN shall be based upon a very high-capacity, high speed network that will enable service provisioning to all state agencies and Eligible Purchasers.

(3) SOEN shall be capable of delivering point-to-point or multipoint video for distance education and training to subscribing state agencies and Eligible Purchasers.

(4) SOEN shall have sufficient capacity to support the voice, video, and data transport requirements of state agencies and Eligible Purchasers.

(5) DAS shall not construct, install, operate or maintain SOEN.

(6) DAS may construct, install, operate or maintain Telecommunications Systems and shall coordinate the consolidation and operation of all Telecommunications Systems used by the state and state agencies.

(7) DAS will use agency service charges to acquire and improve SOEN services as needed. This will enhance the economic value of the advanced digital communications network infrastructure in Oregon.

(8) When feasible, SOEN may interconnect other publicly-owned, available and proven communications networks.

(9) When economically feasible, SOEN may interconnect existing State of Oregon wide area network services and Telecommunications Systems and regional networks established by Eligible Purchasers.

(10) The SOEN service providers' shall be responsible for all administrative and management functions necessary to operate SOEN at the required levels of service.

(11) To the extent feasible, SOEN shall enable the State of Oregon to obtain full period interactive monitoring, deployment configuration, and network segment management across the entire network.

(12) SOEN services shall be provided using state-of-the-art technology where economically and technically feasible. The SOEN service provider shall be responsible for the costs, labor and necessary equipment upgrades to make SOEN state-of-the-art.

(13) SOEN services may be provided by a single entity or a consortium of service providers. The prime contractor in any consortium shall be responsible for the performance of the obligations required by the SOEN purchase agreement.

(14) On behalf of participating schools or libraries, DAS may make application to the Universal Service Administrative Company to obtain E-Rate discounts on those eligible SOEN services. Applicable services include, but are not limited to:

- (a) Inter-LATA services;
- (b) Intra-LATA services;
- (c) Dedicated Internet access;
- (d) Dial-up Internet access statewide; and
- (e) Integrated services for routers and digital service units.

Stat. Auth.: ORS 291.038

Stats. Implemented: ORS 283.500-283.520

Hist.: DAS 6-2000(Temp), f. & cert. ef. 9-11-00 thru 3-4-01; DAS 2-2001, f. & cert. ef. 3-1-01; DAS 4-2002(Temp), f. 8-13-02 cert. ef. 8-15-02 thru 2-10-03; DAS 7-2002, f. & cert. ef. 12-27-02

#### 125-500-0010

##### Procurement of Telecommunications or Data Transport Services

The development and procurement of telecommunications or data transport services by the Department of Administrative Services shall be guided by the following standards:

(1) DAS may procure telecommunications services and data transport, including SOEN services, from a single entity or a number of service providers to allow greater competition in the marketplace.

(2) Prior to the procurement of any telecommunications or data transport services, the Department of Administrative Services may consult with the appropriate advisory entities established under ORS 291.038, state agencies, and any other affected public bodies or interest groups that have an interest in the use of the State's information resources.

(3) To the extent feasible, interim purchase of telecommunications or data transport services shall be guided by the objectives set forth in section 125-500-0005 of these rules and shall be compatible with eventual full procurement of the SOEN services. The Department of Administrative Services shall use the state purchasing process to procure telecommunications or data transport services.

(4) Telecommunications or data transport services, including SOEN services, or statewide integrated video conferencing and statewide on-line access services, may be extended to Eligible Purchasers.

(5) To the extent feasible, the award of any contract for telecommunications or data transport services by the Department of Administrative Services shall be based upon specifications and requirements that promote electronic communication and information sharing among state agencies and between state and local governments, and with the public where appropriate; and that are based upon industry standards for open systems to the extent possible. The Department of Administrative Services shall also consider, wherever feasible, the achievement of the economic development and quality of life outcomes in the Oregon benchmarks, as well as the promotion of competition in the marketplace for the provision of advanced digital communication networks, in the award of these contracts.

Stat. Auth.: ORS 291.038

Stats. Implemented: ORS 283.500-283.520

Hist.: DAS 6-2000(Temp), f. & cert. ef. 9-11-00 thru 3-4-01; DAS 2-2001, f. & cert. ef. 3-1-01; DAS 4-2002(Temp), f. 8-13-02 cert. ef. 8-15-02 thru 2-10-03; DAS 7-2002, f. & cert. ef. 12-27-02