

Chapter 125 Department of Administrative Services

DIVISION 1		125-040-0005	Mail Services
PROCEDURAL RULES		125-040-0010	Delivery Disclaimer
125-001-0000	Notice of Proposed Rule	DIVISION 45	
125-001-0005	Uniform and Model Rules of Procedure	DISPOSITION AND ACQUISITION OF REAL PROPERTY INTERESTS	
DIVISION 7		125-045-0200	Purpose
CRIMINAL RECORDS CHECK AND FITNESS DETERMINATION RULES		125-045-0205	Definitions
125-007-0200	Statement of Purpose and Statutory Authority	125-045-0210	Alternative Rules for Acquisitions and Terminal Dispositions by State Agencies
125-007-0210	Definitions	125-045-0215	Appraisal and Determination of Value of Real Property Interests
125-007-0220	Subject Individual	125-045-0220	Acquisition of Real Property Interests
125-007-0230	Criminal Records Check Process	125-045-0225	Terminal Disposition of State Real Property Interests (Notices to Department, State Agencies and Political Subdivisions)
125-007-0240	Preliminary Fitness Determination	125-045-0230	Right of First Refusal Determination
125-007-0250	Hiring or Appointing on a Preliminary Basis	125-045-0235	Terminal Dispositions of State Real Property Interests (Offers to Other Individuals or Entities)
125-007-0260	Final Fitness Determination	125-045-0240	Transfer of Property with Deed Restrictions
125-007-0270	Crimes Relevant to a Fitness Determination	125-045-0245	Department Approval
125-007-0290	Notice to Subject Individual of Fitness Determination	125-045-0250	Public Lands Advisory Committee
125-007-0300	Appealing a Fitness Determination	125-045-0255	Procedure for Submitting Property Transactions and Inventory Information for PLAC Review
125-007-0310	Recordkeeping and Confidentiality	125-045-0260	Procedure for PLAC Review
125-007-0320	Authorized Designees	125-045-0265	Statewide Inventory and Property Management
125-007-0330	Fees	125-045-0270	Statewide Lands Inventory Program Costs
DIVISION 10		DIVISION 55	
PUBLIC CONTRACT REVIEW SERVICES AND FEES		STATE PURCHASING	
125-010-0005	Contract Review Board Services to Local Public Agencies	125-055-0005	Definitions for Purchasing Policies Governing the Acquisition of Goods and Services from Qualified Rehabilitation Facilities
DIVISION 21		125-055-0010	Policy
FEES FOR PUBLIC RECORDS		125-055-0015	Application for QRF Participation
125-021-0005	Fees for Public Records	125-055-0020	Determination of Suitability of Product or Service
DIVISION 22		125-055-0025	Review of Suitability Determinations
PERSONAL SERVICES AGREEMENTS WITH STATE AGENCIES AND OTHER GOVERNMENTAL ENTITIES		125-055-0030	Determination of Price
125-022-0050	Definitions	125-055-0035	Audits
125-022-0100	Interagency and Intergovernmental Agreements	125-055-0040	General Provisions
125-022-0200	Interstate Agreements	125-055-0045	Purchases under ORS 279.855
125-022-0300	International Agreements	125-055-0100	Purpose — HIPAA Privacy and Security Rule Implementation
DIVISION 35		125-055-0105	Definitions
FEDERAL SURPLUS PROPERTY		125-055-0115	Business Associate Contract Provisions
125-035-0005	Authority	125-055-0120	Order of Precedence
125-035-0010	Designation of the State Agency	125-055-0125	Methods of Compliance
125-035-0015	Inventory Controls and Accounting Systems	125-055-0130	Standards in Individual Contracts
125-035-0020	Return of Donated Property by Donee	DIVISION 60	
125-035-0025	Financing and Service Charges	HOUSING AND RENTALS	
125-035-0030	Terms and Conditions on Donated Property	125-060-0000	State Agency Housing Provided to State Officers or Employees
125-035-0035	Non-Utilized Donated Property	125-060-0005	Management of the Capitol Mall Housing Units
125-035-0040	Fair and Equitable Distribution	DIVISION 70	
125-035-0045	Eligibility	GIFTS AND DONATIONS	
125-035-0050	Compliance and Utilization	125-070-0000	Gifts and Donations for the Benefit of the Programs of the Real Property Division
125-035-0055	Consultation with Advisory Bodies and Private Groups	DIVISION 75	
125-035-0060	Audit	USE OF BUILDINGS, PARKS AND GROUNDS UNDER DEPARTMENT CONTROL	
125-035-0065	Cooperative Agreements	125-075-0000	Restrictions on the Use of Capitol Mall Heliport
125-035-0070	Liquidation	125-075-0005	Use of the Capitol Mall Area Parks and Grounds
125-035-0075	Records		
DIVISION 40			
MAIL/DELIVERY SERVICES			
125-040-0001	Definitions		

Chapter 125 Department of Administrative Services

- 125-075-0010** Public Use of Meeting Rooms in State Buildings Under the Department of Administrative Services' Control
- 125-075-0015** Prohibiting Possession or Use of Firearms, Alcoholic Beverages and Other Illegal Substances on the Premises of State Office Buildings

DIVISION 80

SALES OR SOLICITATION

- 125-080-0000** Vending Facilities in State Buildings or Grounds Under the Department of Administrative Services' Control
- 125-080-0005** Cafeterias in State Office Buildings Under the Department of Administrative Services' Control
- 125-080-0010** Sales or Solicitations in State Office Buildings Under the Department of Administrative Services' Control

DIVISION 85

RECYCLING

- 125-085-0000** State Recycling Program

DIVISION 90

PARKING FACILITIES

- 125-090-0000** Definitions
- 125-090-0005** Rental Rates for Parking Facilities Controlled by the Department of Administrative Services
- 125-090-0010** Parking Facilities Subject to Department of Administrative Services Management and Control
- 125-090-0020** Fees for Parking Automobiles
- 125-090-0030** Car Pool Incentive Reductions
- 125-090-0040** Fees for the Parking of Motorcycles
- 125-090-0050** Parking for Bicycles
- 125-090-0060** Terms Under Which Parking Facilities Shall be Leased
- 125-090-0070** Payment for Monthly Parking Privileges
- 125-090-0080** Payment for Daily Parking Privileges
- 125-090-0090** Permit Cancellation
- 125-090-0100** Other Parking Provided
- 125-090-0110** Assignment of Priority
- 125-090-0120** Safety Rules
- 125-090-0130** Enforcement
- 125-090-0140** Schedule of Parking Rates and Surcharges

DIVISION 110

LAND USE COORDINATION

- 125-110-0001** Land Use Program Coordination Rules

DIVISION 120

RENTING OR LEASING OFFICE QUARTERS

- 125-120-0000** Definitions
- 125-120-0010** Exemptions
- 125-120-0020** Assignment of Office Quarters
- 125-120-0030** Allotment of Space in Office Quarters (ORS 270.410)
- 125-120-0040** Measuring Office Quarters
- 125-120-0050** Space Allocation/Rental Agreement
- 125-120-0060** Complying with Local Policies
- 125-120-0070** Leasing Authority
- 125-120-0075** Technical Assistance and Leasing Services for Non Office Quarters
- 125-120-0080** Subleases by an Agency
- 125-120-0090** Leasing or Renting Involvement of a Requesting Agency
- 125-120-0100** Lease Renewal

- 125-120-0110** Agency Commitment
- 125-120-0120** Locating Office Quarters
- 125-120-0130** Determining a Lease Search Area
- 125-120-0140** Leasing Directly
- 125-120-0150** Giving Notice of Intent to Lease
- 125-120-0160** Procedures for Major Leasing Projects
- 125-120-0170** Tenant Improvements
- 125-120-0180** Providing for Non-Appropriation and Early Termination

DIVISION 125

STATEWIDE FACILITY PLANNING PROCESS

- 125-125-0050** Purpose, Application, and Authority
- 125-125-0100** Definitions
- 125-125-0150** Statewide Facility Planning Process
- 125-125-0200** Capital Projects Advisory Board
- 125-125-0250** Procedure for Submitting Reports for Review
- 125-125-0300** Procedure for Board Review
- 125-125-0350** Salem Area Project Review
- 125-125-0400** Area Plan Update Responsibilities
- 125-125-0450** Capitol Mall Area Project Review

DIVISION 140

CONFIDENTIALITY AND INADMISSIBILITY OF MEDIATION COMMUNICATIONS

- 125-140-0010** Confidentiality and Inadmissibility of Mediation Communications
- 125-140-0020** Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

DIVISION 145

MEASURE 37 CLAIMS

- 125-145-0010** Purpose
- 125-145-0020** Definitions
- 125-145-0030** Submitting a Claim
- 125-145-0040** Contents of a Claim
- 125-145-0045** Additional Information
- 125-145-0060** Registry of Claims
- 125-145-0080** Third Party Participation
- 125-145-0090** Department Review and Decision Process, Forwarding Claim to Regulating Entities
- 125-145-0100** Regulating Entity Review and Decision Process
- 125-145-0105** The Record for Final Administrative Decisions on a Claim

DIVISION 150

RISK MANAGEMENT

- 125-150-0000** Claims Against the State Liability Fund
- 125-150-0005** Selection of Insurance Agent of Record
- 125-150-0010** Purchase of Professional Services

DIVISION 155

STATE VEHICLE USE AND ACCESS

- 125-155-0000** Purpose
- 125-155-0010** Definitions
- 125-155-0020** Policy and Principle
- 125-155-0100** Minimum Driver Requirements
- 125-155-0200** Voluntary and Compulsory Driver Standards
- 125-155-0300** Verifying Driver Qualifications
- 125-155-0400** Authorized Drivers
- 125-155-0410** Authorized Driver Summary
- 125-155-0420** Passengers
- 125-155-0430** Passengers Summary
- 125-155-0500** General Use of Vehicles
- 125-155-0510** Day Use
- 125-155-0520** Overnight and Full-time Use

Chapter 125 Department of Administrative Services

125-155-0530	Emergency Use
125-155-0540	Vehicle Use Summary
125-155-0600	Storing State Vehicles
125-155-0700	Insurance and Collisions
125-155-0800	Rules Enforcement
125-155-0900	Extensions and Exemptions

DIVISION 160

ADMINISTRATION AND BENEFITS OF THE INMATE INJURY SYSTEM

125-160-0000	Purpose, Applicability, and Effective Date
125-160-0010	Definitions
125-160-0100	Benefit Limits During Temporary Disability
125-160-0110	Benefit Limits During Permanent Disability
125-160-0120	Death Benefit Limits
125-160-0200	Claiming Benefits
125-160-0300	Evaluating Claims
125-160-0310	Evidence and Construction
125-160-0400	Claims Denials
125-160-0500	Delivery of Claims, Notices, Responses
125-160-0600	Delivery of Benefits
125-160-0700	Suspension and Forfeiture of Benefits
125-160-0710	Termination of Benefits
125-160-0720	Abandonment of Benefits
125-160-0800	Subrogation
125-160-0900	Appealing Claims Decisions and Actions
125-160-0910	Hearings Process
125-160-0920	Conduct of Hearings
125-160-0930	Testimony of Witnesses
125-160-0940	Documents & Physical Evidence
125-160-0950	Hearings Conclusions and Record

DIVISION 246

GENERAL PROVISIONS FOR PUBLIC CONTRACTING

General Provisions

125-246-0100	Application; Commentary; Federal Law Prevails
125-246-0110	Definitions
125-246-0120	Policies
125-246-0130	Application of the Code and Rules; Exceptions

Authority

125-246-0140	Procurement Authority
125-246-0150	Applicability of These Rules to Agencies
125-246-0170	Delegation of Authority

Minorities, Women and Emerging Small Business

125-246-0200	Affirmative Action; Limited Competition Permitted
125-246-0210	Subcontracting to and Contracting with Emerging Small Businesses; Disqualification
125-246-0220	Advocate's Office and OMWESB

Contract Preferences

125-246-0300	Preference for Oregon Supplies and Services; Tie-Offers
125-246-0310	Reciprocal Preferences
125-246-0320	Recycling; Definitions
125-246-0321	Recycling Policy
125-246-0322	Preference for Recycled Materials
125-246-0323	Recycled Paper and Paper Products
125-246-0324	Recycling; Food Service and Food Packaging

State Procurement

125-246-0330	State Procurement
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Personal Services Contracts

125-246-0335	Authority and Standards for Personal Services Contracts
125-246-0345	Procedures for Personal Services Contracts
125-246-0350	Approval of Personal Services Contracts
125-246-0351	Acquiring Services Before Obtaining Requisite Approvals
125-246-0352	Retroactive Approval of Public Contracts
125-246-0353	Reporting Requirements for Personal Services Contracts

Procurement Files

125-246-0355	Procurement Files
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Intergovernmental Relations

125-246-0360	Purchases Through Federal Programs
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Cooperative Procurement

125-246-0400	Purpose, Policy, and Definitions
125-246-0410	Authority for Cooperative Procurements
125-246-0420	Responsibilities
125-246-0430	Joint Cooperative Procurements
125-246-0440	Permissive Cooperative Procurements
125-246-0450	Interstate Cooperative Procurements
125-246-0460	Protest and Disputes
125-246-0470	Amendments of Cooperative Procurements

Notices and Advertisement

125-246-0500	Oregon Procurement Information Network (ORPIN)
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Contract Administration

125-246-0550	General Definitions
125-246-0555	Contract Administration; General Provisions
125-246-0576	Payment Authorization for Cost Overruns for Services Contracts
125-246-0560	Amendments
125-246-0570	Reinstatements of Expired Contracts
125-246-0575	Retroactive Approvals of Existing Contracts
125-246-0580	Dispute Resolution

Ethics in Public Contracting

125-246-0600	Policy
125-246-0605	Selection and Award of Public Contracts
125-246-0610	Appointments to Advisory Committees
125-246-0615	Nonretaliation
125-246-0620	Specifications
125-246-0625	Sole-Source
125-246-0630	Fragmentation
125-246-0635	Authorized Agency and Provider Communications

State Surplus Property

125-246-0700	State Surplus Property Definitions
125-246-0710	Eligibility of State Agencies, Political Subdivisions and Non-Profit Organizations
125-246-0720	State Surplus Property Acquisition
125-246-0730	Public Sales for Disposal of State Surplus Personal Property

Selling Supplies and Services

125-246-0800	Policy; Applicability; Methods
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Penalties

125-246-0900	Penalties
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Chapter 125 Department of Administrative Services

DIVISION 247		125-247-0670	Disposition of Offers if Solicitation Cancelled
PUBLIC PROCUREMENT OF SUPPLIES AND SERVICES			Specifications
General Provisions		125-247-0690	Policy
125-247-0005	Definitions	125-247-0691	Brand Name or Equal Specification
125-247-0010	Policies		Legal Remedies
125-247-0100	Applicability		
125-247-0165	Practices Regarding Electronic Goods Procurement	125-247-0700	Protests and Judicial Review of Approvals of Special Procurements
125-247-0170	Life Cycle Costing	125-247-0710	Protests and Judicial Review of Sole-Source Procurements
Methods of Source Selection		125-247-0720	Protests and Judicial Review of Multiple-Tiered and Multistep Solicitations
125-247-0200	Methods of Source Selection	125-247-0730	Protests and Judicial Review of Solicitations
125-247-0255	Competitive Sealed Bidding; One Step Solicitations	125-247-0731	Protests and Judicial Review of Qualified Products List Decisions
125-247-0256	Competitive Sealed Bidding; Multistep Solicitations	125-247-0740	Protests and Judicial Review of Contract Award
125-247-0260	Competitive Sealed Proposals; One Step Solicitations	125-247-0750	Judicial Review of Other Violations
125-247-0261	Competitive Sealed Proposals; Multistep Solicitations	125-247-0760	Review of Prequalification and Debarment Decisions
125-247-0265	Small Procurements	125-247-0770	Dispute Resolution
125-247-0270	Intermediate Procurements		Contract Amendments
125-247-0275	Sole-Source Procurements		
125-247-0280	Emergency Procurements	125-247-0800	Contract Amendments
125-247-0285	Special Procurements; Purpose and Application		DIVISION 248
125-247-0286	Special Procurements; Definitions		CONSULTANT SELECTION; ARCHITECTURAL, ENGINEERING AND LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS
125-247-0287	Special Procurements; Request Procedures		
125-247-0288	Special Procurements; by Rule	125-248-0100	Application; Effective Date
125-247-0293	Special Procurements: Interstate and International Agreements	125-248-0110	Definitions
125-247-0294	Special Procurements: Tribal Agreements	125-248-0120	List of Interested Consultants; Performance Record
125-247-0295	Special Procurements: General or Special Counsel Authorized by the Attorney General	125-248-0130	Applicable Selection Procedures; Pricing Information
125-247-0296	Mandatory Use Contracts and Price Agreements		Selection Procedures
Procurement Process		125-248-0200	Direct Appointment Procedure
125-247-0300	Applicability to Methods of Source Selection	125-248-0210	Informal Selection Procedure
125-247-0305	Public Notice of Solicitation Documents	125-248-0220	Formal Selection Procedure
125-247-0310	Bids or Proposals are Offers	125-248-0230	Ties Among Proposers
125-247-0320	Facsimile Bids and Proposals	125-248-0240	Protest Procedures
125-247-0330	E-Procurement	125-248-0250	Solicitation Cancellation; Consultant Responsibility for Costs
Bid and Proposal Preparation		125-248-0260	Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects
125-247-0400	Offer Preparation		Post-Selection Considerations
125-247-0410	Offer Submission	125-248-0300	Contract Form; Prohibited Payment Methodology; Purchase Restrictions
125-247-0420	Pre-Offer Conferences	125-248-0310	Expired or Terminated Contracts
125-247-0430	Addenda to Solicitation Document	125-248-0330	Special Contract Processes
125-247-0440	Pre-Closing Modification or Withdrawal of Offers	125-248-0340	Contract Amendments
125-247-0450	Receipt, Opening, and Recording of Offers		DIVISION 249
125-247-0460	Late Offers, Late Withdrawals, and Late Modifications		GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES
125-247-0470	Mistakes		
125-247-0480	Time for Authorized Agency Acceptance	125-249-0100	Application; Federal Override; Effective Date
125-247-0490	Extension of Time for Acceptance of Offer	125-249-0110	Policies
Qualifications and Duties		125-249-0120	Definitions
125-247-0500	Responsibility of Offerors	125-249-0130	Competitive Bidding Requirement
125-247-0525	Qualified Products Lists	125-249-0140	Contracts for Construction Other Than Public Improvements
125-247-0550	Prequalification of Prospective Offerors; Request for Qualifications (RFQ)	125-249-0150	Emergency Contracts; Bidding and Bonding Exemptions
125-247-0575	Debarment of Prospective Offerors	125-249-0160	Intermediate Procurements; Competitive Quotes and Amendments
Offer Evaluation and Award			
125-247-0600	Offer Evaluation and Award		
125-247-0610	Notice of Intent to Award		
125-247-0620	Documentation of Award		
125-247-0630	Availability of Award Decisions		
125-247-0640	Rejection of an Offer		
125-247-0650	Rejection of All Offers		
125-247-0660	Cancellation of Procurement or Solicitation		

Formal Procurement Rules

125-249-0200	Solicitation Documents; Required Provisions; Assignment or Transfer
125-249-0210	Notice and Advertising Requirements; Posting
125-249-0220	Prequalification of Offerors
125-249-0230	Eligibility to Bid or Propose; Registration or License
125-249-0240	Pre-Offer Conferences
125-249-0250	Addenda to Solicitation Documents
125-249-0260	Request for Clarification or Change; Solicitation Protests
125-249-0270	Cancellation of Solicitation Document
125-249-0280	Offer Submissions
125-249-0290	Bid or Proposal Security
125-249-0300	Facsimile Bids and Proposals
125-249-0310	Electronic Procurement
125-249-0320	Pre-Closing Modification or Withdrawal of Offers
125-249-0330	Receipt, Opening and Recording of Offers; Confidentiality of Offers
125-249-0340	Late Bids, Late Withdrawals and Late Modifications
125-249-0350	Mistakes
125-249-0360	First-Tier Subcontractors; Disclosure and Substitution; ITB
125-249-0370	Disqualification of Persons
125-249-0380	Bid or Proposal Evaluation Criteria
125-249-0390	Offer Evaluation and Award; Determination of Responsibility
125-249-0395	Notice of Intent to Award
125-249-0400	Documentation of Award; Availability of Award Decisions
125-249-0410	Time for Authorized Agency Acceptance; Extension
125-249-0420	Negotiation With Bidders Prohibited
125-249-0430	Negotiation When Bids Exceed Cost Estimate
125-249-0440	Rejection of Offers
125-249-0450	Protest of Contractor Selection, Contract Award
125-249-0460	Performance and Payment Security; Waiver
125-249-0470	Substitute Contractor
125-249-0490	Foreign Contractor

Alternative Contracting Methods

125-249-0600	Purpose
125-249-0610	Definitions for Alternative Contracting Methods
125-249-0620	Use of Alternative Contracting Methods
125-249-0630	Findings, Notice and Hearing
125-249-0640	Competitive Proposals; Procedure
125-249-0645	Requests for Qualifications (RFQ)
125-249-0650	Requests for Proposals (RFP)
125-249-0660	RFP Pricing Mechanisms
125-249-0670	Design-Build Contracts
125-249-0680	Energy Savings Performance Contracts (ESPC)
125-249-0690	Construction Manager/General Contractor (CM/GC)

Contract Provisions

125-249-0800	Required Contract Clauses
125-249-0810	Waiver of Delay Damages Against Public Policy
125-249-0815	BOLI Public Works Bond
125-249-0820	Retainage
125-249-0830	Contractor Progress Payments
125-249-0840	Interest
125-249-0850	Final Inspection
125-249-0860	Public Works Contracts
125-249-0870	Specifications; Brand Name Products
125-249-0880	Records Maintenance; Right to Audit Records
125-249-0890	Authorized Agency Payment for Unpaid Labor or Supplies
125-249-0900	Contract Suspension; Termination Procedures
125-249-0910	Changes to the Work and Contract Amendments

DIVISION 400

**PROVISIONS FOR EXTENDING
TELECOMMUNICATIONS SERVICES TO
QUALIFIED PUBLIC AND PRIVATE ENTITIES**

125-400-0000	Purpose, Applicability, and Effective Date
125-400-0010	Definitions
125-400-0020	Benefits from State Telecommunications Contracts Extended to Communities of Interest
125-400-0030	Designation of Communities of Interest; Application; Approval; Cancellation; Redesignation
125-400-0040	Denial of Community of Interest Designation; Reconsideration; Appeal
125-400-0050	Access to Statewide Integrated Video Conferencing and Statewide On-line Access Services
125-400-0060	Application Process for Video and On-line Access Services
125-400-0070	Denial of Application for Video or On-line Access Services; Reconsideration; Appeal
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
125-400-0090	Listing of Internet Access Service Providers

DIVISION 500

**NATURE OF THE STATE OF OREGON
ENTERPRISE NETWORK**

125-500-0000	Definitions
125-500-0005	Objectives of State of Oregon Enterprise Network
125-500-0010	Procurement of Telecommunications or Data Transport Services

DIVISION 600

**IDENTITY AUTHENTICATION/
ELECTRONIC SIGNATURES**

125-600-0005	Guidelines for Use of Electronic Signatures by State Agencies
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DIVISION 700

INTERNAL AUDITING

125-700-0010	Purpose
125-700-0012	Statewide Audit Advisory Committee
125-700-0015	Definitions
125-700-0020	Internal Auditing Requirements
125-700-0025	Internal Auditing Standards
125-700-0030	Agency Internal Auditor Qualifications
125-700-0035	Internal Auditing Leadership
125-700-0040	Agency Internal Audit Functions
125-700-0045	Internal Audit Status in the Agency
125-700-0050	Planning and Performance Responsibilities
125-700-0055	External Peer Review
125-700-0060	Audit Records and Retention

DIVISION 1

PROCEDURAL RULES

125-001-0000

Notice of Proposed Rule

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

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

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

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

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

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

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

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

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

125-001-0005

Uniform and Model Rules of Procedure

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

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

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

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

DIVISION 7

CRIMINAL RECORDS CHECK AND FITNESS DETERMINATION RULES

125-007-0200

Statement of Purpose and Statutory Authority

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

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

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

Stats. Implemented: ORS 181.534(9)

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

125-007-0210

Definitions

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

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

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

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

(4) **"Criminal Offender Information"** includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police

Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 181.534(9).

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

125-007-0220

Subject Individual

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

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

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

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

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

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

(c) That has payroll functions;

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

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

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

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 181.534(9).

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

125-007-0230

Criminal Records Check Process

(1) Disclosure of Information by Subject Individual.

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

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

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

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

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

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

(b) An individual employed by the Department meets the definition of "subject individual" because he or she is either moving to or

applying for a position that meets the criteria of OAR 125-007-0220(2)(a)-(n), if:

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

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

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

(c) An authorized designee has reason to believe that a subject individual committed a crime listed in OAR 125-007-0270 and either a fitness determination has not yet been done on the subject individual or the crime had not been identified in a prior fitness determination;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 181.534(9).

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

125-007-0240

Preliminary Fitness Determination.

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

(2) An authorized designee shall make a preliminary fitness determination about a subject individual based on information dis-

closed by the subject individual under OAR 125-007-0230(1) and a LEDS criminal records check.

(3) The authorized designee shall approve a subject individual as fit on a preliminary basis if the authorized designee has no reason to believe that the subject individual has made a false statement and the information available to the authorized designee does not disclose that the subject individual:

(a) Has been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under OAR 125-007-0270;

(b) Within the last five years, has been arrested for or charged with a crime listed under OAR 125-007-0270;

(c) Is being investigated for, or has an outstanding warrant for a crime listed under OAR 125-007-0270;

(d) Is currently on probation, parole, or another form of post-prison supervision for a crime listed under OAR 125-007-0270;

(e) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 125-007-0270; or

(f) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 125-007-0270 if committed by an adult.

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

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

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

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

Stats. Implemented: ORS 181.534(9).

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

125-007-0250

Hiring or Appointing on a Preliminary Basis

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

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

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

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

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

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

Stats. Implemented: ORS 181.534(9).

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

125-007-0260

Final Fitness Determination

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

(2) In making a fitness determination about a subject individual, an authorized designee shall consider the factors in subsections (a)-

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

(a) Whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 125-007-0270;

(b) The nature of any crime identified under subsection (a);

(c) The facts that support the conviction, finding of guilty except for insanity, or pending indictment;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made:

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

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

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

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

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

(F) A recommendation of an employer;

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

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

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

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

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

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

(M) Periods of incarceration of the subject individual;

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

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

(3) Possible Outcomes of a Final Fitness Determination

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

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

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

of the date that the subject individual signed the DAS Criminal Records Request form;

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

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

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

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

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

(c) Restricted Approval.

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

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

(d) Denial.

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

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

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

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

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

Stats. Implemented: ORS 181.534(9).

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

125-007-0270

Crimes Relevant to a Fitness Determination

(1) Permanent Review Crimes.

(a) ORS 162.015, Bribe giving;

(b) ORS 162.025, Bribe receiving;

(c) ORS 162.065, Perjury;

(d) ORS 162.085, Unsworn falsification;

(e) ORS 162.155, Escape II;

(f) ORS 162.165, Escape I;

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

(h) ORS 162.265, Bribing a witness;

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

(j) ORS 162.305, Tampering with public records;

(k) ORS 162.325, Hindering prosecution;

(l) ORS 162.405, Official misconduct II;

(m) ORS 162.415, Official misconduct I;

(n) ORS 162.425, Misuse of confidential information;

(o) ORS 163.005, Criminal homicide;

(p) ORS 163.095, Aggravated murder;

(q) ORS 163.115, Murder;

(r) ORS 163.118, Manslaughter I;

(s) ORS 163.125, Manslaughter II;

(t) ORS 163.145, Criminally negligent homicide;

(u) ORS 163.160, Assault IV;

(v) ORS 163.165, Assault III;

(w) ORS 163.175, Assault II;

(x) ORS 163.185, Assault I;

(y) ORS 163.187, Strangulation;

(z) ORS 163.190, Menacing;

(aa) ORS 163.200, Criminal mistreatment II;

(bb) ORS 163.205, Criminal mistreatment I;

(cc) ORS 163.207, Female genital mutilation;

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

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

(ff) ORS 163.225, Kidnapping II;

(gg) ORS 163.235, Kidnapping I;

(hh) ORS 163.257, Custodial interference I;

(ii) ORS 163.275, Coercion;

(jj) ORS 163.355, Rape III;

(kk) ORS 163.365, Rape II;

(ll) ORS 163.375, Rape I;

(mm) ORS 163.385, Sodomy III;

(nn) ORS 163.395, Sodomy II;

(oo) ORS 163.405, Sodomy I;

(pp) ORS 163.408, Unlawful Sexual penetration II;

(qq) ORS 163.411, Unlawful Sexual penetration I;

(rr) ORS 163.415, Sexual abuse III;

(ss) ORS 163.425, Sexual abuse II;

(tt) ORS 163.427, Sexual abuse I;

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

(vv) ORS 163.452, Custodial sexual misconduct I;

(ww) ORS 163.454, Custodial sexual misconduct II;

(xx) ORS 163.465, Public indecency;

(yy) ORS 163.515, Bigamy;

(zz) ORS 163.525, Incest;

(aaa) ORS 163.535, Abandonment of a child;

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

(ccc) ORS 163.545, Child neglect II;

(ddd) ORS 163.547, Child neglect I;

(eee) ORS 163.555, Criminal nonsupport;

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

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

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

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

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

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

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

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

(nnn) ORS 163.732, Stalking;

(ooo) ORS 164.057, Aggravated theft I;

(ppp) ORS 164.075, Theft by extortion; ORS 164.085, Theft by deception;

(qqq) ORS 164.125, Theft of services; ORS 164.162, Mail theft or receipt of stolen mail;

(rrr) ORS 164.225, Burglary I;

(sss) ORS 164.325, Arson I;

ORS 164.377, Computer crime;

(ttt) ORS 164.395, Robbery III;

(uuu) ORS 164.405, Robbery II;

(vvv) ORS 164.415, Robbery I;

(www) ORS 165.007, Forgery II;

(xxx) ORS 165.013, Forgery I;

(yyy) ORS 165.017, Criminal possession of a forged instrument II;

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

(aaa) ORS 165.032, Criminal possession of a forgery device;

- (bbbb) ORS 165.042, Fraudulently obtaining a signature;
(cccc) ORS 165.055, Fraudulent use of a credit card;
(dddd) ORS 165.080, Falsifying business records;
(eeee) ORS 165.095, Misapplication of entrusted property;
(ffff) ORS 165.100, Issuing a false financial statement;
(gggg) ORS 165.581, Cellular counterfeiting I;
(hhhh) ORS 165.800, Identity theft;
(iiii) ORS 166.005, Treason;
(jjjj) ORS 166.015, Riot;
(kkkk) ORS 166.085, Abuse of corpse II;
(llll) ORS 166.087, Abuse of corpse I;
(mmmm) ORS 166.155, Intimidation II;
(nnnn) ORS 166.165, Intimidation I;
(oooo) ORS 166.220, Unlawful use of weapon;
(pppp) ORS 166.270, Possession of weapons by certain felons;
(qqqq) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
(rrrr) ORS 166.275, Possession of weapons by inmates of institutions;
(ssss) ORS 166.429, Firearms used in felony;
(tttt) ORS 166.720, Racketeering activity unlawful;
(uuuu) ORS 167.012, Promoting prostitution;
(vvvv) ORS 167.017, Compelling prostitution;
(www) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;
(xxxx) ORS 167.065, Furnishing obscene materials to minors;
(yyyy) ORS 167.070, Sending obscene materials to minors;
(zzzz) ORS 167.075, Exhibiting an obscene performance to a minor;
(aaaaa) ORS 167.080, Displaying obscene materials to minors;
(bbbbb) ORS 167.262, Adult using minor in commission of controlled substance offense;
(ccccc) ORS 167.315, Animal abuse II;
(ddddd) ORS 167.320, Animal abuse I;
(eeeee) ORS 167.322, Aggravated animal abuse I;
(fffff) ORS 167.333, Sexual assault of animal;
(ggggg) ORS 181.599, Failure to report as sex offender;
(hhhhh) ORS 192.852/865, Prohibited obtaining or disclosing of protected information;
(iiiii) ORS 411.630, Unlawfully obtaining public assistance;
(jjjjj) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);
(kkkkk) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;
(lllll) ORS 475.525, Sale of drug paraphernalia prohibited;
(mmmmm) ORS 475.805, Providing hypodermic device to minor prohibited;
(nnnnn) ORS 475.840, Prohibited acts generally (regarding drug crimes);
(ooooo) ORS 475.846, Unlawful manufacture of heroin;
(ppppp) ORS 475.848, Unlawful manufacture of heroin within 1,000 ft of school;
(qqqqq) ORS 475.850, Unlawful delivery of heroin;
(rrrrr) ORS 475.852, Unlawful delivery of heroin within 1,000 ft of school;
(sssss) ORS 475.854, Unlawful possession of heroin;
(ttttt) ORS 475.856, Unlawful manufacture of marijuana;
(uuuuu) ORS 475.858, Unlawful manufacture of marijuana within 1,000 ft of school;
(vvvvv) ORS 475.860, Unlawful delivery of marijuana;
(wwwww) ORS 475.862, Unlawful delivery of marijuana within 1,000 ft of school;
(xxxxx) ORS 475.864, Unlawful possession of marijuana;
(yyyyy) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine;
(zzzzz) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 ft of school;
(aaaaaa) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;
(bbbbbb) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 ft of school;
(cccccc) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;
(dddddd) ORS 475.876, Unlawful manufacture of cocaine;
(eeeeeee) ORS 475.878, Unlawful manufacture of cocaine within 1,000 ft of school;
(ffffff) ORS 475.880, Unlawful delivery of cocaine;
(gggggg) ORS 475.882, Unlawful delivery of cocaine within 1,000 ft of school;
(hhhhhh) ORS 475.884, Unlawful possession of cocaine;
(iiiiii) ORS 475.886, Unlawful manufacture of methamphetamine;
(jjjjjj) ORS 475.888 Unlawful manufacture of methamphetamine within 1,000 ft of school;
(kkkkkk) ORS 475.890, Unlawful delivery of methamphetamine;
(llllll) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 ft of school;
(mmmmmm) ORS 475.894, Unlawful possession of methamphetamine;
(nnnnnn) ORS 475.904, Penalty for manufacture or delivery of controlled substance within 1000 feet of school;
(oooooo) ORS 475.906, Penalties for distribution to minors;
(pppppp) ORS 475.908, Causing another person to ingest a controlled substance;
(qqqqqq) ORS 475.910, Application of controlled substance to the body of another person;
(rrrrrr) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes); ORS 475.916, Prohibited acts involving records and fraud; ORS 475.918, Falsifying drug test results;
(ssssss) ORS 475.920, Providing drug test falsification equipment
(tttttt) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;
(uuuuuu) ORS 475.975, Unlawful possession & distribution of iodine in its elemental form;
(vvvvvv) ORS 475.976, Unlawful possession & distribution of iodine matrix;
(wwwwww) ORS 677.080, Prohibited acts (regarding the practice of medicine);
(yyyyyy) ORS 803.230, Forging, altering or unlawfully producing or using title or registration;
(zzzzzz) ORS 811.140, Reckless driving;
(aaaaaa) ORS 811.182, Criminal driving while suspended or revoked;
(bbbbbb) ORS 811.540, Fleeing or attempting to elude police officer;
(cccccc) ORS 811.700, Failure to perform duties of driver when property is damaged;
(dddddd) ORS 811.705, Failure to perform duties of driver to injured persons;
(eeeeeee) ORS 813.010, Driving under the influence of intoxicants (DUI);
(ffffff) ORS 819.300, Possession of a stolen vehicle;
(gggggg) Any federal crime;
(hhhhhh) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;
(iiiiii) Any other felony under the statutes of Oregon or any other jurisdiction not listed elsewhere in this rule that the authorized designee determines is relevant to performance of the subject individual's present or proposed position as a Department employee, contractor, vendor or volunteer;
(jjjjjj) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (1) pursuant to ORS 161.405, 161.435, or 161.450;
(kkkkkk) Any crime based on criminal liability for conduct of another pursuant to ORS 61.155, when the underlying crime is listed in this section (1);
(llllll) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section (1) as determined by the authorized designee;
(mmmmmm) Any offense that no longer constitutes a crime under Oregon law or the laws of any other jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (1) as determined by the authorized designee.
(2) Ten-Year Review Crimes.
(a) ORS 133.076, Failure to appear on criminal citation;
(b) ORS 162.075, False swearing;
(c) ORS 162.117, Public investment fraud;

(d) ORS 162.145, Escape III;
 (e) ORS 162.175, Unauthorized departure;
 (f) ORS 162.185, Supplying contraband;
 (g) ORS 162.195, Failure to appear II;
 (h) ORS 162.205, Failure to appear I;
 (i) ORS 162.247, Interfering with a peace officer or parole & probation officer;
 (j) ORS 162.285, Tampering with a witness;
 (k) ORS 162.295, Tampering with physical evidence;
 (l) ORS 162.315, Resisting arrest;
 (m) ORS 162.335, Compounding;
 (n) ORS 162.355, Simulating legal process;
 (o) ORS 162.365, Criminal impersonation;
 (p) ORS 162.367, Criminal impersonation of peace officer;
 (q) ORS 162.369, Possession of false law enforcement identification card;
 (r) ORS 162.375, Initiating a false report;
 (s) ORS 162.385, Giving false information to police officer for a citation or arrest warrant;
 (t) ORS 163.195, Recklessly endangering another person;
 (u) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;
 (v) ORS 163.245, Custodial interference II;
 (w) ORS 163.445, Sexual misconduct;
 (x) ORS 163.467, Private indecency;
 (y) ORS 163.700, Invasion of personal privacy;
 (z) ORS 163.750, Violating court's stalking protective order;
 (aa) ORS 164.043, Theft III;
 (bb) ORS 164.045, Theft II;
 (cc) ORS 164.055, Theft I;
 (dd) ORS 164.095, Theft by receiving;
 (ee) ORS 164.135, Unauthorized use of a vehicle;
 (ff) ORS 164.140, Criminal possession of rented or leased personal property;
 (gg) ORS 164.215, Burglary II;
 (hh) ORS 164.235, Possession of burglar's tools or theft device;
 (ii) ORS 164.255, Criminal trespass I;
 (jj) ORS 164.265, Criminal trespass while in possession of firearm;
 (kk) ORS 164.272, Unlawful entry into motor vehicle;
 (ll) ORS 164.315, Arson II;
 (mm) ORS 164.335, Reckless burning;
 (nn) ORS 164.354, Criminal Mischief II;
 (oo) ORS 164.365, Criminal Mischief I;
 (pp) ORS 165.037, Criminal simulation;
 (qq) ORS 165.065, Negotiating a bad check;
 (rr) ORS 165.070, Possessing fraudulent communications device;
 (ss) ORS 165.074, Unlawful factoring of payment card transaction;
 (tt) ORS 165.085, Sports bribery;
 (uu) ORS 165.090, Sports bribe receiving;
 (vv) ORS 165.102, Obtaining execution of documents by deception;
 (ww) ORS 165.540, Obtaining contents of communication;
 (xx) ORS 165.543, Interception of communications;
 (yy) ORS 165.570, Improper use of emergency reporting system;
 (zz) ORS 165.572, Interference with making a report;
 (aaa) ORS 165.577, Cellular counterfeiting III;
 (bbb) ORS 165.579, Cellular counterfeiting II;
 (ccc) ORS 165.692, Making false claim for health care payment;
 (ddd) ORS 166.023, Disorderly conduct I;
 (eee) ORS 166.025, Disorderly conduct II;
 (fff) ORS 166.065, Harassment;
 (ggg) ORS 166.076, Abuse of a memorial to the dead;
 (hhh) ORS 166.116, Interfering with public transportation;
 (iii) ORS 166.180, Negligently wounding another;
 (jjj) ORS 166.190, Pointing firearm at another;
 (kkk) ORS 166.240, Carrying of concealed weapon;
 (lll) ORS 166.250, Unlawful possession of firearms;
 (mmm) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;
 (nnn) ORS 166.382, Possession of destructive device prohibited;
 (ooo) ORS 166.384, Unlawful manufacture of destructive device;

(ppp) ORS 166.470, Limitations and conditions for sales of firearms;
 (qqq) ORS 166.480, Sale or gift of explosives to children;
 (rrr) ORS 166.649, Throwing an object off an overpass II;
 (sss) ORS 166.651, Throwing an object off an overpass I;
 (ttt) ORS 166.660, Unlawful paramilitary activity;
 (uuu) ORS 167.007, Prostitution;
 (vvv) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;
 (www) ORS 167.212, Tampering with drug records;
 (xxx) ORS 167.222, Frequenting a place where controlled substances are used;
 (yyy) ORS 167.325, Animal neglect II;
 (zzz) ORS 167.330, Animal neglect I;
 (aaaa) ORS 167.337, Interfering with law enforcement animal;
 (bbbb) ORS 167.355, Involvement in animal fighting;
 (cccc) ORS 167.365, Dogfighting;
 (dddd) ORS 167.370, Participation in dogfighting;
 (eeee) ORS 167.820, Concealing the birth of an infant;
 (ffff) ORS 417.990, Penalty for placement of children in violation of compact;
 (gggg) ORS 418.130, Unauthorized use and custody of records of temporary assistance for needy families program;
 (hhhh) ORS 418.140, Sharing assistance prohibited;
 (iiii) ORS 418.250, Supervision of child-caring agencies;
 (jjjj) ORS 418.327, Licensing of certain schools and organizations offering residential programs;
 (kkkk) ORS 433.010, Spreading disease (willfully) prohibited;
 (llll) ORS 471.410, Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property;
 (mmmm) ORS 475.900, Commercial drug offense;
 (nnnn) ORS 475.912, Unlawful delivery of imitation controlled substance;
 (oooo) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);
 (pppp) ORS 475.950, Failure to report precursor substance;
 (qqqq) ORS 475.955, Failure to report missing precursor substances;
 (rrrr) ORS 475.960, Illegally selling drug equipment;
 (ssss) ORS 475.962, Distribution of equipment, solvent, etc., with intent to manufacture controlled substance;
 (tttt) ORS 475.965, Providing false information on precursor substances report;
 (uuuu) ORS 475.979 Unlawful possession of lithium or sodium metal;
 (vvvv) ORS 657A.280, Failure to certify child care facility;
 (wwww) ORS 807.620, Giving false information to police officer;
 (xxxx) ORS 830.475, Failure to perform the duties of an operator (boat);
 (yyyy) Any unclassified misdemeanor defined in Oregon's or any other jurisdiction's statutes and not listed elsewhere in this rule;
 (zzzz) Any other misdemeanor under the statutes of Oregon or any other jurisdiction and not listed elsewhere in this rule that the authorized designee determines is relevant to performance of the subject individual's present or proposed position as a Department employee, contractor, vendor or volunteer;
 (aaaaaa) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (2) pursuant to ORS 161.405, 161.435, or 161.450;
 (bbbbb) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (2);
 (ccccc) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (2) as determined by the authorized designee;
 (ddddd) Any offense that no longer constitutes a crime under Oregon law or the laws of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (2) as determined by the authorized designee.
 (3) Five-Year Review Crimes.
 (a) ORS 164.245, Criminal trespass II;
 (b) ORS 164.345, Criminal mischief III;
 (c) ORS 164.882, Unlawful operation of audiovisual device;

(d) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes;

(e) ORS 166.075, Abuse of venerated objects;

(f) ORS 166.090, Telephonic harassment;

(g) ORS 166.095, Misconduct with emergency telephone calls;

(h) ORS 167.340, Animal abandonment;

(i) ORS 418.630, Operating uncertified foster home;

(j) ORS 685.990, Violations pertaining to naturopathic medicine;

(k) ORS 822.045, Crimes relating to conducting a vehicle dealer business;

(l) ORS 830.035/990, Fleeing or attempting to allude a peace officer (small watercraft);

(m) ORS 830.053/990, Fraudulent report of theft of boat;

(n) ORS 830.315/990, Reckless operation of a boat;

(o) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance;

(p) ORS 830.730/990, False information to peace officer or State Marine Board;

(q) ORS 830.955/990, Prohibition of installation of submersible polystyrene device;

(r) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435 or 161.450

(s) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (3).

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

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

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

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

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

Stats. Implemented: ORS 181.534(9).

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

125-007-0280

Incomplete Fitness Determination.

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 181.534(9).

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

125-007-0290

Notice to Subject Individual of Fitness Determination.

(1) An authorized designee shall provide, in a format approved by the Department, written notice to a subject individual upon com-

pletion of a preliminary or final fitness determination, or upon the closing a fitness determination due to incompleteness.

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

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

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

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

Stats. Implemented: ORS 181.534(9).

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

125-007-0300

Appealing a Fitness Determination

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

(2) Process:

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

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

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

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

(3) Discovery

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

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

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

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

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

(5) Proposed and Final Order:

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 181.534(9).

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

125-007-0310

Recordkeeping and Confidentiality

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

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

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

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

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

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

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

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

(3) Other Records.

(a) The Department shall treat all records received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, includ-

ing DAS Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15).

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

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

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

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

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

Stats. Implemented: ORS 181.534(9).

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

125-007-0320

Authorized Designees

(1) Appointment.

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

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

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

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

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

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

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

(4) Termination of Authorized Designee Status.

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

(b) The Department shall suspend or terminate a Department employee's appointment to a designated position within the Personnel Unit of the Department's Operations Division, and thereby suspend or terminate his or her status as an authorized designee, if the employee fails to comply with OAR 125-007-0200 thru 125-007-310 in conducting criminal records checks and fitness determinations.

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

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

(A) Every three years; or

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

(5) A denial under OAR 125-007-0260(3) related to a designated position within the Personnel Unit of the Department's Operations

Division is subject to the appeal rights provided under OAR 125-007-0300.

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

125-007-0330

Fees

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

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

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

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

DIVISION 10

PUBLIC CONTRACT REVIEW SERVICES AND FEES

125-010-0005

Contract Review Board Services to Local Public Agencies

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

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

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

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

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

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

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

Stat. Auth.: ORS 279.015 & 279.055
Stats. Implemented:
Hist.: GS 7-1983, f. & ef. 11-3-83; GS 10-1991, f. & cert. ef. 7-5-91; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

DIVISION 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 & 283.060
Stats. Implemented:
Hist.: GS 8-1989, f. 10-31-89, cert. ef. 11-1-89

DIVISION 22

PERSONAL SERVICES AGREEMENTS WITH STATE AGENCIES AND OTHER GOVERNMENTAL ENTITIES

125-022-0050

Definitions

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

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

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

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

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

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

Stat. Auth.: ORS 184.305, 184.340 & 291.021
Stats. Implemented: ORS 184, 279 & 291
Hist.: TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95

125-022-0100

Interagency and Intergovernmental Agreements

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

(2) An interagency and intergovernmental agreement must specify:

(a) The purpose of the agreement;

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

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

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

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

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

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

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

Stat. Auth.: ORS 184.305, 184.340 & 291.021

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

Stats. Implemented: ORS 184, 279 & 291

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

125-022-0300

International Agreements

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

(2) An international agreement must specify:

(a) Its duration;

(b) The organization, composition and nature of any separate legal administrative entity created to exercise the functions agreed upon;

(c) The purpose of the agreement;

(d) The method of financing the joint or cooperative undertaking;

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

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

(g) Any other necessary and proper matters.

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

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

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

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

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

Stat. Auth.: ORS 184.305, 184.340 & 291.021

Stats. Implemented: ORS 184, 279 & 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 35

FEDERAL SURPLUS PROPERTY

125-035-0005

Authority

The Department of Administrative Services, State of Oregon, is authorized by ORS 279.820 to acquire, warehouse and distribute federal surplus property from the Government of the United States or any

surplus property disposal agency thereof (all such property is hereinafter referred to as "Federal surplus property") to all eligible donees in the state and to enter into cooperative agreements pursuant to the provisions of **41 CFR Ch. 101-44.206**.

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

125-035-0010

Designation of the State Agency

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

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

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

125-035-0015

Inventory Controls and Accounting Systems

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

(1) Inventory Controls:

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

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

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

(i) Oregon List number;

(ii) Item number;

(iii) Unit acquisition cost;

(iv) Description, including serial number, if applicable;

(v) Unit of measure;

(vi) Unit service and handling charge.

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

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

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

(2) Accounting Systems: A state approved double entry accounting system shall be used. It shall include a chart of accounts, a general ledger with accounts for all assets, liabilities, income, and expense, and journals for all original records of transactions. It shall identify and

separately account for funds accumulated from service charges. Monthly and year-end reports shall be provided for management visibility and program control.

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

125-035-0020

Return of Donated Property by Donee

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

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

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

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

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

125-035-0025

Financing and Service Charges

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

125-035-0030

Terms and Conditions on Donated Property

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

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

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

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

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

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

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

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

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

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

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

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

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 279 & 283
Stats. Implemented:
Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0035

Non-Utilized Donated Property

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

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

(b) Sell the property by public sale; or

(c) Abandon or destroy the property.

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

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 279 & 283
Stats. Implemented:
Hist.: GS 3-1984, f. 6-29-84, ef. 6-30-84; GS 1-1994, f. & cert. ef. 11-1-94

125-035-0040

Fair and Equitable Distribution

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

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

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

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

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

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

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

(b) Ability to utilize:

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

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

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

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

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

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

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

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

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

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

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

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

125-035-0045

Eligibility

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

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

(A) Public Agencies;

(i) Listings of cities and towns;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

125-035-0050

Compliance and Utilization

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

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

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

(4) During the physical review, a SASP representative shall ascertain whether the donee is complying with any special handling conditions or use limitations imposed on items of property by General Services Administration in accordance with **FPMR 101-44.108**. The review shall include a survey of donee compliance with the statutory requirements that all items of property acquired by the donee have been placed into use within one year of acquisition and used for one year thereafter. Written reports on utilization and compliance reviews shall be made and placed on file.

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

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

125-035-0055

Consultation with Advisory Bodies and Private Groups

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

125-035-0060

Audit

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

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

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

125-035-0065

Cooperative Agreements

(1) The Oregon Department of Administrative Services is authorized, pursuant to statute, to enter into cooperative agreements with the Administrator of General Services Administration for the use of property, facilities, personnel and services. Such agreements may or may

not require payment or reimbursement for use by the SASP of any surplus personal property in its possession, subject to conditions imposed by the General Services Administration. It is the desire of the SASP to continue, renew, or enter into such agreements authorized under **Section 203(n) of the Act, 40 USC para 471, et seq.**

(2) Periodically, internal audits shall be performed on the operations and financial affairs of the SASP. External audits will meet the requirements of the Office of Management and Budget Circular A-128 "Audits of State and Local Governments." The state and SASP will provide GSA two copies of any audit report made pursuant to the circular, or with copies of the sections pertaining to the Federal Donation Program. An outline of the necessary corrective action the SASP will take to comply with scheduled completion dates shall be submitted with the audit report. General Services Administration may conduct their own audit of the SASP following due notice to the chief executive officer of the state of the reasons for such audit. Financial records and all other books and records shall be made available by the SASP for inspection by General Services Administration, the General Accounting Office or other authorized Federal activities.

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

125-035-0070

Liquidation

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

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

125-035-0075

Records

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

Stat. Auth.: ORS 279 & 283

Stats. Implemented:

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

DIVISION 40

MAIL/DELIVERY SERVICES

125-040-0001

Definitions

As used in this chapter unless the context requires otherwise:

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

(2) "Interagency Mail" means:

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

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

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

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

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

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

Stat. Auth.: ORS 283

Stats. Implemented:

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

125-040-0005

Mail Services

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

(2) Private mail:

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

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

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

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

Stat. Auth.: ORS 283

Stats. Implemented:

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

125-040-0010

Delivery Disclaimer

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

Stat. Auth.: ORS 283

Stats. Implemented:

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

DIVISION 45

DISPOSITION AND ACQUISITION OF REAL PROPERTY INTERESTS

125-045-0200

Purpose

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

Stat. Auth.: ORS 184.340, 270.015 & 270.100

Stats. Implemented: ORS 244.010 & 270.010

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

125-045-0205

Definitions

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

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

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

(3) “Administrator” means the Administrator of the Department’s Facilities Division.

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

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

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

(7) “Department” means the Oregon Department of Administrative Services.

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

(9) “Director” means the Director of the Department.

(10) “Disposing Agency” means an Agency that proposes to dispose of a Real Property Interest.

(11) “Division” means the Facilities Division of the Department.

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

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

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

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

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

(a) The Department of Fish and Wildlife;

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

(c) The Department of State Lands;

(d) The Department of Transportation;

(e) The Oregon University System;

(g) The Parks and Recreation Department, and

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

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

(a) The Oregon Board of Forestry;

(b) The Oregon Board of Higher Education;

(c) The Oregon Fish and Wildlife Commission;

(d) The Oregon Parks and Recreation Commission;

(e) The Oregon Transportation Commission; and

(f) The State Land Board.

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

(16) “In Reserve” as used in the Statewide Lands Inventory means an Agency-owned Real Property Interest that is not currently being used by the Agency, but that the Agency intends to use to fulfill an anticipated future requirement, need or benefit related to the mission of the Agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

125-045-0210

Alternative Rules for Acquisitions and Terminal Dispositions by State Agencies

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

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

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

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

(3) If an Agency believes that it is exempt from all or a part of these rules due to superseding constitutional or statutory authority, the Agency shall, at least 30 days prior to the Acquisition or Terminal

Disposition, provide notice to the Division. The notice shall include the following information:

- (a) The specific requirements of these rules from which the Agency claims to be exempt;
- (b) The constitutional or statutory authority that the Agency believes supersedes these rule(s); and
- (c) Identification of the Agency's rules and the date they were filed with the Secretary of State.
- (3) The Division shall determine whether the Agency's rules are consistent with ORS 270.005 to 270.140. If the Agency's rules are determined to be consistent, the Division shall certify the Agency's rules and shall notify the Agency that it may use Agency rules in lieu of these rules.
- (4) Upon obtaining certification by the Division and after obtaining approval by the Agency's Governing Body, the Agency may acquire and dispose of Real Property Interests in accordance with its certified rules.
- (5) The Division will maintain a master file of all Agencies whose rules are certified exempt from all or a part of these rules. This master file will include the Agency's request for exempt certification, identification of the filed rules that the Agency will be using and a copy of the Division's written determination.
- (6) Once certified exempt, an Agency may not use amended rules filed for the Acquisition and Terminal Disposition of Real Property Interests in lieu of these rules until the Agency's restructured rules have again been certified exempt by the Division.
- (7) Notwithstanding OAR 125-045-0210, the Division may, upon 30 days prior notice to the Agency, withdraw its certification of an Agency's rules as a result of a reexamination Department rules, policies and certifications or an Agency's compliance with its certified rules. In such event, the Agency shall thereafter comply with OAR 125-045-0210 through 125-045-0245 until new or revised rules have been certified by the Division.

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

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

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

125-045-0215

Appraisal and Determination of Value of Real Property Interests

- (1) Prior to Acquisition from or Terminal Disposition to a party other than an Agency of a Real Property Interest, the Acquiring or Disposing Agency shall obtain an Appraisal of the Real Property Interest.
- (2) For acquisitions with an estimated fair market value of less than \$100,000, a letter of opinion from a licensed real estate professional constitutes an Appraisal.
- (3) If the estimated fair market value of the Real Property Interest is \$500,000 or greater, the Administrator:
 - (a) shall either select or approve the selection of an appraiser by the Disposing Agency;
 - (b) Must approve of the form and substance of the written Appraisal and the final determination of Appraised Fair Market Value by the appraiser; and
 - (c) May require that more than one Appraisal be obtained to establish the Appraised Fair Market Value.
- (4) Upon written request by an Agency, the Administrator may preapprove the Agency's appraisal process provided the process is consistent with this rule.
- (5) Upon written request by an Agency, the Administrator may preapprove the Agency's use of a directed appraisal for a particular use.

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

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

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

Stats. Implemented: ORS 270.100 & 270.105

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

125-045-0220

Acquisition of Real Property Interests

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

- (a) A detailed description of the Real Property Interest sought to be acquired, including its approximate size in square feet or acreage;
- (b) Any particular requirements of the Agency that the Interest must satisfy;
- (c) A description of the general or specific location where the Agency desires to acquire the Real Property Interest, including a map if possible;
- (d) The reason for the Acquisition;
- (e) A completed notice using a form provided by the Division; and
- (f) Any other information the Division may request.

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

- (a) The information provided by the Acquiring Agency defined in OAR 125-045-0220(1);
- (b) A request that the Agency give the Division written notice if the Agency controls a State Real Property Interest that the Agency no longer needs and the State Real Property Interest may match the needs of the Acquiring Agency;
- (c) The deadline for the Agency to respond to the Division, which may not be less than 30 days from the date of the Division's notice, unless the Administrator determines that a shorter period is in the State's interest; and

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

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

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

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

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

Stats. Implemented:

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

125-045-0225

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

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

- (a) A detailed description of the State Real Property Interest to be transferred, including its approximate size in square feet or acreage and its legal description;
- (b) A map showing the location of the State Real Property Interest;
- (c) An explanation of the reason for disposal;
- (d) A completed notice using a form provided by the Division; and
- (e) Any other information the Division may request.

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

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

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

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

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

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

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

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

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

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

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

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

(7) Before a Disposing Agency may dispose of a State Real Property Interest to other than another Agency, the Division shall provide notice of the intended Terminal Disposition to Political Subdivisions. Written notice will be given 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) Mailed notice;

(a) Posting notice of the intended Terminal Disposition on the Division's web site; or

(b) Publication meeting the requirements defined in OAR 125-045-0235(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) That such State Real Property Interest not be resold to a private purchaser without the consent of the State;

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

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

Stat. Implemented: ORS 270.100, 270.120

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

125-045-0230

Right of First Refusal Determination

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

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

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

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

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

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

Stat. Auth.: ORS 270.015(2), 270.100(1)(d)
 Stats. Implemented: ORS 270.010, 270.110, 270.130, 270.140
 Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06

125-045-0235

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

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

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

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

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

(b) The 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 may not be less than 30 days from the date of the first notice;

(e) A requirement that a security deposit in the amount and form described in this rule must 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;

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

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

(i) Any other information the Disposing Agency elect to include.

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

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

(6) All Proposals submitted in response to the published notice described in this rule must be accompanied by a deposit, in the form of a certified check or 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 of the total amount of the proposed purchase price. Deposits will be refunded to all unsuccessful Proposers after the closing of the sale to a successful Proposer or rejection of all Proposals.

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

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

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

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

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

(9) The Disposing Agency shall notify the apparent successful Proposer and shall negotiate to determine if the transfer can be con-

summated and a final agreement reached. If negotiations are unsuccessful, the Disposing Agency may:

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

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

(c) Reject remaining Proposals.

(10) If the Disposing Agency and a Proposer reach a final agreement on the Terminal Disposition of the State Real Property Interest and this agreement, where required, is approved by the Attorney General pursuant to ORS 291.047, the Disposing Agency shall transfer the State Real Property Interest to the successful Proposer in accordance with the terms of the agreement.

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

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

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

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

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

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

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

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

125-045-0240

Transfer of Property with Deed Restrictions

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

Stat. Auth.: ORS 270.015(2)

Stats. Implemented: ORS 270.110

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

125-045-0245

Department Approval

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

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

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

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

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

(b) The Director if:

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

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

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

(4) An Agency disposing of a State Real Property Interest pursuant to OAR 125-045-0245(3) shall provide the following informa-

tion to the Administrator within 30 days following Terminal Disposition:

- (a) The identify of the State Real Property Interest disposed of;
- (b) The Appraised Fair Market Value of the Interest;
- (c) The value received for the Interest; and
- (d) Any other information requested by the Administrator.

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

Stats. Implemented: ORS 270.100

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

125-045-0250

Public Lands Advisory Committee

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

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

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

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

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

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

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

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

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

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

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

Stats. Implemented:

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

125-045-0255

Procedure for Submitting Property Transactions and Inventory Information for PLAC Review

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

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

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

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

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

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

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

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

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

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

Stats. Implemented:

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

125-045-0260

Procedure for PLAC Review

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

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

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

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

Stats. Implemented:

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

125-045-0265

Statewide Inventory and Property Management

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

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

Property Interest is declared Surplus and sold, whether there are restrictions on the use of proceeds.

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

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

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

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

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

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

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

Stats. Implemented:

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

125-045-0270

Statewide Lands Inventory Program Costs

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

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

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

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

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

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

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

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

Stats. Implemented:

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

DIVISION 55

STATE PURCHASING

125-055-0005

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

As used in OAR 125-055-0005 to 125-055-0045:

(1) "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.

(2) "Agency" means a public agency, as defined in ORS 279.835(4).

(3) "Competitive Employment" means work performed by an individual in the competitive labor market on a full-time basis with no more than reasonable accommodation (as required by the Americans with Disabilities Act, 42 USC §§12101 to 12213) for which the individual is compensated within the range of customary wages and levels of benefits paid in the community for the same or similar work performed by individuals who are not disabled.

(4) "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.

(5) "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.

(6) "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.

(7) "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 125-055-0015.

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

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

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) & 184.340
 Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855
 Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

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 rehabilitation 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. 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 appli-

cant'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) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

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)(e)(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) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

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) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

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, 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 offi-

cer'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) & 184.340

Stats. Implemented: ORS 279.015(1)(b) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

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 and 279.835 to 279.850 and those which were procured outside the program created by those statutes ORS 279A.025(4),

(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) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

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 the state in

excess of a total of 1,040 hours in a 12-month period. A QRF temporary service provider must obtain a written statement from the contracted employee attesting to the accumulative hours worked for any state agency under the QRF contract or any other QRF provider plus any other hours worked as a state temporary employee with the state during the 12-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) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

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) & 184.340
Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855
Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

125-055-0100

Purpose — HIPAA Privacy and Security Rule Implementation

The purpose of these rules is to set forth the contract requirements to comply with the Business Associate provisions of HIPAA and the implementing Privacy Rule and Security Rule. 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. The Security Rule requires a Covered Entity to obtain certain written assurances from a Business Associate before the Business Associate may create, receive, maintain, or transmit Protected Health Information transmitted by or maintained in Electronic Media on behalf of the Covered Entity. 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 or Security Rule. The requirements contained in this Rule apply both to Contracts for trade services personal services, as defined in OAR 125-246-0110.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184.305, 184.340 & 279A.140
Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, Sec. 262 & Sec. 264
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05

125-055-0105

Definitions

For purposes of rules 125-055-0100 through 125-055-0130 the following terms shall have the meanings set forth below. Capitalized terms not defined herein shall have the same meaning as those terms in the Privacy Rule and the Security Rule.

(1) "Agency" means an agency of the State of Oregon subject to the procurement authority of DAS pursuant to ORS 279A.140 and that is a Covered Entity.

(2) "Business Associate" has the meaning defined in 45 CFR 160.103. A Business Associate performs or assists a Covered Entity in performing a function or activity that involves the use, disclosure, or creation of Protected Health Information 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 Contractor setting forth the rights and obligations of the parties.

(4) "Covered Entity" means:

(a) A governmental or private Health Plan;

(b) A Health Care Provider that transmits any Health Information in electronic form to carry out financial or administrative activities in connection with a Transaction;

(c) A Health Care Clearinghouse; or

(d) A prescription drug card sponsor under Medicare Part D.

(5) "Electronic Media" means:

(a) Electronic storage media; and

(b) Transmission media used to exchange information already in electronic storage media.

(6) "Electronic Protected Health Information" means Protected Health Information that is transmitted by Electronic Media or maintained in Electronic Media.

(7) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, Public Law 104-191, sec. 262 and sec. 264.

(8) "Health Care Provider" means the persons or entities that furnish, bill for or are paid for Health Care in the normal course of business, as more fully defined in ORS 192.519.

(9) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(10) "Protected Health Information" means Individually Identifiable Health Information that is maintained or transmitted in any Electronic Media or other form or medium by a Covered Entity.

(11) "Required by Law" has the meaning defined in 45 CFR section 164.103.

(12) "Rule" means this Oregon Administrative rule 125-055-0100 through 125-055-0130.

(13) "Security Rule" means the security standards for Electronic Protected Health Information found at 45 CFR Parts 160, 162, and 164.

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

Stat. Auth.: ORS 184.305, 184.340 & 279A.140
Stats. Implemented: ORS 192.519, 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, Sec. 262 & Sec. 264
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05

125-055-0115

Business Associate Contract Provisions

(1) A Contract that is subject to the Business Associate requirements of the Privacy Rule shall contain the following provisions, effective on or after April 14, 2003:

(a) 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 (a), 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.

(b) 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.

(i) 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.

(ii) 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.

(iii) 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).

(iv) 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.

(c) 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.

(d) 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 (1)(b)(B) above.

(e) 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:

(i) 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;

(ii) 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

(iii) If neither termination nor cure is feasible, Agency shall report the violation to the Secretary.

(iv) The rights and remedies provided herein are in addition to the rights and remedies provided in the Contract.

(B) Effect of Termination.

(i) 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.

(ii) 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.

(2) Security Requirements: Effective April 20, 2005, a Contract that is subject to the Security Rule's Business Associate requirements for Electronic Protected Health Information must comply with both the Privacy Rule and the Security Rule requirements applicable to a Business Associate. In addition to the Privacy Rule requirements set forth in subsection (1) of this rule, the Contract shall contain the following provisions: Obligations of Business Associate. Business Associate agrees to:

(a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Agency;

(b) Ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it; and

(c) Report to the Agency any security incident of which it becomes aware.

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

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, Sec. 262 & Sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05

125-055-0120

Order of Precedence

In the event of a conflict between this Rule and the provisions of the Contract, this Rule shall control. In the event of a conflict between this Rule and the Privacy Rule or the Security Rule, or the provisions of the Contract and the Privacy Rule or the Security Rule, the Privacy Rule and the Security 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 and the Security Rule.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, Sec. 262 & Sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05

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 and Business Associate are government entities, the parties may comply with the requirements of this Rule by entering into a memorandum of understanding that accomplishes the objectives of this Rule and meets the Business Associate requirements of the Privacy Rule and the Security Rule.

(2) Amendment. Agency may comply with the requirements of this Rule by executing an amendment or rider that amends Agency's Contract and that contains the contract provisions required by this Rule.

(3) Required by Law. If a Business Associate is Required by Law to perform a function or activity on behalf of an Agency or to provide a service described in the definition of Business Associate to an Agency, such Agency may disclose Protected Health Information to the Business Associate to the extent necessary to comply with the legal mandate without meeting the requirements of this Rule, provided that the Agency attempts in good faith to obtain satisfactory assurances required by OAR 125-055-0115, and, if such attempt fails, documents the attempt and the reasons that such assurances cannot be obtained.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, PL 104-191, Sec. 262 & Sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05

125-055-0130

Standards in Individual Contracts

(1) Agency and Business Associate may enter into a Contract that contains more stringent standards than those set forth in this Rule as long as such standards do not violate the requirements of the Privacy Rule or the Security Rule.

(2) Agencies shall use the form contract provided by the State Procurement Office of the State Services Division of the Department of Administrative Services when entering into personal services contracts as defined in OAR 125-246-0110. An Agency may request the Division to approve a revised form Contract for a one time use or repeated use for a specific class or classes of transactions.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, PL 104-191, Sec. 262 & Sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05

DIVISION 60

HOUSING AND RENTALS

125-060-0000

State Agency Housing Provided to State Officers or Employees

(1) As required by ORS 182.415 to 182.425, every state agency that provides housing for its officers or employees shall collect a rental for such housing. An exception is allowed in cases where employment contracts, signed prior to December 1, 1977, provide for free housing, until such original contracts expire or the incumbent leaves the position; or where express statutory authority exists which provides exemptions from ORS 182.425.

(2) Definitions: As used in this rule, unless the context requires otherwise:

(a) "Furnishings" includes furniture usually used in connection with occupancy of a household but does not include rugs, draperies, range, refrigerator, washer, dryer or any item of furnishings received by the state or one of its agencies as a gift, nor does it include any furniture purchased for the state-owned residence required in relation to the official duties of an institutional executive or the Chancellor of the Department of Higher Education prior to September 9, 1971;

(b) "Housing" includes single and multiple family dwellings, apartments, and mobile homes and mobile home pads, available for tenancy on a monthly or other basis but does not include guard stations maintained by the State Forestry Department or dormitory facilities at any state institution or at any state institution of higher education;

(c) "Dormitory" includes any facility which houses students and those facilities used primarily for sleeping purposes by the employees of the Mental Health Division;

(d) "State Agency" means every state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held in the State Treasury, except the Legislative Assembly, the courts and their officers and committees, and except the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices;

(e) "Utilities and Services" include heat, electricity, gas, oil, telephone, water, sewer, garbage, lawn care, laundry, linens, bedding, and towels used for any state agency provided housing.

(3) Every state agency that provides housing for its officers or employees shall:

(a) Examine and periodically re-examine the fair market rental value as determined by a qualified appraiser certified under ORS 308.010, when the agency determines that market conditions have changed to require it, but not less frequently than once every five years. In determining the fair market rental value, the appraisal shall consider all market factors unique to each housing unit including the value of utilities and services if provided or paid for by the owning agency;

(b) Collect a rental for such housing based on the fair market rental value, subject to any applicable rental reductions authorized under the schedule provided in this rule;

(c) Deposit such rental collected to the agency's account;

(d) Review the net rental rate annually and make such adjustment, if any, as may be determined from changes in the local rental housing market conditions;

(e) Provide no furnishings as a part of any housing provided by the agency;

(f) Determine whether or to what extent the agency will provide utilities and services for each housing unit.

(4) Whenever a state agency provides housing to anyone of its officers or employees, it shall notify the Facilities Division, Department of Administrative Services, on the appropriate form, of these arrangements, including the basis for rental charge and such rental rate reductions as may be applicable. Thereafter, annually on July 1, the agency shall report to the Facilities Division the following information:

(a) A listing of all housing provided by the agency to its officers and employees;

(b) A copy of the most recent rental appraisal report for each housing unit if a new appraisal has been made subsequent to the last annual report;

(c) The rental reductions, if any, applied to determine the net rental charge. Each rent reduction made under subsection (a) or (b) in sections (7) to (9) and under section (10) of this rule requires a justification;

(d) The net rental rate to be charged by the agency.

(5)(a) Each agency providing housing to its officers or employees shall employ an independent auditor selected by the Department of Administrative Services to determine the agency's compliance with this rule. The expense of such review shall be paid by the state agency being audited;

(b) Such audit shall be conducted at least once every three years. The written report of the independent auditor shall be filed by the agency with the Department of Administrative Services within 45 days of agency receipt of the report, together with an indication of actions taken or expected to be taken by the agency to correct any deficiencies cited in the auditor's report. Also, each agency shall implement any supplemental corrective actions which may be ordered by the Department of Administrative Services to comply with this rule.

(6) In determining whether reductions are necessary, each state agency that provides housing for its officers or employees shall consider factors such as isolation, invasion of the officer or employee's privacy, the agency's justifiable need for having its officers or employees occupy the housing in a specific location and inequities between the fair rental value as determined under ORS 182.425(1) and the salary of the officer or employee occupying the housing. The extent of rental reductions for each housing may be determined by the agency

by applying the schedule of reductions provided under sections (7) to (10) of this rule, and records shall be kept which will indicate reasons or justifications for any rental reductions applied.

(7) Reduction for the state agency need to have its officers or employees occupy such housing at such locations as it exists may not be more than 50 percent of the fair rental value, and the specific amount by which the rent is to be reduced shall be determined by the state agency providing such housing by applying the following standards:

(a) Residence in such housing is a part of the job requirement as evidenced by contract or position description, and not offered as an incentive or a fringe benefit to the resident state employee — 50 percent reduction;

(b) Residence in such housing is not a job-related requirement but is a distinct advantage to the agency by having the officer or employee live close to the job in case of an emergency, and for a general protection to the public property in the area — 20 percent reduction;

(c) Residence in such housing is not a job requirement. The only advantage to the agency is for the residence to be occupied to reduce the chance of vandalism and deterioration — 10 percent reduction;

(d) Residence in such housing is not a job requirement, nor is it for the benefit of the agency. It is solely for the convenience or by choice of the occupant — no reduction.

(8) Reduction for invasion of privacy of the resident of such housing shall be not more than 30 percent from the fair rental value, and the specific amount by which the rent is to be reduced shall be determined by the state agency providing such housing by applying the following standards:

(a) The housing or a significant part of it is used for a public office or public business, including such official functions as frequent receptions, dinners or other entertainment functions for the agency related guests; or is so located that invasion of privacy is considered the expected or the invited affair by the public or the state institutional residents — 30 percent reduction. "Frequent" here means at least once per week on a yearly average;

(b) Public is not invited and invasion is not the usual occurrence, but the residence's location or the architecture plainly indicates its state ownership with little or no restriction on public or the state institutional client traffic — 20 percent reduction;

(c) Invasion of privacy is an occasional or seasonal occurrence, and some restriction to public traffic is applied — 10 percent reduction;

(d) Invasion of privacy is no more than that which would be expected for an average privately owned residence — no reduction.

(9) Reduction for isolation of the resident shall be not more than 20 percent of fair rental value. Such reduction may be in addition to any rental value adjustment which may have been considered in the appraisal determined under subsection (3)(a) of this rule. To evaluate the isolation factor, the state agency may consider factors such as distance from the nearest full-service community, difficult road conditions or services, a public presence so substantial that the resident's family is forced to retreat within the walls of their home, or conditions that make friends and neighbors reluctant to socialize and visit because of institutional inmate activities, or the stigma attached to a state institution. A rent reduction may be allowed for such isolation according to the following standards:

(a) The housing is located in an isolated area, which is defined as being more than 50 miles or 90 minutes travel by automobile, one way, from the nearest full-service community, or the travel conditions are usually severe or hazardous. A full-service community is to be defined as one complete with supermarket, department store, medical doctor, dentist, church, school, etc.; or if the resident employee's family is isolated socially by public pressure or by the institutional atmosphere to the point where the family is primarily confined within the walls of the home, or friends refuse to come to such housing to socialize — 20 percent reduction;

(b) The housing is located 30 to 50 miles or 60 to 90 minutes travel time, one way, from the nearest full-service community, or the travel conditions are seasonally severe or hazardous, or location or institutional atmosphere tends to reduce the residents' freedom of socialization with neighbors — 15 percent reduction;

(c) The housing is located about 10 to 30 miles or 30 to 60 minutes travel time, one way, from the nearest full-service community, the

travel conditions are seldom severe or hazardous, and there is little or no restriction on socialization — 10 percent reduction;

(d) The housing is located within ten miles and not over 30 minutes travel one way from the nearest full-service community, and there is no restraint on socialization from any institutional activity or atmosphere — no reduction.

(10) When the officer or employee is required by the agency to occupy state provided housing as a condition of employment, agencies may apply a rental reduction for unique conditions not previously discussed in sections (7) through (9) of this rule according to the following standards:

(a) As a unique condition, when a reduction from the fair market rental value is needed by the agency to establish a uniform rental schedule for like houses provided in different locations by a single agency to enable intra-agency geographical transfers of employees — reduction to the extent necessary and reasonable to establish a uniform rental schedule;

(b) As a unique condition, when a reduction from the fair market rental value is needed to correct inequities between the fair market rental value of housing and the salary of the officer or employee occupying the residence — reduction to the extent necessary and reasonable;

(c) As a unique condition, when a reduction from the fair market rental value is needed because of unique conditions in the state's title to the property such as when housing is received by the state or one of its agencies as a gift for the free use of a specified state officer or employee and where a valid right of reverter exists — for the use by the state officer or employee, a reduction up to 100 percent of the fair market rental value;

(d) Other factors not previously considered in the reduction schedule may be considered unique conditions when necessary and justifiable for the agency's effective program management — a reduction up to 20 percent. (Factors reflecting only employee convenience or comfort, without a corresponding impact on the agency's program management, shall not be considered unique conditions).

(11) The rental reductions authorized in sections (6) through (10) of this rule, when combined, may be up to 100 percent of the fair market rental value, when justified.

Stat. Auth.: ORS 182 & 283

Stats. Implemented:

Hist.: GS 46, f. & ef. 12-1-77; GS 5-1983, f. 4-29-83, ef. 5-2-83; GS 8-1983, f. & ef. 12-2-83

125-060-0005

Management of the Capitol Mall Housing Units

(1) Pursuant to ORS 276.028 and 276.046, the Department may purchase or acquire by agreement or donation, for development as a part of the Capitol area, the land lying in the area of the City of Salem bordered by Capitol and Winter Streets on the east and west and by Court Street on the south to D Street on the north.

(2)(a) The Department may operate housing units acquired under section (1) of this rule as state office quarters, or as rental properties for any appropriate private commercial use or as rental houses and apartments;

(b) For any Mall housing units leased to private persons for use as private residences or for housing any lawful commercial enterprise and the housing unit designated as the Governor's residence, the Department's rules OAR 125-075-0005, 125-075-0010 and 125-075-0015 shall not apply and the use access thereto shall be totally at the control of the persons leasing or residing in such housing units.

(3) For each Mall housing unit used as a rental housing or as a private commercial rental unit, the Department may:

(a) Set rental rates, security deposits and fees at par with the prevailing comparable market rates, and apply such rate schedule for the year with some adjustments allowed taking into consideration the prevailing market conditions or the condition of repairs of the rental unit;

(b) Enter into a written rental agreement with tenants on a month-to-month tenancy basis or a longer term lease, when appropriate;

(c) Conduct periodical inspections to ensure the tenant performance of the responsibilities under the rental agreement;

(d) At any time during the tenancy the Department may order the tenant to repair or correct the conditions listed below to be performed within a reasonable period of time specified, or in case the tenant does not apply, the Department may undertake the repair or the corrective action required, and charge the tenant for the costs. The conditions for

such action shall include, but not be limited to, any damage to the premises above and beyond normal wear and tear, excessively unclean and unkept conditions which present health or fire hazards requiring a major cleaning work or a disposal of garbage and rubbish, any apparent pet damages, and any seriously neglected maintenance of the lawn and landscape.

(4) For Mall housing units used as state office quarters, the Department may manage the units in accordance with other appropriate policies of the Department.

(5)(a) For minor repairs and improvements on any rental Mall housing unit used as a residential unit, when the tenant offers to do such work for free of charge which the Rental Housing Coordinator recognizes such work as being needed and as being within the tenant's capability, the Department may furnish to the tenant the necessary materials to complete the work;

(b) Tenants of Mall housing units shall not be compensated for any work in the form of rent reduction.

(6) For all residential rental agreements, the Department may charge appropriate amounts for security deposits and special fees at the time such agreements are signed. Such deposits and special fees are refundable at the end of tenancy, less the amount sufficient to correct any deficiencies which are the responsibility of the tenant. When the deposit amount is not sufficient to correct the deficiencies, the Department may pursue appropriate methods to collect the additional amount from the tenant or former tenant.

(7) The procedures relative to this rule are as follows:

(a) Tenants or Applicants:

(A) Contact the Rental Housing Coordinator, Facilities Division, Department of Administrative Services at 1225 Ferry Street SE, Salem, OR 97310 to arrange for tenancy in any Mall housing units;

(B) Complete an application form of the Department providing references, social security number, former addresses and such other information as the Department may require;

(C) Complies with the terms of the rental agreement.

(b) Rental Housing Coordinator, Facilities Division — Action:

(A) Makes selections of tenants for the Mall housing units following the normal practices of the private rental housing industry, and signs rental agreements;

(B) Annually for each rental housing unit, establishes the rental rate and the amounts to be charged for deposits and fees to be applicable in renting during the year, and applies such rental-deposit-fee schedule with some adjustments allowed taking into consideration the prevailing market conditions or the condition of repairs of the rental unit;

(C) Conducts periodic inspections of the Mall housing rental units during and at the end of each tenancy, and determines the amount to be billed to the tenant or to be charged against the deposits and fees. The chargeable items include the following: Damages above and beyond normal wear and tear, cleaning, garbage disposal, lawn and landscape maintenance, disposal of any rubbish, pet damage, loss of keys and lock changes, as needed, and final rent due, if any;

(D) Within 30 days, prepares and transmits an itemized accounting of any deficiencies, an estimated cost to correct the deficiencies and the amount to be refunded to the former tenant;

(E) When claims against the security deposit exceed the amount of the deposit, pursues appropriate methods to collect the remaining claim amount from the tenant or former tenant.

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

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

DIVISION 70

GIFTS AND DONATIONS

125-070-0000

Gifts and Donations for the Benefit of the Programs of the Real Property Division

(1) As authorized under ORS 276.005(3), the Department may accept on behalf of the State of Oregon any gifts, grants and donations from public and private sources for the purposes set out in ORS 276.005(1). Any prospective donor may contact the Facilities Division Administrator or the Director of the Department to consult or to propose making gifts, grants or donations of any value stipulating con-

ditions or limitations, if any. Such proposals may be addressed to: Director, Department of Administrative Services, 155 Cottage Street N.E., Salem, OR 97310.

(2) Gifts, grants and donations approved under section (1) of this rule will be received by the Director or a designee. Funds will be deposited by the Department in appropriate separate trust accounts to be used for the purposes for which the gifts, grants or donations are made. When no specific designations are made by the donor, the Department shall deposit such amounts in the Capital Projects Account established under ORS 273.004(2), subject to any limitations imposed by the donor. When the Department determines that any stipulation or limitation imposed by the donor will result in violation of any applicable law or is contrary to any rules or policies of the state, the Department shall decline acceptance of such donation or gift. All donations or gifts, except landscape donations, must be approved by the Director before such an offer can be accepted by the Department.

(3) All proposed landscape donations are subject to review and approval by the Administrator of the Facilities Division or the Administrator's designee. Proposed donations may be incorporated into the landscape or the facilities only if the following criteria are satisfied:

(a) Compatibility with the Department's master plans or, in areas not covered by such plans, compatibility with existing facilities;

(b) Compatibility with the local conditions;

(c) Age and the anticipated general condition of the donation;

(d) Anticipated maintenance requirements.

(4) Memorial or donation plaques associated with any landscape donation are discouraged by the Department in order to simplify the environment and minimize maintenance. However, in case any such plaque is stipulated by the donor and approved by the Department, the donor shall provide the cost for the purchase of such plaque. The size and type of such plaque shall be determined by the Department. The Department may provide the mounting post and the necessary labor for the installation.

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

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

DIVISION 75

USE OF BUILDINGS, PARKS AND GROUNDS UNDER DEPARTMENT CONTROL

125-075-0000

Restrictions on the Use of Capitol Mall Heliport

(1) The Capitol Mall Heliport, located at the open recessed area between the State Library Building and the Public Service Building, is a non-public, restricted use facility registered with the State of Oregon Aeronautics Division and the Federal Aviation Administration. No one may use this Heliport without first receiving permission to use it from the Department of Administrative Services. The use of this Heliport is restricted and permission for use is given only for official state business or emergencies in following instances:

(a) Official state business use by the Governor, the President of the Senate, the Speaker of the House or the Chief Justice of the Supreme Court;

(b) Emergencies (e.g., air ambulance, catastrophes, etc.) to be so defined and approved by the Manager, Operations & Maintenance Section, Facilities Division, Department of Administrative Services.

(2) All requests for the Heliport use, with no exception, must be directed to and approved by: Manager, Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone: 378-2865.

(3) All users of the Heliport must inform the Department in advance of the estimated time of landing and lift-off so that the Department can notify the Capitol Mall Area Security personnel to clear the Heliport area to ensure safety.

(4) All Capitol Mall Heliport air traffic shall contact the Salem Airport FAA Control Tower to receive advisories in approaching or departing the Heliport.

(5) Any unauthorized use of the Heliport shall be reported to the State of Oregon Aeronautics Division and may be prosecuted under ORS 276.990 and other applicable provisions of law.

Stat.: Auth.: ORS 276 & 283

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

125-075-0005**Use of the Capitol Mall Area Parks and Grounds**

(1) The State Capitol grounds including Willson Park, Capitol Park, and other parks and grounds in the Capitol area as defined in ORS 276.010, save and except that property used for residential purposes located in the northern portion of the Capitol area, are open to the public for use, subject to restrictions specified in this rule.

(2) The restrictions specified in the **City of Salem Code 94.010**, as adopted by Salem City Council on October 25, 1955, are hereby adopted by the Department of Administrative Services and, except for the modifications set forth in section (5) of this rule, are made a part of this rule governing the use of the State Capitol area parks and grounds.

(3) Any request for information, applications for permits or reservations for a park or a portion thereof for use should be sent to: Manager, Operations and Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310.

(4) Any use of the Capitol area parks and grounds for the following activities shall require use authorization by the Department:

(a) Sales and solicitations, as provided under the **City of Salem Code 94.100**;

(b) Public demonstration, as provided under the **City of Salem Code 94.090**;

(c) Any organized or group activity, as referenced in the **City of Salem Code 94.200**.

(5) Enforcement of this rule shall be carried out by the Department's Capitol area security personnel in cooperation with the City of Salem Police Department with the following stipulations modifying the **City of Salem Codes 94.010 to 94.990** for the purposes of this rule:

(a) For the purposes of **City Code 94.070** on throwing objects, frisbees are exempted from the prohibited category of "other missile";

(b) For the purposes of **City Code 94.100** on sales and solicitations, the Department may follow the Department's rule OAR 125-080-0000 and 125-080-0010 for granting permits;

(c) For the purposes of **City Code 94.110**, no bathing, wading or swimming shall be allowed in fountains, water displays or systems, with the exception of the Wall of Water Fountain on the Capitol Mall Plaza, in front of the Capitol Building, where wading is allowed;

(d) For the purposes of **City Codes 94.160 to 94.180** relative to use of motor vehicles and parking, the Department may follow the Department rules OAR 125-095-0000 through 125-095-0065;

(e) For the purposes of **City Code 94.190**, the Department shall not permit any overnight use of the parks and grounds subject to this rule;

(f) For the purposes of **City Code 94.195** on the use of alcoholic beverages, the Department shall follow the Department's rule OAR 125-075-0015(2), and prohibits use of any illegal drugs or controlled substances by law in addition to any alcoholic beverages;

(g) For the purposes of **City Code 94.200**, the Department may choose not to set or post any signs for public information on opening and closing hours of the Capitol grounds. However, as provided under section (4) of this rule, the Department will regulate organized activities to minimize traffic congestion in the Capitol Mall area, disruption of state business by noise, such as by high amplification equipment, and informal use of the parks;

(h) No posters or placards may be placed on public grounds except those authorized by the Facilities Division for the conduct of public business;

(i) The State Capitol Building and the Supreme Court Building including their respective entrance areas are outside the jurisdiction of the Department. For any proposed use thereof, inquiries should be directed to the Administrative Services, Legislative Administration Committee, S401 State Capitol, Salem, OR 97310; or the office of State Court Administrator, Supreme Court Building, Salem, OR 97310, respectively.

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

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

Hist.: GS 3-1983, f. & ef. 1-19-83; GS 14-1992(Temp), f. & cert. ef. 7-1-92; GS 19-1992, f. 11-23-92, cert. ef. 1-1-93

125-075-0010**Public Use of Meeting Rooms in State Buildings Under the Department of Administrative Services' Control**

(1) Pursuant to ORS 276.440 and other related provisions of ORS Chapter 276, the Department may permit and schedule the occasional use of certain meeting rooms in the Department-controlled state office buildings by the public on space available basis, subject to restrictions and payment of fees where applicable under this rule. Any interested person or organization may call or write to the Department for information on available meeting rooms or to make reservations. The address and the phone number are as follows: Meeting Room Reservations, Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone: 378-2865.

(2)(a) The Department shall refuse to permit the use of such meeting rooms when it determines that doing so is contrary to any applicable law or policies of the state, or disrupt the operations of the building or the working of the state government;

(b) The use of the meeting rooms shall not be permitted under this rule for the following types of activities:

(A) Activities which generally produce excessive noise, such as music performances with high amplification;

(B) Activities which will tend to create traffic congestions in the Capitol Mall area in Salem;

(C) Activities considered by the Department as likely to endanger public safety or property;

(D) Activities at which alcoholic beverages are served or used.

(3) Fees for the use of meeting rooms shall be set by the Department. Where applicable, the minimum space rental shall be \$15. In addition, a service fee will be charged for any use after 5:00 p.m. on weekdays, and any time on weekends and holidays for security, clean up and other support needs. Whenever special custodial services are required, a fee therefor shall be for not less than two hours.

(4) State agency tenants in Department-owned or controlled office buildings are exempted from the space rental charges. When tenant agency use requires special custodial services, an applicable service fee will be charged. All other users will be charged a space rental charge, and a service fee when applicable.

(5) All non-state users must reserve meeting rooms early, at least seven days in advance and pay all applicable use fees in advance of the dates or times reserved. Any cancellation must be made as soon in advance as possible to allow rescheduling. When a scheduled user fails to cancel the reservation at least three business days in advance, the scheduled user may forfeit charges for the period reserved for use.

(6) Scheduling of such meeting rooms will be done in order of priority first to state agencies, second to other public agencies, and third to private citizens or organizations.

(7) The Division reserves the right to cancel or alter any scheduled or reserved use of any meeting room when it considers necessary for public safety under emergencies.

(8) All users of meeting rooms shall leave the rooms in a reasonably clean condition after each use. In case an excessive clean up by the Department's personnel is necessary, the user may be billed for the additional custodial services for the cleanup.

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

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

125-075-0015**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 & 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 & 283
 Stats. Implemented:
 Hist.: GS 3-1983, f. & ef. 1-19-83

125-080-0005

Cafeterias in State Office Buildings Under the Department of Administrative Services' Control

(1) Pursuant to ORS 276.431(2), the Department of Administrative Services may lease any suitable space in state office buildings owned or leased by the Department to restaurateurs to establish and operate cafeterias or snack bars for a term not to exceed five years.

(2) No person, firm or state agency may establish or operate any cafeteria or snack bar in any state office building owned or leased by the Department without a specific authorization from the Department or by a contract with the Department. Any inquiry therefore should be addressed to: Manager, Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone 378-2865.

(3) Determinations as to whether to establish or to continue operating any cafeteria or snack bar in any Department controlled building shall be within the discretion of the Department, and terms and conditions for operating such facility shall be specified in a written contract made between the restaurateur and the Department. The Department may furnish such facility to the extent necessary or to the extent customarily provided for such facility, subject to negotiation with the restaurateur, and may set a rental rate for such facility at par with prevailing commercial rates for nearby comparable facilities used for similar purposes.

(4)(a) For any available opportunity to enter into a new contract with a restaurateur such as when opening a new cafeteria or snack bar or when a contract for an existing facility is due to expire or being terminated, the Department will inform in writing the Commission for the Blind about the available opportunity and offer to the Commission the right of first refusal to contract on the terms and conditions set forth by the Department;

(b) The Commission for the Blind shall respond in writing within 30 days to accept or to decline the offer made by the Department under subsection (a) of this section, and the Commission may commence negotiating with the Department for a contract should the Commission decide to accept the offer, subject to conditions stipulated under section (5) of this rule;

(c) In case the Commission for the Blind fails to respond within the 30 days specified under subsection (b) of this section, or declines to accept the Department's offer, the Department may proceed to select other restaurateurs either by an open competitive bid or by negotiating with one or more restaurateurs without competitive bid under certain circumstances, subject to any applicable provision of law.

(5) The Department reserves the right to reject any and all bids and proposals. The Department's decision in awarding all contracts will be based upon any or all of the following conditions:

(a) Restaurateur's experience and competence in managing and operating food service facilities of the similar nature;

(b) The proposed menu, food prices and service levels;

(c) The quality of food and service at other establishments owned or managed by the restaurateur;

(d) Terms of contract and considerations offered to the Department.

(6) No alcoholic beverages shall be allowed in any cafeteria or snack bar in any state buildings under the Department's control.

(7) The Department reserves the right to make periodic inspections of any contracted facility to insure the lessee-restaurateur performance of the terms and conditions of the contract.

Stat. Auth.: ORS 276 & 283
 Stats. Implemented:
 Hist.: GS 3-1983, f. & ef. 1-19-83

125-080-0010

Sales or Solicitations in State Office Buildings Under the Department of Administrative Services' Control

(1)(a) In any state office building premises under the jurisdiction of the Department of Administrative Services, any temporary walk-in sales activity or solicitations by any person who is not a state employee shall be restricted and require permits issued by the Department of Administrative Services;

(b) Such temporary sales or solicitation activities restricted under this rule shall include, but not be limited to, hawking, peddling, vending or selling goods, wares, merchandise, foods, beverages or services; soliciting donations or signatures; or distributing handbills or posting

posters on any wall space designated for such purposes by the agency leasing the space;

(c) Any wall space designated for posting information on bulletin boards are for state business and related purposes only.

(2) Permits for any restricted activity under section (1) of this rule may be issued by the Department provided a written request for a permit is received by the Department at least seven days in advance, and such proposed activity is determined by the Department as not likely to interfere with the normal operation of the building or working conditions of the building residents. No sales or solicitations shall be permitted at workstations of the building residents.

(3) All permit applicants shall specify in the application or request for permission the time, place, type of activity being proposed and state the organizational affiliations, if any.

(4) The Department may issue permits under this rule for the following activities specifying the time and place where the permitted activity may be conducted:

(a) Sales of products or other activities which are in the judgment of the Department to be of some significant benefit or relevance to the residents of the state office building in conducting their official business, or in the general public interest; *and*; in addition;

(b) When such sales of products or other activities referred to under subsection (a) of this section are conducted by members of and on behalf of any nonprofit organization whose primary mission is for services for youth, charitable organizations or services for the public.

(5) State employees shall not engage in any sales or solicitation activities in any Department controlled premises, except when so authorized by their own employing agency.

(6) Any inquiry or permit applications under this rule should be addressed to: Operations & Maintenance Section, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, OR 97310 — Phone 378-2865.

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

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

DIVISION 85

RECYCLING

125-085-0000

State Recycling Program

(1) The Department of Administrative Services shall operate the state agencies recycling program established under ORS 279.560 by contracting with persons or firms for the collection, processing, and marketing of such recyclable products. Terms and conditions of such contract may include provisions for the following specifications:

(a) The acceptable waste paper products for the collection may include:

- (A) White ledger or bond paper;
- (B) Stationery and letterheads;
- (C) Plain bond machine copies;
- (D) Computer printouts;
- (E) Envelopes;
- (F) Colored paper;
- (G) Newspapers;
- (H) Cardboard.

(b) Other acceptable products for collection may include but are not limited to, plastic, glass and metal, as determined for acceptability by the Department's recycling program;

(c) The collection schedule and the method of accounting for quantities collected;

(d) The rates and the payment schedule.

(2) In selecting contractors under section (1) of this rule, the Department may, under ORS 279.015, and 279.835 to 279.855, give preference to nonprofit organizations which provide opportunity to persons with disabilities who reside in the State of Oregon, but awarding of contracts will be based on contractor's experience, capability and payment arrangements offered to the Department.

(3) All inquiries concerning the Department's recycling program for state agencies and all collection accounting reports or other contact from contractors should be addressed to: State Recycling Coordinator, State Recycling Program, Facilities Division, Department of Administrative Services, 1225 Ferry Street S.E., Salem, Oregon 97310.

Stat. Auth.: ORS 276, 279 & 283

Stats. Implemented: ORS 279.545, 279.550 & 279.560

Hist.: GS 3-1983, f. & ef. 1-19-83; TPPSD 2-1994, f. 12-22-94, cert. ef. 1-1-95

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 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, 190.240, 276.591 & 283.110
 Hist.: GS 3-1981(Temp), f. 8-28-81, ef. 10-1-81; GS 7-1981, f. 11-23-81, ef. 1-1-82; GS 1-1992, f. 1-28-92, cert. ef. 2-1-92; GS 13-1992(Temp), f. 6-22-92, cert. ef. 7-1-92; GS 17-1992, f. & cert. ef. 8-27-92; DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

125-090-0005

Rental Rates for Parking Facilities Controlled by the Department of Administrative Services

(1) The provisions of this rule shall govern all of the Parking Facilities regulated by division 90 and subsequent, applicable administrative rules. These above listed administrative rules provide the basis for establishing rental rates and for the review and adoption of revised rental rates of the Parking Facilities.

(2) The Department shall conduct an annual rate review of the fees to be charged for parking in the various Parking Facilities regulated by division 90 and by subsequent, applicable administrative rules. The Department also may conduct more frequent rate reviews and may alter any parking fees or rates if it determines that reviewing the rates or changing the fees is justified by a consideration of the factors listed in OAR 125-090-0020.

(3) In addition to the rate review and adoption of rental rates described in sections (1) and (2) of this rule, the Department also may alter rental rates periodically or for periods the Department determines appropriate when parking lot occupancy exceeds expected levels. Such rental rate changes may be temporary or long-term and may be used to adjust revenue levels to those levels required considering those factors identified in OAR 125-090-0020.

(4) After the Department completes an annual review of rates, or after it completes an interim review, it shall publish the rate schedule, stipulated in OAR 125-090-0020(4) and subsequent, applicable administrative rules regulating Parking Facilities. The new published rate schedule shall supersede all previously published rate schedules and the rental rates originally established in OAR 125-090-0140.

(a) Pursuant to section (3) of this rule, the published rate schedule shall include:

(A) Any revised long-term rental rate changes; and/or

(B) The magnitude and the proposed duration of any temporary rental rate change.

(b) The Department shall publish the revised rates by distributing a new rate schedule, in writing, to:

(A) All individuals who lease parking subject to the rate change; and

(B) All State Agencies which lease, or have employees who lease, parking subject to the rate change.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591 & 276.601

Hist.: GS 2-1983(Temp), f. & ef. 1-7-83; GS 4-1983, f. & ef. 3-1-83; GS 4-1988, f. & cert. ef. 6-23-88; DASII 1-1996, f. & cert. ef. 3-1-96

125-090-0010

Parking Facilities Subject to Department of Administrative Services Management and Control

The provisions of this rule shall govern Parking Facilities:

(1) Provided at the expense of any State Agency of the State of Oregon, which are located:

(a) Within the Capitol Mall Area, except for the garage of the State Capitol and that parking in front of the Capitol but south of Court Street; or

(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, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

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) through (f) of this section, parking which is made available to persons who are not State Employees.

(3) Pursuant to the provisions of OAR 125-090-0005 and this rule, the Department shall annually review the base rate and schedule of surcharges authorized in sections (1) and (2) of this rule, and shall adopt and publish a rate schedule for distribution to all persons leasing parking subject to these rules, and to all State Agencies which occupy quarters located in the Capitol Mall Area, or elsewhere in the City of Salem, the Portland State Office Building and the Eugene State Office Building. Pursuant to OAR 125-090-0005 and this rule, the Department may, at its discretion, review and adjust the base rate and schedule of surcharges more frequently when it determines that reviewing or adjusting the base rate or the schedule of surcharges is justified by a consideration of the factors listed in this rule. Unless otherwise specified, the rate schedules published by the Department shall supersede all previously published schedules for parking subject to these rules.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

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, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

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, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

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, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

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, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

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, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

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, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 6-2001, f. & cert. ef. 11-1-01; DAS 2-2002, f. & cert. ef. 7-30-02

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, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

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, 184.340, 276.591 - 276.601 & 283.100
 Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601
 Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01

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, 184.340, 276.591 - 276.601 & 283.100
 Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601
 Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 6-2001, f. & cert. ef. 11-1-01

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, 184.340, 276.591 - 276.601 & 283.100
 Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601
 Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

125-090-0130

Enforcement

(1) The Department shall investigate and administer the application of these rules in the designated Parking Facilities, with its own personnel or it may enter into agreements with other State Agencies, public jurisdictions or private concerns to provide such services.

(2) The Department may enter into agreements with local jurisdictions to adjudicate parking citations issued in accordance with these rules.

(a) Such an agreement exists with the City of Salem to cover the Parking Facilities in the City of Salem, in accordance with Salem Revised Code, Chapter 102. Citations shall be processed and prosecuted in the Municipal Court of the City of Salem.

(b) Such an agreement exists with Multnomah County to cover the Parking Facilities at the Portland State Office Building. Citations shall be processed and prosecuted in the District Court of the State of Oregon for Multnomah County.

(c) Such an agreement exists with the City of Eugene to cover the Parking Facilities within the City of Eugene. Citations shall be processed and prosecuted in the Municipal Court of the City of Eugene.

(3) Parking Facilities shall be subject to all local parking and traffic ordinances. Such ordinances are adopted and made a part of this rule.

(4) Bails and penalties shall be as indicated on the citation.

(5) Vehicles found to be in violation of these rules may be impounded in place or towed away. If, within three days after a vehicle has been impounded, no person has appeared to claim and establish ownership or right to possession thereof, the Department shall research the name and address of the person entitled to possession of such vehicle and send notice to such person by mail at his or her last known address. The notice will indicate the location of the impounded vehicle, the amount of the delinquent parking fees, fines, bail costs, penalties, impoundment costs and other accrued charges against the same, and shall ask if the owner wishes to regain possession of the vehicle by paying such costs. Release of the vehicle will be made only upon receipt of such payment. Unclaimed vehicles will be disposed of in accordance with law.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100
 Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601
 Hist.: DASII 1-1996, f. & cert. ef. 3-1-96

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, 184.340, 276.591 - 276.601 & 283.100
 Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601
 Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 6-2001, f. & cert. ef. 11-1-01

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 com-

patibility 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 & 283.060

Stats. Implemented:

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

125-120-0020

Assignment of Office Quarters

(1) When an agency requires an assignment of office space or leased office quarters, the agency shall first estimate the space requirements, in accordance with the Department’s Office Space Standards, DAS Policy 125-6-100, and submit a completed Space Assignment Request form to the Division.

(2) Facilities Division shall review and approve Space Assignment Requests and shall allocate office quarters in the following order of priority: first, office quarters owned or managed by the Department, when available and feasible; second, other state-owned or state-leased office quarters when available and feasible; third, and only if neither of the foregoing office quarters is available and feasible will the Department consider approving any lease for office quarters. The State Capitol and the Supreme Court Building are not subject to space assignment by the Department.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.410

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0030

Allotment of Space in Office Quarters (ORS 270.410)

Allotment of space in all leased office quarters shall be guided by the Department’s Office Space Standards (Policy #125-6-100).

Stat. Auth.: ORS 276.428 & 283.060

Stats. Implemented:

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90

125-120-0040

Measuring Office Quarters

The Division will use the standards of the American National Standards Institute (ANSI) as adopted by the Building Owners and Managers Association (BOMA) as a guide in measuring office space.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.410

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0050

Space Allocation/Rental Agreement

(1) Agencies occupying Department-owned office quarters shall sign and comply with the Department’s Space Assignment/Rental Agreement.

(2) The Division may charge and collect from any agency violating the terms of such Agreement, the cost of correcting the damages resulting from the agency’s violations.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0060

Complying With Local Policies

All facility siting shall comply with local land use plans, and if possible, community development policies, pursuant to Department of Administrative Services’ OAR 125-110-0001 (the Land Use Coordination Rule).

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0070

Leasing Authority

(1) The Department, acting through its Facilities Division, shall supervise and conduct negotiations for all leases, rental agreements and related site selections for office quarters, unless otherwise authorized by the Division in writing.

(2) No lease or rental agreement shall be binding upon the state or any agency unless such lease or rental agreement has been approved by the Division in accordance with ORS 276.428.

(3) The tenant agency Representative, as identified by the Division to the lessor, may communicate with build-to-suit lessors during construction, and with other lessors during remodeling or renovations of office quarters. The tenant agency representative shall not communicate changes in the scope or specifications of lessor’s work directly with lessor’s contractor(s), unless so authorized by the lessor. In any case, all change orders must be processed through Facilities Division.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0075

Technical Assistance and Leasing Services for Non Office Quarters

(1) Leases for facilities other than office quarters (such as prisons, medical clinics, dormitories, laboratories) are not subject to the Department’s supervision and approval and are exempted from complying with OAR 125-120-0000 through 125-120-0200 (the Leasing Rules).

(2) Upon written request from an agency, the Facilities Division may provide leasing services and technical assistance in any manner it deems appropriate to best serve the interests of the state.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0080

Subleases by an Agency

(1) Facilities Division must review and approve all subleases by or for all agencies subject to the Leasing Rules.

(2) Any agency that has office space that is not needed for agency purposes, which the agency believes it is feasible to backfill, shall inform the Division. The Division will provide assistance to the agency in back filling the surplus space.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 276.428

Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0090

Leasing or Renting Involvement of a Requesting Agency

(1) When the Division determines it to be in the best interests of the state, the Division may delegate to a requesting agency, in writing, certain aspects of the leasing process under the guidance and supervision of the Division.

(2) An agency may seek rental market information, but an agency shall not make commitments to lease or negotiate a lease unless authorized in writing by the Division.

Stat. Auth.: ORS 184.340
Stats. Implemented: ORS 276.428
Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0100

Lease Renewal

(1) Approximately 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 276.428
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

125-120-0120

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 leasable 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 276.428
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

125-120-0130

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 & 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, leasable properties on file at Facilities Division which have been submitted by property owners and real estate professionals interested in developing and leasing office quarters for occupancy by the state. Alternatively, Facilities Division may advertise publicly or conduct a search for a leasable facility, and negotiate directly with the owner or owner's representative for the lease.

(2) To solicit offers of leasable properties, Facilities Division may publish its leasing requirements, or inform those on the Division's trade list of property owners, developers and real estate professionals who have expressed interest in developing and leasing office quarters to the state.

(3) A property owner, developer or real estate professional may be added to Facilities Division's trade list by contacting Facilities Division.

Stat. Auth.: ORS 184.340
Stats. Implemented: ORS 276.428
Hist.: GS 13-1990(Temp), f. 5-30-90, cert. ef. 6-1-90; GS 26-1990, f. & cert. ef. 11-29-90; DASII 5-1997, f. 5-27-97, cert. ef. 6-1-97

125-120-0150

Giving Notice of Intent to Lease

(1) When the geographic search area for siting office quarters has been established or when leasable properties have been identified, Facilities Division shall contact the community or communities which Facilities Division determines are likely to be affected by the requesting agency's 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 125

STATEWIDE FACILITY PLANNING PROCESS

125-125-0050

Purpose, Application, and Authority

These rules are adopted under ORS 276.227. They set forth the statewide facility planning process for state agencies and the duties of the Board, which assists the Department with the planning process. State agencies other than institutions of higher education are required to provide information about their facilities and projects to the Department. Additionally, they implement a planning and review process for facilities and projects within the area described in ORS 276.010.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06

125-125-0100

Definitions

As used in these rules, the following terms have the meanings indicated, unless the context requires otherwise:

(1) "Area Plan" means a plan for development in one of the specified geographical areas described in ORS 276.010.

(2) "Biennial Leasing Plan" means a summary of all continuing leases or changes in leasing activity proposed for the coming biennium. This will summarize agency leasing activities or requests and provide a context for individual leasing plans.

(3) "Board" means the Capital Projects Advisory Board appointed under ORS 276.227(3), which is advisory to the Director of the Department.

(4) "Building Maintenance Plan" means a plan to be completed by an agency that owns a building of 10,000 or more square feet.

(5) "Committee" means the Capitol Mall Project Review Committee, which reviews projects on the Capitol Mall for compliance with the Capitol Mall Area Plan standards and policy.

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

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

(8) "Leasing Plan" means a proposed new lease, business case and cost benefit analysis completed by state agencies that lease or plan to lease a site with 10,000 or more square feet of conditioned space for a term of ten years or more.

(9) "Project Plan" means a plan to be completed for each major capital construction project of \$500,000 or more that a state agency is anticipating within the next three biennia which is either new construction or adds area to an existing facility.

(10) "Space Needs Plan" means a plan to be completed by state agencies that own or plan to build or buy a building with 10,000 or more square feet; lease or plan to lease a site with 10,000 or more square feet of conditioned space for a term of ten years or more; plan to seek any legislative or Emergency Board approval for a major construction, acquisition or leasing project; or plan to seek planning funds for a project that is anticipated to cost more than \$500,000 over the next three biennia.

(11) "Statewide Program" means a program of the Facilities Division of the Department of Administrative Services that implements OAR 125-125-0050 to 125-125-0450.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06

125-125-0150

Statewide Facility Planning Process

(1) The statewide planning process provides a means of evaluating if state facilities are planned, financed, acquired, constructed, managed and maintained in a manner that maximizes and protects this investment.

(2) The described budget review process program does not apply to institutions of higher education, community colleges, Oregon Health Sciences University, SAIF Corporation, Lottery, Secretary of State, Treasurer's Office, or to the Legislative or Judicial branches.

(3) The Department shall implement and maintain a planning process. This process shall coordinate state facilities' data, standards, maintenance planning, leasing planning and capital project planning. The Department shall use the Board to assist in the review of agency plans and other associated documents and to advise the Director.

(4) The Statewide Facilities Program shall develop the State Facilities Planning Process Manual. The manual shall provide definitions, examples, and detailed descriptions of required reports to aid agencies in supplying information to the Statewide Program. The manual shall be reviewed biennially before the budget process begins and updated, if needed.

(5) Following the guidelines contained in the State Facilities Planning Process Manual, Agencies shall submit a State Facility Plan through the statewide facilities coordinator if it meets one or more of the following criteria:

- (a) The agency owns buildings or plans to build or buy a building of 10,000 or more square feet;
- (b) The agency plans a major re-organization;
- (c) The agency proposes to enter into a lease of 10,000 or more square feet of conditioned space for a period of ten years or more;
- (d) The agency proposes to request a budget to construct a major capital project;
- (e) The agency plans to seek a legislative or Emergency Board approval for a major construction or acquisition project.

(f) The agency plans to seek planning funds for a major construction or acquisition project for which the total cost will be \$500,000 or more.

(6) To best coordinate and distribute the facilities data, the Statewide Program shall maintain a State Facility Inventory. The inventory shall be a database of state agency facilities covered under this rule and valued over \$1 million, which shall be updated biennially by agencies. The inventory shall include basic information on these buildings, such as the age, roof replacement schedule, deferred maintenance plan, etc. The data shall be used to make effective decisions on capital projects, space needs, and maintenance of the buildings.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06

125-125-0200

Capital Projects Advisory Board

(1) CPAB shall assist the Department in the review of agency plans. It shall be comprised of seven members. Five members shall be public members knowledgeable about construction, facilities management, and maintenance issues. One member shall be from the City of Salem Community Development Department and one member from the City of Salem Public Works Department. The Director shall appoint the chairperson of the Board.

(2) The term of each member of the Board is determined by the Director.

(3) The Board shall meet monthly or at times deemed advisable by the majority of its members. In addition, the Director may call the Board to meet for the purpose of considering agency reports.

(4) The Board members shall serve without compensation from the Department for travel or per diem.

(5) The Board is advisory to the Director of the Department and is not a governing body of a public body under ORS 192.610. Meetings of the Board shall be treated as public meetings and shall generally follow the notification and other procedures described in the Attorney General's Public Records and Meetings Manual. The Department shall send notice of upcoming meetings to an established and iterative mailing list of interested parties, using electronic methods, where practical. The Department shall also provide information regarding meetings on the Department's website.

(6) The Board shall provide a place on the agenda for public comment. Public comment should be limited to the review process criteria listed in ORS 276.227(3)(d). The Board will accept public comment only on the review items listed on the meeting agenda. The Board shall acknowledge any public comment and include it in the formal review record.

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

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06

125-125-0250

Procedure for Submitting Reports for Review

(1) Each state agency shall report to the Board by July 1 of even-numbered years a long-range facility plans and funding strategies that reflect changes in technology and priorities. The reports shall include a Space Needs Plan, a Project Plan, a Biennial Leasing Plan, and a Building Maintenance Needs Plan, if applicable.

(2) The Board shall review the information submitted and presented under section (1) of this rule and make recommendations to the Director by September 1 of even-number years related to long-range plans, the condition of facilities, maintenance schedules, funding strategies and options for new facilities.

(3) The statewide facilities coordinator shall request updated plans from agencies biennially and establish a submittal schedule. This schedule shall include the report due dates and presentation date for each agency to appear before the Board.

(4) The Agency shall provide one electronic copy to the statewide facilities coordinator no later than the due date stated for the agency on the facility planning schedule.

(5) If an Agency has project(s) that require review under OAR 125-125-0350 Salem Area Project Review, then a supplemental listing and description of those projects should be prepared and submitted with the other required materials.

(6) The statewide facilities coordinator will provide a substantive analysis of the plans, including review for completeness and responsiveness to issues and provide the information to the Board. The coordinator may return a list of questions to the agency or recommended changes.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06

125-125-0300

Procedure for Board Review

(1) Following review of the information by the Department, the agency shall present its plans before the Board, for the purpose of determining if the projects are compatible with the criteria established in the State Facilities Planning Process Manual. The Board may pose further questions to the agency or determine if additional action is required and postpone acceptance or comment on the plans.

(2) In order to grant acceptance or favorable comment on the plans, the Board must find the project is compatible with the criteria listed in the State Facilities Planning Process Manual and the Budget Instructions.

(3) No agency subject to this rule shall seek Legislative or Emergency Board approval of projects meeting the criteria of 125-125-0150 without first having obtained review of the project by the Board.

(4) The Board shall accept the report after consideration of agency submissions, testimony, and public testimony, if any. Their comments shall be kept in the formal meeting minutes and provided to the Director and budget analysts for inclusion in the agency's budget package.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06

125-125-0350

Salem Area Project Review

(1) The Department shall conduct a special review process for projects on state-owned property, located within the boundaries of the city of Salem.

(2) This review process applies to any state officer, board, commission or department authorized by law to engage in capital construction or improvement projects in the areas described by ORS 276.010.

(3) The Department shall use the Board to assist with this review for major projects or those requiring public input. Reviews will be based upon the development standards and policies contained in the Area Plans previously developed by the Capitol Planning Commission or as modified by the Department after review by the Board.

(4) Area Plans cover the following state properties: Capitol Mall Area; Airport Road Area; Hillcrest Area; Oregon State Corrections Area; State Fair and Exposition Center Area; Oregon State Hospital and Penitentiary Properties Area; Oregon School for the Blind Area; and, Oregon School for the Deaf Area.

(5) For the purposes of the review required under this section, project means expenditures for capital construction or for capital improvement. A project does not include the following:

(a) Interior remodeling that does not substantially change the existing use of space to another use (e.g., office space, or space used by the public);

(b) Repair or maintenance that does not substantially change the existing use of space, that does not add additional square footage to a building, and that does not change exterior building design;

(c) Individual plantings within an established landscape plan that do not alter the overall plan concept.

(6) A minor improvement to the building or grounds means an improvement that does not fall within the exceptions under OAR 125-125-0350 and impacts the appearance of the building grounds or exterior.

(7) A major improvement to the building or grounds, addition, or new construction means a total rework of the building exterior or landscaping, an addition to the building, or construction of a new building.

(8) No state agency may expend funds for any project subject to the requirements of this section unless the project has been reviewed and approved through the described review process.

(9) An agency seeking project review will submit a written request to the Statewide Facilities Program not less than 21 days before the next scheduled meeting of the Board. The Department shall provide a standard form for agencies to use to request project review. The Department may waive the notification period for good cause. The requesting agency shall provide 10 copies of materials submitted.

(10) Projects for minor improvements to the building or grounds shall include:

(a) A completed project application form;

(b) A written description of the project;

(c) Site, architectural, and landscaping plans (if applicable) for the project;

(d) Sufficient information to demonstrate compliance with the applicable Area Plan; and

(e) Sufficient information to demonstrate compliance with local zoning and other applicable standards.

(11) Projects for major improvements to buildings or grounds, additions, or new construction shall include an initial submittal including:

(a) A completed project application form;

(b) A written description of the project;

(c) Preliminary site, architectural, and landscaping plans (if applicable) for the project;

(d) A description of the process planned to be used to ensure compliance with the Area Plan and local zoning and other applicable standards; and

(e) A description of any planned meetings with neighborhood groups or other interested members of the public.

(12) Once the design of the major project is completed, the state agency shall make a final project submittal, which shall include:

(a) Site, architectural, and landscaping plans (if applicable) at a design development stage or later;

(b) Sufficient information to demonstrate compliance with the applicable Area Plan;

(c) Sufficient information to demonstrate compliance with local zoning and other applicable standards; and

(d) A record of meetings with neighborhood groups or other interested members of the public.

(13) For new construction projects, facility siting review will be required before starting design and making the required submittals under OAR 125-125-0350(11). For siting review, the following shall be provided:

(a) A completed site need and description form;

(b) A written description of the proposed improvements that will be constructed;

(c) A vicinity map showing the proposed site and its proximity to major streets and surrounding functions;

(d) A topographic map of the proposed site indicating the boundaries for proposed improvements, prominent features, surrounding buildings, and other related information to provide a context for the project;

(e) Preliminary information about whether sewer, water, streets, and other infrastructure is available to service the proposed use;

(f) A preliminary assessment of any wetland, flood plain, environmental, or archeological issues on the site and whether development would likely impact them;

(g) Sufficient information to demonstrate compliance with local zoning, comprehensive plan, and other related land use standards.

(h) If the proposed site is on state-owned property, sufficient information to demonstrate that the proposed use is in compliance with the applicable Area Plan; and

(i) If the proposed site is to be acquired, an assessment of what state-owned properties were considered and why none were acceptable, plus information required by the Facility Siting Policy 125-6-115.

(14) If the project is within the areas included in the Capitol Mall Area Plan, the required submittals shall also include the conclusions from the Capitol Mall Project Review Committee according to the requirements of OAR 125-125-0450.

(15) The Board shall review the material submitted by the agency and acknowledge if the applicable requirements were met. The Board shall also provide an opportunity for interested members of the public to comment about the project's compliance with the Area Plan. The Board will then pass the record of the project review to the agency and the Director.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06

125-125-0400

Area Plan Update Responsibilities

(1) Each agency owning property in the Salem area shall be responsible for helping maintain an Area Plan for property it owns.

(2) The Department shall develop a standard template for Area Plans, which shall structure any modifications to existing plans. The Department shall also develop and maintain a coordination plan that addresses the interrelationship among the different Area Plans and the state's presence in the City of Salem.

(3) The Department shall develop and maintain a review schedule for the Area Plans and a process for coordinating any required changes with the affected agencies and the City of Salem. If outside assistance is required to update the plan, it shall be at the expense of the property owning agency or agencies.

(4) The review schedule shall result in each Area Plan being reviewed before the Board at least once every five years and updated as may be required. At the time of the review, the Board shall provide an opportunity for public comment on any proposed revisions to the plan.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06

125-125-0450

Capitol Mall Area Project Review

(1) The Department shall investigate, review and make recommendations on all proposals of state agencies to add to, reduce or otherwise change a building or grounds in the areas described in ORS 276.028.

(2) The Department shall create and maintain a special Capitol Mall Project Review Committee to provide an additional level of design review for Capitol Mall projects. The committee will be comprised of the following members: the manager of the Facilities Division Statewide Program; a representative from the Legislative Assembly; a representative from the City of Salem; and a private design practitioner.

(3) This review process applies to any state office, board, commission or department authorized by law to engage in capital construction or improvement projects in the areas described by ORS 276.010.

(4) In addition to the procedures described for Salem Area projects, any projects covered by the Capitol Mall Area Plan shall have these additional requirements:

(a) Before submitting the materials for Salem Area Project Review, the agency shall submit the material to the Capitol Mall Project Review Committee.

(b) The Committee will determine if the proposed project is consistent with the policies and design standards for the Capitol Mall.

(c) The Committee will pass its conclusions to the Board.

(d) For major projects, both the initial submittal and final design submittal will require review by both the Capitol Mall Project Review Committee and the Capital Projects Advisory Board.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06

DIVISION 140

CONFIDENTIALITY AND INADMISSIBILITY OF MEDIATION COMMUNICATIONS

125-140-0010

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or 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 are available from the agency.]

Stat. Auth.: ORS 36.224 & 184.340

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: DAS 1-1999, f. 4-30-99, cert. ef. 5-1-99

125-140-0020

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the sub-

stance 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 145

MEASURE 37 CLAIMS

125-145-0010

Purpose

The purpose of OAR chapter 125, division 145, is to establish procedures for filing and reviewing Claims against the State of Oregon under Measure 37.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06

125-145-0020

Definitions

The following definitions apply to this division:

(1) **Agency** means any state officer, board, commission, council, department or Division of state government, whose costs are paid wholly or in part from funds held in the State Treasury, except

(a) The Legislative Assembly, the courts and their officers and committees;

(b) The Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(2) **Claim** means a written demand for compensation under Measure 37.

(3) **Claimant** means the owner who submitted a Claim, or the owner on whose behalf a Claim was submitted.

(4) **Department** means the Department of Administrative Services.

(5) **Land Use Regulation** has the meaning provided in ORS 197 (Measure 37, 2004)

(6) **Lot** means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.

(7) **Measure 37** means Oregon Laws 2005, chapter 1.

(8) **Parcel** means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and ORS 215.010.

(9) **Property** means the Lot or Parcel that is or includes the private real property that is the subject of a Claim.

(10) **Reduction in Fair Market Value** means the difference in the fair market value of the Property resulting from enactment or enforcement of the Land Use Regulation(s) identified in the Claim as of the date the Claim is submitted to the Department.

(11) **Registry** means the database of information about Claims required by OAR 125-145-0060.

(12) **Regulating Entity** means an Agency that has enacted or enforced, or has authority to remove, modify or not to apply, the Land Use Regulation(s) identified in the Claim.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06

125-145-0030

Submitting a Claim

(1) Claims must be submitted by an owner or an authorized agent on behalf of an owner. A Claim must contain sufficient information, as described in OAR 125-145-0040, for review of the Claim by the Department or a Regulating Entity and may be submitted on a form available from the Department at the address provided in this rule or from the Department's website.

(2) Claims must be submitted to the Department at:

1225 Ferry Street SE, U160

Salem, OR 97310-4292

Claims shall not be submitted by facsimile or electronically.

(3) A Claim is made under section 4 of Measure 37 on the date a Claim is received by the Department.

(4) The Department may send written notice to the person who submitted the Claim noting the date that Claim was received by the Department, the Regulating Entity or Entities reviewing the Claim and the recipients of any notices sent to third parties under OAR 125-145-0080.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06

125-145-0040

Contents of a Claim

A Claim should contain the information described in this rule. A Claim that does not contain this information may be denied as provided in OAR 125-145-0090.

(1) The name, mailing address, and telephone number of the Claimant, and the person submitting the Claim if different.

(2) The name, mailing address and telephone number of every owner of the Property, including but not limited to:

(a) Every lessee and lessor of the Property;

(b) Every person or entity holding a lien against, or a security interest in, the Property;

(c) Every person or entity holding a future, contingent, or other interest of any kind in the Property.

(3) A description of the interest in the Property held by each owner listed.

(4) The location, including a street address, if applicable, of the Property, including the city or county in which it is located, and the legal description of the Property, including reference to the township, range, section and tax lot number in which it is located.

(5) Evidence that the Claimant is an owner of the Property, including the date of acquisition by the Claimant, date of acquisition by any family member of the Claimant if the Claim is based on ownership by a family member and, if so, the chain of title from the family member to the Claimant, and the nature and scope of the Claimant's ownership.

(6) Evidence or information describing any encroachments, easements, Covenants Conditions and Restrictions, and any other recorded or unrecorded interests applicable to the Property.

(7) Evidence or information describing any federal, state and local restrictions on the Property, including all applicable zoning, comprehensive plan and other land use and development regulations.

(8) An explanation, including a citation to each Land Use Regulation on which the Claim is based and evidence or information that demonstrates the following:

(a) The manner in which each cited Land Use Regulation restricts the use of the Property, compared with how the owner, or family member, if applicable, was permitted to use the Property under Land Use Regulations in effect at the time the owner, or family member, if applicable, acquired the Property; and

(b) The amount by which the restriction in use imposed by each cited Land Use Regulation has caused a Reduction in the Fair Market Value of the Property.

(9) Written permission from the Claimant and all other owners with a right to restrict access, authorizing the Department, the Regulating Entity and their officers, employees, agents and contractors as necessary to enter the Property to appraise it and to verify information in the Claim.

(10)(a) A statement acknowledged by signature of the Claimant, or the person submitting the claim if other than the Claimant, as follows: "The information contained in this Claim is true and correct to the best of my knowledge. I understand it is a crime under ORS 162.085 to certify the truth of a statement when I know the statement is not true. This offense is a Class B misdemeanor and is punishable by a jail sentence of up to six months, a fine of up to \$2,500, or both."

(b) If the Claim is submitted by a person other than the Claimant, a written statement by the claimant authorizing the person submitting the Claim to do so on the Claimant's behalf.

(11) Evidence and information that may be submitted to address the requirements of this section include, but are not limited to, the following: the most recent tax assessor's maps; title reports; appraisal reports by certified appraisers; deeds; Covenants, Conditions & Restrictions; and affidavits.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06

125-145-0045

Additional Information

In addition to the information described in OAR 125-145-0040, the Department and Regulating Entity may consider additional information regardless of its inclusion in a Claim. Such additional information may include but is not limited to the following:

(1) An appraisal report of the Property prepared by a certified appraiser that addresses the Reduction in Fair Market Value of the Property resulting from enactment or enforcement of the cited Land Use Regulation(s) as of the date the Claim was filed;

(2) Information about any Land Use Regulation(s) on any owner's tax status, including without limitation any property tax deferrals or tax reductions related to the Land Use Regulation(s) cited in the claim;

(3) Information about any Land Use Regulation in effect at the time the Claimant, or Claimant's family member if applicable, acquired the property explaining how the use that is now not permitted by any Land Use regulation described in OAR 125-145-0040(7) was permitted at the time the owner acquired the property;

(4) Names and addresses of owners of all real property located within 100 feet of the Property if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone.

(5) Information about the Property including but not limited to its location, topography, soil types, vegetation or other natural resources or structures located on the property.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06

125-145-0060

Registry of Claims

The Department shall maintain a Registry of Claims. The Registry shall be accessible to the public electronically and at the location described in OAR 125-145-0030. The Registry shall be the means for providing public notice of Claims filed. Entry of information about a Claim in the Registry provides public notice that the Claim was filed and begins the comment period for third parties as described in OAR 125-145-0080. The registry shall contain at least the following information about each Claim as it becomes available:

(1) The name of the Claimant, and the name of the person submitting the Claim, if different;

(2) The location of the Property, including the county and city in which it is located, street address and reference to its township, range, section and tax lot number;

(3) The amount of Reduction in Fair Market Value alleged in the Claim;

(4) The date the Claim was filed;

(5) The date the Claim was entered into the Registry

(6) The disposition of the Claim, including whether granted or denied, and whether compensation was paid or whether the cited Land Use Regulation(s) was modified, removed or not applied;

(7) Additional information deemed appropriate by the Department.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06

125-145-0080

Third Party Participation

(1) The Department shall mail written notice of a Claim to any person or organization that has requested notice, to any person who is an owner of record of real property located within 100 feet of the Property, if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone, any neighborhood, or community organization(s) whose boundaries include the site when the city or county in which the site is located provides to the Department or Regulating Entity, contact information for the organization(s).

(2) Any person or organization receiving notice under this rule, or any other person, may submit written comments, evidence and information addressing any aspect of the Claim.

(3) Comments, evidence and information from third parties must be submitted within ten (10) days of the date the notice under this rule is sent or information about the Claim first appeared in the Registry, whichever is later, and must be submitted to the location and in the manner described in OAR 125-145-0030. Comments, evidence and information will be submitted in a timely fashion if either postmarked

on the tenth (10) day or actually delivered to the Department by the close of business on the tenth (10) day.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06

125-145-0090

Department Review and Decision Process, Forwarding Claim to Regulating Entities

(1) When a Claim is wholly based on Land Use Regulation(s) for which there is no Regulating Entity, the Department shall be the Regulating Entity for purposes of carrying out the process described in OAR 125-145-0100.

(2) Upon receipt of a Claim that is based in whole or in part on Land Use Regulation(s) for which there is a Regulating Entity, the Department shall forward the Claim to the Regulating Entity. When a Claim alleges that Land Use Regulations of multiple Regulating Entities restrict the use of the Property, the Department may consult with one or more Regulating Entities and may appoint a Lead Regulating Entity to issue the final decision required by OAR 125-145-0100. Each Regulating Entity shall provide the Lead Regulating Entity with a staff report addressing at least the issues listed in OAR 125-145-0100(3) with regard to its Land Use Regulation cited in the Claim.

(3) Upon review of the Claim, if the Department or the Regulating Entity determines that it lacks sufficient information to evaluate the Claim, the Department or Regulating Entity may notify in writing the person who submitted the Claim. The written notice shall specify the material or information that would enable the Department or Regulating Entity to evaluate the claim, and shall provide a time certain for Claimant, or the person who submitted the Claim on Claimant's behalf, to submit the material or information. Failure to submit the information requested by the Department or Regulating Entity within the time specified in the notice may result in denial of a Claim.

(4) The Department may issue the final order itself or jointly with the Regulating Entity, or it may authorize a Regulating Entity to issue a final order if, after consulting with the Regulating Entity as required by OAR 125-145-0100(6), the final order modifies, removes or does not apply the Land Use Regulation(s) on which the Claim is based.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06

125-145-0100

Regulating Entity Review and Decision Process

(1) A Regulating Entity that receives a claim from the Department, shall issue a staff report addressing at least the issues listed in subsection (2). The staff report shall be mailed to the Claimant, person who submitted the Claim, if different, and any third parties who submitted comments under OAR 125-145-0080, and shall be mailed or otherwise delivered to the Department and other Regulating Entities, if any.

(2) The staff report shall address the following issues:

(a) Whether the Claim was timely filed under section 5 of Measure 37;

(b) Whether the Claimant is an owner under section 11(c) of Measure 37;

(c) Whether the Claimant's request for compensation is based on the prior ownership of a family member under section 11(A) of Measure 37;

(d) Whether any of the Land Use Regulations relied on in the Claim are exempt under section 3 of Measure 37;

(e) Whether any of the Land Use Regulations relied on in the Claim restricted the use of the property permitted at the time the owner or family member, if applicable, acquired the Property;

(f) Whether any of the Land Use Regulations relied on in the Claim has the effect of reducing the fair market value of the property and the amount of any such reduction;

(g) Any other issue relevant to evaluation of the Claim, including without limitation the effect of any other land use regulation or other restriction on use of the Property; and

(h) The Regulating Entity's conclusions and recommendation for just compensation or to modify, remove or not apply any of the Land Use Regulation relied on in the Claim to allow a use permitted at the time the owner acquired the property.

(3) The Claimant or the Claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 may submit comments, evidence and information in response to the staff report. Such response must be filed no more than ten (10) days after the date the staff report is mailed to the Claimant and any third parties, at the location and in the manner described in OAR 125-145-0030. Such responses will be submitted in a timely fashion if either postmarked on the tenth (10) day, or actually delivered to the Department by the close of business on the tenth (10) day.

(4) The staff of the Regulating Entity shall issue a revised report following receipt of any submissions under subsection (3) of this rule.

(5) The Regulating Entity may recommend approval or denial of a claim based on the revised staff report and any comments, evidence and information submitted to the Department or the Regulating Entity.

(6) The Regulating Entity may issue a final order jointly with the Department, or the Regulating Entity may issue a final order after consultation with the Department if the decision is to modify, remove or not apply Land Use Regulation(s).

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06

125-145-0105

The Record for Final Administrative Decisions on a Claim

Final administrative decisions approving or denying a Claim shall be based on a written record that includes the following, if available:

(1) The Claim;

(2) The contents of the Registry as to the Claim;

(3) Comments, evidence and information properly submitted by or on behalf of the Claimant or third parties;

(4) Staff reports, evidence and information submitted by the Department and the Regulating Entity;

(5) Response and rebuttal properly submitted by or on behalf of the Claimant or third parties, and;

(6) Final decisions on the Claim by a Regulating Entity or the Department as provided in OAR 125-145-0090 and 125-145-0100.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & OL 2005 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06

DIVISION 150

RISK MANAGEMENT

125-150-0000

Claims Against the State Liability Fund

(1) The Department of Administrative Services, Risk Management Division, administers the Liability Fund established by ORS 278.100 to cover the tort liability of the state and its officers, employees, or agents acting within the scope of their employment under ORS 30.260 to 30.300.

(2) An individual intending to make a claim against the Liability Fund must follow the notice requirements under ORS 30.275, as amended by Chapter 350, Oregon Laws 1981.

(3) Under ORS 30.275, formal notice of a claim against a state officer, employee, or agent may be given by mail or personal delivery to the Director of the Department of Administrative Services. By this policy, the Director delegates responsibility for receipt of liability claims to the Risk Management Division, Department of Administrative Services.

(4) A claimant or representative may file a claim in the following manner:

(a) Send or deliver a *written* statement to the Risk Management Division, including the following information:

(A) A statement that a claim for damages will be asserted against a *named* state agency, officer, employee, or agent;

(B) A description of the time, place and circumstances giving rise to the claim;

(C) The name of the claimant and the mailing address to which correspondence concerning the claim may be sent. Send or present the notice to: Claims Section, Risk Management Division, Department of Administrative Services, 155 Cottage Street N.E., Salem, OR 97310.

(b) To give actual notice of a claim as provided under ORS 30.275, provide the same information as required above for formal notice, orally to: Claims Section, Risk Management Division, (503) 373-7475.

Stat. Auth.: ORS 278 & 283

Stats. Implemented:

Hist.: GS 1-1982, f. 1-29-82, ef. 2-1-82

125-150-0005

Selection of Insurance Agent of Record

(1) The Department of Administrative Services may appoint an Agent of Record to assist in the procurement of commercial insurance.

(2) Selection of an Agent(s) of Record will follow guidelines established by the Public Contract Review Board in OAR 127-010-0140.

(3) Prior to the selection of an Agent of Record, the Department shall make reasonable efforts to inform known insurance agents in the competitive market area of its intent to choose an Agent of Record.

(4) The Agent of Record will be selected according to the following procedure:

(a) Risk Management Division:

(A) Establishes bid specifications for Agent of Record;

(B) Places public advertisement in at least one local newspaper of general circulation and trade periodical soliciting open bids;

(C) Through Transportation, Purchasing & Print Services Division, distributes bid specifications to insurance agents requesting copies in competitive market area of applicable coverages.

(b) Commercial Insurance Agencies:

(A) Review bid specifications and prepare sealed bid presentation in accordance with bid procedure guidelines;

(B) Submits bid to Department of Administrative Services, Transportation, Purchasing & Print Services Division, in accordance with bid specifications.

(c) Risk Management Division:

(A) Review bids at time stipulated in bid notice;

(B) May invite acceptable bid applicants for oral presentation of proposal;

(C) Evaluates written bids and oral presentations, grading bid proposals upon standards previously established in bid specifications;

(D) Makes final selection of Agent of Record;

(E) Informs all applicants (bidders) of successful awarding of contract for Agent of Record selection;

(F) Prepares and issues Agent of Record contract;

(G) Retains information for Public Contract Review Board on: Agent of Record selected; names of agents submitting bids; summary of evaluations of each applicant.

Stat. Auth.: ORS 283

Stats. Implemented:

Hist.: GS 5-1982, f. & ef. 5-3-82

125-150-0010

Purchase of Professional Services

(1) The Department is authorized under ORS 278.130 to purchase necessary technical and professional services.

(2) Examples of services that may be required include, but are not limited to, claims adjusting, property appraisal and Risk Management and actuarial audits to augment services provided by the Risk Management Division.

(3) Services will be acquired by one of the following methods:

(a) Services valued over \$5,000;

(A) Service requirements that are continuous or for which the amount of the contract is over \$5,000, shall be open for competitive

bids according to procedures outlined by the Public Contract Review Board (PCRB);

(B) OAR 125-150-0005, Agent of Record, provides specific guidelines for the purchase of commercial insurance and related services;

(C) The Risk Management Division will make a reasonable effort to notify all independent contractors known by the Division to be qualified to provide the required services. The Division shall also place at least one public advertisement in a west coast insurance trade publication;

(D) Contractors interested in submitting a proposal should request a copy of the bid specifications from the Division;

(E) The Risk Management Division will evaluate the proposals of all respondents. Selection will be based on the experience and qualifications of contractor and scope, completeness and schedule of work plan. Among equally qualified contractors and work plans, selection will be based on the lowest cost;

(F) The Risk Management Division reserves the right to reject any and all proposals.

(b) Services valued under \$5,000:

(A) One-time or emergency services will be secured as situations require. A minimum of two independent contractors, known by the Risk Management Division to be qualified and available to offer such services, will be contacted and asked to quote a fee for the required services either by a written letter or telephone conversation;

(B) A record of contractors contacted, service requirements, and corresponding quotes will be retained on file by the Risk Management Division, open to public inspection during regular business hours, 8 a.m. to 5 p.m., Monday through Friday;

(C) Of those independent contractors participating, selection will be based on experience, professional qualifications, work plan and time schedule. Among equally qualified contractors and work plans, selection will be based on the lowest cost;

(D) The Risk Management Division reserves the right to reject any and all proposals.

(4) The following procedure should be followed:

(a) Risk Management Division:

(A) Recognizes need for additional technical or professional expertise;

(B) Composes bid specifications or obtains at least two estimates;

(C) Notifies appropriate technical and/or professional vendors of intention to secure proposals or estimates.

(b) Independent Contractors: Prepare and submit proposals according to established procedure of Department;

(c) Risk Management Division: Awards contract to selected independent contractor according to rules specified by Department of Administrative Services, Transportation, Purchasing & Print Services Division and Public Contract Review Board.

Stat. Auth.: ORS 283

Stats. Implemented:

Hist.: GS 5-1982, f. & ef. 5-3-82

DIVISION 155

STATE VEHICLE USE AND ACCESS

125-155-0000

Purpose

These rules set standards for use, operation and access to state vehicles, including private vehicles in use for state business.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0010

Definitions

As used in this chapter, unless the context requires otherwise, the following words, phrases, and abbreviations have the meanings listed:

(1) "DAS" means Department of Administrative Services.

(2) "DAS-RMD" means Risk Management Division of DAS.

(3) "DAS-TTPSD" means Transportation, Purchasing, and Print Services Division of DAS.

(4) "ODOT-DMV" means Driver and Motor Vehicle Services, Department of Transportation or, if the context requires, its equivalent in another jurisdiction.

(5) "OSSHE" means Oregon State System of Higher Education.

(6) "Agency" means an agency, board, commission, or branch of the State of Oregon that is subject to ORS Chapter 283 or 278.

(7) "Agent" means a person or legal entity that is appointed in writing by a state agency to perform specified work. An agent is not an independent contractor. Agents, paid or unpaid, are subject to the direction and control of the Agency. An Agency may not call people agents for the primary purpose of justifying their transportation in a state vehicle.

(8) "Duty station" means the location designated in writing by the Agency from which an employee normally carries out his or her duties.

(9) "Employee" means any person employed by the state to do state business for whom the state withholds income tax, provides workers' compensation coverage, and pays the workers' compensation hour-tax. Under this definition, the following are not employees: workers provided by a temporary employment services agency, Department of Corrections inmates, and OSSHE students unless the student meets the terms of this definition.

(10) "Official state business" or "state business" means any activity conducted in conformance to these rules and directed and controlled by a state agency to advance the lawful policies and purposes of the agency. State law requires a narrow interpretation of this term. Therefore, agencies' policies and purposes are only those that are official, in writing, and within statutory authority. These may be written in statutes, orders, rules, policy manuals, procedural guides, and position descriptions. They may be written in official statements of agency missions, goals, objectives, and performance measurement plans. They may be written in Oregon Benchmarks and OSSHE rules defining its officially sanctioned programs.

(11) "Private vehicle" means a motor vehicle that is owned, rented, borrowed, leased, or otherwise lawfully in the possession and control of any private person or any entity other than the state. A commercial rental vehicle is a private vehicle if it is rented or used for a mix of private and state uses. Private vehicles, while in use for state business, are treated as state vehicles in these rules unless the context clearly requires otherwise. While any motor vehicle is being used to transport family or for any other personal purpose, it is not on state business. An independent contractor's vehicle being used for contract services is on the contractor's business, not on state business. "Private off-road vehicle" means a private motor vehicle that is unlicensed or not designed for use on public roads. It includes unenclosed vehicles designed for just one or two riders, all-terrain recreational vehicles, two or three wheeled vehicles.

(12) "Private specialty vehicle" means a private vehicle that is a motorcycle or other two or three wheeled vehicle designed for one or two riders.

(13) "Satisfactory agency record" means an agency has annual rates of risk markers that are normal, compared to statewide rates. Risk markers include rates per mile of collisions, of related losses, of citizen reported dangerous driving, and of bodily injuries. Rates, norms, and deviations shall be as calculated by RMD. An agency may conclude that its record is satisfactory until notified otherwise in writing by RMD.

(14) "Spouse" means the husband or wife of the authorized driver.

(15) "State vehicle" means a motor vehicle owned, rented, borrowed, leased, or otherwise under the possession and control of the state. It is licensed for highway use. A rental vehicle is a state vehicle if it is rented by a duly authorized employee at the cost of the state, solely for official state business. A vehicle, owned by DAS and lawfully rented to a local government or other non-state entity, is not a state vehicle for purposes of these rules. Unless the context clearly requires otherwise, "state vehicle" refers to private vehicles while in use for official state business.

(16) "Volunteer" means an unpaid person appointed by a state agency to work on its behalf. Volunteers are appointed in writing to do state business under agency direction and control. They receive no remuneration. An agency may not call people volunteers for the primary purpose of justifying their transportation in a state vehicle. Volunteer and agent may be used interchangeably unless the context requires otherwise.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0020

Policy and Principle

(1) It is state policy that all vehicles in use for state business shall be used legally, courteously, and safely.

(2) The basic principle of these rules can be summarized for most drivers as follows: **If you have a valid driver license and you are acting at the direction and control of a state agency, you may drive in any way or for any purpose that is lawful and necessary to carry out the official business of your agency. Whenever you do otherwise, you are personally liable for all driving costs and related risks.** The remainder of these rules apply this principle in detail to the hundreds of varied situations the state, its agencies, officers, employees, and agents may encounter.

(3) When the legal status of a driver license or driving record is in doubt, the agency shall ask the Oregon State Police or ODOT-DMV to evaluate the questioned item under applicable law and without regard to these rules. DAS-RMD shall determine issues that remain unresolved.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395

Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0100

Minimum Driver Requirements

(1) To drive any motor vehicle on state business, a driver must:

(a) Be 18 years or older, legally responsible for his or her actions and contracts, and subject to an agency's direction and control;

(b) Hold a driver license acceptable under these rules;

(c) Qualify to drive under these rules and any rules or policies of the driver's agency and of the agency owning the vehicle; and

(d) Have permission from the driver's agency to drive.

(2) An acceptable driver license is a regular, temporary, or commercial license that is lawful, current, and valid. It must be issued by the state or country where the employee actually resides. It must be legal to use in the jurisdiction where the driver is driving. It must be the kind or class or be endorsed as required by law for the kind of driving to be done.

(3) An international license is an acceptable license if the following conditions are met:

(a) The driver's agency shall agree in writing to accept the license.

(b) The license shall be acceptable for one period of no more than ninety days.

(c) Before allowing the driver to drive on state business, the agency shall furnish him or her a copy of the Oregon driving manual and a briefing on state driving law and rules.

(4) A hardship or probationary permit is a limited use driving permit granted by ODOT-DMV to a person whose license is suspended. The permit is acceptable under these conditions:

(a) The driver must be a state employee other than a temporary employee. See the definition of employee.

(b) Before deciding to accept the permit, the agency shall review the driver's full driving record. The agency may attach conditions to its acceptance of the permit.

(c) The agency shall give the driver counseling on its expectations for safe and legal driving. The agency shall give the driver a copy of these rules and any agency rules, policies, or conditions agency attaches to its acceptance of the hardship or probationary permit.

(d) The driver must complete, or have completed in the preceding 12 months, a safe driving training course.

(e) A letter from the agency head or designee shall be given to DAS-RMD that requests DAS-RMD to certify state self-insurance coverage to ODOT-DMV. No one else shall have authority to certify state coverage.

(f) The employee shall drive only within the restrictions of the permit.

(g) DAS-RMD approval is required for a permit from an out-of-state DMV.

(5) A driver license or permit is not acceptable if it:

(a) Is legally invalid or unlawful due to changed residence or any other reason;

(b) Lacks a legally required endorsement or class; or

(c) Is issued with restrictions, except when used within those restrictions.

Stat. Auth.: ORS 184.305, 184.340 & 278.405

Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0200

Voluntary and Compulsory Driver Standards

(1) Agencies that maintain a satisfactory agency record may develop their own standards for training and driving records. Alternatively they may use the standards that are compulsory for agencies on trial status. Agencies may apply their standards to any reasonable class: new drivers, problem drivers, passenger carriers, high risk driving, or all drivers.

(2) DAS-RMD may place on trial status an agency that fails to maintain a satisfactory agency record. During trial status, the following minimum standards are compulsory:

(a) Within 12 months of notice of its trial status, an agency shall assure that its drivers have at least the driving records and training described in this section. The agency shall continue to do so until DAS-RMD gives notice that it has held a satisfactory record for two fiscal years.

(b) The trial status agency shall verify driver's license, training, and driving record upon learning of a driver's moving-vehicle traffic citation, vehicular collision on state business, request for a hardship permit, or request for exception or extension of any of these rules.

(3) An agency on trial status may find a driver's record acceptable if the driver has not forfeited bail or been convicted for any of the following, or reasonably similar, driving violations. The listed periods begin at the later date of violation, forfeiture, or conviction. The following kinds of driving records shall be unacceptable:

(a) A major traffic offense in the last 24 months. This includes reckless driving, driving under the influence of intoxicants, failing to perform the duties of a driver, criminal driving while suspended or revoked, fleeing or attempting to elude a police officer, and others;

(b) Felony revocation of driving privileges or felony or misdemeanor driver license suspension within the last 24 months;

(c) More than three moving traffic violations in the last 12 months;

(d) A careless driving conviction in the last 12 months; or

(e) A Class A moving traffic infraction in the last 12 months.

(4) An agency on trial status may consider its driver training acceptable if:

(a) All new drivers complete safe driver training before driving a state-owned vehicle.

(b) All drivers complete a safe driver training course at least once in every five years.

(c) The agency accepts verified training previously taken by a driver.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0300

Verifying Driver Qualifications

(1) Agencies shall not knowingly allow anyone to drive on state business who does not conform to these rules. An agency may verify drivers' qualifications at any reasonable schedule or time and by any reasonable means. Means might include direct checks, review of copies of records supplied by the driver, or accepting drivers' signed statements.

(2) All drivers shall verify for themselves that they meet all driver qualifications, including requirements of law, rule, and employing and vehicle-owning agencies. Drivers shall present evidence of meeting qualifications to any affected agency upon request. Drivers shall promptly report to their supervisor a loss of acceptable driver license status or other requirement.

(3) An agency shall verify its driver meets its standards whenever it learns of the driver's involvement in an accident, traffic citation, or a major traffic offense.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0400

Authorized Drivers

(1) Only the following are authorized to drive motor vehicles on state business. They are only authorized while driving in conformance to these rules:

(a) Adults under the direction and control of a state agency; and
(b) Anyone specifically authorized by state statute, including ORS 283.305; and

(c) Anyone authorized by this OAR 125-155-0400.

(2) OSSHE students may drive state vehicles under these rules, provided that OSSHE adopts, in conjunction with DAS-RMD, the rules required by ORS 283.310, identifying officially sanctioned programs and setting vehicle operation standards and training for safety of all employees, students, and volunteers. These rules shall then apply to students driving vehicles owned by agencies other than OSSHE.

(3) A person shall not drive any motor vehicle on state business simply because he or she is related or known to an authorized driver.

(4) Under state rules, agencies may contract to reimburse their contractors' mileage. Therefore, an agency shall not furnish a vehicle to any contractor who is not its agent. An agency shall not furnish a vehicle to a contractor who is its agent unless:

(a) It is clearly necessary or beneficial to the agency;

(b) The agency has the consent of the vehicle owner, if other than the agency;

(c) The contract requires the contractor to comply with these rules and to furnish adequate primary vehicle liability and property insurance; and

(d) The contract states the allowed uses of the vehicle, states the exchange of value for use of the vehicle, and holds the contractor liable for its safe use and return.

(5) To the extent required for state business, an agency may allow its driver or working passenger to employ a private chauffeur, paid or unpaid. The agency may allow its driver or passenger to employ one adult to accompany and assist him or her in any reasonable way, paid or unpaid. The following conditions shall apply:

(a) The state driver or passenger shall be liable to the state and hold the state harmless for the actions of his or her aide or chauffeur. The aide or chauffeur shall hold the state harmless for any actions of his or her principal or employer, the state driver or passenger.

(b) The state driver or passenger shall furnish proof, acceptable to the agency, of primary auto liability insurance covering the driving of the chauffeur in a state vehicle.

(c) The state driver or passenger shall assure that the aide or chauffeur complies with all state vehicle laws, rules, and policies.

(d) Nothing in these rules empowers or prohibits an agency from paying any expense. However, except as expressly provided by written agreement with the agency, the aide or chauffeur shall have no right to any compensation, benefit, insurance coverage, indemnification, or reimbursement of any kind from the state. By virtue of the state permitting an employee to have an aide or chauffeur, the aide or chauffeur shall not become an employee, agent, or volunteer of the state.

(e) Agencies may permit the spouse of a driver to accompany him or her. The spouse shall constitute the driver's aide and shall be subject to these rules and conditions affecting aides. A spouse shall not drive unless allowed by the agency as a necessary chauffeur under these rules.

(f) Agencies may set additional conditions. These conditions for aides and chauffeurs do not apply to an aide or chauffeur retained at agency expense and under the direct supervision and control of the agency.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0410

Authorized Driver Summary

The following table summarizes many issues from these rules dealing with who may drive for the state at whose risk. Private vehicles on private business are not subject to these rules. See the remainder of OAR 125, division 155 for details. Chief Condition:

(1) **Employee or Volunteer:**

(a) State Direction/Control:

(A) State vehicle or state rental:

(i) Control: State;

(ii) At Risk/Liable: Primarily state.

(B) Private vehicle on state business:

(i) Control: State;

(ii) At Risk/Liable: Secondarily 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, 184.340 & 278.405
 Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
 Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95; Administrative Reforming 11-29-97

125-155-0420

Passengers

- (1) Agencies may permit drivers to transport people, animals, or things to the extent needed to accomplish state business.
- (2) No driver may give a ride in a state-owned vehicle to anyone except as permitted by these rules or necessary to accomplish official state business. Hitch hikers shall not be allowed in any state vehicles or private vehicles on state business.
- (3) All passengers shall follow these rules and all reasonable directions of their drivers.
- (4) Drivers shall obtain prior agency approval and conditions for the following passengers:
 - (a) Guests of the government. These include official visitors from any entities in which the state has any interest. They include local government officials traveling to the same area or near the route of the state driver. Guests may be cost-sharing or courtesy passengers.
 - (b) Observers or ride-a-longs;
 - (c) Driver's or passenger's aides; or
 - (d) Minors and others who are not legally liable for themselves and their agreements.
- (5) The following drivers shall obtain prior agency approval to transport any passengers on state business: any authorized driver whose license is a hardship permit and all agents, volunteers, temporary employees, students, and inmates. Agencies may impose conditions.
- (6) Family members, friends, and pets of drivers and working passengers shall not ride in state vehicles or in private vehicles on state business except under the following conditions and requirements:
 - (a) Friends, family, and pets may not ride in state vehicles or in private vehicles on state business except as permitted by these rules and then only with prior agency permission. Agencies may impose any conditions.
 - (b) Medical aid animals may be taken along as necessary without advance permission, but remain subject to reasonable agency conditions.

(c) Their children under age 18 may ride with them only with advance agency approval and a DAS order allowing children to ride for special occasions. Friends under the age of 18 are prohibited.

(d) Family members, whether riding with agency permission or without and whether in compliance with these rules or not, shall ride at their own risk or at the personal risk of the driver, employee, or person to whom they relate. The state shall not insure or indemnify friends or family nor insure or indemnify the employee against any claims brought by friends or family.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
 Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
 Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0430

Passengers Summary

The following table summarizes many issues from these rules dealing with who may ride in a state vehicle or a vehicle on state business and at whose risk. Private vehicles on private business are not subject to these rules. See the remainder of OAR 125, division 155 for details. Chief Condition:

- (1) **Generally:** Needed to Accomplish State Business:
 - (a) State Vehicle and State Rental — Control/At Risk: Primarily state;
 - (b) Private on State Business — Control/At Risk: Secondly 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, 184.340 & 278.405
 Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
 Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95; Administrative Reforming 11-29-97

125-155-0500

General Use of Vehicles

(1) By law, state vehicles shall be used only for official state business and not for any personal purposes. This applies to state owned vehicles. It also applies to private or rental vehicles while being used for state business or at state cost or risk. Vehicle uses contrary to the law or these rules shall mean the driver is acting outside the definition of official state business, is not an authorized driver, and is acting outside the course and scope of his or her employment or duties. "Contrary to these rules" includes making prohibited uses of a state vehicle or a private vehicle purportedly on state business, carrying prohibited passengers or materials, and allowing an unauthorized person to drive. When a private or rental vehicle is used contrary to these rules the driver and vehicle shall not be covered by state insurance or self-insurance coverages. When a state vehicle is used contrary to these rules, the vehicle and its use shall be the personal liability of the driver. The driver shall be personally liable for any damage to the state vehicle or harm to any other parties or property. State tort liability indemnification or self-insurance shall not apply.

(2) The law requires that "official state business" be narrowly construed. No diversion from state use to serve a personal purpose is permitted. However, a necessary state business use may coincide with a personal purpose. Stopping for meals or breaks enroute is an example where state and personal uses are both served.

(3) A state vehicle may not be used by an employee to the private financial benefit of the employee or any member of his or her household. No one has authority to permit anyone to make personal or family use of a state vehicle or any vehicle driven at state risk.

(4) It is the responsibility of all agencies and drivers to assure that the requirements of the law and these rules are followed in all situations.

(5) Drivers of state vehicles and private vehicles on state business shall comply with the following safe use requirements:

(a) Drivers shall transport material that is dangerously explosive, flammable, radioactive, or extremely toxic only within the precautions

required by law. Passengers shall be transported with the material only with their informed consent.

(b) Drivers shall require appropriate safety restraints to be worn. They shall require children to ride in any legally required car seats. Animals shall be in secured carriers. Agencies may approve any lawful exceptions.

(c) Drivers shall not consume alcohol in vehicles nor operate a vehicle under the influence of intoxicants. They shall not transport alcohol in state vehicles unless required by their agency to do so for official state business and then only as permitted by law.

(d) Drivers shall not transport illegal drugs or contraband of any kind in vehicles except as necessary to carry out their assigned duties of official state business.

(e) Drivers shall not transport firearms in vehicles unless required to do so by their agency under its authorization by state law. An agency may permit the transport of unloaded, packaged firearms as necessary for official state business. Officially sanctioned programs of OSSHE may transport unloaded firearms only under written conditions set by OSSHE.

(f) Drivers shall not allow smoking in state vehicles designated for no smoking.

(g) Private specialty vehicles and private off-road vehicles shall not be used for state business except to the extent that an agency determines that necessary state business cannot reasonably be accomplished without the use of the particular private vehicle.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0510

Day Use

(1) "Day-use" means the driver of a state vehicle is not staying away overnight due to state business. During day-use, drivers may travel for any state business and no personal business.

(2) The state's vehicle, during day-use away from the duty station, shall not be used to reach personal recreational activities, personal appointments, grooming or fitness facilities, or personal visits; or for transportation of, or errands for, friends or relatives. Drivers may stop for food or breaks at sites reasonably near to their direct business route.

(3) The state's vehicle shall not be taken to or from the duty station for any personal day-use purposes. This prohibits personal travel between home and the driver's official duty station. It prohibits travel from the duty station to go eat, attend a personal appointment, recreate, assist friends or family, visit, or get laundry or grooming done. These are not state business.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0520

Overnight and Full-time Use

(1) "Overnight use" means the driver is traveling in the state's vehicle overnight for state business. In that working situation, state business includes allowing for employees' daily necessities. The minimum necessary use of the state's vehicle is permitted to meet drivers' and passengers' normal daily needs. Private vehicles are always free to be used for these purposes and shall be deemed to be engaged in personal and private business, not state business for these uses. A driver on overnight use may make negligible and prudent use of the state's vehicle as follows. Within the local vicinity of the direct travel route or of the overnight assignment and during reasonable hours, the driver may travel to:

- (a) Restaurants, stores, and the like for meals, breaks, and personal needs;
- (b) Grooming, medical, fitness, or laundry facilities; or
- (c) Recreational activities, such as theaters, parks, or friends or relatives homes.

(2) "Full time use" means the driver is assigned virtually all day and every day to day-use of a state vehicle for field work away from home and office. During full time use, drivers are permitted to use the state's vehicle to attend medical appointments for injury covered by workers' compensation. The appointment shall be within the period of their assigned duties and on or near their direct or assigned route.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0530

Emergency Use

(1) A roadside emergency is an obvious accident or breakdown within the borders of this state that leaves a vehicle's occupants dangerously stranded. Someone just hitch-hiking or asking for a ride or someone in a city with a mechanical breakdown are not roadside emergencies. A state driver and passengers may use the state's vehicle and equipment to render reasonable emergency aid under the following conditions and provisions:

(a) Those giving emergency aid shall only be state employees on duty on official state business in an official, state-owned vehicle.

(b) An agency may, in writing, countermand this roadside emergency provision for any or all of its drivers. Employee's shall not give emergency aid under these rules if their agency has instructed its drivers not to render roadside aid.

(c) In giving emergency aid as provided in these rules, state employees shall be deemed to be acting within the course and duties of their state employment for purposes of all state insurance and self-insurance coverages.

(d) The assisting employee shall not be held personally liable by the state for any unintended damage to state-owned property, used for the kind of task for which it was reasonably designed. For example, pushing or pulling another car requires a state vehicle designed and specially equipped to do that task.

(e) Reasonable aid includes using state cellular phones and radios to call for aid. If necessary, the state vehicle may be used to transport someone to the nearest telephone, shelter, repair service or emergency medical provider. State fire extinguishers, first aid kits, and blankets may be used.

(f) Rendering aid shall be purely voluntary in every case. Employees are not urged or expected to render aid. An employee should do only what he or she is willing and trained or experienced to do.

(g) Anyone who renders aid other than in compliance with these rules, does so as a private person, entirely at his or her own risk and cost, and not as state business or duties.

(2) When circumstances require it, a state vehicle may be used to transport an injured employee or client to emergency medical care for an immediate work-related injury. Traffic laws shall be obeyed. A state vehicle shall not be used for transport unnecessarily or when appropriate professional emergency services are available.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0540

Vehicle Use Summary

Following is a summary table. It lists some examples of uses or activities that may or may not be made of a vehicle, depending on the vehicle's type and travel status. See the remainder of OAR 125, division 155 for details. **Each listed use is allowed during the state travel status shown below or it is prohibited or constitutes a private use, also, as shown below.**

(1) Ordinary state business:

- (a) State vehicle: On any travel status;
- (b) State rental: On any travel status;
- (c) Private vehicle status: On any travel status.

(2) Non-urgent on the job injury:

- (a) State vehicle: Overnight, full-time;
- (b) State rental: Overnight;
- (c) Private vehicle status: Private use, cost, risk.

(3) Medical, personal:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Private use, cost, risk;
- (c) Private vehicle status: Private use, cost, risk.

(4) Personal grooming:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Overnight travel status;
- (c) Private vehicle status: Private use, cost, risk.

(5) Personal recreation:

- (a) State vehicle: Overnight travel status;
- (b) State rental: Private use, cost, risk;
- (c) Private vehicle status: Private use, cost, risk.

(6) Personal laundry:

- (a) State vehicle: Overnight travel status;

- (b) State rental: Overnight travel status;
- (c) Private vehicle status: Private use, cost, risk.
- (7) **Personal necessity shopping:**
- (a) State vehicle: Overnight travel status;
- (b) State rental: Overnight travel status;
- (c) Private vehicle status: Private use, cost, risk.
- (8) **Family needs:**
- (a) State vehicle: Prohibited;
- (b) State rental: Prohibited;
- (c) Private vehicle status: Private use, cost, risk.
- (9) **Food/Break enroute:**
- (a) State vehicle: On any travel status;
- (b) State rental: On any travel status;
- (c) Private vehicle status: On any travel status.
- (10) **Emergency roadside aid:**
- (a) State vehicle: On any travel status;
- (b) State rental: Private use, cost, risk;
- (c) Private vehicle status: Private use, cost, risk.
- (11) **Emergency on the job injury:** On any travel status if necessary and emergency services are not available.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
 Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
 Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95; Administrative Reformatting 11-29-97

125-155-0600

Storing State Vehicles

(1) The state's vehicles shall be stored at sites owned, leased, or controlled by the state except during travel or the conditions listed in these rules. When practical, a state vehicle at a home, hotel, or motel shall be parked off the public street in a reasonably secure setting.

(2) An agency may allow a state vehicle to be parked at home when a task or trip requires a driver to depart so early or return so late that it is impractical to pick up or return the vehicle to state parking on the same day. For long-term assignment of a vehicle to home, the agency must do a cost-benefit analysis. The analysis must consider the costs and risks of daily travel to the home, the frequency of call-outs, parking risks, any salary savings, and other factors. The analysis should weigh reasonable alternatives such as the cost of reimbursing private vehicle mileage. An agency may allow an employee to park a state vehicle at home when one of the following conditions requires and it is to the benefit of the state to provide its vehicle.

(a) Assigned, normal duties require the driver to frequently travel to urgent, unscheduled field work after hours. The mere possibility of being called-out is not sufficient. Call-outs must actually occur with justifiable frequency.

(b) The driver's home is his or her official duty station from which he or she engages in virtually full-time field work away from the office or motorpool.

(c) It will clearly reduce state paid time to permit a driver to park a state vehicle at home while on temporary assignment away from the duty station.

(d) Other circumstances caused by state business in which home garaging will clearly reduce direct costs of the agency.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
 Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
 Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0700

Insurance and Collisions

(1) Coverages for the state's vehicles and drivers and loss reporting requirements are found in DAS-RMD self insurance policies, in ORS 30.260–30.300 and in ORS Chapter 278.

(2) Drivers are responsible to provide their own proof of legally adequate insurance for all uses they make of private vehicles and vehicles they rent for any mixture of state and personal uses. DAS-RMD provides certificates of self-insurance coverage for rental vehicles that are used exclusively for official state business.

(3) The state's self-insured coverage has been accepted by jurisdictions in the United States, its possessions and territories, and Canada. Drivers must contact DAS-RMD to arrange coverage for any state vehicles in other locales. Lack of proper coverage in some countries could result in a driver being personally liable for criminal fine and imprisonment, criminal defense costs, and payment to the state for the confiscation of its vehicle.

(4) Mileage reimbursement is the only amount that the state or its agencies shall pay to any employee for use of his or her private vehicle on state business. The state may not pay an employee for damage to his or her vehicle or for deductibles or increased insurance rates due to an accident occurring while on state business. Mileage reimbursement details are found in DAS State Controller's Division Oregon Accounting Manual and ORS Chapter 283.

(5) Drivers shall report to their agency and to DAS-RMD all collisions or accidents occurring to any vehicle while on state business. Agencies shall review each collision or accident involving any vehicle in use on state business. The review shall determine whether the collision or accident was preventable by reasonable safe driving techniques and recommend action to prevent recurrences. Agencies may use any objective panel for this purpose.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
 Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
 Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0800

Rules Enforcement

(1) For purposes of all state insurances or self-insurance coverages, while transporting prohibited passengers or material in a private vehicle or otherwise using a private vehicle contrary to these rules, the driver shall be deemed in all respects to be driving on personal business; not official state business. The private car driver shall not be subject to discipline for making personal use of his or her vehicle unless the driver is acting in violation of his or her agency's policies or supervisory directives.

(2) For purposes of all state insurances or self-insurance coverages, while transporting prohibited passengers or material in the state's vehicle or otherwise using a state vehicle contrary to these rules, the driver shall be deemed in all respects to be driving on personal business; not official state business. The driver shall be liable to the state for the value of the use of the vehicle and for any damage to the vehicle arising out of the misuse. The driver may also be subject to any other discipline or penalty of any kind provided by law or contract.

(3) These rules shall have no effect on a driver's qualifying for salary, employment benefits, or state reimbursement of mileage, meals, lodging, or expenses for which the driver otherwise qualifies.

(4) The agency employing a driver shall apply and enforce these rules. The agency owning the state vehicle may enforce these rules as they relate to its vehicles. Nothing in these rules shall limit an agency's ability to apply any kind of personnel or disciplinary action or to exercise any of its specific rights or duties under existing contracts with vendors and agents. Agencies may make additional provisions.

(5) Regardless of any agency actions, any violation of these rules may result in DAS exercising any of its rights and authorities. These may include:

(a) Imposing fines and withholding pay as provided in ORS 291.990; or

(b) Conditionally restricting a driver or agency from any or all access to or from certain uses of DAS Fleet vehicles.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
 Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
 Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

125-155-0900

Extensions and Exemptions

(1) State and federal law shall supersede any provision of these rules to the extent that complying with the provision would violate the law.

(2) Agencies that are not subject to ORS Chapter 283.310 shall notify DAS-RMD in writing if they elect that these rules shall not apply to their own vehicles and personnel. Otherwise, these rules shall apply to them by virtue of ORS 278.405. Their notice shall be delivered to DAS-RMD within 120 days following the effective date of these rules. Thereafter, notice that the agency wishes to cease being covered by these rules shall be delivered 120 days before the agency's election shall take effect. The agency shall provide DAS-RMD with its notice, a copy of the rule or policy it will use in place of these rules. Regardless of election, these rules shall apply to any state use of any vehicle owned by an agency that is subject to these rules.

(3) These rules shall not apply to a state-owned vehicle used by federal, local, other state government, or other entities when that vehicle is furnished and used under the terms of an intergovernmental

agreement, instate or intergovernmental compact, or similar agreement.

(4) If an officer or employee fails to meet any new driving records requirement on the day it takes effect, the agency shall grant the minimum time necessary to meet the new requirement. Agencies shall not extend time to anyone who made materially false statements to the agency about his or her related driving record or qualifications.

(5) An agency that is notified it is on trial status may propose, for DAS-RMD approval, a plan of action as an alternative to the compulsory standards set by these rules.

(6) If an agency finds it is reasonable and necessary for essential state business, it may permit an employee to drive temporarily after he or she ceases to meet training or records standards. The agency shall impose in writing appropriate restrictions and a plan to achieve driver qualifications in minimum time. Restrictions shall be designed to reduce risk to the agency, passengers, and the public. A temporary permission under this rule shall not be renewed or extended. No agency shall extend time or in any way excuse any driver from any driver license requirements or any requirement imposed by law.

(7) Vehicle sales and repair contractors may drive state vehicles, at their own risk and as necessary, for pick-up, delivery, and test drives.

(8) To the extent noted here, state agencies may permit:

(a) Their criminal law enforcement employees and emergency public safety drivers to disregard provisions of these rules to the extent necessary to prevent interference with law enforcement and emergency duties;

(b) Detection dog handlers to use specially equipped detection dog vehicles for home to work travel as necessary for work involving the dog or for the benefit of the dog; or

(c) Undercover criminal investigators to disregard provisions of these rules as necessary to carry out lawful undercover assignments, protect identities, and assure personal security.

(9) The Governor, the Director of the Department of Corrections, the Adjutant General of the Military Department, and the Superintendent of State Police may use specially equipped vehicles at all times and places. These state officers are on duty at all times. The safety, security, and welfare of the public depend on their personal safety, security, and accessibility. What constitutes appropriate use of those vehicles within the law shall be determined by each of them in their own discretion.

(10) An agency may apply to the Director of DAS for a variance from any of these rules. The request shall be submitted by the agency, not by an affected driver or passenger, to DAS-RMD. The RMD administrator shall review the request and submit it to the director with a recommendation. DAS-RMD shall then convey the director's decision to the agency. Requests shall be made at least 30 days in advance of the needed effective date.

Stat. Auth.: ORS 184.305, 184.340 & 278.405
Stats. Implemented: ORS 283.310, 283.340, 283.345 & 283.395
Hist.: DASII 4-1995, f. 11-22-95, cert. ef. 11-24-95

DIVISION 160

ADMINISTRATION AND BENEFITS OF THE INMATE INJURY SYSTEM

125-160-0000

Purpose, Applicability, and Effective Date

(1) Section 41, Article 1 of the Oregon Constitution provides that injury or disease from inmate work shall be covered by a corrections system inmate injury fund rather than workers compensation law. These rules set procedures and benefits. They are patterned generally after accidental death and disability insurance.

(2) These rules apply to injuries to inmates in authorized work or training assignments of the Oregon Department of Corrections.

(3) These rules apply to injuries occurring on and after June 30, 1995.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525
Stats. Implemented: ORS 655.505 - 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0100

Benefit Limits During Temporary Disability

For purposes of temporary disability benefits, the Department shall calculate and limit benefits during temporary disability as follows:

(1) While still in confinement, temporary disability benefits shall be limited to medical services provided by or at the direction of Corrections medical staff.

(2) After the release date, any temporary disability award shall be at a disability rating of 100 percent. Temporary disability awards shall be payable for no more than the 6 months immediately following release. Medical services shall be provided only by, or at the direction of, the attending physician and only while the claimant is temporarily disabled and not stationary.

(3) After the release date, medical services shall be limited to \$5,000. No more than \$1,000 of that limit may be applied to rehabilitation services. The limit does not apply to services provided by and through Corrections medical staff while the claimant is confined.

(4) In response to the attending physician's request, Department may waive the foregoing limit on medical services payments. Waiver shall be in increments of \$5,000 not to exceed a total medical services limit of \$50,000. Any conditions that Department may deem reasonable may be attached to its waiver. Any waiver shall conform to one of the following:

(a) Corrections medical staff may request a waiver shortly before or after the date of release if these conditions are met:

(A) The initial claim shall have been promptly filed, treatment promptly sought, and Department shall have found claimant eligible for temporary disability benefits.

(B) Claimant's medical condition shall have remained medically unstationary from time of injury through time of waiver request and release.

(C) Claimant shall be reported by Corrections to be actively cooperating toward recovery.

(D) The treating physician shall give Department a written report. It shall state that the medical condition is due to the covered injury and no other cause. It shall estimate the amount by which essential medical treatment will exceed the foregoing limit on medical services. It shall include a plan of essential treatment.

(b) A post-release attending physician may request a waiver no later than 90 days after release if the foregoing conditions are met. Also, this additional condition shall be met: Due to a covered injury and from no other cause, claimant shall be in dire medical condition that directly threatens death or a permanent disability rating of 70 percent or more.

(5) Further temporary disability medical services limits after release are as follows:

(a) Prior to the first visit to any post-release physician, the claimant shall obtain the Department's written approval for that attending physician. If the Department disapproves the claimant's request, it shall provide the claimant with a list of physicians with whom the claimant may treat. The Department may require a claimant to seek medical treatment through a contract medical service or a Corrections

institution's medical staff. A claimant may not change physicians without prior approval of the Department.

(b) The Department may require any physician to provide a written plan for treatment of the covered injury and any other reports, useful under these rules.

(c) Attending physicians, and any medical providers to whom the attending physician or the Department refer claimant under these rules, may bill the Department for reasonable and necessary medical expenses. They shall do so in the same manner and amounts as provided for services under ORS Chapter 656 and related rules, or as provided in any contract with the Department.

(d) The Department shall be required to pay for an examination, investigation, or report only if it is required by the Department or provided or required by the attending physician. This shall include consulting or advisory physicians examination and reports. Department may choose to pay anyone for any actual expense which it considers necessary or useful to determine a claim or to prove a subrogation claim.

(e) The cost of reasonable and necessary medications, prescriptions, physical aids, and prosthetics are medical services. Only those required solely for recovery from the covered injury and duly prescribed by the attending physician qualify. Department may require that these be obtained from the Department, its contract provider, a mail-order service, or any other means determined by the Department to be economical or reasonable.

(f) The Department may require claimants to purchase any prescribed items through a contract pharmacy or mail order supplier. The Department may, from time to time, provide claimants with any terms and conditions for reimbursement of prescription purchases that it deems reasonable. All reimbursement requests shall be submitted in a form required by the Department, with all required documentation, and within 30 days following purchase.

(g) The attending physician shall closely monitor medications. Department shall only pay for a two week supply and one refill of a two week supply. Physician must see the claimant before further refill. The physician may prescribe larger quantities under the terms of a contract with the Department or Corrections or if the medication is known to the physician to be without potential for abuse.

(6) Any and all benefits payable or potentially payable to any claimant during temporary disability may be permanently terminated by Department without notice when any of the following occur:

(a) Attending physician's estimated duration of temporary disability expires without medical findings that claimant continues to be temporarily disabled.

(b) Attending physician reports that claimant is not cooperating in claimant's own recovery.

(c) Claimant fails to appear for any appointment with the attending physician.

(d) Claimant fails to appear for any appointment with any physician designated by the Department or the attending physician for which at least 14 days notice was given to the claimant.

(e) Claimant becomes medically stationary.

(7) Temporary disability benefits may be permanently terminated by Department without notice, upon claimant commencing work or applying for, or receiving, unemployment compensation.

(8) Minor injuries, that require only first aid or that do not result in temporary or permanent disability as defined by these rules, shall qualify only for any medical services that may be provided by Corrections.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0110

Benefit Limits During Permanent Disability

(1) For purposes of initial estimates and final awards, the Department shall calculate and limit benefits for permanent disability as described in this rule.

(2) While still in confinement, all permanent disability and training benefits shall be limited to training provided by Corrections. The need for, and type of, any training shall be decided solely by Corrections. All medical services benefits are permanently terminated.

(3) Upon release all permanent disability benefits shall be limited to the permanent disability payments and prosthetics awards approved

under these rules. All medical services benefits except preparation of reports for final award or appeals are permanently terminated. No training benefit shall be provided after release except that the Department, solely upon the request and advice of Corrections, may extend a program commenced in confinement.

(4) Upon release with permanent disability, any prosthetics award may be paid in advance. It may be reserved to pay when actual need is proven. It may be converted to a periodic payment and paid as part of the permanent disability award. Department shall select the payment method it deems reasonable in its final award.

(5) Upon release with permanent disability, the permanent disability award shall be payable for limited periods. The periods start when release and medically stationary dates are both attained. Although no payment shall be made, time spent in later confinement shall count against the period in which benefits would be payable. Disability ratings and periods shall be as follows:

(a) For a rating of 10 percent or less, the permanent disability award shall be zero.

(b) For a rating of more than 10 percent through 20 percent, the permanent disability award shall be payable for a period of 24 months or to age 65, whichever occurs first.

(c) For a rating of more than 20 percent through 30 percent, the permanent disability award shall be payable for a period of 48 months or to age 65, whichever occurs first.

(d) For a rating of more than 30 percent through 40 percent, the permanent disability award shall be payable for a period of 96 months or to age 65, whichever occurs first.

(e) For a rating of more than 40 percent through 50 percent, the permanent disability award shall be payable for a period of 132 months or to age 65, whichever occurs first.

(f) For a rating more than 50 percent through 60 percent, the permanent disability award shall be payable for a period of 180 months or to age 65, whichever occurs first.

(g) For a rating of more than 60 percent through 70 percent, the permanent disability award shall be payable for a period of 240 months or to age 65, whichever occurs first.

(h) For a rating of more than 70 percent through 80 percent, the permanent disability award shall be payable for a period of 300 months or to age 65, whichever occurs first.

(i) For a rating of more than 80 percent through 90 percent, the permanent disability award shall be payable for a period of 360 months or to age 65, whichever occurs first.

(j) For a rating of more than 90 percent through 100 percent, the permanent disability award shall be payable until age 65.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0120

Death Benefit Limits

(1) Upon a covered death, the death benefit to the claimant's estate shall be limited to \$3,000 for actual and reasonable costs of transport and burial.

(2) The death benefit to beneficiaries shall be limited to the deceased's disability award. It shall be distributed in percentage shares of the monthly amount to beneficiaries qualifying under these rules. The total shall not exceed 100 percent of the monthly amount.

(3) The death benefit shall be allocated among three beneficiary groups: spouse, children, and others. If no claim is filed from any of these groups, that group's allocation shall be applied to the remaining groups.

(4) Distribution among and within the three beneficiary groups shall be as follows:

(a) Ten percent shall be divided equally among qualifying, claiming beneficiaries other than claimant's spouse or child.

(b) Forty-five percent shall go to the qualifying, claiming spouse.

(c) Forty-five percent shall be divided equally among qualifying, claiming children. Department shall not be required to do so, but may choose to pay a child's benefit on its behalf to any custodial parent or to an annuity or trust fund in the child's name.

(5) Death benefits may commence upon covered death if it occurs after release. If covered death occurs in confinement, death benefits shall be deferred to what would have been claimant's next likely release date. However, if the deceased provided the major part of the

beneficiary's financial support for the 12 months preceding the covered death, the death shall be treated as a post release death. Support shall be counted only from the deceased's authorized work assignments and any pre-confinement work.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 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, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0300

Evaluating Claims

(1) No benefit shall be awarded or paid except through request and proof of eligibility as required by these rules and related law. A claim shall be approved if the claimant proves to the Department that the claim, injury, disability, and all related issues qualify and conform to these rules and related law.

(2) Department shall investigate any claim for benefits as it deems necessary to determine eligibility under these rules and the extent of any benefits. Department shall notify claimant of its denial or initial estimate of benefits in a reasonable time. When practical, Department shall issue its initial estimate in the period after claimant is stationary and before claimant is released.

(3) The attending physician shall make all medical determinations with regard to the claim. If Department finds the attending physician is not complying with these rules, Department may name a new attending physician to provide all medical services. The attending physician shall:

(a) Determine the existence and nature of the reported injury, its extent and expected duration of temporary disability.

(b) Determine the claimant's medically stationary date and any permanent disability rating.

(c) Estimate likelihood or frequency of necessary repair and replacement of prosthetics.

(d) Report to the Department. Reports shall be in sufficient detail to show that all determinations are based on medical evidence supported by objective findings as provided in ORS 655.510(2). The reports shall show due consideration of any input from advisory or consulting physicians. Reported pain or alleged limited range of motion, without objective findings, shall not meet this requirement.

(4) Department may require a claimant to be examined by any physician or physicians if Department considers such examination necessary to determine a claim.

(5) If there is a dispute among physicians as to any medical fact or issue, the attending physician shall determine the dispute. He or she shall give due consideration to the reports of consulting or advisory physicians.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 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, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 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, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0500

Delivery of Claims, Notices, Responses

(1) The Department shall send any and all notices, letters, responses, and benefits payments by regular mail or other reasonable means to the claimant's last known residential address or to claimant's parole or probation officer's address. Department records of mailings shall be proof of mailing and shall constitute delivery.

(2) Department may refuse to mail to a post office box when it deems reasonable to do so. Department shall not mail to General Delivery, message services, drop boxes, or third party addresses. Payments and notices mailed by Department to claimant shall say "do not forward" or similar wording required by the delivery carrier to prevent forwarding of mail.

(3) Claimant shall file all claims, requests, and appeals in writing by mail. Claimant may file by electronic facsimile to department's Fax number if claimant mails the original to Department on the same day. No claim or information necessary to a claim may be delivered by claimant by means of electronic computer mail or orally in person or by telephone. Only physical receipt by Department shall constitute delivery.

(4) Department and Corrections shall have no duty to give advice or notify, warn, or remind any claimants or potential claimants of their rights or duties under these rules. This includes the deadlines for filing requests or claims. Should Department give incorrect information, that shall not relieve the recipient of his or her duty to conform to these rules nor shall it alter any benefit to which the person may be entitled under these rules.

(5) Department may make available to Corrections and to any requesting law enforcement agency or publicly funded benefit program, any information provided to it under these rules. The requesting entity shall make its request in writing and state therein that the records are sought in connection with a valid investigation of a crime, or of a request for benefits.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 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, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0700

Suspension and Forfeiture of Benefits

(1) Claimants shall keep the Department informed of their current status and circumstances in all respects as they may bear on the requirements of these rules. Status, as used here, may include employment, medical condition, mailing and physical residence addresses, confinement, or any disqualifier for benefits. The Department may also require a claimant to complete and sign a written status report at any time before releasing any benefit or payment.

(2) The Department may temporarily suspend any or all payments to any claimant of any kind. Temporary suspension and the method of restoration shall not be subject to appeal. Suspension may be made for the following:

(a) As necessary due to inadequate funding for the Inmate Injury component of the state Insurance Fund.

(b) When claimant is believed by Department to be confined, to have moved without notifying Department, to have recovered from the disability that was expected to be permanent, or to have abandoned the claim.

(c) As requested by Corrections or parole or probation officers seeking claimant.

(d) When claimant does not respond to an inquiry from Department or fails to complete and return any status report requested by the Department or attending physician.

(e) When Department is notified in writing by any corrections or law enforcement agency that a warrant is outstanding for the claimant's arrest or that claimant is sought in connection with escape or a crime.

(f) When Department's inquiry or request for information is unanswered by claimant or is answered with an unsigned response or one that does not appear to be the claimant's.

(g) When it appears to Department that benefit checks or warrants are being negotiated by someone other than the payee.

(h) When an overpayment is discovered.

(i) As otherwise provided in these rules.

(3) After claimant provides satisfactory evidence that there existed and exists no cause for forfeiture or termination, Department shall restore and resume payments. Department, shall restore by lump sum, temporary increase in award, or extending the period of award as it may deem reasonable. No interest shall be paid.

(4) Though the months suspended shall count against the period for benefits, suspended payments shall be forfeited if:

(a) Claimant was confined, was not cooperating in his recovery, had recovered from the disability, or in any way ceased to be eligible for benefits under these rules.

(b) Claim was declared abandoned after final award.

(c) Claimant was in unlawful flight to avoid prosecution, was an escapee from any confinement, or was under order to appear for an outstanding felony warrant.

(d) Any payments were overpayments or were negotiated by someone other than the payee without payee immediately notifying Department.

(5) If for any reason, Department learns it has paid claimant more than is due under these rules or Department is billed for a medical service claimant did not use or attend, Department may offset the payment by benefit reductions. It may temporarily suspend and not restore payments, reduce the award, or shorten the period of payments as it may deem reasonable to recover the overpayment. Department may also exercise any other recovery right allowed it by law.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0710

Termination of Benefits

(1) Any and all benefits payable or potentially payable to a claimant shall be terminated fully and finally, without prior notice, upon the occurrence of any of the following:

(a) Claimant gives Department or Corrections any kind of false report or supplies any false information in connection with a claim.

(b) Inmate dies due, in large part, to any cause or causes other than the covered injury.

(c) Claimant, receiving permanent benefits or death benefits, attains age 65.

(d) The date is reached at which an inmate deceased from a covered death would have attained age 65.

(e) A beneficiary dies, ceases to be a beneficiary under these rules or, if a child, attains 18 years of age.

(2) Anyone who receives benefits shall return at once to Department any payment that he or she is not entitled to under these rules due to termination of benefits or any other cause.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0720

Abandonment of Benefits

(1) If benefits are abandoned, claimant forfeits all rights under these rules, except the right to give Department clear and convincing evidence that abandonment did not occur. Claimant shall provide such evidence in writing to Department within 30 days of Department's declaration of abandonment. If Department refuses to reinstate benefits after receipt of clear and convincing evidence that abandonment did not occur, claimant may appeal as provided in these rules.

(2) Benefits shall be deemed abandoned if both of the following occur:

(a) The Department sends three consecutive mailings by regular or certified mail on different dates at least one week apart and all are returned, or the Department's requests for response contained in each and all of the mailings elicit no response, or Department's checks or warrants included in each of the mailings are not negotiated.

(b) In the 90 days following the date of the last mailing, the Department receives no signed, written communication from the claimant with a valid residential mailing address.

(3) Upon the occurrence of the preceding, the Department shall declare the claim abandoned and take the following steps:

(a) Department shall record in its records that the claim is declared abandoned. Department shall not be required to make further attempt to find claimant or notify claimant or any other party.

(b) If final award has not been made, Department shall permanently terminate the claim and all prospective benefits as fully and finally abandoned.

(c) If final award has been made, Department shall suspend all benefits until the earlier of six months or claimant's proof to Department's satisfaction that claimant remains eligible for benefits. The benefits suspended shall be forfeited. Upon satisfactory proof of eligibility, suspended benefits may be resumed subject to any conditions Department may deem reasonable. Otherwise, Department shall permanently terminate all benefits as fully and finally abandoned.

(4) Any benefit check or warrant that is returned from the last known mailing address or is not negotiated within 90 days of mailing, may be canceled or voided by Department. A payment so canceled may be deemed paid. Its month shall count against any benefit period. Department shall not be required to replace it.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0800

Subrogation

Applying for and accepting benefits under these rules shall transfer to the Department all the acceptors' rights, claims, and causes of action against any third party for the covered injury or death to the extent of benefits paid or payable hereunder. Department shall be entitled to the net recovery against the third party to the extent of benefits paid or payable hereunder. Except as provided by ORS 655.510(4), if the Department does not choose to claim damages from a third party, all these rights shall revert to claimant and Department shall waive any interest it has in any recovery.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 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, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0910

Hearings Process

(1) The Department shall designate as hearings officer any person trained in the hearings process. The hearings officer shall not have

been a witness or had personal knowledge of any material, disputed fact of the case. He or she shall not have had another role in the case.

(2) The hearing shall be conducted at a time and place designated by the hearings officer and acceptable to Corrections. The hearing may be conducted by telephone or other means of communication.

(3) The hearings officer shall conduct the hearing as prescribed in ORS 183.415 except as otherwise required in these rules.

(4) Prior to commencement of hearing, the Department or hearings officer shall:

(a) Inform party(s) to the hearing of the matters specified in ORS 183.413(2).

(b) Explain issues involved in the hearing and matters parties must prove or disprove under these rules.

(5) Making the reasons a part of the record, a hearing may be postponed by the hearings officer for good cause and for reasonable periods of time, consistent with these rules. Good cause includes, but is not limited to:

(a) Preparation or scheduling needs of the Department;

(b) Illness of the claimant;

(c) Unavailability of the claimant. Upon unavailability for 90 days, the hearings officer shall cancel the hearing and issue a recommendation to the Department that its decision should stand or the claim should be permanently terminated as abandoned.

(d) Avoiding interference with ongoing police investigation or pending prosecution.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0920

Conduct of Hearings

(1) The findings of the hearings officer must be on the merits. Technical or clerical errors in the writing or processing of a contested decision shall not be grounds for modification or rescission unless there is substantial prejudice to the claimant.

(2) The standards of proof shall be those provided in these rules.

(3) Making the reasons part of the record, the hearings officer shall raise the claimant's burden of proof to clear and convincing evidence upon the occurrence of the following:

(a) The hearings officer finds the claimant provided or has a history of providing unreliable or false evidence;

(b) The contested issue is timeliness, inclusion or omission of evidence, or other procedural requirements; or

(c) As otherwise provided in these rules.

(4) The hearings officer shall consider such evidence as would be considered by reasonable persons in the conduct of their serious affairs.

(5) At hearings, claimants shall be allowed to speak in their behalf, submit evidence, and exercise rights allowed by these rules.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0930

Testimony of Witnesses

(1) The hearings officer shall direct all scheduling and taking of testimony of witnesses at the hearing. Witnesses shall be limited to people with direct personal knowledge of the essential elements of the matters on appeal. Witnesses and testimony shall only be received from those who, and whose evidence, were made known to the Department in or between the filing of the claim and the request for review. Testimony may be taken in person, by telephone or by written report or statement. Testimony shall not be required in support or explanation of any evidence that these rules say shall be presumed true or constitute a rebuttable presumption. Reports of expert witnesses shall be sufficient evidence instead of testimony.

(2) The claimant may request that the hearings officer schedule witnesses to present testimony at the hearing. The request shall:

(a) Be delivered in writing to the hearings officer not less than 7 days before the scheduled hearing;

(b) List the name and address of each witness whose testimony is desired;

(c) Show the materiality of each witness;
 (d) Request that the hearings officer schedule the testimony; and
 (e) If claimant is not represented by attorney, provide a list of questions the claimant wishes to be posed to each witness.

(3) The hearings officer shall arrange to receive testimony from the claimant's requested witnesses subject to the provisions of these rules.

(4) Making the reasons part of the record, the hearings officer may:

(a) Limit testimony or exclude any question that is cumulative, repetitive, or immaterial. It shall be a rebuttable presumption that all questions pertaining to the attending physician's or to the Department's procedures, practices, or actions on the subject case or other cases are immaterial.

(b) Exclude any evidence or witness or refuse to ask or permit any question upon finding that the testimony or evidence, if taken in the light most favorable to the claimant, together with the reasonable inferences to be drawn therefrom, would not substantially affect the Department's decision;

(c) Exclude any witnesses upon finding that their appearance at the hearing would present an immediate undue risk to the safe, secure, or orderly operation of corrections, specifically including the safety and security of corrections or Department employees and inmates. No Corrections or Department employee shall be required to release personal residence addresses or phone numbers nor other identifying information except name, official title and post and length of service when hearings officer finds such information pertinent.

(d) Exclude any witness upon finding that the witness' testimony would not assist the hearings officer in the resolution of the case before him or her.

(5) The hearings officer may call witnesses to testify that were not requested by the parties and may pose any pertinent questions during the hearing.

(6) Any witness may substitute a written report in place of actual testimony. If any witness resides in this state and is unwilling to appear or provide a written report in lieu of appearing, the Department may issue a subpoena as provided by ORS 183.440.

(7) The identity of any confidential informant and the verbatim statement of the informant shall be submitted to the hearings officer in writing, but shall remain confidential. The hearings officer shall only rely on the testimony of a confidential informant if accompanied by information from which the hearings officer can find that the informant is a person who can be believed or the information provided by the informant is truthful.

(8) With the permission of the Department of Justice, Department and Corrections may authorize agency representatives at any hearing.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0940

Documents & Physical Evidence

(1) The claimant may present any documents or physical evidence permitted by these rules before or during the hearing.

(2) Only the attending physician may make medical findings and submit medical reports to the hearing. Any other medical report or medical evidence from any other physician shall only be submitted to the attending physician as the opinion of an advisory or consulting physician. Reports of the attending physician shall suffice as evidence in place of testimony.

(3) The Department shall provide a copy of the records upon which it based its decision. The Department may add summaries or explanations. Department reports shall suffice as evidence in place of testimony.

(4) Making the reasons part of the record, the hearings officer may exclude evidence upon finding that it would:

(a) Not assist him or her in finding whether substantial evidence existed to support Department's decision; or

(b) Present an undue risk to the safe, secure, or orderly operation of Corrections, specifically including the safety and security of Corrections or Department employees and inmates.

(5) The hearings officer may classify documents or physical evidence as confidential upon finding that disclosure would present an undue risk to the safe, secure, or orderly operation of Corrections,

specifically including the safety and security of Corrections or Department employees and inmates. The reasons for classifying documents or physical evidence as confidential shall be made a part of the record. Confidential evidence shall not be disclosed to the claimant.

(6) Claimant shall have right to examine all evidence that Department relied upon at the time of its review or submitted to the hearings officer for consideration. Department shall provide the evidence to claimant or claimant's legal representative when it submits evidence to the hearings officer. Department may submit to the hearings officer, without copy to the claimant or legal representative, any evidence it considers confidential. Any documents the hearings officer finds to be confidential shall be furnished to claimant or legal representative upon request with any information which could identify the confidential source masked or removed.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

125-160-0950

Hearings Conclusions and Record

(1) The hearing shall be held, and the hearings officer shall seek, to determine whether the Department had substantial evidence for its decision and whether its decision substantially complied with these rules. The hearings officer shall then issue a recommendation to the Department that it affirm, rescind, or modify its decision.

(2) The hearings officer shall deliver a hearing record to Department within 30 days after the hearing. The record shall include:

(a) A copy of the Department's decision;

(b) The request for administrative review or appeal;

(c) The notice of hearing and rights;

(d) The tape recording or transcribed record of the hearing;

(e) Documents and other evidence relied upon; and

(f) The hearings officer shall prepare a proposed order which includes findings of fact, conclusions of law, summary of evidence and exceptions, and the hearings officer's recommendation.

(3) A hearings officer's proposed order shall take effect 60 days after issue unless the Department's Director issues an amended decision within that period.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.525

Stats. Implemented: ORS 655.505 - 655.525

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96

DIVISION 246

GENERAL PROVISIONS FOR PUBLIC CONTRACTING

General Provisions

125-246-0100

Application; Commentary; Federal Law Prevails

(1) These Rules of the Department of Administrative Services (Department) are policy and procedure for the Public Contracting of Agencies subject to these Rules. Pursuant to ORS 279A.065(5), the Department adopts these Rules, including but not limited to selected and adapted Public Contract Model Rules. The Public Contract Model Rules adopted by the Attorney General do not apply to the Department or the Agencies. These Department Public Contracting Rules implement the Oregon Public Contracting Code and consist of the following four Divisions:

(a) Division 246, which applies to all Public Contracting;

(b) Division 247, which applies only to Public Contracting for Supplies and Services, and not to construction services or Architectural, Engineering and Land Surveying Services, and Related Services;

(c) Division 248, which applies only to Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 249, which applies only to Public Contracting for construction services.

(2) If a conflict arises between these Division 246 Rules and Rules in Division 247, 248 or 249, the Rules in Divisions 247, 248 or 249 take precedence over these Division 246 Rules.

(3) Commentary on these Rules may be published by the Department to assist the Agencies by providing: examples, options, refer-

ences, background, and other commentary. The Department's commentary is not a Rule or interpretation of any Rule and has no legally-binding effect.

(4) Federal statutes and regulations prevail and govern, except as otherwise expressly provided in ORS 279C.800 through 279C.870 (Prevailing Wage Rate) and notwithstanding other provisions of the Public Contracting Code, under these conditions:

(a) Federal funds are involved; and

(b) The federal statutes or regulations either:

(A) Conflict with any provision of ORS Chapters 279A, 279B, or 279C.005 through 279C.670; or

(B) Require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, or 279C.005 through 279C.670.

(5) Except for Section (6) of this Rule, the authority for Amendments pursuant to OAR 125-246-0170, and 125-246-0560(13), these Division 246 Rules apply to Public Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

(6) Transitional and Old Contracts.

(a) Pursuant to Oregon Laws 2005, chapter 103, Section 39, the rules repealed by section 332, chapter 794, Oregon Laws 2003 (Old Rules) will continue to apply to Transitional and Old Contracts, including: Solicitations, if any, as defined in Section 39 and Contract Administration as defined in the Old Rules, except for Amendments and the related authority for Amendments. (See OAR 125-246-0170 and 125-246-0560(13))

(b) Section (6) of this Rule applies retroactively to and is effective on and after March 1, 2005.

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

Stats. Implemented: ORS 279A.020, 279A.030, 279A.065 & OL 2005, Ch. 103, Sec. 39

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0110

Definitions

The following terms are a compilation of definitions, including those found in the Public Contracting Code, in other statutes referenced by the Public Contracting Code, and elsewhere in these Rules. Partial definitions of the Public Contracting Code are for the use of the Agencies only. The following terms, when capitalized in these Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "Adequate" is defined in ORS 279C.305 and means sufficient to control the performance of the Work and to ensure satisfactory quality of construction by the contracting agency personnel.

(3) "Advantageous" means a judgmental assessment by the Agency of the Agency's best interests.

(4) "Advocate for Minority, Women and Emerging Small Business" means the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Advocate oversees the resolution of business concerns with Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses pursuant to ORS 200.025.

(5) An "Administrator" or "Administering Agency" is defined in OAR 125-246-0400(3)(a).

(6) "Affected Person" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely affected by an Agency decision.

(7) "Affirmative Action" is defined in ORS 279A.100 and means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

(8) "Agency" means those agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department pursuant to ORS 279A.050 and 279A.140. This term includes

the Department when the Department is engaged in Public Contracting. Under these Rules, an Agency is authorized only through a delegation of authority pursuant to OAR 125-246-0170.

(9) "Amendment" means a Written modification to the terms and conditions of a Public Contract, other than Changes to the Work as defined in OAR 125-249-0910, that meets the requirements of OAR 125-246-0560. For the purposes of these Rules, Amendments are included within the definitions of "Procurements" and "Contract Administration."

(10) "Architect" is defined in ORS 279C.100 and means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms "architect," "licensed architect" and "registered architect."

(11) "Architectural, Engineering and Land Surveying Services" is defined in ORS 279C.100 and collectively means professional services that are required to be performed by an architect, engineer or land surveyor. "Architectural, Engineering and Land Surveying Services" includes "Architectural, Engineering or Land Surveying Services," separately or any combination thereof, as appropriate within the context of a Rule.

(12) "Architectural, Engineering and Land Surveying Services, and Related Services" is defined in ORS 279C.100 and 279C.100(6) and collectively means professional services that are required to be performed by an architect, engineer or land surveyor and Related Services. "Related Services" means services that are related to the planning, design, engineering or oversight of Public Improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services. "Architectural, Engineering and Land Surveying Services, and Related Services" includes "Architectural, Engineering or Land Surveying Services, or Related Services, separately or in any combination thereof, as appropriate within the context of a Rule."

(13) "As-Is, Where-Is" applies to the sale of Goods and means that the Goods are of the kind, quality, and locale represented, even though they are in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Goods involved, based upon the buyer's own inspection. Implied and express warranties are excluded in sales of Goods "As-Is, Where-Is."

(14) "Authorized Agency" means any Person authorized pursuant to OAR 125-246-0170 to conduct a Procurement or take other actions on an Agency's behalf. This term, including its use in the Rules, does not convey authority to an Agency. For the authority of Agencies under the Code and these Rules, see OAR 125-246-0170 only.

(15) "Award" means, as the context requires, either identifying or occurrence of the Agency's identification of the Person with whom the Agency intends to enter into a Contract following the resolution of any protest of the Agency's selection of that Person, and the completion of all Contract Negotiations.

(16) "Bid" means a Written response to an Invitation to Bid.

(17) "Bidder" means a Person who submits a Bid in response to an Invitation to Bid.

(18) "Brand Name or Equal Specification" is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers' names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the Agency's requirements and that authorizes Offerors to offer Supplies and Services that are equivalent or superior to those named or described in the Specification.

(19) "Brand Name Specification" is defined in ORS 279B.200(2) and means a Specification limited to one or more products, brand names, makes, manufacturer's names, catalog numbers or similar identifying characteristics.

(20) "Business Day" means 8:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, excluding State of Oregon holidays.

(21) "Chief Procurement Officer" means the individual designated and authorized by the Director of the Department to perform certain procurement functions described in these Rules.

(22) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.

(23) "Client" means any individual, family or Provider:

(a) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(b) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(c) Who is under the custody, care, or both of the Agency; or

(d) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(24) "Client Services" means any Services and incidental or specialized Goods, in any combination thereof, that either directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(a) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(b) Sustenance, including clothing;

(c) Employment training or Skills training to improve employability;

(d) Services for people with disabilities;

(e) Foster care or foster care facilities;

(f) Residential care or residential care facilities;

(g) Community housing;

(h) In-home care including home delivered meals;

(i) Medical care, services and treatment, including but not limited to:

(A) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(B) Alcohol and drug treatment;

(C) Smoking cessation;

(D) Drugs, prescriptions and non-prescription;

(E) Nursing services and facilities;

(j) Transportation or relocation;

(k) Quality of life, living skills training; or

(l) Personal care; or

(m) Legal services and expert witnesses services;

(n) Religious practices, traditions and services, separately or in any combination thereof; and

(o) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(25) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(26) "Code" is the "Public Contracting Code," defined in ORS 279A.010(1)(z), and "Code" means ORS Chapters 279A, 279B and 279C.

(27) "Competitive Quotes" means the sourcing method pursuant to OAR 125-249-0160.

(28) "Competitive Range" means the Proposers with whom the Agency will conduct Discussions or Negotiations if the Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-247-0261 or 125-249-0650.

(29) "Competitive Sealed Bidding" means the sourcing method pursuant to ORS 279B.055.

(30) "Competitive Sealed Proposals" means the sourcing method pursuant to ORS 279B.060.

(31) "Consultant" means the Person with whom an Agency enters into a Contract for the purposes of consulting, conferring, or deliberating on one or more subjects, and this Person provides advice or opinion; e.g., Consultants for Architectural, Engineering and Land Surveying Services, and Related Services as defined in ORS 279C.115 and information technology Consultants.

(32) "Contract" means an agreement between two or more Persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. For the purposes of these Rules, "Contract" means Public Contract.

(33) "Contract Administration" means all functions related to a given Contract between an Agency and a Contractor from the time the Contract is awarded until the Work is completed and accepted or the Contract is terminated, payment has been made, and disputes have been resolved. Contract Administration includes Amendments.

(34) "Contractor" means the Person with whom an Agency enters into a Contract and has the same meaning as "Consultant" or "Provider."

(35) "Contract Price" means, as the context requires, (i) the maximum monetary obligation that an Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(36) "Contract Review Authority" means the Director of the Department and the Director's delegatee, unless specified by statute as the Director of the Oregon Department of Transportation.

(37) "Contract-Specific Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(38) "Contracting Agency."

(a) "Contracting Agency" is defined in ORS 279A.010(1)(b) and, for Agencies operating under these Rules and the Code, means the Director of the Oregon Department of Administrative Services, authorized to act on their behalf pursuant to ORS 279A.140.

(b) The definition of "Contracting Agency" in ORS 279A.010(1)(b) does not give Agencies procurement authority. For procurement authority of Agencies, see OAR 125-246-0170.

(39) "Cooperative Procurement" is defined in OAR 125-246-0400(3)(c).

(40) "Cooperative Procurement Group" is defined in OAR 125-246-0400(3)(d).

(41) "Days" means calendar days.

(42) "Disqualification" means a disqualification, suspension or debarment of a Person pursuant to ORS 200.065, 200.075, and 279A.110 and OAR 125-246-0210(4).

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

(44) "Department Price Agreement" means a Price Agreement issued by the Department's State Procurement Office on behalf of all Agencies. Such Agreements may be mandatory for use by Agencies or voluntary for use by Agencies. Such Agreements may result from a Cooperative Procurement. Pursuant to OAR 125-246-0360 (Purchases through Federal Programs), an Authorized Agency may not purchase Supplies and Services through Federal Programs if a Department Price Agreement for those authorized Supplies and Services exists.

(45) "Designated Procurement Officer" means the individual designated and authorized by the head of an Authorized Agency to perform certain Procurement functions described in these Rules. If any head of an Authorized Agency does not designate and authorize an individual as a Designated Procurement Officer, "Designated Procurement Officer" also means that head of the Authorized Agency, who then acts in the place of the Designated Procurement Officer.

(46) "Descriptive Literature" means Written information submitted with the Offer that addresses the Supplies and Services included in the Offer.

(47) "Director" is defined in ORS 279A.010(1)(e) and means the Director of the Department or a person designated by the Director to carry out the authority of the Director under the Public Contracting Code and these Rules.

(48) "Discussions" means to exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer. This typically occurs before the issuance of a Notice of Intent to award, or in the absence of such Notice, during the Procurement Process and prior to award.

(49) "Donee" is defined in ORS 279A.250(1) and means an entity eligible to acquire federal donation property based upon federal

regulations or eligible to acquire Surplus Property in accordance with rules adopted by the Department. Entities eligible to acquire federal donation property may also acquire Surplus Property other than federal donation property.

(50) "Electronic Advertisement" means an Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Agency's Procurements made available over the Internet via:

- (a) The World Wide Web;
- (b) ORPIN; or

(c) An Electronic Procurement System other than ORPIN approved by the State Procurement Office. An Electronic Advertisement may or may not include a Solicitation Document.

(51) "Electronic Offer" means a response to an Agency's Solicitation Document or request for Quotes submitted to an Agency via

- (a) The World Wide Web or some other Internet protocol; or
- (b) ORPIN.

(52) "Electronic Procurement System" means ORPIN or other system approved by the State Procurement Office, constituting an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and an Agency to post Electronic Advertisements, receive Electronic Offers, and conduct any activities related to a Procurement.

(53) "Electronic Goods" means Goods which are dependent on electric currents or electromagnetic fields in order to Work properly and Goods for the generation, transfer and measurement of such currents and fields.

(54) "Emergency" means circumstances that:

- (a) Could not have been reasonably foreseen;
- (b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

(c) Require prompt execution of a Contract to remedy the condition. An "Emergency Procurement" means a sourcing method pursuant to ORS 279B.080, 279C.335(5), 125-248-0200, or related Rules.

(55) "Energy Savings Performance Contract" means a Public Contract between an Agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(56) "Engineer" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2).

(57) "Established Catalog Price" is defined in ORS 279B.005(1)(a) and means the price included in a catalog, price list, schedule or other form that:

- (a) Is regularly maintained by a manufacturer or Contractor;
- (b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or to buyers constituting the general market, including public bodies, for the Supplies and Services involved.

(58) "Executive Department" is defined in ORS 174.112 and subject to ORS 174.108, means: all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the Executive Department of government as described in section 1, Article III of the Oregon Constitution, and that are not:

- (a) In the judicial department or the legislative department;
- (b) Local governments; or
- (c) Special government bodies.

(d) An entity created by statute for the purpose of giving advice only to the Executive Department and that does not have members who are officers or employees of the judicial department or Legislative Department;

(A) An entity created by the Executive Department for the purpose of giving advice to the Executive Department, if the document creating the entity indicates that the entity is a public body; and

(B) Any entity created by the Executive Department other than an entity described in Subsection (c), unless the document creating the

entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Executive Department.

(59) "Findings" is defined in ORS 279C.330 and means the justification for an Agency's conclusion that includes, but is not limited to, information regarding:

- (a) Operational, budget and financial data;
- (b) Public benefits;
- (c) Value engineering;
- (d) Specialized expertise required;
- (e) Public safety;
- (f) Market conditions;
- (g) Technical complexity; and
- (h) Funding sources.

(60) "Fire Protection Equipment" is defined in ORS 279A.190 and 476.005 and means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities, excepting forest fire protection equipment.

(61) "Flagger" is defined in ORS 279C.810 and means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(62) "Formal Selection Procedure" means the procedure pursuant to OAR 125-248-0220.

(63) "Fringe Benefits" is defined in ORS 279C.800 and means the amount of:

(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to Workers pursuant to an enforceable commitment to carry out a financially responsible plan or program that is committed in Writing to the Workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the Contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(64) "Good Cause" is defined in ORS 279C.585, and the Oregon Construction Contractors Board must define "Good Cause" by rule. "Good Cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "Good Cause" must reflect the least-cost policy for Public Improvements established in ORS 279C.305.

(65) "Good Faith Dispute" is defined in ORS 279C.580(5)(b) and means a documented dispute concerning:

- (a) Unsatisfactory job progress;
- (b) Defective work not remedied;
- (c) Third-party claims filed or reasonable evidence that claims will be filed;

(d) Failure to make timely payments for labor, equipment and materials;

(e) Damage to the prime Contractor or subcontractor; or

(f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(66) "Goods" is derived from the definition in ORS 279B.005(b) and means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that an Agency is authorized by law to procure.

(67) "Goods and Services" or "Goods or Services" is defined in ORS 279B.005 and for purposes of these Rules falls within the meaning of "Supplies and Services" (see the definition of "Supplies of Services" in this Rule). "Goods and Services" or "Goods or Services" does not include Personal Services. "Supplies and Services" includes Personal Services.

(68) "Grant" is defined in ORS 279A.010(1)(i) and means:

(a) An agreement under which an Agency receives money, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Agency and in which no substantial

involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Agency provides money, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(c) "Grant" does not include a Public Contract:

(A) For a Public Improvement for Public Works, as defined in ORS 279C.800; or

(B) For emergency Work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) An Agency pays moneys that the Agency has received under a Grant; and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the Agency.

(69) "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

(70) "Informal Selection" means the procedure pursuant to OAR 125-248-0210.

(71) "Intermediate Procurement" means a sourcing method pursuant to ORS 279B.070 or OAR 125-249-0160.

(72) "Interstate Cooperative Procurement" is defined in OAR 125-246-0400(3)(e).

(73) "Invitation to Bid" or "ITB" is defined in ORS 279B.005 and 279C.400 and means all documents, whether attached or incorporated by reference, used for soliciting Bids in accordance with either ORS 279B.055 or 279C.335.

(74) "Joint Cooperative Procurement" is defined in OAR 125-246-0400(3)(f).

(75) "Judicial Department" is defined in ORS 174.113 and means:

(a) The Supreme Court, the Court of Appeals, the Oregon Tax Court, the circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation.

(b) An entity created by statute for the purpose of giving advice only to the Judicial Department and that does not have members who are officers or employees of the Executive Department or Legislative Department;

(c) An entity created by the Judicial Department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(d) Any entity created by the Judicial Department other than an entity described in paragraph (c) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Judicial Department.

(76) "Labor Dispute" is defined in ORS 662.010 and means any controversy concerning terms or conditions of employment, or concerning the association or representation of Persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(77) "Land Surveyor" is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(4).

(78) "Legally Flawed" is defined in ORS 279B.405(1)(b) and means that a Solicitation Document contains terms or conditions that are contrary to law.

(79) "Legislative Department" is defined in ORS 174.114 and, subject to ORS 174.108, means:

(a) The Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation.

(b) An entity created by statute for the purpose of giving advice only to the Legislative Department and that does not have members who are officers or employees of the executive department or judicial department;

(c) An entity created by the Legislative Department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

(d) Any entity created by the Legislative Department by a document other than a statute and that is not an entity described in paragraph (c) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Legislative Department.

(80) "Locality" is defined in ORS 279C.800(2) and means the following district in which the Public Works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(l) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(81) "Lowest Responsible Bidder" is defined in ORS 279A.010(1)(p) and means the lowest Bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110(2) or 279C.375;

(c) Has not been debarred or disqualified by the Agency under ORS 279B.130 or 279C.440; and

(d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract.

(82) "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(83) "Mandatory Use Contract" means a Public Contract, Department Price Agreement, or other agreement that an Agency is required to use for the Procurement of Supplies and Services.

(84) "Multiple-tiered" or "Multisteped" means the type of process used in Competitive Sealed Bidding and Competitive Sealed Proposals pursuant to ORS 279B and OAR Division 247, where the process is staged in phases. For example, a multisteped proposal process includes more than one opportunity to submit proposals for the same project.

(85) "Negotiations" means to compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter. Pursuant to ORS 279B and OAR Division 247 Negotiations typically occur after issuance of a Notice of Intent to award, or in the absence of such Notice, preceding an award of a Contract.

(86) "Nonprofit Organization" is defined in ORS 279C.810 and means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(87) "Nonresident Offeror" means an Offeror who is not a resident Offeror. For the meaning of residency, see the definition of "Resident Offeror."

(88) “Not-for-Profit Organization” is defined in ORS 307.130(4)(c) and means a Nonprofit Corporation.

(89) “OAR” means the Oregon Administrative Rules.

(90) “Offer” means a response to a Solicitation, including: a Bid, Proposal, Quote or similar response to a Solicitation.

(91) “Offeror” means a Person who submits an Offer

(92) “Offering” means a Bid, Proposal, or Quote.

(93) “Office of Minority, Women, and Emerging Small Business” or “OMWESB” is defined in ORS 200.025 and 200.055 and means the office that administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBE/WBE), and Emerging Small Business (ESB) Programs. OMWESB is the sole authority providing certification in Oregon for disadvantaged, minority, and woman-owned businesses, and emerging small businesses.

(94) “Old Contracts” means all Public Contracts entered into before March 1, 2005. See OAR 125-246-0100(5).

(95) “OPB Certified Professional” means an individual holding an active Oregon Procurement Basic Certification, issued by the State Procurement Office.

(96) “Opening” means the date, time and place specified in the Solicitation Document for the public opening of Written sealed Offers.

(97) “Ordering Instrument” or “Order” means a document used by an Authorized Agency in compliance with the Public Contracting Code, these Rules, and Department policies, for the general purpose of ordering Supplies and Services from one or more Providers.

(a) An Ordering Instrument or Order may also be known as a Purchase Order, Work Order, or other name assigned by an Agency.

(b) A Price Agreement may specify the use of Ordering Instruments.

(c) Absent a Price Agreement and subject to the Public Contracting Code, Rules, and Department policies, an Authorized Agency’s appropriate use of an Ordering Instrument is an Offer to purchase Supplies and Services from one or more Providers, and a Provider’s responsive and appropriate acceptance of the Offer creates a Public Contract.

(98) “Ordinary Construction Services” means those services that are not Public Improvements, are procured under ORS Chapter 279B, and are otherwise under ORS Chapter 279C, in accordance with OAR 125-249-0100(1) and 125-249-0140.

(99) “Original Contract” means the initial Contract or Price Agreement as solicited and awarded by the State Procurement Office or an Authorized Agency. See OAR 125-246-0400(3)(h) for the definition of “Original Contract” that the Public Contracting Code and Rules use for Cooperative Procurements only.

(100) “ORPIN” means the on-line electronic Oregon Procurement Information Network administered by the State Procurement Office, as further defined in OAR 125-246-0500.

(101) “ORS” means the Oregon Revised Statutes.

(102) “Participant,” is defined in OAR 125-246-0400(3)(i).

(103) “Permissive Cooperative Procurement” is defined in OAR 125-246-0400(3)(j).

(104) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity. “Person” is also defined in ORS 279C.500 and 279C.815 and means any employer, labor organization or any official representative of an employee or employer association.

(105) “Personal Services” means the services performed under a Personal Services Contract in accordance with Division 247 and related Rules in Division 246. “Personal Services” is also defined in ORS 279C.100, and that definition applies only to ORS 279C.100 to 279C.125, for Architectural, Engineering, Land Surveying Services or Related Services.

(106) “Personal Services Contract” or “Contract for Personal Services” means a Contract, or a member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services as defined in ORS 279C.100, which primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, Consultant, broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculp-

tor). Contracts for Architectural, Engineering and Land Surveying Services, and Related Services are a special class of Personal Services Contracts, defined in ORS 279C.100(5), and Providers under such Contracts are Consultants, as defined in OAR 125-248-0110(1).

(107) “Prevailing Rate of Wage” is defined in ORS 279C.800 and means the rate of hourly wage, including all fringe benefits, paid in the Locality to the majority of Workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(108) “Price Agreement.”

(a) “Price Agreement” is defined in ORS 279A.010(1)(t) and means a Public Contract for the Procurement of Supplies and Services at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the Authorized Agency does not guarantee a minimum or maximum additional purchase.

(b) The set price may exist at the outset or be determined later by an Ordering Instrument.

(c) A “Price Agreement” as a Public Contract may collectively consist of an initial agreement, together with later Ordering Instruments, if any.

(A) The initial agreement may be known as an agreement to agree, a master agreement, a Price Agreement for any Supplies and Services, a services agreement, or a retainer agreement, if such agreement meets the requirements of this Rule’s definition.

(B) The Ordering Instrument may be known as a work order, purchase order, or task order, or by another name for ordering purposes and related to the initial agreement.

(109) “Procurement” means the act of purchasing, leasing, renting or otherwise acquiring: Supplies and Services; Architectural, Engineering and Land Surveying Services, and Related Services; and Public Improvements. Procurement includes each function and procedure undertaken or required to be undertaken by an Authorized Agency to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public Contracting Code and these Rules. Procurement includes Contract Administration, and Contract Administration includes Amendments.

(110) “Procurement Process” means the process related to these acts, functions, and procedures of Procurement.

(111) “Procurement Document” collectively means the inclusive Solicitation Document and all documents either attached or incorporated by reference, and any changes thereto, used for any of the methods pursuant to ORS 279A.200 through 279A.220, 279B.055 through 279B.085, 279C.100 through 279C.125, or 279C.300 through 279C.450.

(112) “Procurement File” means any of the following files maintained by an Authorized Agency: a solicitation, contract, or contract administration file, separately or collectively.

(113) “Product Sample” means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(114) “Property” is defined in ORS 279A.250 and means personal property.

(115) “Proposal” means a Written response to a Request for Proposals.

(116) “Proposer” means a Person who submits a proposal in response to a Request for Proposals, except for Architectural, Engineering and Land Surveying Services, and Related Services pursuant to OAR 125-248-0110(4), whereby “Proposer” means a Consultant who submits a proposal to an Authorized Agency in response to a Request for Proposals.

(117) “Provider” means collectively or in the alternative: the supplier, Contractor or Consultant, providing Supplies and Services or Public Improvements.

(118) “Post-consumer Waste” means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. “Post-consumer waste” does not include manufacturing waste.

(119) “Public Agency” is defined in ORS 279C.800 and means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(120) "Public Body" is defined in ORS 174.109, subject to ORS 174.108, and means state government bodies, local government bodies and special government bodies.

(121) "Public Contract" is defined in ORS 279A.010(1)(x) and means a sale or other disposal, or a purchase, lease, rental or other acquisition, by an Authorized Agency of Supplies and Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Public Contract" does not include Grants. For the purposes of these Rules, "Public Contract" means Contract.

(122) "Public Contracting" is defined in ORS 279A.010(1)(y) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering Public Contracts or Price Agreements.

(123) "Public Contracting Code" or "Code" is defined in ORS 279A.010(1)(z) and means 279A, 279B and 279C.

(124) "Public Improvement Contract" means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(125) "Public Improvement" is defined in ORS 279A.010(1)(aa) and means a project for construction, reconstruction or major renovation on real property by or for an Authorized Agency. "Public Improvement" does not include:

(a) Projects for which no funds of an Authorized Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(126) "Public Works" is defined in ORS 279C.800 and includes, but is not limited to: roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for, by any public agency, to serve the public interest, but does not include the reconstruction or renovation of privately owned property that is leased by a Public Agency.

(127) "Purchase Order" means an Ordering Instrument or Order, as defined in this Rule.

(128) "Pursuant to" means "in accordance with" or "in harmony with" its object.

(129) "QBS" means the qualifications based selection process mandated by ORS 279C.110 for Architectural, Engineering and Land Surveying Services, and Related Services Contracts.

(130) "Quote" means a verbal or Written Offer obtained through an Intermediate Procurement pursuant to either OAR 125-247-0270 or 125-249-0160.

(131) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(132) "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(133) "Recycled Paper" means a paper product with not less than:

(a) Fifty percent of its fiber weight consisting of secondary waste materials; or

(b) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(134) "Recycled PETE" means post-consumer polyethylene terephthalate material.

(135) "Recycled Product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(136) "Related Services" is defined in ORS 279C.100(6) and means personal services, other than architectural, engineering and land surveying services, that are related to the planning, design, engineering

or oversight of Public Improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services.

(137) "Request for Proposals" or "RFP" is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with either ORS 279B.060 or 279C.405 and related rules.

(138) "Request for Qualifications" or "RFQ" means a Written document issued by an Authorized Agency and describing: the Authorized Agency's circumstances; the type of service(s) or Work desired; significant evaluation factors; their relative importance; if appropriate, price; and competitive qualifications. Contractors respond in Writing to the Authorized Agency by describing their experience and qualifications. The RFQ will not result in a Contract. It establishes a list of qualified Contractors in accordance with OAR 125-247-0550, 125-248-0220 or 125-249-645.

(139) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Supplies and Services or Public Improvements described in the request.

(141) "Resident Bidder" is defined in ORS 279A.120 and means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this State, and has stated in the Bid whether the Bidder is a "resident Bidder."

(142) "Resident Offeror" means an Offeror that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Offer, has a business address in this State, and has stated in the Offer whether the Offeror is a "resident Offeror."

(143) "Responsible" means meeting the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and not debarred or disqualified by the Authorized Agency under OAR 125-247-0575 or 125-249-0370.

(144) "Responsible Bidder" or "Responsible Proposer" is defined in ORS 279A.105 and 279B.005 and means a person who meets the standards of responsibility as described in ORS 279B.110.

(145) "Responsible Offeror" means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and who has not been debarred or disqualified by the Agency under OAR 125-247-0575 or 125-249-0370, respectively.

(146) "Responsible Proposer" or "Responsible Bidder" is defined in ORS 279B.005 and means a Person who meets the standards of responsibility described in ORS 279B.110.

(147) "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(148) "Responsive Bid" or "Responsive Proposal" is defined in ORS 279B.005 and means a Bid or Proposal that substantially complies with the Invitation to Bid or Request for Proposals, respectively, and all prescribed Procurement procedures and requirements.

(149) "Responsive Offer" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(150) "Responsive Proposal" or "Responsive Bid" is defined in ORS 279B.005 and means a bid or proposal that substantially complies with the Invitation to Bid or Request for Proposals and all prescribed procurement procedures and requirements.

(151) "Retainage" is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the contract by the Authorized Agency.

(152) “Rules” means these Public Contracting Rules of the Department including Divisions 246 through 249, unless otherwise indicated.

(153) “Scope” means the extent or range of view, outlook, application, operation, or effectiveness.

(154) “Secondary Waste Materials” means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. “Secondary Waste Materials” includes post-consumer waste. “Secondary Waste Materials” does not include excess virgin resources of the manufacturing process. For paper, “Secondary Waste Materials” does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(155) “Services” or “services,” for the purpose of these Rules only, means Trade Services, Personal Services, or any combination thereof.

(156) “Signature” means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

(157) “Signed” means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(158) “Small Procurement” means a sourcing method pursuant to ORS 279B.065.

(159) “Sole-Source Procurement” means a sourcing method by which an Authorized Agency awards a Contract without competition to a single source for Supplies and Services, when Written justification demonstrates no other source is available, in accordance with ORS 279B.075 and OAR 125-247-0275.

(160) “Solicitation” means:

(a) A request by an Authorized Agency for the purpose of soliciting Offers. This request may take the form of an Invitation for Bid, a Request for Proposal, a Request for Quotation, a Request for Qualifications or a similar document; or

(b) The process of notifying prospective Offerors that the Authorized Agency requests such Offers; or

(c) The Solicitation Document itself. A Solicitation and award process uses methods identified in ORS 279A.200 through 279A.220 (Cooperative Procurement); ORS 279B.055 through 279B.060 (bidding and proposals); ORS 279B.070 (intermediate procurements); ORS 279B.085 (special procurements); ORS 279C.100 through 279C.125 (Architectural, Engineering and Land Surveying and Related Services); or ORS 279C.300 through 279C.450 (Public Improvements).

(161) “Solicitation Document” means an Invitation to Bid; a Request for Proposals; a Writing for a Small, Intermediate, Informal Selection, Competitive Quote, or Emergency Procurement; a Special Procurement Solicitation; or other document issued to invite Offers from prospective Contractors in accordance with ORS 279B or 279C. “Solicitation Document” includes related documents, either attached or incorporated by reference, and any changes thereto, issued by an Authorized Agency to establish an Original Contract that forms the basis for an Agency’s participation in a Procurement.

(162) “Special Government Body” is defined in ORS 174.117 and

(a) Means any of the following:

(A) A public corporation created under a statute of this State and specifically designated as a public corporation.

(B) A school district.

(C) A public charter school established under ORS chapter 338.

(D) An education service district.

(E) A community college district or community college service district established under ORS chapter 341.

(F) An intergovernmental body formed by two or more public bodies.

(G) Any entity that is created by statute, ordinance or resolution that is not part of state government or local government.

(H) Any entity that is not otherwise described in this section that is:

(i) Not part of state government or local government;

(ii) Created pursuant to authority granted by a statute, ordinance or resolution, but not directly created by that statute, ordinance or resolution; and

(iii) Identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity, without regard to the specific terms used by the statute, ordinance or resolution.

(b) Subject to ORS 174.117, “Special Government Body” includes:

(A) An entity created by statute for the purpose of giving advice only to a special government body;

(B) An entity created by a Special Government Body for the purpose of giving advice to the special government body, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by a Special Government Body described in Subsection (a) of this section, other than an entity described in paragraph (B) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Special Government Body.

(163) “Special Procurement” means a sourcing method may be a class Special Procurement, a contract-specific Special Procurement or both, unless the context requires otherwise in accordance with ORS 279B.085 and OAR 125-247-0287.

(a) “Class Special Procurement” is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Supplies and Services.

(b) “Contract-specific Special Procurement” means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(164) “Specification” is defined in ORS 279B.200(3) and means any description of the physical or functional characteristics, or of the nature of the Supplies and Services to be procured by an Agency. “Specification” includes: any requirement for inspecting, testing, or preparing the Supplies and Services for delivery and the quantities or qualities of Supplies and Services to be furnished under the Contract. Specifications generally will state the result to be obtained and occasionally may describe the method and manner of performance.

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

(166) “State Government,” subject to ORS 174.108, means the Executive Department, the Judicial Department and the Legislative Department.

(167) “State Procurement Office” means that office of the State Services Division of the Department designated by the Director to carry out the authority of the Department under the Public Contracting Code and these Rules. The authority of the State Procurement Office is described in OAR 125-246-0170, originating with the Director, delegated to the Chief Procurement Officer, and subdelegated in writing by the Chief Procurement Officer to any subdelegatee within the State Procurement Office. When a Rule refers to the approval of the State Procurement Office, any individual acting on behalf of the State Procurement Office must be authorized to give such approval in accordance with OAR 125-246-0170.

(168) “Substantial Completion” is defined in 279C.465 and pursuant to ORS 12.135 and HB 3022 means the date when the Contractee accepts in Writing the Construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such Written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the Contractee.

(169) “Supplies and Services” includes “Supplies or Services” and collectively means Goods, Trade Services, Personal Services, and Ordinary Construction Services separately or in any combination of these terms thereof as appropriate within the context of the Rule. “Supplies and Services” includes the terms “goods and services,” “goods or services,” and “personal services” contained in ORS 279A and 279B. This term does not include Public Improvements or Architectural, Engineering and Land Surveying Services, and Related Services, governed under ORS 279C.

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

(171) “Sustainability” is defined in ORS 184.421 and means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

(172) “Threshold” means a specific monetary limitation that distinguishes one Procurement method from another, triggers a requirement, or marks a point of reference or change in Rule. For example, the Thresholds of \$5,000 to \$150,000 distinguish Intermediate Procurements under ORS 279B from other methods.

(173) “Trade Services” means all remaining services that do not meet the definition for Personal Services.

(174) “Transitional Contracts” means all Public Contracts first advertised before March 1, 2005, but not entered into until on or after March 1, 2005. See OAR 125-246-0100(6).

(175) “Unnecessarily Restrictive” is defined in ORS 279B.405(1)(c) and means that Specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the Procurement needs of an Agency.

(176) “Used Oil” is defined in ORS 459A.555 and means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(177) “Virgin Oil” means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(178) “Work” means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

(179) “Work Order” means an Ordering Instrument.

(180) “Writing” means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intend to represent or convey particular ideas or meanings. “Writing” when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(181) “Written” means existing in Writing.

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

Stats. Implemented: ORS 279A.065, 279A.200, 279B.005 & 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0120

Policies

(1) These Rules simplify, clarify and modernize Public Contracting pursuant to ORS 279A.015(1).

(2) These Rules provide a foundation for ethical and fair dealing in Public Contracting, designed to instill public confidence pursuant to ORS 279A.015(2).

(3) The promotion of efficient use of resources pursuant to ORS 279A.015(3) includes but is not limited to Sustainability. Pursuant to ORS 184.421, “Sustainability” means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives. ORS 184.421(1) sets forth the goals for the State of Oregon regarding Sustainability and provides that in conducting internal operations, Agencies must, in cooperation with the Department, seek to achieve the following objectives:

(a) State purchases should be made so as to serve the broad, long term financial interests of Oregonians, including ensuring that environmental, economic and societal improvements are made so as to enhance environmental, economic and societal well-being;

(b) Investments in facilities, equipment and durable goods should reflect the highest feasible efficiency and lowest life cycle costs;

(c) Investments and expenditures should help promote improvements in the efficient use of energy, water and resources;

(d) State operations and purchases should help maintain vital and active downtown and main street communities;

(e) State purchases should help support opportunities for economically distressed communities and historically underemployed people;

(f) State operations should be conducted in ways that significantly increase the efficient use of energy, water and resources;

(g) State operations and purchases should reflect the efficient use and reuse of resources and reduction of contaminants released into the environment.

(4) These Rules clearly identify and implement each of the legislatively mandated socioeconomic programs identified pursuant to ORS 279A.015(4).

(5) “Arriving at best value” pursuant to ORS 279A.015(5) means selecting a Provider based on a determination of which Providers’ proposals offer the best trade-off between price and performance, in which quality is considered an integral performance factor. The selection may be based on evaluation factors including but not limited to:

(a) The total cost of ownership, including the cost of acquiring, operating, maintaining and supporting Supply and Services, Public Improvements, and Architectural, Engineering and Land Surveying and Related Services, or any combination thereof, over its projected lifetime;

(b) The technical merit of the Proposer’s proposal; and

(c) The probability of the Proposer performing the requirements stated in the Solicitation on time, with high quality and in a manner that accomplishes the stated business objectives.

(6) Authorized Agencies must conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

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

Stats. Implemented: ORS 279A.015

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05

125-246-0130

Application of the Code and Rules; Exceptions

(1) Code, Rules and Policies. Except as set forth in this Section, an Agency must exercise all rights, powers and authority related to Public Contracting in accordance with the Public Contracting Code, Rules, and applicable Department policies (Policies).

(2) Exceptions for Contracts and Grants. These Rules apply to the following:

(a) Contracts between Agencies;

(b) Contracts between Agencies and Public Bodies;

(c) Contracts between Agencies and the federal government;

(d) For Cooperative Procurements, the Code and these Rules do not apply to any contractual relationship described in subsections (2)(a) through (c) of this Rule. The Code, Rules, and policies apply to the contractual relationships between the Agencies and Providers, other states, tribes, other nations, and any of their public entities; or

(e) Grants. If an agreement includes the substantial involvement of the grantor in public contracting, it is not a “Grant” as described in ORS 279A.010(1)(i) and OAR 125-246-0110; and the Code, Rules, and Policies apply to such public contracting.

(3) Exceptions for Agencies. Neither the Code nor these Rules apply to the Public Contracting activities and entities listed in ORS 279A.025(2) and (3).

(4) Exception for a Federal Program. Authorized Agencies otherwise subject to the Code and these Rules may enter into Public Contracts under a federal program described in ORS 279A.180 and pursuant to OAR 125-246-0360, without following the procedures set forth in ORS 279B.050 through 279B.085 and 125-247-0250 through 125-247-0690.

(5) Exception for Qualified Rehabilitation Facilities. Agencies otherwise subject to the Code and these Rules are not subject to the methods set forth in ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and related Rules when the Agencies procure Supplies and Services pursuant to ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045 (Acquisition of Supplies and Services from Qualified Rehabilitation Facilities). Agencies are subject to the remainder of the Code and these Rules, including but not limited to delegation of authority in accordance with OAR 125-246-0170.

(6) Exception for Correctional Industries. Agencies otherwise subject to the Code and these Rules may enter into Contracts with correctional industries pursuant to the Oregon Constitution, Article 1,

Subsection 11, without being subject to the source selection procedures set forth in either ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and their respective rules.

(7) Exception for Price Agreements. Agencies otherwise subject to the Code and these Rules are not subject to the methods set forth in ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and related Rules when the Agencies procure Supplies and Services from a DAS Price Agreement or other Price Agreement. Agencies are subject to the remainder of the Code and these Rules, including but not limited to delegation of authority in accordance with OAR 125-246-0170.

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

Stats. Implemented: ORS 279A.025, 279A.050, 279A.055 & 279A.180

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

Authority

125-246-0140

Procurement Authority

Pursuant to ORS 279A.050, except as otherwise provided in the Public Contracting Code, for state agencies the Director of the Department has all of the rights, powers and authority necessary to carry out the provisions of the Public Contracting Code, and the Department must exercise all rights, powers and authority in accordance with the Public Contracting Code. For Agencies, the Department and its Director are the Contracting Agency described in the Public Contracting Code and represent the Agencies. Authorized Agencies receive delegated authority pursuant to OAR 125-246-0170.

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

Stats. Implemented: ORS 279A.050(1)(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0150

Applicability of These Rules to Agencies

Agencies subject to the authority of the Director of the Department must follow these Rules. If an Agency is partially independent of the authority of the Department and partially subject to the authority of the Department, that Agency is responsible for obtaining any legal determination related to these Rules.

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

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0170

Delegation of Authority

(1) Generally.

(a) Purpose. The purpose of this Rule is to specify the policy and procedures related to the delegation of authority pursuant to the Code, including but not limited to authority related to Procurements, approvals, orders, reports, and other procedures (Authority). This Rule and only this Rule delegates this Authority. This Rule consists of the following:

(A) Section (1) applies to all delegations and subdelegations of Authority (collectively, Delegations), modifications of Delegations, and revocations of Delegations;

(B) Section (2) applies to individuals in the Agencies; and

(C) Section (3) applies to the Chief Procurement Officer.

(b) Policy.

(A) Authority of the Director. Pursuant to ORS 279A.140, the Department must conduct all Procurements, including Contract Administration, for the Agencies. Other Sections of the Code authorize specific actions by the Director of the Department. Pursuant to ORS 279A.050(1) and (2), this Authority of the Department vests only in the Director of the Department. The Director is ultimately responsible for the Procurement of the Agencies.

(B) Policy of the Code. The policy of the Code is to clarify responsibilities, instill public confidence, promote efficient use of resources, implement socioeconomic programs, allow meaningful competition, and provide a structure that supports evolving procurement methods, pursuant to ORS 279A.015. These Rules support this policy of the Code.

(C) Individual Representation. Public Contracting impacting State assets require individual representation of the State's interests. Authority under these Rules may be delegated only to individuals acting on behalf of the Agencies and in accordance with this Rule. All

individual delegates must hold and use this Authority within the scope of their employment by the Agency and act on behalf of the Agency as the Agency's representative. Subdelegations may be in whole or in part pursuant to ORS 279A.075. Any individual may decline a subdelegation in whole or in part.

(c) Delegation of Authority by this Rule. The Director of the Department hereby delegates Authority to individuals in the Agencies, only as set forth in Section (2), and delegates Authority to the Chief Procurement Officer, including the discretionary power to revoke the Authority hereby given to individuals in the Agencies, only as set forth in Section (3). A delegator or delegatee may also be referred to in this Rule as an "Authorized Individual."

(d) Forms of Delegations and Revocations of Authority. ORS 279A.075 provides that the exercise of all authorities in the Code may be delegated and subdelegated in whole or in part. The form of a Delegation or revocation of Authority by an Authorized Individual may be by:

(A) This Rule by the Director of the Department;

(B) A Written external or internal policy by an authorized delegator or revoker;

(C) An Interagency Agreement, signed by the Chief Procurement Officer and the Authorized Agency; or

(D) A letter or memorandum signed by an authorized delegator or revoker.

(e) Changes in Individual Representation. If an Agency determines that an Authorized Individual has ceased to represent that Agency for Procurement (Absent Individual), then:

(A) The Authority of the Absent Individual automatically reverts back to the individual who originally delegated the Authority to the Absent Individual. The Agency must determine who receives the reverted Authority in accordance with this Rule. If the Absent Individual is a head of an Agency or Designated Procurement Officer, the delegator of authority to that individual must notify the State Procurement Office within thirty (30) days after the change in representation.

(B) Subdelegations, if any, by an Absent Individual remain in effect unless and until the Authority of any subdelegates is modified or revoked by an Authorized Individual.

(f) Requirements.

(A) Compliance. Authorized Agencies must maintain good contracting procedures in accordance with the Public Contracting Code, related Rules and policies of the Department. Delegation of Authority does not exempt anyone from the requirements of the Public Contracting Code, related Rules, and policies of the Department. To the extent applicable, any individual receiving delegated Authority is responsible for following the Public Contracting Code, related Rules, and policies of the Department.

(B) Modifications or Revocations.

(i) Authority. Subject to the conditions of Subsection (ii) below, any Delegation may be modified or revoked by:

(I) The Director of the Department,

(II) The Chief Procurement Officer in accordance with Section (3)(d)(F);

(III) The head of an Agency in accordance with Subsection (2)(a)(B); or

(IV) The original authorized delegator or successor of this delegator who made this Delegation being modified or revoked.

(ii) Conditions.

(I) This modification or revocation of a Delegation must be Writing;

(II) The delegatee must receive reasonable notice of the modification or revocation of the Delegation; and

(III) This modification or revocation of a Delegation must be based upon a determination, as set forth in the related policy of the Department.

(C) Maintenance of Documents. The Authorized Agency must maintain copies of letters, memoranda, or agreements granting a Delegation.

(g) Signature. When an Authorized Agency has delegated Authority pursuant to this Rule, the Authorized Agency's signature constitutes both the execution and approval of the Contract, except as described in Subsections (1)(h), (2)(a)(B), and (2)(b)(F).

(h) Commitment of Funds. ORS 291 and 293, together with the policies of the State Controller's Division of the Department, provide for public financial administration, including: appropriations, allot-

ments by the Department, and an individual's authority to commit or encumber funds, financially obligate the Agency, and decide to expend funds. This type of authority may be referred to as commitment, expenditure, obligation, expenditure decision or signature authority (collectively, Commitment of Funds).

(2) Delegation to Individuals in Agencies.

(a) Chain of Delegation and Responsibilities.

(A) Head and Designated Procurement Officer of the Agency.

(i) Conditional Delegation. The Director delegates Authority, only as set forth in this Section (2), to the heads of Authorized Agencies, on the condition that the heads of Authorized Agencies subdelegate such Authority to their Agencies' Designated Procurement Officers, who may further subdelegate such Authority in accordance with policies of their Agencies (Chain of Delegation). Every Authorized Agency must appoint a Designated Procurement Officer to serve that Authorized Agency; if none is appointed, the head of the Agency is deemed to be the Designated Procurement Officer and assumes the Authority, duties and responsibilities of the Designated Procurement Officer (collectively, "Designated Procurement Officer"). The heads of the Agencies may not subdelegate Authority outside this Chain of Delegation, except as provided in Subsection (2)(a)(B).

(ii) Manner of Appointment. The Authorized Agency determines its procedure for appointing its Designated Procurement Officer, and this Rule does not require or imply any inherent Authority in individual(s) or the Agency in order to make this appointment. The Agency must send a Written notice of its appointment of the Designated Procurement Officer to the State Procurement Office.

(B) Exceptions: Head and Other Individuals of the Agency.

(i) Execution of Contracts. Heads of Authorized Agencies may subdelegate the Authority to execute Contracts, as described in subsection (2)(b)(F), to other individuals within their respective Agency, provided this subdelegation is in accordance with a Written alternative subdelegation plan, maintained on file with the Agency's Designated Procurement Officer.

(ii) Special Procurements of General or Special Counsel Authorized by the Attorney General, pursuant to OAR 125-247-0295. Heads of Authorized Agencies may subdelegate the Authority to procure general or special counsel authorized by the Attorney General, as described in subsection (2)(d)(Q), to other individuals within their respective Agency, provided the head of the Authorized Agency has determined that the individual receiving the subdelegation has the requisite skills and knowledge to carry out the subdelegation. Such subdelegations may be further subdelegated within that Authorized Agency, provided the subdelegator has determined that each individual receiving the Delegation has the requisite skills and knowledge to carry out the subdelegation.

(iii) Chain of Delegation. Authorized Individuals in accordance with subsections (2)(a)(B)(i) and (ii) are included in the Chain of Delegation.

(C) Responsibilities. Each individual in the Chain of Delegation remains responsible for the exercise of Authority by that individual's subdelegates, and subdelegation does not waive this responsibility. Each delegator must determine and document that the delegatee is capable and accountable for the Procurement. The Designated Procurement Officer, appointed within each Authorized Agency, is responsible for all delegated procurement activity on behalf of the Authorized Agency, as described in this Section (2), except as provided in Subsection (2)(a)(B).

(b) Duties and Responsibilities of Designated Procurement Officers. The Authority, duties and responsibilities of the Designated Procurement Officer, pursuant to (2)(a)(A), are as follows:

(A) Serve as the exclusive supervisor and manager of the Authorized Agency's Procurement system;

(B) Conduct, supervise and manage the Procurement and the Procurement Process for the Authorized Agency in accordance with the Code and these Rules, except for those Procurements conducted by a delegatee to whom the Designated Procurement Officer has delegated Authority;

(C) Prepare or monitor the use of Specifications or statements of work for all Procurements of the Authorized Agency;

(D) Issue Solicitations and implement other non-Solicitation methods for all Procurements of the Authorized Agency in accordance with the Code and these Rules;

(E) Award Contracts only as authorized in accordance with this Rule;

(F) Execute Contracts, which means causing the signing of Contracts and performance of all necessary formalities to bring the Contracts into their final, legally enforceable forms. If the Designated Procurement Officer is unable to make a Commitment of Funds as described in Subsection (1)(h), then the head of the Authorized Agency may follow an alternative subdelegation plan in accordance with Subsection (2)(a)(B)(i).

(G) Comply with the reporting requirements of the Code, these Rules, and Department policies;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, Delegations, Special Procurements and exemptions. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon the monitoring described in Subsection (2)(b)(H), determine opportunities, establish targets, and utilize methods pursuant to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(c) Delegation by Rule Based Upon Thresholds. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to Section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services up to and including the Threshold of \$5,000, pursuant to ORS 279B.065 and related Rules;

(B) Direct appointments of Architectural, Engineering and Land Surveying Services and Related Services pursuant to OAR 125-248-0200;

(C) Intermediate Procurements of Supplies and Services greater than \$5,000 and not exceeding \$150,000, pursuant to ORS 279B.070 and OAR 125-247-0270, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(D) Informal Selection Procedures of Architectural, Engineering and Land Surveying Services and Related Services pursuant to ORS 279C.110 and OAR 125-248-0210, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(E) Competitive Quotes for Public Improvements estimated not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways, bridges and other transportation projects, pursuant to OAR 125-249-0160, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(F) Competitively Sealed Bidding not exceeding \$150,000 and pursuant to OAR 125-247-0255 or 125-247-0256;

(G) Competitively Sealed Proposals not exceeding \$150,000 and pursuant to OAR 125-247-0260 or 125-247-0261;

(H) Sole-Source Procurements not exceeding \$150,000 and pursuant to ORS 279B.075 and OAR 125-247-0275;

(I) Purchase of Used Personal Property Special Procurements not exceeding \$150,000 and pursuant to OAR 125-247-0288(9);

(J) Reverse Auctions Special Procurements not exceeding \$150,000 and pursuant to OAR 125-247-0288(11);

(K) Contract Administration as follows:

(i) For Contracts and Ordering Instruments authorized pursuant to this Section (2)(c) and (d), the Contract Administration of these Public Contracts and Ordering Instruments, including but not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s); but excluding the Contract Administration described in Subsection (v) below;

(ii) The daily or routine Contract Administration of Ordering Instruments placed against Department Price Agreements and Contracts procured by the State Procurement Office on behalf of Agencies. This daily or routine Contract Administration includes but is not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s);

(iii) Activities specified in Writing by the Chief Procurement Officer or delegatee;

(iv) Activities specified in a related policy of the Department; and

(v) Notwithstanding Subsection (2)(c)(K)(i) through (iv) above, this Delegation by Subsection (2)(c)(K) does not include:

(I) The Contract Administration of Department Price Agreements; or

(II) For Contracts procured by the State Procurement Office on behalf of Agencies, Amendments when the amended value of Contract exceeds \$150,000; and terminations of such Contracts when the amended value of such Contract exceeds \$150,000;

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to Section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Emergency Procurements, in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(B) One-time, nonrepetitive Joint Cooperative Procurements in accordance with OAR 125-246-0430, provided that:

(i) No such Procurement results in:

(I) a Permissive Cooperative Procurement that is open to any Agency outside of those Agencies jointly named in the original Procurement or

(II) a Price Agreement for repetitive use by any Agency;

(ii) No such Procurement of Supplies and Services exceeds the Threshold of \$150,000, including all Amendments, pursuant to OAR 125-246-0560;

(iii) No such Procurement of Public Improvements exceeds \$100,000, or exceeds \$50,000 in the case of Contracts for highways, bridges and other transportation projects, including Amendments pursuant to OAR 125-246-0560; and

(iv) The Authorized Agency must follow any related policy of the Department.

(C) Federal program Procurements not exceeding \$150,000 or pursuant to a delegation agreement with the State Procurement Office, and in accordance with ORS 279A.180 and related Rules;

(D) Client Services Special Procurements pursuant to OAR 125-247-0288(1) and (2);

(F) Client Services procured under ORS 279B.055 through 279B.085 and related Rules, including all amendments pursuant to OAR 125-246-0560;

(G) Renegotiations of Existing Contracts with Incumbent Contractors Special Procurements pursuant to OAR 125-247-0288(3) and as follows: the Authorized Agency is limited to the same authority delegated to that Agency with regard to the Original Contract and any Amendments and may not collectively exceed any Threshold related to its authority to procure the Original Contract, except this limit may be exceeded with the prior Written approval of the Chief Procurement Officer or delegatee of the State Procurement Office;

(H) Advertising Contracts Special Procurements pursuant to OAR 125-247-0288(4);

(I) Equipment Repair and Overhaul Special Procurements pursuant to OAR 125-247-0288(5);

(J) Contracts for Price Regulated Items Special Procurements pursuant to OAR 125-247-0288(6);

(K) Investment Contracts Special Procurements pursuant to OAR 125-247-0288(7);

(L) Food Contracts Special Procurements pursuant to OAR 125-247-0288(8);

(M) Business Assistance Services Special Procurements pursuant to OAR 125-247-0288(10);

(N) Interstate and International Agreements Special Procurements pursuant to OAR 125-247-0293 or an Interstate Agreements Special Procurement pursuant to OAR 125-247-0287;

(O) Tribal Agreements Special Procurements pursuant to OAR 125-247-0294 or an approved Tribal Agreements Special Procurement pursuant to OAR 125-247-0287;

(P) Special Procurements of General or Special Counsel Authorized by the Attorney General, pursuant to OAR 125-247-0295.

(e) Supplemental Requested Delegations. Any Agency may submit a request for a Delegation to the State Procurement Office for authority in accordance with the Public Contracting Code, this Rule, and the related policy of the Department.

(A) The Department will identify in policy the necessary requirements for requesting and obtaining delegated authority pursuant to this Rule.

(B) All Delegations must be approved in Writing by the Chief Procurement Officer and based upon a consideration of relevant factors set forth in the related policy of the Department.

(3) Delegation to the Chief Procurement Officer:

(a) Powers and Authorities. The Director of the Department delegates to the Chief Procurement Officer the rights, powers and authority vested in the Director of the Department to:

(A) Delegate and subdelegate these authorities in whole or in part pursuant to ORS 279A.075;

(B) Approve Special Procurement requests, pursuant to ORS 279B.085 and related Rules, and receive filed protests of approvals of Special Procurements, pursuant to ORS 279B.400(1);

(C) Conduct hearings, approve Agency findings, approve exemption requests, and issue exemption orders, pursuant to ORS 279C.335, ORS 279C.345, 279C.390, and related Rules;

(D) Create all procedures and Specifications required by the Public Contracting Code and these Rules;

(E) Receive, maintain, and act upon information contained in reports, including but not limited to ORS 279A.140(h) and 279C.355, as required by the Public Contracting Code and these Rules;

(F) Receive and resolve protests pursuant to ORS 279B.400 to 279B.420 and Division 247 Rules, except for appeals from a decision of the Chief Procurement Officer or delegatee;

(G) Receive notices, conduct hearings, and make decisions regarding prequalifications, debarments, and Disqualifications pursuant to ORS 279A.110, 279B.425, ORS 279C.450, ORS 200.065(5), and ORS 200.075(1), except for appeals from a decision of the Chief Procurement Officer or delegatee;

(H) Approve Unanticipated Amendments pursuant to OAR 125-246-0560(2);

(I) Approve expedited notices for Sole-Source Procurements pursuant to OAR 125-247-0275;

(J) Procure and administer Cooperative Procurements and receive, hear, and resolve related protests and disputes, pursuant to ORS 279A.200 through 279A.225 and OAR 125-246-0400 through 125-246-0460;

(K) Approve Brand Name Specifications pursuant to OAR 125-247-0288(3);

(L) Determine authorization for purchases through federal programs pursuant to ORS 279A.180 and OAR 125-246-0360; and

(M) Authorize public notice of bids, proposals, and public improvement Contracts to be published electronically and pursuant to ORS 279B.055(4)(c) and 279C.360(1);

(N) Approve the manner and character of retainage pursuant to ORS 279C.560(1) and (5); and

(O) Other actions of the State Procurement Office specifically required by these Rules.

(b) Duties and Responsibilities of the Chief Procurement Officer. The authority, duties and responsibilities of the Chief Procurement Officer are as follows:

(A) Conduct Procurements, including administration of Contracts, for Agencies.

(B) Develop and maintain State-wide Procurement rules, policies, procedures and standard contract terms and conditions as necessary to carry out the Public Contracting Code.

(C) Subdelegate authority in whole or part, based upon consideration and documentation of one or more of the following factors in making this decision:

(i) The procurement expertise, specialized knowledge and past experience of the individual;

(ii) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(iii) The individual's adherence to the Code, these Rules, standards, procedures and manuals;

(iv) The ability and assent of the individual to be accountable for the delegated Procurement; or

(v) The short-term demands upon the staff and resources of the State Procurement Office, arising from unusual circumstances;

(D) Revoke authority delegated by the Chief Procurement Officer or in accordance with (3)(d)(F), in whole or part, based upon consideration and documentation of one or more of the following factors in making this decision:

(i) The procurement expertise, specialized knowledge and past experience of the individual;

(ii) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(iii) The individual's adherence to the Code, these Rules, standards, procedures and manuals; or

(iv) The ability and assent of the individual to be accountable for the delegated Procurement;

(E) Maintain a file of Written subdelegation authority granted and revoked under these Rules in accordance with the law;

(F) Provide guidance and leadership on Procurement matters to Agencies and their employees;

(G) Provide training and instruction opportunities to assure SPO staff and Agency staff are equipped with necessary knowledge and skills to comply with requirements of the Public Contracting Code, Rules, and Department policy related to Procurement;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, Delegations, Special Procurements and exemptions. Report these matters to the Authorized Agency and Director as appropriate. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon monitoring described in Subsection (3)(b)(H), determine opportunities, establish targets, and utilize methods pursuant to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(J) Appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition pursuant to ORS 279A.015.

(c) Delegation by Rule Based Upon Threshold. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services on behalf of Agencies and pursuant to ORS 279B.065;

(B) Intermediate Procurements of Supplies and Services greater than \$5,000 and not exceeding \$150,000, on behalf of Agencies and pursuant to ORS 279B.070 and OAR 125-247-0270;

(C) Informal Selection procedures of Architectural, Engineering and Land Surveying Services and Related Services, on behalf of Agencies and pursuant to ORS 279C.110 and OAR 125-248-0210;

(D) Competitive Quotes of Public Improvements estimated not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways, bridges and other transportation projects, pursuant to ORS 279C.410 notes and OAR 125-249-0160; and

(E) All Procurements exceeding the Thresholds for Intermediate Procurements, Informal Procurements, or Competitive Quotes, pursuant to ORS 279B.070 and OAR 125-247-0270 (Supplies and Services); ORS 279C.110 and OAR 125-248-0210 (Architectural, Engineering and Land Surveying and Related Services); and ORS 279C.410 and OAR 125-249-0210 (Public Improvements), respectively.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and OAR 125-246-0400 through 125-246-0460, except as provided in Section (7)(a)(C) of this Rule; and the State Procurement Office may delegate this authority by agreement to an Authorized Agency, provided this Delegation to an Authorized Agency meets the following criteria:

(i) There is no pre-existing Department Price Agreement or Mandatory Use Agreement;

(ii) The proposed Procurement does not negatively impact DAS Price Agreements or other Contracts identified by the State Procurement Office;

(iii) A competitive process was used for the original agreement; and

(iv) The initial Solicitation was or will be advertised in Oregon.

(B) Special Procurements pursuant to ORS 279B.085 and related Rules;

(C) Sole-Source Procurements in accordance with ORS 279B.075 and OAR 125-247-0275;

(D) Emergency Procurements in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(E) Federal program Procurements in accordance with ORS 279A.180 and OAR 125-246-0360; and

(F) All Procurements otherwise delegated to an Authorized Agency pursuant to Section (2) if the Chief Procurement Officer, at her or his own discretion, revokes and assumes this delegated authority, based upon a determination that any Authorized Agency refuses or fails to comply with any Delegation described in Section (2).

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

Stats. Implemented: ORS 279A.050, 279A.075 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 15-2005(Temp), f. & cert. ef. 12-22-05 thru 5-21-06; DAS 5-2006, f. & cert. ef. 5-31-06

Minorities, Women and Emerging Small Businesses

125-246-0200

Affirmative Action; Limited Competition Permitted

Pursuant to ORS 279A.100, an Authorized Agency may limit competition on Public Contracts for Supplies and Services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with any policies and procedures established by the Department.

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

Stats. Implemented: ORS 279A.100

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0210

Subcontracting to and Contracting with Emerging Small Businesses; Disqualification

(1) As set forth in ORS 279A.105, an Authorized Agency may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

(a) A business enterprise that is certified under ORS 200.055 as an emerging small business; or

(b) A business enterprise that is:

(A) Certified under ORS 200.055 as an emerging small business; and

(B) Is located in or draws its Workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department.

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

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

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

(3) Authorized Agencies must include in each Solicitation Document a requirement that Offerors certify in their Offers that the Offeror has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055. Authorized Agencies must use a form approved by the State Procurement Office.

(4) Disqualification:

(a) An Authorized Agency may disqualify a Person from consideration of award of the Authorized Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Public Contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with subsections (d) and (e) of this section.

(b) As provided in ORS 200.065 and 200.075 an Authorized Agency may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a subcontractor) as follows:

(A) For a Disqualification under ORS 200.065, the Authorized Agency may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or

if the Person has been disqualified by another Authorized Agency pursuant to ORS 200.065.

(B) For a Disqualification under ORS 200.075, the Authorized Agency may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(a) through (c).

(c) An Authorized Agency may disqualify or suspend a Person's right to submit Offers or participate in Public Contracts only for the length of time permitted by ORS 200.065 or 200.075, as applicable.

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

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

(B) Set forth the reasons for the Disqualification;

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

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

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

(F) State the proposed Disqualification period; and

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

(e) Hearing. Upon the Authorized Agency's receipt of the Person's timely request, the Authorized Agency must promptly deliver written notification and this request to the Chief Procurement Officer. The State Procurement Office must schedule a hearing upon its receipt of the Person's timely request. The State Procurement Office must notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing. The Chief Procurement Officer has the discretion to delegate authority under OAR 125-246-0170(3)(a)(G) and specify how the delegatee must review and hear Disqualifications.

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

Stats. Implemented: ORS 279A.200.065, 200.075, 105 & 279A.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0220

Advocate's Office and OMWESB

(1) The "Governor's Advocate's Office for Minority, Women and Emerging Small Business (Advocate's Office)" was created in the Office of the Governor, and the "Advocate for Minority, Women and Emerging Small Business" is the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Advocate oversees the resolution of business concerns with Authorized Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses pursuant to ORS 200.025.

(2) The "Office of Minority, Women and Emerging Small Business" (OMWESB), located in the Department of Consumer and Business Services, administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBEWBE), and Emerging Small Business (ESB) Programs. As the sole certification authority in Oregon for disadvantaged, minority-and woman-owned businesses, and emerging small businesses, the Office of Minority, Women and Emerging Small Business (OMWESB) provides certification services for disadvantaged, minority, woman and emerging small businesses, pursuant to ORS 200.025 and 200.055.

(3) A "Disadvantaged Business Enterprise" means a small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by

one or more of the socially and economically disadvantaged individuals who own it.

(4) An "Emerging Small Business" is a business with its principal place of business located in this State; a business with average annual gross receipts over the last three years not exceeding \$1 million for construction firms and \$300,000 for non-construction firms business which has fewer than 20 employees; an independent business (not a subsidiary, affiliate, or successor company of another business whose average gross receipts would exceed the stated limits); and a business properly licensed and legally registered in this State.

(5) A "Minority or Women Business Enterprise" is a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals, pursuant to ORS 200.005.

(6) The general policy of the Department and these Rules is to expand economic opportunities for Disadvantaged Business Enterprises, Minority Business Enterprises, Women Business Enterprises and Emerging Small Businesses by exposing them to contracting and subcontracting opportunities available through Public Contracts, pursuant to ORS 279A.105 and based upon the Legislative findings set forth in ORS 200.015.

(7) The Agency must support the participation of Minority, Women owned and Emerging Small Businesses in its purchasing processes by notifying the Advocate for Minority, Women and Emerging Small Business as required under ORS 200.035.

(8) When a Public Improvement Contract is less than \$100,000 and the Offerors are being drawn exclusively from a list of Certified Emerging Small Businesses maintained by the Office of Minority, Women and Emerging Small Business, the Authorized Agency may let the Contract without formal competitive sourcing methods after a good faith effort to obtain a minimum of three competitive Quotes from Emerging Small Businesses. To obtain maximum exposure for all firms and guard against favoritism, care must be taken to obtain Quotes from different firms each time the list is used. The Authorized Agency must keep a Written record of the source and amount of the Quotes received and comply with the applicable requirements of this Rule.

(9) In carrying out the policy of affirmative action, an Authorized Agency may rely upon ORS 279A.100 and advice of legal counsel regarding its application.

(10) No Special Procurement pursuant to ORS 279B.085 and no exemption pursuant to ORS 279C.335 approved by the Chief Procurement Officer waives or excepts the requirement of notice to the Governor's Advocate for Minority, Women and Emerging Small Businesses in accordance with ORS 200.035 and any DAS policy. All Agencies must comply with ORS 200.035, notwithstanding the Public Contracting Code.

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

Stats. Implemented: ORS 279A.100 & 279A.105

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

Contract Preferences

125-246-0300

Preference for Oregon Supplies and Services; Tie-Offers

(1) Award When Offers Identical. When an Authorized Agency receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the Authorized Agency must award the Contract based on the following order of precedence:

(a) The Authorized Agency must award the Contract to the Offeror among those submitting identical Offers, who is offering Supplies and Services or Architectural, Engineering or Land Surveying Services, or Related Services, that have been manufactured or produced in Oregon. For the purposes of this Rule only, Supplies and Services includes Architectural, Engineering or Land Surveying Services, or Related Services; see OAR 125-248-0230(2).

(b) If two or more Offerors submit identical Offers, and they all offer Supplies and Services manufactured or produced in Oregon, the Authorized Agency must award the Contract by drawing lots among the identical Offers.

(c) If the Authorized Agency receives identical Offers, and none of the identical Offers offer Supplies and Services manufactured or produced in Oregon, then the Authorized Agency must award the

Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots must be given notice and an opportunity to be present when the lots are drawn. The Authorized Agency must provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing lots and an opportunity for these Offerors to be present when the lots are drawn.

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

(2) Determining if Offers are Identical. An Authorized Agency must consider Offers identical in price, fitness, availability and quality as follows:

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

(b) Offers received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals. While qualifications are the primary criteria, whenever an Authorized Agency determines that the Services offered by two or more individuals or firms are equally able to meet that Agency's needs and are of equal value, that Agency must award the Contract to the individual or firm offering the Service at the lowest price.

(c) Proposals received in response to a Special Procurement conducted pursuant to ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the State Procurement Office, the Authorized Agency determines, in Writing, that two or more Proposals are equally Advantageous to the Authorized Agency.

(3) Determining if Supplies and Services are Manufactured or Produced in Oregon. For the purposes of complying with Section 1 of this Rule, Authorized Agencies must determine whether a Contract is predominantly for Goods, Trade Services or Personal Services and then use the predominant purpose to determine if the Goods, Trade Services or Personal Services are manufactured or produced in Oregon. Authorized Agencies may request, either in a Solicitation Document, following Closing, or at any other time the Authorized Agency determines is appropriate, any information the Authorized Agency may need to determine if the Supplies and Services are manufactured or produced in Oregon. An Authorized Agency may use any reasonable criteria to determine if Supplies and Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Authorized Agency applies those criteria equally to each Offer.

(4) Procedure for Drawing Lots. When the Rule calls for the drawing of lots, the Authorized Agency must draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

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

Stats. Implemented: ORS 279A.120

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0310

Reciprocal Preferences

When evaluating Offers pursuant to OAR 125-247-0255 through 125-247-0261, 125-249-0390 or 125-249-0640 through 125-249-0660, Authorized Agencies must add a percentage increase to the Offer of a Nonresident Offeror equal to the percentage, if any, of the preference that would be given to that Offeror in the state in which the Offeror resides. An Authorized Agency may rely on the list prepared and maintained by the Department pursuant to ORS 279A.120(4) to determine both:

(1) Whether the Nonresident Offeror's state gives preference to in-state Offerors; and

(2) The amount of such preference.

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

Stats. Implemented: ORS 279A.120

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0320

Recycling; Definitions

(1) "Post-consumer Waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer Waste" does not include manufacturing waste.

(2) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(3) "Recycled PETE Product" means a product containing post-consumer polyethylene terephthalate material.

(4) "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. For paper, "secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

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

Stats. Implemented: ORS 279A.125, 279A.145, 279A.150, 279B.270 & 279B.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0321

Recycling Policy

(1) The Department promotes the Procurement by all Authorized Agencies of products made from Recycled Materials in accordance with ORS 279A.125 and 279A.270.

(2) When purchasing Goods, or pursuant to Subsection (2)(c), Personal Services that relate to the use of recovered resources and Recycled Materials, Authorized Agencies must:

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

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

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

(3) Pursuant to ORS 279A.125, notwithstanding provisions of law requiring the Department to award a Contract to the lowest or best Offeror, the State Procurement Office must give preference to the procurement of Goods manufactured from Recycled Materials, if the Recycled Product's costs do not exceed the costs of nonrecycled products by more than 5%, or a higher percentage if a Written determination is made by the State Procurement Office. The requirements of ORS 279A.125 may be applied to Authorized Agencies by agreement or policy of the Department.

(4) The Offeror must indicate in the Offer, the materials considered relevant to the 5% preference. The 5% preference will only apply to the value of that portion of the Offer that offers non-paper products containing verifiable recycled contents.

(5) All Contracts must require Contractors to use, in the performance of the Contract Work, to the maximum extent economically feasible, Recycled Paper;

(a) All Contracts must require Contractors to use, in the performance of the Contract Work, to the maximum extent economically feasible, recycled PETE products, as well as other recycled plastic resin products. "Recycled PETE products" means a product containing post-consumer polyethylene terephthalate material. The Department must provide guidelines to Authorized Agencies and Contractors on the availability of necessary Goods that contain recycled PETE, as well as other recycled plastic resin supplies and materials; the Department must also identify suppliers able to provide necessary Goods containing recycled PETE, as well as other recycled plastic resin supplies and materials, pursuant to ORS 279A.150.

(b) All Authorized Agencies must include the following language in any Invitation to Bid or Request for Proposal: "Vendors must use recyclable products to the maximum extent economically feasible in

the performance of the contract Work set forth in this document,” pursuant to ORS 279B.270(2); and

(c) The Department must include Recycled Product purchasing information within publications and training programs provided to local governments requesting state government purchasing assistance, pursuant to ORS 279A.145.

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

Stats. Implemented: ORS 279A.125, 279A.145, 279A.150, 279B.270 & 279B.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0322

Preference for Recycled Materials

(1) Notwithstanding provisions of law requiring an Authorized Agency to award a Contract to the lowest or best Offer of a Provider, and in accordance with ORS 279A.125 and Subsection (2) of this Section, an Authorized Agency charged with the Procurement of Goods for any public use must give preference to the Procurement of Goods manufactured from Recycled Materials whenever the Authorized Agency uses Competitive Sealed Bidding or Competitive Sealed Proposals pursuant to ORS 279B.055 or 279B.060, respectively, and as set forth in this Rule.

(2) In comparing Goods from two or more Offerors, if at least one Provider offers Goods manufactured from Recycled Materials and at least one Provider does not, an Authorized Agency must select the Provider offering Goods manufactured from Recycled Materials if each of the following four conditions exists:

(a) The Recycled Product is available;

(b) The Recycled Product meets applicable standards;

(c) The Recycled Product can be substituted for a comparable non-recycled product; and

(d) The Recycled Product's costs do not exceed the costs of non-recycled products by more than five percent (5%), or a higher percentage if a Written determination is made by the Authorized Agency and set forth in the Solicitation Document. When making this determination, the Authorized Agency must consider the costs of the Goods following any adjustments the Authorized Agency makes to the price of the Goods after evaluation pursuant to OAR 125-246-0310.

(3) For the purposes of this Section, an Authorized Agency must determine if Goods are manufactured from Recycled Materials in accordance with standards established by the State Procurement Office.

(4) Providers must certify in their Offers:

(a) The minimum, if not exact, percentage of Recycled Product in all materials and supplies offered; and

(b) Both the post-consumer and secondary waste content thereof. Providers may certify a zero percent Recycled Product content. This certification applies to Public Improvement products and all other Procurements.

(5) To be eligible for a preference under ORS 279A.125 and this Rule:

(a) The Provider must indicate which materials and supplies contain verifiable recycled content; and

(b) Such products must meet the requirements of ORS 279A.125 and this Rule.

(6) A preference under ORS 279A.125 will only be applied to those products in the Offer that contain verifiable recycled content.

(7) Offers that contain false information about (i) the percentage of Recycled Product, post-consumer and secondary waste content, or (ii) verifiable recycled content, must be rejected as nonresponsive, and the Provider offering false information may be deemed non-responsive.

(8) Contracts awarded as a result of a preference under ORS 279A.125 are subject to such investigation, including but not limited to, audits, plant visitations, examination of invoices, laboratory analysis, and other documents, etc., as the Department deems necessary to confirm that the products supplied therein contain the percentages of Recycled Product, post-consumer and secondary waste stated in the Offer.

(9) Failure to provide products containing the percentages of Recycled Product, post-consumer and secondary waste stated in the Offer may result in:

(a) The Provider reimbursing the State for the portion of the Contract Price that is attributable to the preference applied under ORS 279A.125;

(b) Contract termination; or

(c) Both (a) and (b), or such other remedies as the Department deems appropriate.

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

Stats. Implemented: ORS 279A.125

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0323

Recycled Paper and Paper Products

(1) The Department promotes the use of Recycled Paper and paper products, and no less than 35% of Authorized Agency Procurements of paper products may be from Recycled Paper Products, pursuant to ORS 279A.155.

(2) The State Procurement Office or its delegates must make available to Agencies paper and paper products that contain significant quantities of Recycled Materials in all grades where it can be obtained. The State Procurement Office and Authorized Agencies must purchase Recycled Paper and paper products when the cost of such Recycled Paper or paper products is no more than five (5%) higher than the cost of the same quality paper or paper products containing little or no Recycled Paper. The State Procurement Office and Authorized Agencies must give a preference of up to five percent (5%) pursuant to ORS 279A.125(2), to suppliers of Recycled Paper and paper products, over the lowest price of non Recycled Paper and paper products if the fitness and quality of the Recycled Paper content paper meet Specification requirements and the type of Recycled Paper content is equivalent to the same type of virgin material.

(3) Except as provided in this Rule and regardless of cost, the State Procurement Office or its delegates must make Recycled Paper and paper products available to Authorized Agencies through a Recycled Paper agreement. Authorized Agencies that find it economically feasible to exceed the incentive in Section (2) of this Rule for Recycled Paper may do so either by use of agreements for Recycled Paper or by indicating on their purchase request the percentage of Recycled Paper incentive, which is economically feasible for them.

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

Stats. Implemented: ORS 279A.125 & 270A.155

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0324

Recycling: Food Service and Food Packaging

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

(2) The five percent (5%) preference in ORS 279A.125(2) must apply to purchases of Recycled Products for food service and packaging that are not paper products. The minimum purchase in ORS 279A.155 of at least thirty-five percent (35%) must apply to purchases of Recycled Products for food service and food packaging that are 100% paper or paper products.

(3) Recyclable or Biodegradable Products for food service and packaging will be made available for purchase by Authorized Agencies.

(4) Authorized Agencies are required to purchase recyclable or biodegradable food service and packaging products when purchasing supplies.

(5) The Department must include a provision in all food service Contracts and extensions to such Contracts, requiring the use of recyclable or biodegradable food service products when such products are readily available, meaning deliverable within thirty (30) days of placement of an order by the food service Contractor to its supplier. This period of time may be less or more, as industry standards for various commodities indicate.

(6) The Department must encourage its suppliers to provide biodegradable or Recycled Products as substitutes.

(7) The Department must use best efforts to obtain and use biodegradable or Recyclable Products as substitutes for products that are non-biodegradable or non-recyclable.

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

Stats. Implemented: ORS 279A.125 & 270A.155

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

State Procurement

125-246-0330

State Procurement

(1) The Department must conduct all Procurements and administer the contracting for Supplies and Services; Architectural, Engi-

neering and Land Surveying Services, and Related Services; and Public Improvements for the Agencies, pursuant to ORS 279A.140 and 279C.105(1). Delegations of authority in accordance with OAR 125-246-0170 do not relieve the Department of this responsibility. To advance the conduct of Procurements including administration of Contracts, the State Procurement Office provides leadership and services for innovative, responsive, and accountable public Procurement. The following Sections (2) through (4) of this Rule apply only to Trade Services, Personal Services, and Architectural, Engineering and Land Surveying and Related Services (for the purposes of this Rule only, "Services").

(2) Independent Contractor Status. The Authorized Agency must develop a Statement of Work for Trade or Personal Services, including Architectural, Engineering and Land Surveying Services, and Related Services, that will not result in an employee relationship with the potential Contractor. The Authorized Agency and Contractor(s) must complete the Independent Contractor Certification whether by contract provision or form approved by the State Procurement Office (Independent Contractor Certification). If the individual cannot certify Independent Contractor status, the Authorized Agency may not contract with the individual using a Trade or Personal Services Contract, including Architectural, Engineering and Land Surveying Services, and Related Services, except as otherwise allowed in Subsection (2)(f) of this Rule:

(a) An Independent Contractor Certification must be part of each Contract;

(b) If the Contractor is a corporation, the Independent Contractor Certification is still required.

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

(d) The Contract must include the Contractor's legal name, address, and Social Security or federal tax identification number.

(e) The Contract must provide that the Contractor is responsible for federal Social Security, except those categories excluded by law, and for any federal or state taxes applicable to the contract payment.

(f) When a Contractor cannot certify that the Contractor meets the definition of "independent contractor," is customarily engaged in an independently established business, and meets at least three of the requirements for such a business in accordance with ORS 670.600, then the Authorized Agency may contract with the Contractor only if the State Procurement Office, in consultation with the Department of Justice, approves the Contract upon a determination by the State Procurement Office that the Contractor is an Independent Contractor and the Contract will not result in undue risk to the State.

(3) Tax Compliance. No Contract or other agreement for more than \$1,000 may be entered into, renewed or extended with any Person unless the Person certifies in Writing, under penalty of perjury, that the Person is not in violation of any tax laws described in ORS 305.385(6) and (7).

(4) Requirements to Transact Business in Oregon:

(a) A Contractor who is a corporation, partnership, or who has an assumed business name must be registered with the Secretary of State Office in accordance with ORS chapters 58, 60, 62, 63, 65, 67, 70, and 648. This registration is the obligation of the Contractor, not the Agency.

(b) In addition, for Contracts requiring the services of one or more architects, engineers, and land surveyors, these Consultants must be registered with the appropriate licensing boards under the provisions of ORS 671.020, 672.020, and 672.025.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070 & Sec. 335, Ch. 794, OL 2003 (HB 2341)

Stats. Implemented: ORS 279A.140 & 279C.105(1)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

Personal Services Contracts

125-246-0335

Authority and Standards for Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services, and Related Services.

(2) Identification of Personal Services Contracts.

(a) Pursuant to ORS 279A.140(2)(h), the State Procurement Office may designate Contracts or classes of Contracts as Personal Services Contracts for the purposes of reporting Personal Services Contracts in accordance with ORS 279A.140 and identifying the

appropriate required procedures in accordance with ORS 279A.070 and 270A.140. In the event of uncertainty or disagreement as to the status of any particular Contract or class of Contracts, the State Procurement Office may determine whether a particular contract is a Personal Services Contract.

(b) The Authorized Agency must identify within the Contract that the Authorized Agency is contracting for Personal Services. A failure to adequately describe Personal Services within the Contract will not invalidate the Procurement or Contract if the Authorized Agency properly used a sourcing method pursuant to ORS 279B.055 through 279B.085 or 279C.100 through 279C.125 and substantially followed the related Rules regarding screening, selection, evaluation, award, and approval in accordance with these Rules, OAR 125-246-0345 through 125-246-0355 or 125-246-0100 through 125-246-0320.

(3) Independent Contractor. An Authorized Agency may, within the limits of its delegation under OAR 125-246-0170 and its legislatively approved budget, Contract for Personal Services with Providers who are Independent Contractors. "Independent Contractor" means a Person who provides services to an Authorized Agency in which the Authorized Agency neither controls nor has the right to control the means or manner by which Work is performed. The Authorized Agency may control the results of the services, but not control the means or manner of Contractor's performance of the Work.

(4) Within the parameters of employment, Workers' compensation, and other relevant state and federal laws, and after meeting any collective bargaining agreements, an Authorized Agency may contract for Personal Services when:

(a) The Authorized Agency has complied with any labor-related agreements;

(b) The Work cannot be done in a reasonable time with the Authorized Agency's own Workforce;

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

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

(5) The Authorized 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 Authorized Agency may not enter into a Personal Services Contract with the Contractor; instead, the Authorized Agency must follow personnel policies for employment options.

(6) Contracting Out for Services Provided by Employees.

(a) Where the Authorized Agency is contemplating contracting for Work performed by Authorized Agency employees represented by a labor organization, the Authorized Agency must review the relevant collective bargaining agreement to ensure the contract complies with the provisions and, if applicable, the requirements of ORS 279A.140.

(b) Whenever the Authorized Agency pays more in a given 12-month period to a Provider under a Personal Services Contract for services historically performed by state employees than would have been paid to the Authorized Agency employee performing the same Work, the Authorized Agency must report that fact, with a justifying statement to the Department. The report must be made at the conclusion of each fiscal year.

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

Stats. Implemented: ORS 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0345

Procedures for Personal Services Contracts.

(1) Contract Forms for Architectural, Engineering and Land Surveying Services, and Related Services. Authorized Agencies must comply with OAR 125-248-0300(1).

(2) Contract Forms for other Contracts for Personal Services. Authorized Agencies must use one of the forms provided or approved by the State Procurement Office for Contracts for Personal Services.

(a) If an Authorized Agency obtains approval in accordance with this Rule, it may enter into a Contract for Personal Services containing terms and conditions other than those in the approved form for one-time acquisitions of Personal Services. The Authorized Agency must provide the State Procurement Office with a copy of the proposed Contract for Personal Services that shows the specific terms or conditions that the Authorized Agency wishes to revise. The Authorized Agency must obtain State Procurement Office 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 Contract for Personal Services. The State Procurement Office 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 State Procurement Office approval.

(b) Upon an Authorized Agency's request, the State Procurement Office may approve a revised form Contract for repeated use for a specific class or classes of transactions.

(c) The Authorized Agency must review the approved Contract form at least every two years. If upon review the Authorized Agency revises the Contract form, the Authorized Agency must obtain State Procurement Office approval prior to using the revised Contract form.

(3) Screening, Selection, Evaluation and Award Procedures. An Authorized Agency must follow the procedures set forth in Division 248 of these Rules when contracting for Architectural, Engineering and Land Surveying Services, and Related Services. For all other Contracts for Personal Services, an Authorized Agency must select a sourcing method from the seven methods available pursuant to ORS 279B.055 through 279B.085 and follow the screening, selection, evaluation and award procedures set forth for the selected sourcing method in Division 247 of these Rules.

(4) Amendments and Reinstatements. The procedures for Amendments and reinstatements are found in OAR 125-246-0560 and 125-246-0570, respectively. Procedures for Amendments and reinstatements for Architectural, Engineering and Land Surveying Services, and Related Services are found in OAR 125-248-0340 and 125-248-0310, respectively.

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

Stats. Implemented: ORS 279A.70 & 279A.140(h)(B)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0350

Approval of Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services, and Related Services.

(2) State Procurement Office Approval. Except as provided in OAR 125-246-0170, the State Procurement Office must approve all Personal Services Contracts exceeding \$150,000 before the Authorized Agency executes the Contract.

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

(4) Legal Sufficiency Review. The State Procurement Office may not approve a Personal Services Contract calling for payment of more than \$75,000 before the Attorney General approves this Personal Services Contract, if the review and approval of the Attorney General is required under ORS 291.047 or 291.049.

(5) Types of Approvals.

(a) When Attorney General legal sufficiency approval is required under ORS 291.047, the Authorized Agency must seek legal approval;

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

(A) Department, Risk Management Division for providing tort liability coverage.

(B) Department, Information Resource Management Division (IRMD), Publishing and Distribution for printing services;

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

(i) Assistance to the Authorized Agency in developing State-ments of Work related to information system projects;

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

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

(c) The Authorized Agency's and Contractor's execution must be obtained;

(d) The State Procurement Office approval, when required, is last. The State Procurement Office must 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.

(6) Attorney or Financial Auditing Services.

(a) The Attorney General has sole authority to contract for attorney services. Only the Attorney General may grant exceptions in Writing on a case-by-case basis;

(b) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Only the Secretary of State Audits Division may grant exceptions in Writing on a case-by-case basis.

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

Stats. Implemented: ORS 279A.140(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0351

Acquiring Services Before Obtaining Requisite Approvals

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services and Related Services.

(2) Personal Services may be performed before all requisite approvals are obtained under a Personal Services Contract if the Personal Services Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6). The process set forth in this Rule is intended to allow Authorized Agencies to acquire services before obtaining all requisite approvals for those Personal Services Contracts that call for payments of less than the Threshold for legal sufficiency review by the Attorney General.

(3) The State Procurement Office may authorize an Authorized Agency to acquire services before obtaining all requisite approvals when circumstances exist that require prompt action to protect the interests of the State. An Authorized Agency may seek such authorization for a Personal Services Contract or a class of Personal Services Contracts to address specific recurring needs to acquire services on short notice. An Authorized Agency seeking the State Procurement Office's authorization must describe particular circumstances that make it impracticable to obtain all requisite approvals before acquiring services. The State Procurement Office will only authorize an Authorized Agency to acquire services before obtaining all requisite approvals if the Authorized Agency follows the procedures set forth in this Rule. The State Procurement Office's authorization pursuant to this Rule only allows the Authorized Agency to acquire services before obtaining all requisite approvals. It does not authorize the Authorized Agency to make any payments before obtaining all requisite approvals.

(4) The Authorized Agency seeking the State Procurement Office's authorization to acquire services before obtaining all requisite approvals must provide:

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

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

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

(5) The State Procurement Office after review of the material required by Section (4) above, may authorize the Authorized Agency to acquire the specific services under the specific circumstances described in response to Section (4)(a) above before obtaining all requisite approvals. If the State Procurement Office provides authoriza-

tion, the State Procurement Office will do so in Writing, subject to any conditions or limitations the State Procurement Office deems appropriate, including but not limited to the duration of the authorization, and any other terms and conditions the State Procurement Office may determine are appropriate.

(6) If Authorized Agency acquires services before obtaining all requisite approvals when authorized by the State Procurement Office, the Authorized Agency, as soon as practicable after acquiring the services, must enter into a Written Contract in the form submitted by the Authorized Agency and approved by the State Procurement Office. The Authorized Agency must not revise the terms of the approved Contract form submitted by Authorized Agency without the State Procurement Office's approval.

(7) The Authorized Agency must not make any payments for services before obtaining all requisite approvals.

(8) The State Procurement Office authorization to perform services before obtaining all requisite approvals does not exempt the Authorized Agency from obtaining legal sufficiency review, if required under the provisions of ORS 291.047.

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

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.140(2)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0352

Retroactive Approval of Public Contracts

Authorized Agencies must comply with OAR 125-246-0575.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.140(2)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0353

Reporting Requirements for Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services, and Related Services.

(2) The State Procurement Office maintains an electronic reporting system within ORPIN for the Authorized Agency and a report form for reporting Personal Services Contracts. The Authorized Agency must submit this report form to the State Procurement Office for each Contract and subsequent Contract Amendment. The report form must include the Authorized Agency name, not-to-exceed amount of the Contract, the name of the Contractor, the duration of the Contract, and its basic purpose. The State Procurement Office will provide a copy of the report form for an Authorized Agency without access to the ORPIN. Whenever an Authorized Agency pays more in a calendar year under a Personal Services Contract for services historically performed by state employees than the Authorized Agency would have paid to the Authorized Agency's employees performing the same Work, the Authorized Agency must so report to the Department and include in the report a statement of justification for the greater costs, pursuant to ORS 279A.140(2)(h)(A)(i).

(3) The State Procurement Office must submit a report to the Legislature concerning Authorized Agency use of Personal Services Contracts. This report must include the name of the Authorized Agency, the not-to-exceed amount of the Contracts, the name(s) of Contractor(s), the duration of Contract(s) and the basic purpose of the Contract(s). The report must also include the total dollar figure of all Personal Services Contracts for each fiscal year.

(4) The State Procurement Office maintains an electronic file of Personal Services Contracts report forms for public review. The electronic file includes a justification statement, when applicable, and documentation of the selection process for each Contract.

(5) The Authorized Agency must keep in the Procurement File all Personal Services Contracts, justification statements, when applicable, documentation of the selection process for each Contract, and the report forms in compliance with OAR 166-300-0015(7) and any other applicable laws.

(6) Personal Services Contracts submitted to the State Procurement Office for approval or filing must include the report form. The Authorized Agency's Procurement File should include detailed documentation of the process.

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

Stats. Implemented: ORS 279A.140(h)(A)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

Procurement Files

125-246-0355

Procurement Files

(1) Application. This Rule applies to Procurement Files, as defined in OAR 125-246-0110.

(2) Actions. All Written documents delivered to an Agency from the Department, Chief Procurement Officer, or State Procurement Office, whether the documents relate to approvals, revocations, orders, modifications, or other actions (Actions), must be maintained in a Procurement File related to the documents' subject matter and Action.

(3) Procurements Exceeding Thresholds. This Section (3) applies only to Procurements exceeding the Intermediate Procurement Threshold for Supplies and Services; the Informal Selection Threshold for Architectural, Engineering and Land Surveying Services; and the Competitive Quotes Threshold for Public Improvements pursuant to OAR 125-247-0270, 125-248-0210, and 125-249-0160, respectively, unless a policy established by the Department provides otherwise. Each Agency's Procurement File must contain:

- (a) An executed Contract, if awarded;
- (b) The record of the actions used to develop the Contract;
- (c) A copy of the Solicitation, if any;

(d) Any required findings or statement of justification for the selection of the Provider and sourcing method pursuant to ORS 279A.200 through 279A.220 (Cooperative Procurement); 279B.055 through 085 (seven methods for Supplies and Services); 279C.100 through 279C.125 (Architectural, Engineering and Land Surveying and Related Services); or ORS 279C.300 through 279C.450 (Public Improvements); and

(e) Documentation of Contract Administration pursuant to OAR 125-246-0555.

(4) Each Authorized Agency's Procurement File may also contain, if required by the Code or these Rules:

- (a) A list of prospective Providers notified of any Solicitation;
- (b) The method used to advertise or notify prospective Providers;
- (c) A copy of each Offer that resulted in the Award of a Contract;
- (d) The method of evaluating Offers, the results of the evaluation, and basis of selection;

(e) The record of any Negotiation of the Statement of Work and results;

(f) A record of all material Communications regarding the Solicitation by interested Providers pursuant to OAR 125-246-0635;

(g) All information describing how the Provider was selected, including the basis for awarding the Contract;

(h) A copy of the Request for Special Procurement, if any;

(i) Documentation for a Federal Program purchase pursuant to OAR 125-246-0360;

(j) Documentation related to Cooperative Procurements pursuant to OAR 125-246-0410 et. seq.; and

(k) Any Written documentation of an Action, as described in Section (2) above.

(5) The Agency must maintain Procurement Files, including all documentation, for a period in compliance with OAR 166-300-0015(7) and any other applicable laws. Procurement Files must be made immediately available for review upon the request of the State Procurement Office.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

Intergovernmental Relations

125-246-0360

Purchases Through Federal Programs

(1) Exemption. An Authorized Agency may purchase certain authorized Supplies and Services through General Service Administration (GSA) federal programs or federal Contracts (Federal Programs) without Competitive Sealed Bidding, Competitive Sealed Proposals or other competition required under ORS 279B.050 to 279B.085, provided that the Authorized Agency has federal authorization to purchase through the Federal Program and follows the procedures set forth in this rule.

(2) Federal Authorization:

(a) The Federal Programs named in ORS 279A.180 are accessible to Authorized Agencies for purchasing Supplies and Services. In addition, by this Rule, the Director of the Department (Director) hereby makes the determination pursuant to ORS 279A.180, that the GSA Order of 2000 and any subsequent revisions or updating of this GSA Order of 2000 (GSA Orders) describe other Federal Programs that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies; therefore, Authorized Agencies may purchase through those Federal Programs described in a GSA Order without making individual requests for determination to the Director.

(b) If an Authorized Agency desires to purchase through another Federal Program that is not expressly named in ORS 279A.180 or a GSA Order, the Authorized Agency must request in Writing a determination from the Director or the Director's designated representative. In the request, the Authorized Agency must document that the federal government has authorized states, including the Authorized Agency, to purchase through the proposed Federal Program. The request of the Authorized Agency and the determination by the Director or representative must be limited to those other Federal Programs described in ORS 279A.180 that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies.

(c) If no federal authorization exists as described in Sections (2)(a) and (b) of the Rule, then an Authorized Agency is not permitted to purchase through any Federal Program.

(3) Procedures. To purchase through a Federal Program, an Authorized Agency must document in its Procurement File that:

(a) The federal authority for the Authorized Agency to purchase through the Federal Program, referring to ORS 279A.180, a GSA Order, or the State Procurement Office's approval of an Authorized Agency's request.

(b) The acquisition meets the Authorized Agency's needs;

(c) The price and other terms of the acquisition are Advantageous to the State;

(d) No Department Price Agreement for the authorized Supplies and Services exists, based upon the Authorized Agency's inquiry through ORPIN;

(e) The Authorized Agency has considered the acquisition's impact upon local business as follows:

(A) If the Procurement is in excess of \$5,000, the Authorized Agency has given timely notice through ORPIN of its needs, reasons, and intent to procure through a Federal Program;

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

(C) The Authorized Agency has considered any comments and replied, if appropriate, before proceeding with its Procurement through a Federal Program. This Rule provides for an informal opportunity to comment to and be considered by the Authorized Agency, in lieu of the formal notice requirements for Solicitations in excess of \$5,000 pursuant to ORS 200.035.

(f) State and local preference programs, including but not limited to the Inmate Work Program of ORS 279.015, the Products of Disabled Individuals Program of ORS 279.835 to 850, and state requirements Contracts under OAR 125-247-0296, are not waived or otherwise adversely affected by an acquisition through a Federal Program;

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

(h) The Authorized Agency is informed of its Federal Program's Procurement Process, including:

(A) Voluntary and Direct Contract. The Authorized Agency and Contractors participate voluntarily. The Contractors make direct deliveries to the Authorized Agency and retain the right to decline orders on a case-by-case basis, for any reason, within a five-Day period of receipt of that order;

(B) Funding Fee. The price of a Federal Program Contract includes a GSA industrial funding fee to cover GSA administrative costs to operate the Federal Program;

(C) New Contract. When a Contractor accepts an order from an Authorized Agency, a new Contract is formed. The Contract's terms and conditions are incorporated by reference; and

(D) Additional Terms and Conditions. The Authorized Agency may add to its Contract such significant, substantial contract terms and conditions as are required by State statutes or rules, if such additions do not conflict with the Federal Program's Contract terms and conditions. Examples of such terms and conditions include, but are not limited to:

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

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

(iii) Conflict Resolution. The Authorized Agency may revise the Contract's dispute resolution provision to use Alternative Dispute Resolution (ADR) to the extent authorized by law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070 & Sec.335, Ch. 794, OL 2003 (HB 2341)

Stats. Implemented: ORS 279A.180

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

Cooperative Procurement

125-246-0400

Purpose, Policy, and Definitions

(1) Purpose. The purpose of these Rules for Cooperative Procurement is to specify the policy and procedures of the State Procurement Office or Authorized Agency for Procurement, using one of the three Cooperative Procurement methods; Joint Cooperative Procurements, Permissive Cooperative Procurements, and Interstate Cooperative Procurements. An Administrator's Original Contract or a Participant's Contract with a Provider in a Cooperative Procurement is subject to ORS 279A and these Rules, unlike agreements solely between Authorized Agencies pursuant to ORS 190 et seq. and excepted from the Code pursuant to OR 279A.025.

(2) Policy. It is the policy of the Department that Authorized Agencies will collaborate to leverage their purchases for Supplies and Services to achieve efficiency in state government by optimizing the benefits from these Cooperative Procurements.

(3) Definitions. For the purposes of these Cooperative Procurement Rules only, the following definitions apply to Cooperative Procurement:

(a) An "Administrator" means an entity that solicits and establishes the Original Contract for Procurement of Supplies and Services or Public Improvements in a Cooperative Procurement. "Administrator" means the State Procurement Office, or subject to the approval of the State Procurement Office: an Agency, another Public Body within the state of Oregon, or a governmental body outside the state of Oregon. An Administrator has the same rights and responsibilities as an Administering Contracting Agency in ORS 279A.200 through 279A.225.

(b) "Contract" for the purposes of these Cooperative Procurement Rules means a Public Contract or Price Agreement resulting from a Cooperative Procurement by an Administrator.

(c) "Cooperative Procurement" means a Procurement conducted by an Administrator or on behalf of one or more Participants. Cooperative Procurement includes but is not limited to multiparty Contracts and Price Agreements.

(d) "Cooperative Procurement Group" means:

(A) A group of Agencies, Public Bodies within the state of Oregon or any governmental body outside the state of Oregon, separately or in any combination;

(B) Approved by the State Procurement Office;

(C) Joined through an intergovernmental agreement; and

(D) For the purposes of facilitating a Cooperative Procurement.

(e) "Interstate Cooperative Procurement" means a Permissive Cooperative Procurement in which the Administrator is authorized under that governmental body's laws, rules, or regulations to enter into Public Contracts and in which one or more of the Participants are located outside of the State of Oregon.

(f) “Joint Cooperative Procurement” means a Cooperative Procurement that identifies:

(A) The Participants or the Cooperative Procurement Group; and

(B) The contract requirements or estimated contract requirements for the Original Contract.

(g) “Material Change” or “Material Alteration” means an alteration in a Public Contract or Solicitation that is different in effect from the original meaning or Scope. This includes changes in quality, price or type of Supplies and Services or Public Improvements.

(h) “Original Contract” means the initial Contract or Price Agreement as solicited and awarded during a Cooperative Procurement by an Administrator.

(i) A “Participant” means an entity that procures Supplies and Services or Public Improvements from a Provider based on the Original Contract established by an Administrator in a Cooperative Procurement. A Participant may be the State Procurement Office, or subject to the approval of the State Procurement Office: an Authorized Agency, a local Public Body, or a state agency with independence under ORS 279A.050. A Participant has the same rights and responsibilities as a Participating or Purchasing Contracting Agency in ORS 279A.200 through 279A.225.

(j) “Permissive Cooperative Procurement” means a Cooperative Procurement in which the Participants are not identified.

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

Stats. Implemented: ORS 279A.205, 279A.210, 279A.215, 279A.220, 279A.225

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0410

Authority for Cooperative Procurements

(1) The State Procurement Office will enter into Cooperative Procurements on behalf of Agencies, unless an Authorized Agency receives a delegation of authority pursuant to OAR 125-246-0170 to act as an Administrator or Participant.

(2) Subject to a delegation of authority described in section (1) of this Rule, an Administrator or Participant may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and these Rules.

(3) For Permissive Cooperative Procurements under OAR 125-246-0440 and 125-246-0450 only, each Participant that participates after the Award of the Original Contract must determine, in Writing, whether the Solicitation and award process for the Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085, consistent with 279A.200(2). This Written documentation must be maintained in the Participant’s Procurement File.

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

Stats. Implemented: ORS 279A.205, 279A.210, 279A.215 & 279A.220

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0420

Responsibilities

(1) The Administrator of a Cooperative Procurement may establish any terms and conditions necessary to allow other Participating Authorized Agencies or Cooperative Procurement Groups, of which the Participant is a member (hereinafter collectively known as “Participant”), to participate in a Cooperative Procurement. The Administrator may require Participants to enter into a Written agreement, which establishes the terms and conditions for participation in a Cooperative Procurement. These terms and conditions may include, but are not limited to: the establishment of any administrative fees for the Administrator, whether each Person must enter into a Written agreement with the Administrator, and any other matters related to the administration of the Cooperative Procurement source selection and the resulting Original Contract. The Administrator may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement and advertise the Solicitation Document in a manner to assist Participants’ compliance with the Code and these Rules.

(2) In administering or applying these Rules, the Administrator must collaboratively review and compare the procurement needs and requirements of both the Administrator and the respective Participant(s) for the purpose of using a Cooperative Procurement to achieve cost savings (for examples: lowest total cost of acquisition, least time to procure, process streamlining, Return on Investment cal-

ulation based on a comparison of the total costs of individual Authorized Agency Procurements versus a Cooperative Procurement).

(3) If a Participant enters into a Contract based on a Cooperative Procurement, the Participant must comply with the Code, these Rules, and any terms and conditions set out by the Administrator, including without limitation those sections of the Code and these Rules that govern:

(a) The extent to which the Participant may participate in the Cooperative Procurement;

(b) The advertisement of the Solicitation Document related to the Cooperative Procurement; and

(c) Public notice of the Participant’s intent to establish Contracts based on a Cooperative Procurement.

(4) An Administrator must use a Solicitation and award process that is substantially equivalent to a source selection method identified in ORS 279B.055, 279B.060, 279B.085, or 279C.005 through 279C.870 when it has the characteristics set forth in ORS 279A.200(2).

(5) Interstate Procurement Solicitations must substantially comply with the public notice requirements for advertising pursuant to OAR 125-247-0305.

(6) The interval between the first date of notice of a Joint or Permissive Procurement Solicitation must be not less than fourteen (14) Days for an ITB and thirty (30) Days for an RFP. A Joint or Permissive Procurement Solicitation must comply with the requirements of OAR 125-247-0305.

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

Stats. Implemented: ORS 279A.205

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0430

Joint Cooperative Procurements

(1) Applicability. An Administrator or Participant may participate in, sponsor, conduct or administer this type of Procurement for the purchase of Supplies and Services or Public Improvements. The Administrator and Participant must comply with the procedures set out in OAR 279A.210 and these Rules to procure Supplies and Services or Public Improvement using a Joint Cooperative Procurement. Only the Participants listed in the Solicitation and Original Contract documents may enter into Contract through a Joint Cooperative Procurement. A Joint Cooperative Procurement is not a Permissive Cooperative Procurement.

(2) Solicitation and Original Contract Documents. The Solicitation Document and Original Contract for a Joint Cooperative Procurement must include, but is not limited to:

(a) A list of the Participants that may enter into a Contract under the terms and conditions of the Original Contract;

(b) The Original Contract requirements, which may include, but are not limited to:

(A) The Original Contract’s not-to-exceed value;

(B) The term of the Original Contract;

(C) The quantity or quantity range of purchases to be made;

(D) The minimum level of quality or quality range requirements for the Supplies and Services;

(E) The minimum Provider qualifications;

(F) The Scope of the Supplies and Services or Public Improvements to be purchased;

(G) Terms and conditions;

(H) Any special considerations; and

(I) Any insurance or bonding requirements.

(c) A Written requirement that the Participant will not Materially Change or alter the terms, conditions, and prices from the Original Contract between the Provider and the Administrator.

(d) A Written requirement that Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract pursuant to OAR 125-246-0560.

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

Stats. Implemented: ORS 279A.210

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0440

Permissive Cooperative Procurements

(1) Applicability. An Administrator or Participant may only participate in, sponsor, conduct or administer this type of Cooperative Procurement for the purchase of Supplies and Services. The Admin-

istrator and Participant must comply with the procedures set out in ORS 279A.215 and these Rules to procure Supplies and Services using a Permissive Cooperative Procurement. A Permissive Cooperative Procurement is not a Joint Cooperative Procurement.

(2) Solicitation and Original Contract Documents. The Solicitation Document and Original Contract for a Permissive Cooperative Procurement must include, but is not limited to:

(a) A Written requirement that other Participants may establish Contracts to purchase the Supplies or Service;

(b) A Written requirement that the Provider will extend the terms, conditions and prices to any Participant that establishes a Contract through a Permissive Cooperative Procurement;

(c) The Original Contract requirements, which may include, but is not limited to:

(A) The Original Contract's not-to-exceed value;

(B) The term of the Original Contract;

(C) The quantity or quantity range of purchases to be made;

(D) The minimum level of quality or quality range requirements for the Supplies and Services;

(E) The minimum Provider qualifications;

(F) The Scope of the Supplies and Services to be purchased;

(G) Terms and conditions;

(H) Any special considerations; and

(I) Any insurance or bonding requirements.

(d) A Written requirement that the Participant will not Materially Change or Alter the terms, conditions, and prices from the Original Contract between the Provider and the Administrator.

(e) A Written requirement that Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract pursuant to OAR 125-246-0560.

(3) Public Notice of Intent to establish a Contract; Comment Period.

(a) A Participant that intends to enter into a Contract through a Permissive Cooperative Procurement must publish a notice of its intent to do so if the Participant estimates that it will spend in excess of \$250,000 for the purchase of the Supplies and Services to be acquired under the Contract;

(b) For purposes of determining if a Participant must give a Notice of Intent to establish a Contract through a Permissive Cooperative Procurement as required by ORS 279A.215(a), the estimated amount of the Participant(s)'s purchases will exceed \$250,000 for Supplies and Services if:

(A) The Participant's Contract arising out of the Permissive Cooperative Procurement expressly provides that the Participant intends to make purchases over the term of the Contract that will, in aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated in the Contract;

(B) The Participant's Contract arising out of the Permissive Cooperative Procurement expressly provides:

(i) For payment, whether in a fixed amount or up to a stated maximum amount that exceeds \$250,000; or

(ii) For a guaranteed maximum price, or a maximum not-to-exceed amount that is in excess of \$250,000; or,

(C) At the time the Participant enters into the Contract, the Participant reasonably contemplates, based on historical or other data available to the Participant, that the total purchases it will make for the Supplies and Services under the Contract will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract.

(c) The Notice of Intent must contain the following information:

(A) A description of the purchases to made;

(B) An estimated amount of the purchases;

(C) The name of the Administrator; and,

(D) A time, place and date by which comments must be submitted to the Participant regarding the Notice of Intent to establish a Contract.

(E) The Contract requirements, which may include, but are not limited to:

(i) The Contract's not-to-exceed value;

(ii) The term of the Contract;

(iii) The quantity or quantity range of purchases to be made;

(iv) The minimum level of quality or quality range requirements for the Supplies and Services;

(v) The minimum Provider qualifications;

(vi) The Scope of the Supplies and Services to be purchased;

(vii) Any special considerations;

(vii) Terms and conditions; and

(ix) Any insurance or bonding requirements.

(d) A Written requirement that Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract pursuant to OAR 125-246-0560.

(e) Any Notice of Intent for a Permissive Cooperative Procurement must be published for no fewer than seven (7) calendar Days before the deadline for submission of comments regarding the Notice of Intent to establish a Contract.

(f) Providers must submit comments within seven (7) calendar Days after the Notice of Intent is published. If the Participant receives comments on its intent to establish a Contract, the Participant must respond to any comments on its intent, to include:

(A) The governing body of the Participant, its chief executive or another officer authorized by the Participant must make a Written determination that establishing a Contract is in the best interest of the Participant.

(B) The Participant must provide a copy of the Written determination to all Providers that submitted comments.

(g) The Notice of Intent must appear in the ORPIN system and, at the Participant's option, an additional Notice of Intent 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 ensure Providers, who would otherwise be prospective Offerors on the Contract, are given an opportunity to comment.

(h) The Participant's Notice of Intent described in this Section and the Administrator's Permissive Cooperative Procurement Solicitation advertisement requirements described in OAR 125-0247-0305 may occur concurrently.

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

Stats. Implemented: ORS 279A.215

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0450

Interstate Cooperative Procurements

(1) Applicability. An Administrator or Participant may only participate in this type of Cooperative Procurement for the purchase of Supplies and Services if the Solicitation was advertised in Oregon by the Administrator or Participant pursuant to OAR 125-247-0305. The Administrator or Participant must comply with the procedures set out in ORS 279A.220 and these Rules to procure Supplies and Services using an Interstate Cooperative Procurement.

(2) Solicitation and Original Contract Documents. The Solicitation Document and Original Contract for an Interstate Cooperative Procurement must include, but is not limited to:

(a) A Written requirement that other governmental bodies may establish Contracts to purchase the Supplies and Services;

(b) Either:

(A) A list of the Participant(s) that may enter into Contracts under the terms and conditions of the Original Contract, and a Written requirement that the Provider will extend the terms, conditions and prices to these Participants (Listed Participants); or

(B) A Written requirement that the Provider will extend the terms, conditions and prices to any Participant through the Interstate Cooperative Agreement.

(c) The Original Contract requirements, which may include, but are not limited to:

(A) The Original Contract's not-to-exceed value;

(B) The term of the Original Contract;

(C) The quantity or quantity range of purchases to be made;

(D) The minimum level of quality or quality range requirements for the Supplies or Service;

(E) The minimum Provider qualifications;

(F) The Scope of the Supplies and Services to be purchased;

(G) Any special considerations;

(H) Terms and conditions; and

(I) Any insurance and bonding requirements.

(d) A Written requirement that a Participant will not Materially Change or Alter the terms, conditions, and prices from the Original Contract between the Provider and the Administrator.

(e) A Written requirement that Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract pursuant to OAR 125-246-0560.

(3) Advertisements of Interstate Cooperative Procurements.

(a) If the Solicitation Document and Original Contract for an Interstate Cooperative Agreement contain a list of the Participants in accordance with Subsection (2)(b) and at least one of the Participants is an Agency, then the Solicitation Document for that Interstate Cooperative Procurement must be advertised in Oregon. This Solicitation Document is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with ORS 279B.055(4) or 279B.060(4) by:

- (A) The Administrator;
- (B) The Participant;
- (C) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Participant is a member; or

(D) Another Participant that is subject to the Code, so long as such advertisement would, if given by the Participant, comply with ORS 279B.055(4) or 279B.060(4) with respect to the Participant.

(b) A Participant or the Cooperative Procurement Group of which the Participant is a member satisfies the advertisement requirement under ORS 279A.220(2)(b) if the notice is advertised in the same manner as provided in ORS 279B.055(4)(b) and (c).

(4) Public Notice of Intent to establish a Contract.

(a) If a Participant is not listed in accordance with Subsection (2)(b)(A) and intends to enter into a Contract through an Interstate Cooperative Procurement at any time in accordance with Subsection (2)(b)(B), that Participant must publish a Notice of Intent to do so in Oregon.

(b) The Notice of Intent required in accordance with Subsection (4)(a) must appear in the ORPIN system and, at the Participant's option, an additional Notice of Intent 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 ensure Providers, who would otherwise be prospective Offeror on the Contract, are given an opportunity to comment.

(c) The Notice of Intent must contain the following information:

- (A) A description of the purchases to be made;
- (B) An estimated amount of the purchases;
- (C) The name of the Administrator; and,
- (D) A time, place and date by which comments must be submitted to the Participant regarding the Notice of Intent to establish a Contract.

(E) The Contract requirements, which may include, but are not limited to:

- (i) The Contract's not-to-exceed value;
- (ii) The term of the Contract;
- (iii) The quantity or quantity range of purchases to be made;
- (iv) The minimum level of quality or quality range requirements for the Supplies and Services;
- (v) The minimum Provider qualifications;
- (vi) The Scope of the Supplies and Services to be purchased;
- (vii) Any special considerations;
- (viii) Terms and conditions; and
- (ix) Any insurance and bonding requirements.

(d) A Written requirement that Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract pursuant to OAR 125-246-0560.

(e) Providers must submit comments within seven (7) calendar Days after the Notice of Intent is published. If the Participant receives comments on its intent to establish a Contract, the Participant must respond to any comments on its intent, including:

- (A) The Participant must make a Written determination that establishing a Contract is in the best interest of the Participant; and
- (B) The Participant must provide a copy of the Written determination to any Provider that submitted comments.

(f) The Participant's Notice of Intent described in this Section and the Administrator's Interstate Cooperative Procurement Solicitation advertisement requirements described in OAR 125-0247-0305 may occur concurrently.

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

Stats. Implemented: ORS 279A.220

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0460

Protest and Disputes

- (1) Protests to an Administrator.

(a) Solicitation. If a prospective Offeror wishes to protest the procurement process or the contents of the original Solicitation of an Original Contract related to a Cooperative Procurement, the prospective Offeror must direct the protest to the Administrator, and the Offeror must make such protest pursuant to ORS 279B.405, unless the Administrator is not subject to the Code (see Subsection (c) below).

(b) Award. If an adversely affected Offeror wishes to protest the Award or proposed Award of an Original Contract related to a Cooperative Procurement, the Offeror must direct the protest to the Administrator, and the Offeror must make such protest pursuant to ORS 279B.410, unless the Administrator is not subject to the Code (see Subsection (c) below).

(c) If the Administrator is not subject to the Code, then the prospective Offeror under Subsection (a) or the Offeror under Subsection (b) must make the protest in accordance with the processes and procedures established by the Administrator.

(2) Any other protests related to a Cooperative Procurement, or disputes related to a Contract arising out of a Cooperative Procurement, must be made and resolved as set forth in ORS 279A.225.

(3) Protests to a Participant. If an Offeror wishes to protest the use by a Participant of a Cooperative Procurement after the execution of an Original Contract, the potential Offeror must direct the protest to the Participant, and the potential Offeror must make such protest pursuant to ORS 279B.400 to 279B.425. The protest to the Participant is limited in Scope to the Participant's authority to enter into a Cooperative Procurement Contract.

(4) Preservation of Rights and Remedies. Failure of an Administrator or Participant to exercise any rights or remedies it has under the Original Contract or Contract entered into through a Cooperative Procurement may not affect the rights or remedies of the any other Participant that participates in the Cooperative Procurement, including the Administrator, and may not prevent any other Participant from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative Procurement.

(5) Other Protests or Disputes. Any other protests related to a Cooperative Procurement, or disputes related to an Original Contract or Contract arising out of a Cooperative Procurement, must be made and resolved as set forth in ORS 279A.225.

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

Stats. Implemented: ORS 279A.225

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0470

Amendments of Cooperative Procurements

Agencies must comply with OAR 125-246-0560(7).

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

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Notices and Advertisement

125-246-0500

Oregon Procurement Information Network (ORPIN)

The Oregon Procurement Information Network, known as ORPIN, an Internet-based, on-line system, is the official publication forum for state Procurement notices and advertisements, as functionality allows, by the Department and all Agencies.

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

Stats. Implemented: ORS 279A.065, 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

Contract Administration

125-246-0550

General Definitions

(1) "Contract Administration" means all functions related to a given Contract between the Authorized Agency and a Contractor from the time the Contract is awarded until the Work is completed and accepted or the Contract is terminated, payment has been made and disputes have been resolved.

(2) "Contract terms and conditions" means the entire Contract document including but not limited to: the Contract; a Solicitation Document incorporated by reference in the Contract; and all attachments, exhibits or other requirements specifically referenced in the Contract.

(3) For definitions related to the Rule on Amendments, see OAR 125-246-0560.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0555

Contract Administration; General Provisions

(1) Authority. Procurements include Contract Administration. The authority for an Authorized Agency to conduct Contract Administration is found in OAR 125-246-0170.

(2) Contract Administrator. The Authorized Agency must appoint, in Writing, a Contract Administrator to represent the Authorized Agency for each Contract. The Contract Administrator may delegate in Writing a portion of the Contract Administrator's responsibilities to a technical representative for specific day-to-day administrative activities for each Contract.

(3) Documentation of Contract Administration.

(a) Applicability. This Section (3) applies only to Procurements exceeding the Intermediate Procurement Threshold for Supplies and Services; the Informal Selection Threshold for Architectural, Engineering and Land Surveying Services, and Related Services; and the Competitive Quotes Threshold for Public Improvements pursuant to OAR 125-247-0270, 125-248-0210, and 125-249-0160, respectively, unless the policy established by the Department provides otherwise.

(b) Requirements. Documentation of Contract Administration is a part of the Procurement File in accordance with OAR 125-246-0355, and this documentation must include:

(A) An executed Contract;

(B) The record of the actions used to administer the Contract; and

(C) The Contract Administrator and any technical representative delegates, together with a description of their delegated duties.

(c) Documentation of Contract Administration may also include, if any:

(A) Amendments, including but not limited to the approval of Amendments and the bases for determinations of the Designated Procurement Officer, as required in OAR 125-246-0560(c)(B);

(B) Claims related to the Contract;

(C) Release of claims documents;

(D) Contract close-out documents; and

(E) Other documents related to Contract Administration.

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

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0560

Amendments

(1) Applicability and Definitions. This Rule on Amendments sets forth:

(a) A General Rule for Amendments in Section (2) applicable to Contracts for Supplies and Services pursuant to the Code and these Rules;

(b) Special Rules for Amendments in Sections (3) through (12), applicable to different types of Contracts. These Special Rules replace the General Rule, unless expressly stated otherwise;

(c) A Rule for Transitional and Old Contracts in Section (13), as those Contracts are defined in OAR 125-246-0110; and

(d) Definitions for the purposes of this Rule.

(A) "Anticipated Amendment" means:

(i) The Authorized Agency has stated in the Solicitation Document, if any, and the Original Contract ("Contract") that the Authorized Agency may amend the Contract; and

(ii) Required language in the Solicitation Document, if any, and the Contract includes:

(I) The general circumstances that might require an Anticipated Amendment to be issued under the Contract. "General circumstances" means broad or important aspects of the circumstances and not detailed. "Circumstances" means the anticipated conditions, state of affairs, or context that might require the Amendment. "Anticipated" means considered, realized, foreseen, or expected before its time. "Contract" means the specific Original Contract or class of Original Contracts being amended (specific Contract). This requirement is not satisfied by boilerplate language. "Boilerplate language" means standard language used commonly in documents without variation based upon specific circumstances; and

(II) A general description of certain or known changes to the requirements of the Contract that may be anticipated or planned for, but not necessarily quantified at the time of Contract execution. These changes may be specifically described in any Solicitation and Contract as: Additional Work; Work to be done if certain situations are encountered; or changes in terms, conditions, price, or type of Work. "General description" means broad or important aspects of the certain or known changes and not detailed. "Certain or known changes" that "may be anticipated or planned for" does not mean all possibilities; it means anticipated changes that might be required by the circumstances, as defined in Subsection (d)(A)(ii)(I). This general description of such changes must relate to the specific Contract and is not satisfied by boilerplate language, as defined in Subsection (d)(A)(ii)(I).

(iii) The Authorized Agency is not required to designate an Amendment in any Solicitation Document and Original Contract as an "Anticipated Amendment."

(B) "Unanticipated Amendment" means an Amendment that does not otherwise meet the requirements of being an Anticipated Amendment.

(2) General Rule for Amendments.

(a) Authorized Agency may make Amendments to Contracts as set forth in this Rule under the following conditions:

(A) Scope. The Amendment must be within the Scope of the original Solicitation Document, if any, and the Original Contract, in accordance with the definition of an Amendment under OAR 125-246-0110;

(B) Original Contract. The Original Contract was awarded either:

(i) Pursuant to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.085, or 279A.200 through 279A.220;

(ii) For Transitional or Old Contracts only, in accordance with Old Rules, as the Contracts and Old Rules are defined in OAR 125-246-0100; or

(iii) Other statutory law.

(C) Legal Requirements. The Amendment is made consistent with applicable legal requirements;

(D) Writing. All Amendments to Contracts must be in Writing;

(E) Authority. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts, except that Amendments to Ordering Instruments may be accepted by the action of the Provider in accordance with the terms and conditions of the Ordering Instruments. All Amendments must receive all required approvals before the Amendments will be binding on the Authorized Agency, including but not limited to the Department of Justice legal sufficiency review pursuant to ORS 291.047.

(b) Authority for Anticipated Amendments. An Authorized Agency in accordance with OAR 125-246-0170 may make one or more Anticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, in accordance with the definition of an Anticipated Amendment and this Rule.

(c) Authority for Unanticipated Amendments. An Authorized Agency in accordance with OAR 125-246-0170 may make one or more Unanticipated Amendments to a Contract without any additional competitive process, in accordance with the definition of an Unanticipated Amendment and this Rule.

(A) Limited Amount. The cumulative amounts of one or more Unanticipated Amendments to a Contract must not exceed 20% of the Original Contract amount; or

(B) Unlimited Amount. An Authorized Agency may make one or more Unanticipated Amendments to a Contract without any additional competitive process and for an unlimited amount pursuant to an Authorized Agency's delegated authority under OAR 125-246-0170, the Authorized Agency's Designated Procurement Officer gives Written approval of the Unanticipated Amendment, based upon a determination that:

(i) The change is legitimate and due to unforeseen circumstances which occurred as Work progressed, and that the reasons for the change were unforeseen at the time the Original Contract was established, as opposed to an effort to evade Procurement requirements;

(ii) The Unanticipated Amendment is within the Scope of the original Solicitation Document, if any, and the Original Contract, in accordance with the definition of an Amendment under OAR 125-246-0110;

(iii) The Original Contract contains clauses authorizing modification; and

(iv) The Unanticipated Amendment does not represent a material, general change, which alters the essential identity or main purpose of the Original Contract, or is of such importance as to constitute a new undertaking. The approval of the Designated Procurement Officer and the basis of this determination must be documented in the Procurement File pursuant to OAR 125-246-0355.

(3) Special Rules for Amendments Based on Dollar Threshold:

(a) Small Procurements. An Authorized Agency may amend a Contract awarded as a Small Procurement in accordance with OAR 125-247-0265 and the definition of an Amendment set forth in OAR 125-246-0110.

(b) Intermediate Procurements. An Authorized Agency may amend a Contract awarded as an Intermediate Procurement in accordance with OAR 125-247-0270, and the General Rule on Amendments applies to Intermediate Procurements not exceeding the Threshold of \$150,000. If the Contract and all cumulative Amendments would result in an amended Contract amount exceeding \$150,000, then the Authorized Agency must request and obtain prior approval of a Special Procurement in accordance with OAR 125-247-0287.

(c) Formal Procurements. The General Rule on Amendments applies to Procurements pursuant to ORS 279A.200 through 279A.220 (Cooperative Procurement), ORS 279B.055 through 279B.060 (Competitively Sealed Bidding and Proposals) and ORS 279B.085 (Special Procurements), if applicable, except as provided in this Rule.

(4) Special Rule for Amendments of Sole-Source Procurements. The General Rule on Amendments in Section (2) applies to Sole-Source Procurements pursuant to ORS 279B.075 and OAR 125-247-0275.

(5) Special Rule for Amendments of Contracts for Emergencies. Notwithstanding Sections (2) through (11) of this Rule, an Authorized Agency may amend a Contract awarded as an Emergency Procurement if the emergency justification for entering into the Contract still exists, and the Amendment is necessary to address the continuing emergency.

(6) Special Rule for Reinstatement of Expired Contracts. Notwithstanding the General Rule on Amendments in Section (2), the Rule for Reinstatement of Expired Contracts is found at OAR 125-246-0570.

(7) Special Rules for Payment Authorization for Cost Overruns and Retroactive Approvals and Payment Authorization for Cost Overruns for Services Contracts. Notwithstanding the General Rule on Amendments in Section (2), the Rules for Retroactive Approvals and Payment Authorization for Cost Overruns are found at OAR 125-246-0575 and 125-246-0576, respectively.

(8) Special Rule for Renegotiated Contracts. Notwithstanding the General Rule on Amendments in Section (2) the Special Procurement Rule for Renegotiated Contracts is found at OAR 125-247-0288(3).

(9) Special Rule for Amendments of Contracts for Architectural, Engineering and Land Surveying Services, and Related Services. Notwithstanding the General Rule on Amendments in Section (2), the Rule for Amendments of Contracts for Architectural, Engineering and Land Surveying Services, and Related Services is found at OAR 125-248-0340.

(10) Special Rule for Amendments of Contracts for Public Improvements. Notwithstanding the General Rule on Amendments in Section (2), the Rule for Amendments of Contracts for Public Improvements is found at OAR 125-249-0160.

(11) Special Rule for Amendments of Price Agreements. Notwithstanding the General Rule on Amendments in Section (2), the State Procurement Office or its delegatee may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) As permitted by any applicable Special Rule for Amendments, Sections (3) through (10); or

(c) As permitted by applicable law.

(12) Special Rules for Amendments of Cooperative Procurements.

(a) An Administering Authorized Agency may amend an Original Contract only in accordance with ORS 279A.205 through 279A.225 and in a manner that is substantially equivalent to this Rule.

(b) A Participating Authorized Agency may amend its own Contract resulting from a Cooperative Procurement in a manner that complies with this Rule.

(13) Rule for Amendments of Transitional and Old Contracts.

(a) "Transitional Contracts" and "Old Contracts" are defined in OAR 125-246-0110.

(b) An Authorized Agency must have authority to amend the Transitional or Old Contract in accordance with OAR 125-246-0170, including but not limited to delegations by rule, agreement, letter and policy as described in OAR 125-246-0170(1).

(c) An Authorized Agency may amend a Transitional or Old Contract by complying with one of the following four (4) processes:

(A) New Amendment Process. An Authorized Agency may apply Sections (1) through (9) of this Amendment Rule; or

(B) New Special Procurement Process. An Authorized Agency may amend through the Special Procurement Rules for Supplies and Services, as set forth in OAR 125-247-0285 through 125-247-0287; or

(C) Exclusive Amendment Process. This Process is not available for Personal Services Contracts. An Authorized Agency may amend an Original Contract with a Provider without competitive bidding and for additional Work or product which is reasonably related to the Scope of Work under the Original Contract, including Changes to Work, extra Work, field orders, or other change in the original Specifications that increases the Original Contract price, subject to the following conditions:

(i) The Original Contract:

(I) Was let by a competitive bidding or alternative Procurement process;

(II) Unit prices or additive alternates were provided that established the cost basis for the additional Work or product; and

(III) A binding obligation exists on the parties covering the terms and conditions of the additional Work; or

(ii) The Original Contract was let pursuant to a declaration of emergency, in accordance with former ORS 279.015(4)(a) and 279.015(5) and former OAR 125-310-0030; or

(iii) 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 former 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

(iv) The Original Contract was for the renovation or remodeling of a building.

(v) Except for Amendments entered into pursuant to Subsections (C)(i) to (iv), the aggregate increase resulting from all Amendments to a Contract must 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 (C)(i) 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 (C)(ii) or (iii) are not subject to either the 20 percent or the 33 percent aggregate limit on Contract Amendments.

(vi) If the Original Contract required the Contractor to provide a performance and payment bond, and the Authorized Agency has terminated the Contract and notified the surety of such termination, the Authorized 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 former ORS 279.015(1), must not be subject to the competitive procurement provisions of former ORS 279.005 through 279.111.

(D) Personal Services Amendment Process. This process is for Personal Services Contracts only.

(i) Contract Amendments must be made in writing.

(ii) Amendments to Contracts must fall within the Scope of the original Solicitation, unless the Original Contract was exempt under former OAR 125-020-0610, including whether the Contract consideration or term limit for performance may be increased (See former OAR 125-020-0310(4)(b)). Amendments may not be used to circumvent rules establishing approvals at certain monetary levels.

(iii) The State Procurement Office must approve an Amendment to a Contract unless approval of the amended Contract is not required under OAR 125-246-0170.

(iv) Except for Contracts related to Year 2000 services or Phased Development projects, Amendments to perform additional work related to information technology must not exceed 33% of the amount identified in the original Contract.

(v) 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.

(vi) The Authorized Agency must provide justification for any increase in time, compensation or other modification to the State Procurement Office.

(vii) A Contract Amendment form(s) will be provided by the State Procurement Office. The Authorized Agency may create Amendment form(s) as long as the Amendment form is approved by the State Procurement Office.

(viii) For Amendments, the Authorized Agency is required to:

(I) Prepare a Contract Amendment;

(II) Obtain necessary approvals before the Amendment is effective; and

(III) Issue the Award justification on ORPIN for Amendments that do not require State Procurement Office approval.

(ix) For Contract Amendments that require State Procurement Office approval, the Authorized Agency must 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 State Procurement Office.

(x) The State Procurement Office will review and approve the Contract Amendment for compliance with applicable rules.

(d) Section (10) of this Rule applies retroactively to and is effective on March 1, 2005.

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

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0570

Reinstatements of Expired Contracts

(1) Reinstatement by the Designated Procurement Officer. If the type or aggregated value (including all amendments) of the Contract after reinstatement falls under the Agency's procurement authority in accordance with OAR 125-246-0170, then the Designated Procurement Officer of this Authorized Agency may reinstate and amend for time only an expired or terminated Contract (collectively, "expired Contract"), if the Authorized Agency meets the following conditions:

(a) Purpose. The reinstatement of the expired Contract is for the following purpose:

(A) Fulfillment of its term, up to the maximum time period provided in the Contract; or

(B) Completion of a deliverable, provided:

(i) The deliverable, including but not limited to Services, Work, Goods, or a Public Improvement project, was defined in the Contract as having a completion date or event; and

(ii) The Authorized Agency documents in the Procurement File what has not been completed, as of the date of the reinstatement of the expired Contract.

(b) Proper Execution. The expired Contract was previously properly executed containing all of the required signatures; and

(c) Unforeseen or Unavoidable Conditions. The failure to extend or renew the Contract in a timely manner was due to unforeseen or unavoidable conditions.

(2) Reinstatement by the State Procurement Office. If the type or aggregated value (including all amendments) of the Contract after reinstatement will exceed the Agency's procurement authority in accordance with OAR 125-246-0170, then the State Procurement Office may reinstate and amend for time only an expired Contract, if the Agency submits a written justification to the State Procurement Office, demonstrating the satisfaction of the requirements for reinstatement, as set forth in Subsections (1)(a) through (c) above.

(3) Amendments. The Authorized Agency may amend an expired Contract for time only in accordance with Section (1) of this Rule. The Authorized Agency may amend the Contract for purposes other than time in accordance with OAR 125-246-0560.

(4) When an Authorized Agency reinstates and amends for time an expired Contract pursuant to this Rule, the Authorized Agency may compensate the Provider for Work performed in the interim between the expiration of the Original Contract and effective date of the reinstatement and amendment.

(5) Once a Contract is reinstated, it is in full force and effect, as if it had not expired.

(6) For Architectural, Engineering and Land Surveying and Related Services, the Authorized Agency must follow the Reinstatement Rule set forth in OAR 125-248-0310.

(7) No reinstatement of a Contract may modify the Original Contract, except the Original Contract may be modified with respect to the time for performance and any adjustment in the amount of the Contract as a consequence of the time extension.

(8) If the reinstatement and amendment for time of a Contract pursuant to this Rule requires Attorney General approval under ORS 291.045 and 291.047, the Authorized Agency must obtain such approval before the extension becomes binding.

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

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0575

Retroactive Approvals of Existing Contracts

(1) Application. This Rule applies to existing Contracts that must have the approval of the State Procurement Office pursuant to ORS 279ABC or these Rules, including but not limited to Personal Services Contracts and Contracts for Architectural, Engineering and Land Surveying Services or Related Services.

(2) Approval by the State Procurement Office. If the aggregated value (including all amendments) of the Contract exceeds \$150,000, then retroactive approval of a Contract means the action of the State Procurement Office, retroactively approving an existing Contract that was not previously properly executed and approved.

(3) Approval by a Designated Procurement Officer. If the aggregated value (including all amendments) of the Contract does not exceed \$150,000 and the Agency is authorized under OAR 125-246-0170, then retroactive approval of a Contract means the action of the Designated Procurement Officer of that Authorized Agency, retroactively approving an existing Contract that was not previously properly executed and approved.

(4) This retroactive approval does not apply to payments made for work performed between the start of the Work of the Contract and the date of any retroactive approval (Time Period). The retroactive approval applies to work performed but not paid for, as of the date of such approval.

(5) Requirements. Before the State Procurement Office or authorized Designated Procurement Officer may retroactively approve a Contract in accordance with Sections (1) through (3) of this Rule, the requesting Agency must meet the following requirements:

(a) Submit a Written request to the State Procurement Office or Designated Procurement Officer in accordance with Section (2) or (3). The Authorized Agency must also submit a copy of this Written request to the head of that Agency.

(A) If this Written request is submitted to the State Procurement Office in accordance with Section (2), it must be executed by the Authorized Agency's Designated Procurement Officer.

(B) If this Written request is submitted to the Designated Procurement Officer in accordance with Section (3), it must be executed by another individual within the Authorized Agency who is responsible for oversight of the Contract.

(b) The Written request must contain the following information:

(A) An explanation of why the Contract was not submitted for all required approval signatures before performance began, including but not limited to the circumstances that existed that created any need for performance without all of the required approval signatures;

(B) A description of the steps being taken to prevent similar occurrences in the near future; and

(C) A proposed retroactive approval of the Contract;

(c) Obtain all other approvals required for the Public Contract, including the Department of Justice's Legal Sufficiency Ratification of a Public Contract pursuant to OAR 137-045-0090 for Contracts that exceed \$75,000; and

(d) If an internal approval signature of the Contract is lacking, obtain that internal approval signature in accordance with the Authorized Agency's internal policy, if any.

(6) The Authorized Agency must maintain a copy of the retroactively approved Contract and the Authorized Agency's retroactive approval documentation (Records) in its Procurement File. The Authorized Agency must make these Records available to the State Procurement Office upon request.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0576

Payment Authorization for Cost Overruns for Services Contracts

(1) Payments on Contracts for Trade or Personal Services that exceed the maximum contract consideration (Cost Overruns) require approval (Approval). If the aggregated value of the Contract, including Cost Overruns, does not exceed \$150,000, the Designated Procurement Officer of the requesting Authorized Agency may approve the Cost Overruns in accordance with Section (2) of this Rule. If the aggregated value of the Contract, including Cost Overruns, exceeds \$150,000, the State Procurement Office may approve the Cost Overruns in accordance with Section (2) of this Rule. The Cost Overruns may also require approval from the Department of Justice pursuant to OAR 137-045-0010 et seq.

(2) Approval may be provided if:

(a) The Original Contract was duly executed and, if required, approved by the Department and the Attorney General;

(b) Payments relate to Services that were provided during the term of the Contract;

(c) The cost overrun is not associated with any change in the Statement of Work set out in the Original Contract;

(d) The cost overrun arose out of extraordinary circumstances or conditions encountered in the course of contract performance that were reasonably not anticipated at the time the Original Contract, or the most recent Amendment, if any, was signed. Such circumstances include, but are not limited to: emergencies arising in the course of the Contract that require prompt action to protect the Work already completed, compliance with official or judicial commands or directives issued during contract performance or insurance that the purpose of the Contract will be realized;

(e) The cost overrun was incurred in good faith, results from the good faith performance by the Contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional Work or performance rendered;

(f) The aggregated value of the Contract, including the Cost Overrun, and the Contract's objective are within the procurement authority of the Authorized Agency pursuant to OAR 125-246-0170, and the Authorized Agency currently has funds available for payment under the Contract; and

(g) The Agency must prepare a Written report that describes the Authorized Agency's discovery of the Cost Overrun, the reasons for the Cost Overrun, and the Agency's satisfaction of the conditions set forth in this Section (2) (Report). The Authorized Agency must maintain this Report in its Procurement File and make this Report available to the State Procurement Office upon request.

(h) The Designated Procurement Officer of the Authorized Agency approves in Writing the payment of the overrun, or such portion of the overrun amount as the Designated Procurement Officer of the Authorized Agency determines may be paid consistent with the conditions of this Rule. If the Designated Procurement Officer of the Authorized Agency has signed the Contract, or has immediate supervisory responsibility over performance of the Contract, that Person must designate an alternate delegate to grant or deny Written approval of payment.

(3) The Authorized Agency must obtain any Attorney General's approval of the Contract Amendment, if such approval is required by ORS 291.047, before making any Cost Overrun payment.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06

125-246-0580

Dispute Resolution

Pursuant to ORS 183.502, Authorized Agencies are authorized and encouraged to use alternative dispute resolution (ADR), including

collaborative forms of dispute resolution such as mediation, facilitation and collaborative rulemaking. The Attorney General's Model Rules on ADR are designed to assist Authorized Agencies in the assessment and appropriate use of collaborative ADR, as set forth in the Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure under the Administrative Procedures Act, October 3, 2001.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Ethics in Public Contracting

125-246-0600

Policy

These Rules supplement and do not replace ORS 244.010 through 244.400, for the purpose of applying the policy of ORS 244.010 to Oregon Public Contracting under the Public Contracting Code and these Rules. Oregon Public Contracting is a public trust. The Agencies and Contractors involved in Public Contracting must safeguard this public trust.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0605

Selection and Award of Public Contracts

(1) Agency officers, employees or agents involved in the process of the selection and award of Public Contracts must carefully review the provisions of ORS 244.040.

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

(3) Agency officers, employees and agents are prohibited from using their official position for personal or financial gain.

(4) Agency officers, employees and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal or financial gain.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0610

Appointments to Advisory Committees

The Director, Chief Procurement Officer, Designated Procurement Officer or a delegatee may appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition pursuant to ORS 279A.015.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0615

Nonretaliation

This Rule prohibits retaliation against anyone who complies with the Public Contracting Code and these Rules. Any officer, employee or agent of an Agency or Provider who engages in retaliation action will be subject to Penalties pursuant to ORS 279A.990, 244.350 to 244.400 and related rules. Also, any Provider who engages in a retaliation action may be debarred.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0620

Specifications

(1) Agencies and Providers must not develop Specifications that primarily benefit a Provider, directly or indirectly, to the detriment of an Agency or the best interest of the State.

(2) Agencies must not develop Specifications that inhibit or tend to discourage Public Contracting with Qualified Rehabilitation Facilities under ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045 where those Specifications inhibit or tend to discourage the acquisition of QRF-produced Supplies and Services without reasonably promoting the satisfaction of bona fide, practical procurement needs of the Agency.

(3) Agencies and Providers must not develop Specifications that inhibit or tend to discourage Public Contracting under other public procurement laws or policies of the Department.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0625

Sole-Source

Authorized Agencies may not select a Sole-Source Procurement pursuant to ORS 279B.075 and avoid a competitive Procurement if the purpose of the selection is to primarily benefit the Provider, directly or indirectly, to the detriment of an Authorized Agency or the best interest of the State.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0630

Fragmentation

A Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement, pursuant to ORS 279B.065, or an Intermediate Procurement, pursuant to ORS 279B.070.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279B.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0635

Authorized Agency and Provider Communications

(1) Research Phase. Authorized Agencies are encouraged to conduct research with Providers who can meet the State's needs. This research includes but is not limited to: meetings, industry presentations, and demonstrations with any Providers that, in the Agency's discretion, may be able to meet an Agency's need. Authorized Agencies must document the items discussed during the research phase of Solicitation development. The research phase ends the day of a Solicitation release or request for a Quote pursuant to an Intermediate Procurement, unless the Solicitation or Intermediate Procurement provides for a different process that permits on-going research.

(2) Solicitation and Contracting Phase. Any communication between an Authorized Agency and Providers regarding a Solicitation, that occurs after the Solicitation release or request for a Quote and before the Award of a Contract, must only be made within the context of the Solicitation Document or Intermediate Procurement requirements (Communication). This Communication may allow for Discussions, Negotiations, Addenda, Providers' questions, and the Agency's answers to Providers' questions about terms and conditions, Specifications, Amendments, or related matters. During this phase, telephone conversations and meetings must be documented in the Procurement File. Written inquiries regarding the Solicitation should be responded to by the Authorized Agency in Writing. A record of all material Communications regarding the Solicitation by interested Providers must be made a part of the Procurement File pursuant to OAR 125-246-0355.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

State Surplus Property

125-246-0700

State Surplus Property Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 283.060, 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.250
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0710

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

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

- (1) State Agencies;
- (2) Political subdivisions of the State; and

(3) Any non-profit organization qualified to acquire federal donation property pursuant to OAR 125-035-0045 or determined by the Department to be eligible under criteria established by the Department.

Stat. Auth.: ORS 283.060, 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.260
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0720

State Surplus Property Acquisition

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

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

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

not for resale or distribution unless otherwise pre-approved by the Department.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.260 & 279A.280
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0730

Public Sales for Disposal of State Surplus Personal Property

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

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

(3) Conduct of Internet Auctions:

(a) The Department may offer Surplus Property for public sale through an internet auction provider. Public bidding terminals must be made available during posted public hours at the Department's Property Distribution Center. The public may inspect Property offered for sale at the time and place specified in the public Invitation to Bid;

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

(c) All items must be sold to the highest bidder. All Property must be offered "As-Is, Where-Is" with no warranty or other guarantee as to its condition or fitness for any use or purpose. Terms and conditions of the sale must be made a part of the Internet posting. A purchaser or disappointed bidder must have no recourse against the Department, Agency or any of their respective officers, employees or agents. All sales must be final.

(4) Payment:

(a) Full payment must be made within ten (10) calendar Days from the date of auctions close unless otherwise specified in the public Invitation to Bid.

(5) Claiming Items Purchased:

(a) Items not paid in full by the time specified in the sales terms and conditions must be canceled;

(b) Property paid for, but not claimed within the time specified in the sales terms and conditions must be considered abandoned and ownership must default to the State, unless prior approval is obtained from the Department;

(c) Title to Property sold must be transferred to the purchaser when full and final payment is made, unless otherwise specified by the Department. For vehicles, receipt of payment of the sale price and delivery of key to the purchaser constitutes delivery and possession. Titles to vehicles must be transferred upon receipt of full payment. The Department rejects any liability once a purchaser takes possession of a vehicle;

(d) Motor Vehicles Division trip permits must be required to drive unlicensed motor vehicles and must be available at the Property Distribution Center. A purchaser of a vehicle must certify that the driver of the vehicle has a valid driver's license and is insured as required by Oregon law before a trip permit can be issued.

(6) Failure to Comply. The Department may establish criteria to debar participants from internet auctions and other state sales pursuant to this Rule. Such criteria must be based on:

(a) Conviction of fraud;

(b) Unsatisfactory Internet auction service ratings;

(c) Failure to claim purchases; or

(d) Other documented activities determined by the Department to warrant debarment. Based upon these criteria, the Department may debar participants from internet auctions and participation in other state sales.

(7) Conduct of Auctions and Sealed Bid Sales:

(a) The Department must advertise the date, time and location of public auction or sealed bid sales. A public Invitation to Bid must be

available at the Property Distribution Center or auction site one week before an auction or sealed bid sale. The public may inspect property offered for sale at the time and place specified in the public Invitation to Bid;

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

(c) All items must be sold to the highest Bidder. All Property must 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 must have no recourse against the State, the Department, its Property Distribution Center or any of their respective officers, employees or agents. All sales must be final.

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

(8) 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 (10) percent down payment is required on the day of the sale. The time limit for making full payment and the place where payment must 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, when presented with two (2) pieces of acceptable identification, one of which must be a photo identification ("photo I.D."). Other acceptable identification may include major credit cards, a valid driver's license, or valid voter's registration card. The Department reserves the right, in its absolute discretion, to refuse any tender of payment by personal check and, further, the right to require that payment be made by 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, when presented with two (2) pieces of acceptable identification, one of which must be a photo I.D. The Department reserves the right, in its absolute discretion, to refuse any tender of payment by personal check and, further, the right to require that payment be made by cash, cashier's check or money order.

(9) Claiming Items Purchased:

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

(b) Property paid for, but not claimed within the time specified in the sales terms and conditions must be considered abandoned and ownership must default to the State, unless prior approval is obtained from the Department Surplus Property Manager;

(c) Title to Property sold must be transferred to the purchaser when full and final payment is made, unless otherwise specified by the Department. For vehicles, receipt of payment of the sale price and delivery of key to the purchaser constitutes delivery and possession. Titles to vehicles must be transferred upon receipt of full payment. If payment is made by personal check, the title must be released to the vehicle purchaser in twenty-one (21) calendar Days, or when the check clears the bank. The Department rejects any liability once a purchaser takes possession of a vehicle;

(d) Motor Vehicles Division trip permits must be required to drive unlicensed motor vehicles and must be available at the sale site. A purchaser of a vehicle must certify that the driver of the vehicle has a valid driver's license and is insured as required by Oregon law before a trip permit can be issued.

(10) Failure to Comply. In addition to Section (6) of this Rule, the Department may debar participants from state sales based upon the following criteria:

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

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

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.280
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Selling Supplies and Services**125-246-0800****Policy; Applicability; Methods**

(1) Policy. A sound and responsive Public Contracting system, pursuant to ORS 279A.015, may include both purchasing and selling activities. By definition, a Public Contract includes sales by Agencies pursuant to ORS 279.010(x). The policies of ORS 279A.015 apply to public selling activities.

(2) Applicability. This Rule applies to the sales of Supplies and Services. This Rule does not apply to residential property or the public selling activity of Agencies specifically exempted from the Public Contracting Code by another provision of law or specifically authorized to conduct public selling activity by another provision of law. The sale of Supplies and Services includes but is not limited to: concessions, software rights, and personal property.

(3) Methods. Agencies must use a method, as feasible for selling, pursuant to ORS 279B.055 through 279B.085. For the sale of Goods, the value of the sale transactions for the purpose of selecting the appropriate sourcing method must be based on the gross amount of receipts.

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

Stats. Implemented: ORS 279A.010(x), 279A.015, 279A.050(1)(2), 279A.065(5)(a) & 279A.070

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Penalties**125-246-0900****Penalties**

(1) Any violation of ORS 279A.140, 279A.280, or 279B.270 must be punished as described in ORS 291.990, pursuant to ORS 279A.990(1).

(2) Upon notice to the Department of an alleged violation pursuant to ORS 279A.990(1), the Department, at its own discretion, may provide to an individual of an Agency or an Agency an optional administrative process with an opportunity for remedy prior or parallel to a legal process leading to conviction or a Department certification leading to other penalties provided by ORS 291.990. This Rule and administrative process may address related considerations, including but not limited to:

(a) What specific actions are interpreted as violations giving rise to penalties;

(b) Applicability to individuals of Agencies and Agencies, regardless of whether delegated authority existed pursuant to OAR 125-246-0170; and

(c) The placement of responsibility for violations along the chain of delegated responsibility.

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

Stats. Implemented: ORS 279A.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

DIVISION 247**PUBLIC PROCUREMENT OF SUPPLIES AND SERVICES****General Provisions****125-247-0005****Definitions**

The definitions for this division 247 are found in OAR 125-246-0110.

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

Stats. Implemented: ORS 279B.005

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0010**Policies**

(1) ORS 279B and this Division 247 apply the policies of ORS 279A.015 to the Procurement of Supplies and Services. The seven sourcing methods for procurement, procedures, and legal remedies set forth in ORS 279B and these Rules simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards. ORS 279B and this Division 247 provide a Public Contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, pursuant to ORS 279A.015(6).

(2) Specific procedures accompany each method, followed by a Section of general procedures. Authorized Agencies must comply with both the specific procedures of a method and general procedures.

(3) The responsibility of the Designated Procurement Officer and any delegatee of an Authorized Agency is to choose the appropriate sourcing methods in accordance with the Code, Rules, and policy, and arrive at offers that represent optimal value to the Agency and the State.

(4) Meaningful competition can be achieved through various strategies and sourcing methods when procuring Supplies and Services, and this competition must be reasonably calculated and demonstrated to satisfy the Authorized Agency's and the State's needs.

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

Stats. Implemented: ORS 279B.010

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0100**Applicability**

(1) In addition to the general requirements set forth in division 246 of these Rules, the Rules in this division 247 apply to Public Contracting for Supplies and Services. In the event of conflict or ambiguity, the more specific requirements of the Rules in this division 247 take precedence over the more general requirements of the Rules in division 246.

(2) The Rules implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this division 247 of the Rules specifically addresses matters covered in ORS Chapter 279B.

(3) These division 247 Rules become effective on March 1, 2005 and apply only to the above-described Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

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

Stats. Implemented: ORS 279B.015

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0165**Practices Regarding Electronic Goods Procurement**

(1) ORS 279B.025 requires the Department to establish procurement practices that ensure, to the maximum extent economically feasible, Procurement of Goods that may be recycled or reused when discarded.

(2) The State Procurement Office and Authorized Agencies must procure Electronic Goods in a manner that includes consideration of the impact of the electronic goods upon the environment and public health, in addition to consideration of economic and community interests, in accordance with goals of sustainability pursuant to ORS 184.423. The State Procurement Office and Authorized Agencies, separately or together, may:

(a) Consult with stakeholders to develop procedures or guidelines for Procurement of Electronic Goods; and

(b) Address policy and procedure decisions including but not limited to: recycling, relationship to Rules for State Surplus Property as set forth in OAR 125-246-0700 through 125-246-0730, Energy Star certifications, promote toxic use reduction, and the use of certain components such as mercury or lead that have detrimental impacts.

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

Stats. Implemented: ORS 279B.025, 279B.270 & 279B.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0170**Life Cycle Costing**

(1) Policy. Life Cycle Costing provides an acquisition method that is consistent with the concept of sustainability as defined in ORS 184.421 and also drives the concept of lowest cost of ownership and best value of the products and equipment (Goods) purchased. When planning the award method of an Invitation to Bid or Request for Proposal for Goods, an Agency must consider using Life Cycle Costing whenever the costs of system operation, support, and disposal, and other quantifiable costs are significant in comparison with the cost of acquisition.

(2) Definitions:

(a) "Life-Cycle Cost" means the total cost to the State of acquiring, operating, supporting and (if applicable) disposing of the Goods being acquired.

(b) "Life Cycle Costing" means the various quantifiable cost factors, in addition to the acquisition cost of Goods and related Services.

(3) Concept. Insofar as this Rule is concerned, the concept of Life Cycle Costing will be limited to begin with the acquisition of the Goods, include all the associated cost(s) of ownership, such as purchase price, shipping, maintenance and repair, longevity, and include disposition cost(s) at the end of life. The initial acquisition price is adjusted with additional cost streams expected to occur over the anticipated life of the product or equipment. These additional cost streams must be clearly thought out costs or adjustments, and must be based upon reasonable assumptions. Cost streams are discrete elements of costs that relate to the particular purchase considered for Life Cycle Costing. In some cases cost streams may include negative costs or savings that are expected to result in a particular cost stream.

(a) Acquisition costs are costs associated with acquiring an item for State use. For complex items, several Contracts may be required and costs may involve research and development as well as production, delivery, and installation of the item.

(b) Typical cost streams may include the following:

(A) Switching costs are costs associated with changing from current Goods to another model or brand of Goods. Typically such costs may include: removal, shipping, training, replacement of supporting Goods, and related Services. The Agency may also consider increased project management or additional transition time.

(B) Operating and support costs are all costs, including third party contract costs, associated with equipment, supplies, utilities, fuel, and services needed to operate and maintain an operational system.

(C) Disposal costs are costs, including third party contract costs, associated with removing equipment from service and disposing of it. Evaluations that consider Life-Cycle Cost should also consider any significant salvage or resale value at the time of disposal. Oregon Property Services may help with estimating values, and with adherence to current Rules regarding disposition of State property.

(4) Solicitation Requirements. Life Cycle Cost methodology is permitted under this Rule for use in an ITB, an RFP, an Intermediate Procurement, or a Special Procurement as described in this Division 247. When conducting a Life Cycle Costing-based award, the Solicitation must:

(a) Advise prospective Offerors how Life Cycle Costing will be considered in an award decision.

(A) Awards may be made based on lowest evaluated cost resulting from Life Cycle Costing. Under this approach the evaluation includes Life Cycle Costs in the Solicitation issued by the Agency.

(B) Awards of Invitations to Bid to the lowest Bidder include the total Life Cycle Costs as a part of the bid evaluation methodology and award. The lowest total Life Cycle Cost is considered the low Bid.

(C) Awards of RFPs may include a Life Cycle Costing award factor in two ways:

(i) The RFP may include Life Cycle Costs as a part of the total points awarded for costs. In this method, all Life Cycle Costs are calculated and the lowest total Life Cycle Cost is awarded the maximum points allocated for cost in the RFP; or

(ii) The RFP may include a separate Life Cycle Cost Factor that is assessed a weight or points and is considered in addition to other factors in the proposal evaluation methodology. As a separate evaluation factor, it may be used in addition to costs, when the cost factor does not consider Life Cycle Costing elements.

(b) When Life Cycle Costs continue over a period of years, Solicitations may provide for adjustments to the cost stream for one or more of the following:

(A) Time value of money;

(B) Cost uncertainty; or

(C) Inflation factors.

(5) Factors in the Solicitation. To the extent the Authorized Agency considers practical, the Solicitation must provide relevant information (e.g., projected item usage, operating environment, the operating period, and other information that will be considered in the evaluation of the Offer.) An Agency may include projections and estimates of life and cycle times from independent third party sources. The Solicitation must describe how Life Cycle Cost will be applied in the award process. For one-step Solicitations, factors not described in the Solicitation may not be used in the evaluation. For Multistep and multi-round Solicitations, factors must be described in advance of the evaluation in order to be used in the evaluation.

(6) Elements that may be used in Awards. Solicitations must describe what elements the Offeror will be required to provide in the Offer, including relevant costs, along with appropriate information to support life costs. Typical elements used in Life Cycle Costing Awards may include:

(a) Average unit price, including (when appropriate) recurring and nonrecurring production costs;

(b) Delivery, shipping and transportation costs;

(c) Switching costs prepared by the State that include a reasonable estimate of what it will cost to switch from a current product or brand to another;

(d) Unit operating and support costs (e.g., manpower, energy, parts requirements, scheduled maintenance, and training);

(e) Unit disposal costs (e.g., the cost of removing equipment from the State facility);

(f) Unit salvage or residual value; and

(g) Related information as requested to support costs such as testing and operational data.

(7) Award Decision.

(a) Award of an Invitation to Bid using Life Cycle Cost methods must be made to the Responsible Offeror whose Responsive Offer provides the lowest overall cost of ownership in accordance with the Life Cycle Cost evaluation factors listed in the Solicitation Document.

(b) In the case of a Life Cycle Cost Request for Proposal, award must be made to the Responsible Offeror whose Responsive Offer, after consideration of Life Cycle Cost factors as a part of price evaluation, and other factors listed in the Solicitation Document are determined to be the most Advantageous or best Proposal for the State.

(c) In the case of an Intermediate or Special Procurement, the award requirements are the same as found in these methods, and Life Cycle Costing is incorporated into the methods.

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

Stats. Implemented: ORS 279B.025, 279B.270 & 279B.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

Methods of Source Selection

125-247-0200

Methods of Source Selection

An Authorized Agency must award a Contract for Supplies and Services by one of the following seven sourcing methods in accordance with the Code and related Rules:

(1) Competitive Sealed Bidding (also known as Bidding or ITB) pursuant to ORS 279B.055;

(2) Competitive Sealed Proposals (also known as Proposals or RFP) pursuant to ORS 279B.060;

(3) Small Procurement pursuant to ORS 279B.065;

(4) Intermediate Procurement pursuant to ORS 279B.070;

(5) Sole-Source Procurement pursuant to ORS 279B.075;

(6) Emergency Procurement pursuant to ORS 279B.080; or

(7) Special Procurement pursuant to ORS 279B.085.

A Cooperative Procurement in accordance with OAR 125-246-0400 through 125-246-0470 substantially uses a Competitive Sealed Bidding or Competitive Sealed Proposals method.

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

Stats. Implemented: ORS 279B.050

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0255

Competitive Sealed Bidding; One Step Solicitations

(1) Generally. An Authorized Agency may procure Supplies and Services by Competitive Sealed Bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a Competitive Sealed Bidding Solicitation and must contain the information required by ORS 279B.055(2) and by Section (2) of this Rule. The Authorized Agency must provide public notice of the Competitive Sealed Bidding Solicitation as set forth in OAR 125-247-0305.

(2) Invitation to Bid. In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid must include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See OAR 125-247-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(F) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-246-0210(3));

(G) How the Authorized Agency will notify Bidders of Addenda and how the Authorized Agency will make Addenda available (See OAR 125-247-0430); and

(H) The requirement, if applicable, for the awarded Bidder to obtain or subcontract labor, materials, or labor and materials from a supplier registered as an Emerging Small Business.

(b) Authorized Agency Need. The character of the Supplies and Services the Authorized Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Bidding and Evaluation Process.

(A) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Authorized Agency must set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a); and

(C) If the Authorized Agency intends to award Contracts to more than one Bidder pursuant to OAR 125-247-0600(4)(d), the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. This may be left to the Authorized Agency's discretion at the time of the Award, provided it is so described in the Solicitation.

(d) Applicable preferences pursuant to ORS 279B.055(6)(b):

(A) Preference for Oregon Supplies and Services, pursuant to ORS 279A.120 and OAR 125-246-0300 and 125-246-0310;

(B) Preference for recycled materials, pursuant to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324; and

(C) Performance with the State of public printing, binding and stationery Work, pursuant to ORS 282.210.

(e) Certification if Required. For Authorized Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) Terms and Conditions. All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Supplies and Services without prior Written approval from the Authorized Agency.

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

Stats. Implemented: ORS 279B.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0256

Competitive Sealed Bidding; Multistep Solicitations

(1) Generally. An Authorized Agency may procure Supplies and Services by using one of the following methods of selection for Multistep Sealed Bidding pursuant to ORS 279B.055(12):

(a) Multistep Invitation to Bid; or

(b) Revised Rounds of Bidding. A step and a round have the same meaning for purposes of implementing ORS 279B.055(12). All of the methods described in ORS 279B.055(12) and this Rule may be collectively referred to in Division 247 as a "Multistep Sealed Bidding."

(2)(a) Multistep Invitation to Bid. A Multistep Invitation to Bid is a phased procurement process that seeks necessary information or unpriced submittals in Phase One, followed by a Phase Two of competitive sealed bidding, inviting Bidders who submitted eligible Bids in Phase One to submit competitive sealed price Bids on the unpriced submittals in Phase Two. The Authorized Agency initially issues a Multistep Invitation to Bid, requesting the submission of unpriced submittals. This Phase One may include multiple steps, at the discretion

of the Authorized Agency, in order to obtain necessary information or unpriced submittals. At the conclusion of Phase One, the Authorized Agency evaluates those unpriced submittals to determine the eligibility of the Bidders to submit priced Bids. After this determination, the Authorized Agency may begin Phase Two by issuing subsequent Invitations to Bid, limited to those Bidders eligible to submit priced Bids. The Contract must be awarded to the lowest Responsible Bidder or to multiple Responsible Bidders in accordance with ORS 279B.055(10).

(b) Public Notice. Whenever an Authorized Agency uses a Multistep Invitation to Bid, the Authorized Agency must give public notice for Phase One in accordance with OAR 125-247-0305. Public notice is not required for subsequent steps in Phase One, unless a step in Phase One expands the number of Bidders, and then public notice is required. Public notice is not required for Phase Two. However, an Authorized Agency must give notice to all Bidders from Phase One (Bidders). If an Authorized Agency elects to provide a protest opportunity for Addenda issued after the Closing of Phase One pursuant to OAR 125-247-0430, then the Authorized Agency must give notice to the Bidders of this right to protest such Addenda. If an Authorized Agency elects to provide an opportunity to protest exclusion from Phase Two pursuant to OAR 125-247-0720, then the Authorized Agency must give notice to the Bidders of this right to protest such exclusion.

(c) Procedures Generally. In addition to the procedures set forth in OAR 125-247-0300 through 125-247-0490, an Authorized Agency must employ the following procedures set forth in this Section (2) from Multistep ITB:

(A) Solicitation Protest. Prior to the Closing of Phase One, an Authorized Agency must provide an opportunity to protest the Solicitation under ORS 279B.405 and OAR 125-247-0730.

(B) Addenda Protest. An Authorized Agency may provide an opportunity to protest any Addenda issued after closing of Phase Two pursuant to OAR 125-247-0430(3)(b).

(C) Exclusion Protest. An Authorized Agency may provide an opportunity for a Bidder to protest exclusion from Phase Two as set forth in OAR 125-247-0720.

(D) Administrative Remedy. Bidders may submit a protest to any Addenda or to any action by the Authorized Agency that has the effect of excluding the Bidder from a Phase Two to the extent such protests are provided for in the Solicitation Document or required by this Section (2). Failure to so protest must be considered the Bidder's failure to pursue an administrative remedy made available to the Bidder by the Authorized Agency.

(E) Award Protest. An Authorized Agency must provide an opportunity to protest its intent to award a Contract pursuant to ORS 279B.410 and OAR 125-247-0740. An Affected Bidder may protest, for any of the bases set forth in OAR 125-247-0720(2), its exclusion from Phase Two or an Addendum issued following Closing of Phase One if the Authorized Agency did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

(d) Procedure for Phase One.

(A) Form. Authorized Agency must initiate a Multistep Invitation to Bid by the issuance of an Invitation to Bid in the form and manner required for Competitive Sealed Bidding, except as hereinafter provided. In addition to the requirements set forth in OAR 125-247-0255(1 and 2), the Invitation to Bid must state:

(i) That unpriced submittals are requested;

(ii) Whether price Bids are to be submitted at the same time as unpriced submittals; if they are, that such price Bids must be submitted in a separate sealed envelope;

(iii) That the Solicitation is a multistep Invitation to Bid, and priced Bids will be considered only in Phase Two and only from those Bidders whose unpriced submittals are found eligible in Phase One;

(iv) The criteria to be used in the evaluation of unpriced submittals;

(v) That the Authorized Agency, to the extent that it finds necessary, may conduct oral or Written Discussions for the purposes of clarification of the unpriced submittals;

(vi) That the Supplies and Services being procured must be furnished generally in accordance with the Bidder's unpriced submittal as found to be finally eligible and must meet the requirements of the Invitation to Bid; and

(vii) Whether Bidders excluded from Phase Two have a right to protest the exclusion before the notice of intent to award. Such information must be given in the Bid Solicitation or changed by Addenda.

(B) Addenda to the Invitation to Bid. After receipt of unpriced submittals in Phase One, Addenda to the Invitation to Bid must be distributed only to Bidders who submitted unpriced submittals.

(C) Receipt and Handling of Unpriced Submittals. Unpriced submittals in Phase One need not be opened publicly.

(D) Evaluation of Unpriced Submittals. Unpriced submittals submitted by Bidders in Phase One must be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Unpriced submittals must be categorized as:

(i) Eligible;

(ii) Potentially eligible; that is, reasonably susceptible of being made eligible; or

(iii) Ineligible. The Authorized Agency must record in Writing the basis for determining an unpriced submittal ineligible and make it part of the Procurement File in accordance with OAR 125-246-0355. The Authorized Agency may initiate the Phase Two of the procedure if, in the Authorized Agency's opinion, there are sufficient eligible unpriced submittals to assure effective price competition in Phase Two without Discussions. If the Authorized Agency finds that such is not the case, the Authorized Agency may issue an Addendum to the Invitation to Bid or engage in Discussions as set forth in Subsection (2)(e) of this Rule.

(E) Discussion of Unpriced Submittals. The Authorized Agency may seek clarification of an unpriced submittal by any eligible or potentially eligible Bidder. During the course of such Discussions, the Authorized Agency may not disclose any information derived from one unpriced submittal to any other Bidder. Once Discussions have begun, any Bidder who has not been notified that its unpriced submittal has been finally found ineligible, may submit supplemental information amending its unpriced submittal, at any time until the Closing of the Phase Two. Such submission may be made at the request of the Authorized Agency or upon the Bidder's own initiative.

(F) Notice of Ineligible Unpriced Submittal. When the Authorized Agency determines a Bidder's unpriced submittal to be ineligible, such Bidder may not be afforded an additional opportunity to supplement its unpriced submittal.

(G) Mistakes During a Multistep Invitation to Bid. Mistakes may be corrected or unpriced submittals may be withdrawn during Phase One in accordance with OAR 125-247-0470; and

(i) Before unpriced submittals are considered;

(ii) After any Discussions have commenced under Subsection (2)(e); or

(iii) When responding to any Addenda of the Invitation to Bid.

(H) Revisions to Solicitation Specifications. After the Closing of Phase One, the Authorized Agency may issue Addenda that modify the Specifications for the Goods or Services being procured or that modify other terms and conditions of the Invitation to Bid. The Authorized Agency must provide such Addenda to all Bidders who initially submitted Unpriced Submittals. The Authorized Agency may then require Bidders to submit revised Unpriced Submittals.

(e) Procedure for Phase Two of Multistep Sealed Bidding.

(A) Initiation. Upon the completion of Phase One, the Authorized Agency must invite each eligible Bidder to submit a price Bid.

(B) Conduct. An Authorized Agency must conduct Phase Two as any other Competitive Sealed Bidding Procurement except:

(i) As specifically set forth in this Rule; and

(ii) No public notice need be given of this invitation to submit price Bids because such notice was previously given.

(3)(a) Revised Rounds of Bidding. Revised Rounds of Bidding means a process that begins with an initial round of Competitive Sealed Bidding pursuant to OAR 125-247-0255 and may, at the discretion of the Authorized Agency, include successive rounds of Bidding in order for the Authorized Agency to gain the best Offer for purposes of Award. An Authorized Agency may revise the Solicitation's Specifications, terms and conditions, and pricing structure for successive rounds to best meet the State's needs. Bidders will be allowed adequate time to revise and resubmit their Bids in accordance with the requirements set forth in the newly revised Solicitation Document. At each successive round, Authorized Agency may disregard its scoring of prior Bids and commence new scoring for the new Bids. The Author-

ized Agency must comply with the following procedures for this type of Solicitation:

(b) Revisions. An Authorized Agency may reject any Bid, after any round, because the Bid did not meet a minimum score or minimum set of requirements. An Authorized Agency may then proceed with a subsequent round that requires additional Bids to be submitted, based on different Specifications, terms and conditions, pricing structure, scoring model, and set of award criteria, separately or in any combination thereof, in order to best meet the State's interests (Revisions). If any Revision is made by an Authorized Agency in any subsequent round, the Authorized Agency has the right, in its sole discretion, to permit any Bidder whose Bid was previously rejected to submit a new Bid, if the reason(s) for the rejection of the prior Bid by that Bidder no longer applies.

(c) Public Notice. An Authorized Agency must give public notice pursuant to OAR 125-247-0305. The initial Solicitation Document must disclose that a Revised Rounds of Bidding process will or may be used. An Authorized Agency must give notice to all initial Bidders of any Revision(s) in the Specifications, terms and conditions, pricing structure, scoring model, and set of award criteria, separately or in any combination thereof. If an Authorized Agency discloses any prices, terms or conditions offered by other Bidders, the Authorized Agency will give notice of these disclosures to the initial Bidders. At the end of the process, the Authorized Agency must give a Notice of Intent to award at least seven (7) calendar Days prior to making the Award. Following clarifications and additional investigations, an Offeror may be reinstated or disqualified at any stage of the evaluation process.

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

Stats. Implemented: ORS 279B.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0260

Competitive Sealed Proposals; One Step Solicitations

(1) Generally. An Authorized Agency may procure Supplies and Services and negotiate by Competitive Sealed Proposals as set forth in ORS 279B.060. A Request for Proposal is used to initiate a Competitive Sealed Proposals Solicitation and must contain the information required by ORS 279B.060(2) and by Section (2) of this Rule. The Authorized Agency must provide public notice of the Competitive Sealed Proposals as set forth in OAR 125-247-0305.

(2) Request for Proposal. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal must include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference; and

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See OAR 125-247-0330 for required provisions of electronic Proposals);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-246-0210(3)); and

(F) How the Authorized Agency will notify Proposers of Addenda and how the Authorized Agency will make Addenda available. (See OAR 125-247-0430).

(b) Authorized Agency Need. The character of the Supplies and Services the Authorized Agency is purchasing, including if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Proposal and Evaluation Process.

(A) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Authorized Agency must set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(2)(h)(E). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such

factors must be reasonable estimates of actual future costs based on information available to the Authorized Agency;

(C) If the Authorized Agency's solicitation process calls for the Authorized Agency to establish a Competitive Range, the Authorized Agency must state the size of the Competitive Range in the Solicitation Document. The Authorized Agency may increase or decrease the number of the Proposers in the Competitive Range in accordance with OAR 125-247-0261(2); and

(D) If the Authorized Agency intends to award Contracts to more than one Proposer pursuant to OAR 125-247-0600(4)(d), the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will award. This may be left to the Authorized Agency's discretion at the time of the Award, provided it is so described in the Solicitation.

(d) Applicable Preferences described in ORS 279A.120, 279A.125(2) and 282.210:

(A) Preference for Oregon Supplies and Services, pursuant to ORS 279A.120 and OAR 125-246-0300 and 125-246-0310;

(B) Preference for recycled materials, pursuant to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324; and

(C) Performance with the State of public printing, binding and stationery Work, pursuant to ORS 282.210.

(e) Certification if requested. For Authorized Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) Terms and conditions. All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the Supplies and Services without prior Written approval from the Authorized Agency.

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

Stats. Implemented: ORS 279B.060

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0261

Competitive Sealed Proposals; Multistep Solicitations

(1) Generally. An Authorized Agency may procure Supplies and Services by using any combination of the following methods for Competitive Sealed Proposals pursuant to ORS 279B.060(6)(b).

- (a) Competitive Range;
- (b) Discussions and Revised Proposals;
- (c) Best and Final Offers;
- (d) Multistep Proposals;
- (e) Revised Rounds of Negotiations; and
- (f) Negotiations.

An Authorized Agency may also use a Request for Qualifications pursuant to OAR 125-247-0550 in combination with any of the methods described in ORS 279B.060(6)(b) and this Rule. All of the methods described in ORS 279B.060(6)(b) and this Rule may be collectively referred to in Division 247 as "Multistep Sealed Proposals." A "step," "tier" and "round" have the same meaning for purposes of implementing ORS 279B.060.

(2) Competitive Range. When an Authorized Agency's solicitation process conducted pursuant to ORS 279B.060(6)(b) calls for the Authorized Agency to establish a Competitive Range at any stage in the Procurement Process, the Authorized Agency must comply with the following procedures:

(a) Determining Competitive Range:

(A) The Authorized Agency must establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Authorized Agency must determine and rank the Proposers in the Competitive Range.

(B) The Authorized Agency may increase the number of Proposers in the Competitive Range if the Authorized Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer. The Authorized Agency may decrease the number of Proposers in the initial Competitive Range only if the excluded Proposers have no reasonable chance to be the most Advantageous Proposer.

(b) Contesting Competitive Range. The Authorized Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. An Authorized Agency may provide an opportunity

for Proposers excluded from the Competitive Range to protest the Authorized Agency's evaluation and determination of the Competitive Range in accordance with OAR 125-247-0720.

(c) Intent to Award; Discuss or Negotiate. After determination of the Competitive Range and after any protest period provided in accordance with Subsection (2)(b) expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to award the Contract to the highest-ranked Proposer in the Competitive Range:

(i) An unsuccessful Proposer may protest the Authorized Agency's intent to award in accordance with OAR 125-247-0740 and ORS 279B.410.

(ii) After the protest period provided in accordance with OAR 125-247-0740 expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency must commence Negotiations in accordance with this Rule with Proposers in the Competitive Range; or

(B) Engage in Discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in this Rule and following such Discussions and receipt and evaluation of revised Proposals, conduct Negotiations as set forth in this Rule with the Proposers in the Competitive Range.

(3) Discussions and Revised Proposals. If an Authorized Agency chooses to use the Competitive Range method and then enter into Discussions, the Authorized Agency must proceed as follows:

(a) Initiating Discussions. If the Authorized Agency initiates any Discussion, the Authorized Agency must initiate oral or Written Discussions with all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers") regarding their Proposals with respect to the provisions of the RFP that the Authorized Agency identified in the RFP as the subject of Discussions. The Authorized Agency may conduct Discussions for the following purposes:

(A) Informing eligible Proposers of deficiencies in their initial Proposals;

(B) Notifying eligible Proposers of parts of their Proposals for which the Authorized Agency would like additional information; or

(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Authorized Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Authorized Agency may conduct Discussions with each eligible Proposer necessary to fulfill the purposes of this Section (3), but need not conduct the same amount of Discussions with each eligible Proposer. The Authorized Agency may terminate Discussions with any eligible Proposer at any time. However, the Authorized Agency must offer all eligible Proposers the same opportunity to discuss their Proposals with the Authorized Agency before the Authorized Agency notifies eligible Proposers of the date and time pursuant to Section (4) that best and final Proposals will be due.

(A) In conducting Discussions, the Authorized Agency:

(i) Must treat all eligible Proposers fairly and may not favor any eligible Proposer over another;

(ii) Must only disclose other eligible Proposer's Proposals or Discussions in accordance with 279B.060(6)(b)(B) or (C);

(iii) May adjust the evaluation of a Proposal as a result of a Discussion under this Section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the Discussions provided the changes are within the Scope of the Request for Proposals.

(B) At any time during the time allowed for Discussions, the Authorized Agency may:

(i) Continue Discussions with a particular eligible Proposer;

(ii) Terminate Discussions with a particular eligible Proposer and continue Discussions with other eligible Proposers; or

(iii) Conclude Discussions with all remaining eligible Proposers and provide notice pursuant to this Rule to the eligible Proposers.

(4) Best and Final Offers. If an Authorized Agency chooses to require Best and Final Offers, an Authorized Agency must establish a common date and time by which Proposers must submit best and final Offers. Best and final Offers must be submitted only once;

provided, however, the Authorized Agency may make a Written determination that it is in the Authorized Agency's best interest to conduct additional Discussions and Negotiations or change the Authorized Agency's requirements and require another submission of best and final Offers. Otherwise, no Discussion of or changes in the best and final Offers may be allowed prior to award. Proposers must also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best and final Offer. The Authorized Agency must evaluate Offers as modified by the best and final Offer. The Authorized Agency must conduct evaluations conducted as described in OAR 125-247-0600. The Authorized Agency may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(5) Multistep Sealed Proposals

(a) Process. The Multistep Sealed Proposals process is a phased procurement process that seeks necessary information or unpriced submittals in Phase One and invites Proposers who submitted qualified unpriced submittals in Phase One to submit competitive sealed price Proposals in Phase Two. The Contract must be awarded to the Responsible Proposer, or in the case of multiple awards, the Responsible Proposers pursuant to ORS 279B.060(10), submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to Phase Two. A "Phase" may include one or more "steps"

(b) Public Notice. Whenever an Authorized Agency uses Multistep Proposals, the Authorized Agency must give Public Notice in accordance with OAR 125-247-0305. Public Notice is not required for Phase Two. However, an Authorized Agency must give notice to all Proposers from Phase One (Proposers). If an Authorized Agency elects to provide a protest opportunity for Addenda issued after the Closing of Phase One pursuant to OAR 125-247-0430, then the Authorized Agency must give notice to the Proposers of this right to protest such Addenda. If an Authorized Agency elects to provide an opportunity to protest exclusion from Phase Two pursuant to OAR 125-247-0720, then the Authorized Agency must give notice to the Proposers of this right to protest such exclusion.

(c) Procedures Generally. In addition to the procedures set forth in OAR 125-247-0300 through 125-247-0490, an Authorized Agency must employ the following procedures set forth in this Section for Multistep Sealed Proposals:

(A) Solicitation Protest. Prior to the Closing of Phase One, an Authorized Agency must provide an opportunity to protest the Solicitation under ORS 279B.405 and OAR 125-247-0730.

(B) Addenda Protest. An Authorized Agency may provide an opportunity to protest any Addenda issued after closing of Phase Two pursuant to OAR 125-247-0430(3)(b).

(C) Exclusion Protest. An Authorized Agency may provide an opportunity for a Proposer to protest exclusion from Phase Two as set forth in OAR 125-247-0720.

(D) Administrative Remedy. Proposers may submit a protest to any Addenda or to any action by the Authorized Agency that has the effect of excluding the Proposer from a Phase Two to the extent such protests are provided for in the Solicitation Document or required by this Section. Failure to so protest must be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Authorized Agency.

(E) Award Protest. An Authorized Agency must provide an opportunity to protest its intent to award a Contract pursuant to ORS 279B.410 and OAR 125-247-0740. An Affected Proposer may protest, for any of the bases set forth in OAR 125-247-0720(2), its exclusion from Phase Two or an Addendum issued following Closing of Phase One if the Authorized Agency did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

(d) Procedure for Phase One.

(A) The Form of the Request for Proposals. Multistep Proposals must be initiated by the issuance of a Request for Proposal in the form and manner required for Competitive Sealed Proposals in accordance with OAR 125-247-0260, except as provided in this Rule. In addition to the requirements set forth in OAR 125-247-0260(2), this Request for Proposal must state:

(i) That unpriced submittals are requested;

(ii) That the Solicitation is a unpriced submittal Procurement, and priced Proposals will be considered only in Phase Two and only from

those Proposers whose unpriced submittals are found acceptable in Phase One;

(iii) The criteria to be used in the evaluation of unpriced submittals;

(iv) That the Authorized Agency, to the extent that it finds necessary, may conduct oral or Written Discussions for the purposes of clarification of the unpriced submittals;

(v) That the Supplies and Services being procured must be furnished generally in accordance with the Proposer's unpriced submittals as found to be finally qualified and must meet the requirements of the Request for Proposals;

(vi) Whether Proposers excluded from subsequent steps or Phase Two have a right to protest the exclusion. Such information must be given in the Solicitation or changed by Addenda; and

(vii) If time is a factor, the Authorized Agency may require Proposers to submit a separate sealed price Proposal during Phase One to be opened after the evaluation of unpriced submittals.

(B) Addenda to the Request for Proposal. After receipt of unpriced submittals in Phase One, Addenda to the Request for Proposal must be distributed only to those Proposers who submitted unpriced submittals.

(C) Receipt and Handling of Unpriced Proposals. The Authorized Agency is not required to publicly open unpriced submittals.

(D) Evaluation of Unpriced Proposals. The unpriced submittals submitted by Proposers must be evaluated solely in accordance with the criteria set forth in the Request for Proposals. The unpriced submittals must be categorized as:

(i) Qualified;

(ii) Potentially qualified; that is, reasonably susceptible of being made qualified; or

(iii) Unqualified. The Authorized Agency must record in Writing the basis for determining a Proposal unqualified and make it part of the Procurement File in accordance with OAR 125-246-0355. The Authorized Agency may initiate Phase Two of the procedure if, in the Authorized Agency's opinion, there are sufficient qualified unpriced submittals to assure effective price competition in Phase Two without Discussions. If the Authorized Agency finds that such is not the case, the Authorized Agency may issue an Addendum to the Request for Proposals or engage in Discussions as set forth in this Rule.

(E) Discussion of Unpriced Submittals. The Authorized Agency may seek clarification of any Proposal of any Proposer who submits a qualified, or potentially qualified unpriced submittal. During the course of such Discussions, the Authorized Agency may not disclose any information derived from one unpriced submittal to any other Proposer. Once Discussions begin, any Proposer may submit supplemental information amending the unpriced submittal at any time until the Closing of Phase Two set by the Authorized Agency. A submission may be in response to a request of the Authorized Agency or be initiated by the Proposer.

(F) Notice of Unqualified Unpriced Submittals. When the Authorized Agency determines a Proposer's unpriced submittal to be unqualified, such Proposer must not be afforded an additional opportunity to supplement its unpriced submittal.

(G) Mistakes During Multistep Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during Phase One:

(i) Before unpriced submittals are considered;

(ii) After any Discussions have commenced under this Rule;

(iii) When responding to any Addenda of the Request for Proposals; or

(iv) In accordance with OAR 125-247-0470.

(e) Procedure for Phase Two.

(A) Initiation. Upon the completion of Phase One, the Authorized Agency must invite each qualified Proposer to submit price Proposals.

(B) Conduct. An Authorized Agency must conduct Phase Two as any other Competitive Sealed Proposal pursuant to OAR 125-247-0260, except:

(i) As specifically set forth in this Rule; and

(ii) No public notice need be given of the request to submit price Proposals because such notice was previously given.

(6) Revised Rounds of Negotiations Multistep Revised Negotiations means a process that begins with the standard Solicitation procedures for an RFP and may include successive rounds of Proposals achieved through Negotiations to gain the best Proposal for purposes of Award. These Negotiations may concern the price, Specifications,

and final terms and conditions, separately or in any combination thereof. The Authorized Agency must treat all Proposers fairly. Before the start of each round of Negotiations, the Authorized Agency must disclose the parameters of that round of Negotiations. At that time, the Authorized Agency may revise the Solicitation's Specifications, terms and conditions, evaluation criteria and weight, and pricing structure in order to best meet the State's interests (Revisions). At each successive round, the Authorized Agency may disregard its scoring of prior Proposals and commence new scoring for the new Proposals. The Authorized Agency may eliminate any Proposal after a round because the Proposal did not meet a minimum score, or the Proposal was not susceptible to award, and then proceed with a subsequent round that requires additional Proposals based on the Revision(s). If any Revision is made by the Authorized Agency in any subsequent round, the Authorized Agency reserves the right, in its sole discretion, to permit any Proposer whose Proposal was previously eliminated to submit a new Proposal, if the reason(s) for the elimination of the prior Proposal by that Proposer no longer applies. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must prequalify suppliers and provide an appeal process in accordance with ORS 279B.120 and related rules.

(7) Negotiations.

(a) The Authorized Agency may negotiate serially with the highest-ranked eligible Proposer or simultaneously with all eligible Proposers as follows:

(A) After an initial determination of which Proposals are Responsive;

(B) After an initial determination of the Competitive Range in accordance with this Rule; or

(C) After conclusion of Discussions with all eligible Proposers and evaluation of revised Proposals.

(b) Conducting Negotiations.

(c) Scope. The Authorized Agency may negotiate:

(A) The statement of work;

(B) The Contract Price as it is affected by negotiating the statement of work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for Negotiation in the Request for Proposals or Addenda thereto. Accordingly, the Proposers must not submit, and the Authorized Agency must not accept, for Negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for Negotiation in the Request for Proposals or Addenda thereto.

(d) Terminating Negotiations. At any time during Discussions or Negotiations that the Authorized Agency conducts in accordance with this Rule, the Authorized Agency may terminate Discussions or Negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Authorized Agency reasonably believes that:

(A) The Proposer is not discussing or negotiating in good faith; or

(B) Further Discussions or Negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(e) Continuing Serial Negotiations. If the Authorized Agency is conducting serial Negotiations and the Authorized Agency terminates Negotiations with a Proposer in accordance with this Rule, the Authorized Agency may then commence Negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this Rule until the Authorized Agency has determined either:

(A) To award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Has completed one step of Discussions or Negotiations with all Proposers in the Competitive Range, unless the Authorized Agency provided for more than one round of Discussions or Negotiations in the Request for Proposals.

(f) Competitive Simultaneous Negotiations. If the Authorized Agency chooses to conduct competitive Negotiations, the Authorized Agency may negotiate simultaneously with competing Proposers. The Authorized Agency:

(A) Must treat all Proposers fairly and must not favor any Proposer over another;

(B) Must only disclose other Proposer's Proposals or the substance of Negotiations with other Proposers if the Authorized Agency notifies all of the Proposers with whom the Authorized Agency will engage in Negotiations before engaging in Negotiations with any Proposer; and

(C) Any oral modification of a Proposal resulting from Negotiations under this Section must be reduced to Writing by the Proposer.

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

Stats. Implemented: ORS 279B.060

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0265

Small Procurements

(1) Generally. For Procurements of Supplies and Services less than or equal to \$5,000 an Authorized Agency may award a Contract as a Small Procurement pursuant to ORS 279B.065 and in accordance with these Rules.

(2) Amendments. An Authorized Agency may amend a Contract awarded as a Small Procurement in accordance OAR 125-246-0560, but the cumulative Amendments must not increase the total Contract Price to greater than \$6,000.

(3) No Fragmentation. A Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement, pursuant to ORS 279B.065(2).

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

Stats. Implemented: ORS 279B.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0270

Intermediate Procurements

(1) Generally. For Procurements of Supplies and Services greater than \$5,000 and less than or equal to \$150,000, an Authorized Agency may award a Contract as an Intermediate Procurement pursuant to ORS 279B.070. Authorized Agencies must procure Intermediate Procurements for Supplies and Services in accordance with ORS 279A and 279B.070.

(a) When conducting an Intermediate Procurement, an Authorized Agency must seek at least three informally solicited competitive price Quotes. Bids or Proposals from prospective Offerors. The Authorized Agency must keep a written record of the sources of the Quotes, Bids or Proposals received. If three Quotes, Bids or Proposals are not reasonably available, fewer will suffice, but the Authorized Agency must make a written record of the effort made to obtain the Quotes, Bids or Proposals.

(b) If a Contract is awarded, the Authorized Agency must award the Contract to the Offeror whose Quote, Bid or Proposal will best serve the interests of the Authorized Agency, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and Contractor responsibility under ORS 279B.110.

(2) Written Solicitation. For Intermediate Procurements from \$5,000 to \$75,000, Authorized Agencies are not required to use a Written Solicitation, but if an Agency elects to use a Written Solicitation, then the requirements of this Section (2) apply. For Intermediate Procurements exceeding \$75,000 and up to \$150,000, Authorized Agencies must use a Written Solicitation. The Written Solicitation must include fair, efficient, competitive Award evaluation criteria. This Written Solicitation may allow revisions to the Solicitation and opportunity for protests, at the discretion of the Agency. The process, potential revisions to the Solicitation, if any, and opportunity for protests, if any, must be disclosed in the Solicitation. Authorized Agencies must document:

(a) The Agency's methodology under this subsection (2),

(b) The Agency's compliance with legal sufficiency review requirements of the Attorney General under ORS 291.047; and

(c) Communications between the Agency and Providers regarding:

(A) The subject matter of OAR 125-246-0635 and ORS 279B.210;

(B) Offers;

(C) The Award; and

(D) Protests, if a protest opportunity is provided by the Agency, at its discretion.

(3) Borderline Procurements. If an Authorized Agency's Designated Procurement Officer or delegatee (DPO) in good faith estimated

that the Procurement would be equal to or less than \$75,000, and learned thereafter that all of the Quotes, Bids, or Proposals were minimally exceeding \$75,000, this Procurement is deemed to have complied with Section (2) of this Rule upon the following conditions:

(a) The DPO must document in the Procurement File the basis for the original estimate under \$75,000 and the process used; and

(b) The Agency must still comply with the remainder of this Rule.

(4) Inclusion of MWESBs. The Solicitations of Agencies must be inclusive, in accordance with Department policy and ORS 200.035.

(5) Notices and ORPIN.

(a) The Agency must post on ORPIN a notice of its verbal or Written Solicitation of at least three Quotes, Bids, or Proposals. In addition, the Agency may informally solicit Quotes, Bids, or Proposals by any other appropriate means (collectively, Notice).

(b) For Intermediate Procurements exceeding \$75,000, the Notice must provide:

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

(B) A general description of the Supplies and Services to be acquired;

(C) A reasonable interval between the first date of Notice of the Written Solicitation and the Closing (Time Period);

(i) For all Intermediate Procurements, the Agency must provide a reasonable and sufficient Time Period in order to meet the objectives of ORS 200.035 (Objectives); Agencies may adjust the Time Period to account for the type of Procurement and needs of the Agencies, so long as the Objectives are not undermined;

(ii) For Intermediate Procurements exceeding \$75,000, the Time Period must be at least seven (7) calendar Days;

(D) The name, title and address of the individual authorized by the Agency to receive Offers; and

(E) Any other information the Agency deems to be appropriate.

(6) Negotiations. An Authorized Agency may negotiate with a Proposer to clarify its Quote, Bid, or Proposal or to effect modifications that will make the Quote, Bid, or Proposal acceptable or make the Quote, Bid, or Proposal more Advantageous to the Authorized Agency.

(7) No Fragmentation. A Procurement may not be artificially divided or fragmented so as to constitute an Intermediate Procurement, pursuant to ORS 279B.070(2).

(8) Agencies must post all Awards over \$5,000 on ORPIN.

(9) Amendments. An Authorized Agency may amend a Contract awarded as an Intermediate Procurement in accordance with OAR 125-246-0560.

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

Stats. Implemented: ORS 279B.070

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0275

Sole-Source Procurements

(1) Generally. An Authorized Agency with delegated authority pursuant to OAR 125-246-0170 may award a Contract without a competitive process through a Sole-Source Procurement pursuant to the requirements of ORS 279B.075, this Rule, and the policy of the Department. The Authorized Agency must make a determination of a sole source based upon Written findings of fact that the Supplies and Services are available from only one source.

(2) Requirements:

(a) Findings of fact required under OAR 125-247-0275(1) may include:

(A) Compatibility. The efficient utilization of existing Supplies and Services requires the acquisition of compatible Supplies and Services from only one source. For example, compatibility may be implicated when: Supplies are required to directly interface with or attach to equipment of the same manufacturer and no other manufacturer's Supplies will correctly interface with existing equipment; or when Services such as maintenance, warranty, project management, or systems integration are required to interface or integrate with existing Supplies and Services.

(B) Exchange of software or data. Specific Supplies and Services, which are available from only one source, may be required for the exchange of software or data with other public or private agencies. This finding may be particularly applicable when the Supplies and Ser-

vices involve assets such as copyrights, patents, trademarks, and trade secrets.

(C) Pilot or experimental project. Supplies and Services are for the use in such projects, which may include but are not limited to research and economic development projects.

(D) Other findings that support the conclusion that Supplies and Services are available from only one source may include but are not limited to considerations of: unique design, availability, geographic location, exclusive authorized representative, cost of conversion, and warranty services.

(b) For all Contracts awarded through Sole-Source Procurements exceeding \$5,000 but not exceeding \$150,000:

(A) The Authorized Agency must place a public notice on ORPIN of its determination that the Supplies and Services or class of Supplies and Services are available from only one source.

(B) The public notice must describe the Supplies and Services to be acquired through a Sole-Source Procurement and identify the prospective Contractor and include the date, time and place that protests are due.

(C) The Authorized Agency must give such public notice at least seven calendar (7) Days before the Award of the Contract to allow for protests pursuant to OAR 125-247-0710. If the State Procurement Office is conducting the Sole-Source Procurement, then the State Procurement Office is the Authorized Agency for purposes of this Rule;

(D) For all Public Contracts exceeding \$75,000 but not exceeding \$150,000, the Authorized Agency must also obtain the prior Written approval of the Chief Procurement Officer or delegatee before the Authorized Agency may award a Public Contract as a Sole-Source Procurement under this Rule.

(c) For all Public Contracts exceeding \$150,000:

(A) The Authorized Agency must place a public notice on ORPIN in accordance with Subsection (2)(b)(A) and (B); and if the State Procurement Office is conducting the Sole-Source Procurement, then the State Procurement Office is the Authorized Agency for purposes of this Rule;

(B) The Authorized Agency must give such public notice at least seven calendar (7) Days before the Award of the Contract to allow for protests pursuant to OAR 125-247-0710; and

(C) The Authorized Agency must obtain the prior Written approval of the Chief Procurement Officer or delegatee before the Authorized Agency may award a Public Contract as a Sole-Source Procurement under this Subsection (2)(b).

(d) Pursuant to ORS 279B.075 and to the extent reasonably practical, the Authorized Agency must negotiate with the sole source to obtain contract terms advantageous to the Authorized Agency.

(3) Protest. An Affected Person may protest the Authorized Agency's determination that the Supplies and Services or class of Supplies and Services are available from only one source in accordance with OAR 125-247-0710.

(4) Brand Name Requirements. If the findings of fact required under this Rule include a specification of a Brand Name, that specification must be in accordance with ORS 279B.215 and OAR 125-247-0691.

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

Stats. Implemented: ORS 279B.075

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0280

Emergency Procurements

(1) An Authorized Agency may award a Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. An Authorized Agency has delegated authority to enter into an Emergency Contract pursuant to OAR 125-246-0170. When an Emergency Procurement is authorized, the Procurement must be made with competition that is practicable under the circumstances.

(2) Pursuant to the requirements of this Rule, the Authorized 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.

(3) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must:

(a) Make a Written declaration of emergency, including findings as follows:

(A) A brief description of the Supplies and Services to be provided under the Contract, together with its anticipated cost;

(B) A brief explanation of how the Contract, in terms of duration or Supplies and Services provided under it, was restricted to the Scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances; and

(C) A description of the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis;

(b) Encourage competition that is practicable under the circumstances; and

(c) Record the measures taken under Subsection (3)(b) to encourage competition; the amounts of the Bids, Quotes or Proposals obtained, if any; and the reason for selecting the Contractor.

(4) Pursuant to ORS 279B.080, the head of the Authorized Agency, or person designated under ORS 279A.075, must declare the existence of the emergency, as required by Subsection (3)(a), which must authorize the Authorized Agency to enter into an Emergency Contract.

(5) Any Contract awarded under this Rule must be awarded within sixty (60) days following the declaration of the emergency unless the head of the Authorized Agency or Person designated has granted an extension.

(6) Agencies must also comply with OAR 137-045-0070, Emergency Public Contract Exemption, if applicable. The Authorized Agency must maintain a copy of any required report in the Authorized Agency's Emergency Procurement File.

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

Stats. Implemented: ORS 279B.080

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0285

Special Procurements; Purpose and Application

(1) Generally. An Authorized Agency may award a Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) Purpose. Pursuant to ORS 279B.085, these Rules establish the criteria for procuring Supplies and Services through Special Procurements by the State Procurement Office and Authorized Agencies. Authorized Agencies must have delegated authority pursuant to OAR 125-246-0170.

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

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0286

Special Procurements; Definitions

As used in this Section and ORS 279B.400:

(1) "Class Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Supplies and Services.

(2) "Contract-specific Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(3) "Special Procurement" means, unless the context requires otherwise, a class Special Procurement, a contract-specific Special Procurement or both.

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

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0287

Special Procurements; Request Procedures

(1) Approval. An Authorized Agency may request approval from the Chief Procurement Officer to use a Special Procurement for a particular Contract or Contracts or for a specific class of Contracts using the designated State Procurement Office form.

(2) Requests. Special Procurement Requests must contain the following:

(a) Request must include reason(s) why Authorized Agency has elected to use Special Procurement and how it will benefit the Authorized Agency or the public.

(b) The Request must include findings, market research, or other documentation that the Special Procurement:

(A) Will be unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts, and

(B) Will either:

(i) Result in substantial cost savings to the Authorized Agency or to the public; or

(ii) Otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any related Rules.

(c) The alternative process designed by the Authorized Agency must be clear and complete, including a description of the Supplies and Services to be acquired, provisions for advertisement, a proposed Solicitation process, including provisions for Amendment and criteria for selection, and the proposed contract document.

(d) The State Procurement Office may require any additional information deemed necessary to evaluate the Authorized Agency's request for approval of a Special Procurement.

(3) Effect. The Special Procurement approval is effective only after the Chief Procurement Officer's approval of the findings and Request and completion of the Public Notice required under Section (4) of this Rule.

(4) Public Notice. The Public Notice process and requirements are as follows:

(a) General. The requesting Authorized Agency must give public notice of the approval of its Special Procurement as required under ORS 279B.085(4) and in accordance with this Rule, unless otherwise directed by the Chief Procurement Officer (Public Notice). As a Written condition to approval of the proposed Special Procurement, the Chief Procurement Officer may require that the State Procurement Office instead of the requesting Agency give the Public Notice.

(b) Content. The Public Notice must at least describe the Supplies and Services or class of Supplies and Services to be acquired through the Special Procurement.

(c) Time Periods.

(A) If the Special Procurement involves one or more Solicitations, then Public Notice of the approval of the proposed Special Procurement must be given at least seven (7) calendar Days before the Award. The Solicitation Document must either contain the attached request and approval of the Special Procurement or incorporate the request and approval by reference with the documents easily accessible to Affected Persons; or

(B) If the Special Procurement does not involve a Solicitation, then Public Notice of the approval of the Special Procurement must be given at least seven (7) Days prior to the commencement of the Special Procurement.

(b) An Authorized Agency may request certain information to be withheld from the public notice requirement of this Rule in cases where confidentiality or security may be jeopardized only pursuant to an exception under the Public Records Law (ORS 192.410 through 192.505).

(5) Protest. An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and OAR 125-247-0700.

(6) Reference. Any Solicitation or Contract resulting from a Special Procurement approval must contain a reference to the number of the approved Special Procurement.

(7) Conditions. If the Chief Procurement Officer provides Written approval of the proposed Special Procurement (Approval), the Authorized Agency must award any Contract under the Special Procurement in accordance with the conditions of this Approval and any subsequent amendments to the Approval. The Approval may include conditions, including but not limited to expiration, Public Notice and dollar limitations, and may be revoked at any time by the Chief Procurement Officer.

(8) If an Authorized Agency competitively solicits, it must comply with the the process described in the Special Procurement or the Rules for that method of Solicitation pursuant to ORS 279B.055 through 279B.075 and 279A.200 et seq.

(9) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency pursuant to ORS 291.047.

(10) All Authorized Agencies must comply with ORS 200.035 and related Department policy, notwithstanding this Rule.

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

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0288

Special Procurements; by Rule

(1) Client Placement and Client Health Care Services.

(a) Authorization and Application. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Class Special Procurement by Rule to enter Written agreements for Client Placement and Client Health Care services, as described in this Rule. When an Authorized Agency determines that a need exists to secure or maintain Client Placement Services or to secure Client Health Care Services, the Authorized Agency may contract subject to the following definitions and conditions of this Section (1).

(A) "Client Placement Services" means securing, enhancing, or continuing the placement of a Client in a structured family-like setting or residential setting operated by a qualified Provider.

(B) "Client Health Care Services" means health care services or provision of incidental or specialized supplies related to the health of a Client. Client Health Care Services include but are not limited to: preventive, diagnostic, therapeutic, behavioral, rehabilitative, maintenance, or palliative care and counseling services, assessment, or procedure with respect to the physical or mental condition, or functional status of a Client, or that affect the structure or function of the body; and the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

(C) Services that may prevent a placement or placement disruption but that cannot definitively be classified as Client Placement Services by the Authorized Agency are deemed to be Client Placement Services and are subject to the Class Special Procurement approved under this Rule. This Class Special Procurement for Client Placement Services may include training only if it is provided directly to the Client, excluding Providers.

(b) Authorized Agencies must execute a Contract or amendment to an existing Contract within sixty (60) days of obtaining the Client Placement Services or Client Health Care Services as defined herein. Should the Authorized Agency fail to execute the Contract within this specified period, then the Authorized Agency may execute the Contract if:

(A) A Written statement of justification that describes the unforeseen or unavoidable circumstances that were reasonably unanticipated and preclude the Authorized Agency from executing the Contract within the initial sixty (60) day period; and

(B) A copy of the Written justification is maintained in the Procurement File.

(c) The Authorized Agency may not make any payments for Client Placement Services or Client Health Care Services before obtaining all requisite approvals of the Contract.

(d) The Authorized Agency must adhere to all requirements of the Code and related Rules and must follow all procedures, and guidelines of the Department when procuring Client Placement Services or Client Health Care Services.

(e) The Authorized Agency must ensure that all Procurement personnel responsible for procuring Placement Services or Client Health Care Services are provided training on the conditions and limitations of this Rule.

(f) Contract Forms. Authorized Agencies must use a Contract form approved by the State Procurement Office when acquiring Client Placement Services or Client Health Care Services pursuant to this Rule. The State Procurement Office may approve the Contract form by facsimile, email, letter or any other method that provides an objective means to verify State Procurement Office approval. The Authorized Agency must review the approved Contract form at least every two years. If the Authorized Agency revises the Contract form, the Authorized Agency must obtain State Procurement Office approval prior to using the revised Contract form.

(g) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency pursuant to ORS 291.047.

(2) Client Services Source Selection.

(a) An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Class Special Procurement Rule.

(b) The Chief Procurement Officer waives the source selection requirements as found in OAR 125-247-0200(1) through (6) for Authorized Agencies to procure Client Services, as defined in OAR 125-246-0110.

(c) The Authorized Agency must solicit to the maximum extent possible for Client Services, except those Client Services covered by Section (1), when there is known competition and may use one of the defined source selection methods as found in OAR 125-247-0200 or an alternative source selection method as determined by the Authorized Agency.

(3) Renegotiations of Existing Contracts with Incumbent Contractors.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Class Special Procurement by Rule to renegotiate and amend existing Contracts with incumbent Contractors, and then only if it is in the best interest of the State.

(b) Process and Criteria. The Authorized Agency may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitution, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The Authorized Agency must meet the following conditions in its Renegotiations with incumbent Contractors:

(A) Favorable Result. The Authorized Agency must determine that, with all things considered, the renegotiated Contract is at least as favorable to the State as the Original Contract and document this in the Procurement File. For example, the Authorized Agency and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;

(B) Within the Scope. The Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the Authorized Agency may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation;

(C) Optional Term or Condition. If a Contractor offered to the Authorized Agency during the original Solicitation a term or condition that was reject at that time, (for the purpose of this subsection only, Rejected Term or Condition), the Authorized Agency may not renegotiate for a lower price based on this Rejected Term or Condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price pursuant to a Rejected Term or Condition without additional consideration from the Authorized Agency and as only an option to the Authorized Agency, then the Authorized Agency may accept the option of a lower price under the Rejected Term or Condition. For example, if the Authorized Agency initially rejected a Contractor's proposed Condition that the price required a minimum order, any renegotiated Contract may not mandate this Condition; but the Authorized Agency may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and

(D) Market. In order to avoid encouraging favoritism or diminishing competition, the Authorized Agency may research the accepted competitive practices and expectations of Offerors within the market for the specific Contract(s) or Classes of Contracts to be renegotiated (Market Norm). If the Authorized Agency researches the Market Norm, then the Authorized Agency must document its results in the Procurement File. Based upon this information, the Authorized Agency may confirm that, if the Authorized Agency follows the Market Norm, favoritism is not likely to be encouraged, competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the Authorized Agency accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.

(4) Advertising Contracts.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Class Special Procurement by Rule to purchase media advertising, regardless of dollar value, without competitive bidding, pursuant to OAR 125-246-0170.

(b) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(5) Equipment Repair and Overhaul.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Class Special Procurement by Rule for equipment repair and overhaul, as described in this Rule.

(b) Conditions. An Authorized Agency, having delegated purchasing authority pursuant to OAR 125-246-0170, may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(C) The Authorized Agency purchases within the limits and pursuant to the methods in (5)(c) of this Rule.

(c) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(6) Contracts for Price Regulated Items.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Class Special Procurement by Rule for the Procurement of price regulated items, and the Authorized Agency must comply with the conditions of this Rule. An Authorized Agency having delegated purchasing authority pursuant to OAR 125-246-0170 may, regardless of dollar value and without competitive bidding, contract for the direct purchase of Supplies and Services where the rate or price for the Supplies and Services being purchased is established by federal, state, or local regulatory authority.

(b) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(7) Investment Contracts.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Class Special Procurement by Rule for investment Contracts, including related Contracts arising from or giving rise to investment opportunities (collectively, investment Contracts), as described in this Rule. An Authorized Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by the Authorized Agency when such investment or borrowing is contracted pursuant to duly enacted statute, or constitution.

(b) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must doc-

ument the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(8) Food Contracts.

(a) Intent. The intent of this Rule is to provide a method for Authorized Agencies to procure food products, which are available for a limited period of time at "lower than normal" prices (also referred to as "spot buys") (Food Contracts).

(b) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Class Special Procurement by Rule for the Procurement of Food Contracts, and the Authorized Agency must comply with the conditions of this Rule.

(c) Conditions. An Authorized Agency may procure an unlimited dollar value of food using a competitive bid or quote process when all of the following conditions are present:

(A) A non-exclusive Mandatory Use 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 Mandatory Use Contract or recent bid (as described in Subsection (8)(d) of this Rule) and the amount saved exceeds any additional administrative costs incurred to purchase using this Special Procurement;

(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 Mandatory Use Contract currently in place for the item being purchased contain clauses allowing for the use of this Special Procurement; and

(E) The purchase does not jeopardize fulfillment of a guaranteed minimum volume under an existing Mandatory Use Contract.

(d) Documentation. Purchases may only be made under this Special Procurement after the Authorized Agency documents the following in its Procurement File in accordance with OAR 125-246-0355: the Authorized Agency's attempt and method to obtain Quotes from at least three sources; the Written Quote or Bid, if obtained; item Specifications; quantity; unit pricing; delivery; and other pertinent information. Contract or bid pricing used for comparison must be representative of current pricing available and must have been obtained or confirmed no more than six (6) months prior to the current purchase. When practical, Written Quotes are recommended.

(e) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN, except when the competitive method involves verbal Quotes for perishable food. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(9) Purchase of Used Personal Property.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Class Special Procurement by Rule Subject to the provisions of this Rule, an Authorized Agency may purchase used property or equipment without competitive bidding and without obtaining Quotes, if, at the time of purchase, the Agency has determined and documented that the purchase will (i) be unlikely to encourage favoritism or diminish competition; and (ii) result in substantial cost savings or promote the public interest. "Used personal property or equipment" means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of the Authorized Agency purchase. "Used personal property or equipment" generally does not include property or equipment if the Authorized Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(b) Process and Criteria.

(A) For purchases of used personal property or equipment not exceeding \$150,000, Authorized Agencies having delegated authority pursuant to OAR 125-246-0170, must, where feasible, obtain three Quotes, unless the Authorized Agency has determined and document-

ed that a purchase without obtaining Quotes will result in cost savings to the Authorized Agency and will not diminish competition or encourage favoritism.

(B) For purchases of used personal property or equipment exceeding \$150,000, the State Procurement Office must obtain and keep a Written record of the source and amount of Quotes received. If three Quotes are not available, a Written record must be made of the attempt to obtain Quotes.

(C) If the total purchase is estimated to exceed \$150,000, an Authorized Agency must submit a Written request for a Written delegation of authority from the State Procurement Office prior to making the purchase.

(D) Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(10) Business Assistance Services.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Class Special Procurement by Rule for Business Assistance Services, as described in this Rule. An Authorized Agency with delegated authority pursuant to OAR 125-246-0170 may, without any competitive process and regardless of dollar amount, procure Business Assistance Services. "Business Assistance Services" mean services that:

(A) Are delivered directly and expediently to small or troubled businesses in Oregon, and

(B) Assist businesses with start-up, growth, revitalization or stabilization.

(b) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(11) Reverse Auctions.

(a) Authority. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Class Special Procurement by Rule.

(b) Process. A Reverse Auction means a process for the purchase of Supplies and Services by a buyer from the lowest Bidder. The Authorized Agency as the buyer must conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, Contract terms and conditions. Then, the Authorized Agency must solicit online Bids from all interested Bidders through an Internet-based program. The Solicitation must set forth a start and end time for Bids and specify the following type of information to be disclosed to Bidders during the Reverse Auction:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above. Before the Reverse Auction commences, Bidders must be required by the Authorized Agency to assent to the Contract terms and conditions, either in Writing or by an Internet "click" agreement. The Bidders then compete for the award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the Authorized Agency. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. The

Authorized Agency may cancel this Solicitation if this Agency determines that it is in this Agency's or the State's best interest. At the end of this Bidding process, the Authorized Agency must award any potential Contract to the lowest Responsible Bidder or in the case of multiple awards, lowest Responsible Bidders pursuant to ORS 279B.055(10)(b). This process allows the Authorized Agency to test and determine the suitability of the Supplies and Services before making the Award. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(c) Policy and Approval. The Authorized Agency must follow the policy of the Department and obtain prior Written approval from the State Procurement Office before using this Reverse Auction Special Procurement.

(d) Public Notice. The Authorized Agency must disclose the Reverse Auction process in the Solicitation Documents. The Authorized Agency must provide initial notice of this Solicitation through ORPIN. The Authorized Agency must give subsequent notices of the price(s) offered, rank(s), score(s) and related details to the initial Bidders, as described in the Solicitation Document. The Authorized Agency must issue a Notice of Intent to award at least seven (7) calendar Days prior to making the Award.

(e) Prequalification. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must prequalify suppliers and provide an appeal process in accordance with ORS 279B.120 and related Rules.

(f) E-Procurement. The requirements of OAR 125-247-0330 apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of this Section (11) take precedence over the more general requirements of OAR 125-247-0330.

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

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0293

Special Procurements: Interstate and International Agreements

(1) Authority. An Authorized Agency with delegated authority in accordance with OAR 125-246-0170 may use this Class Special Procurement by Rule to enter into written Interstate or International agreements for Supplies and Services.

(2) Definitions.

(a) "Interstate Agreements," as used in ORS 190.410 to 190.440, means agreements between or among Public Agencies in this state and in another state for joint or cooperative action. See ORS 190.420(2).

(b) "Public Agency," as defined in ORS 190.410, includes:

(A) "Any county, city, special district or other public corporation, commission, authority or entity organized and existing under laws of this state, or any other state, or under the city or county charter of any county or city of this or any other state";

(B) "Any agency of this state or any other state," and

(C) "Oregon Health and Science University."

(c) "International Agreements," as used in ORS 190.480 to 190.490, means agreements between or among a State Agency and another nation or Public Agency of another nation for joint and cooperative action. See ORS 190.485.

(d) "State Agency," as defined in ORS 190.480, "means every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid wholly or in part from funds held in the State Treasury."

(3) Process.

(a) Agencies may procure and contract for Supplies and Services with other states and related entities outside of the state of Oregon according to the provisions of ORS 190.410 to 190.440.

(b) Agencies may procure and contract with other nations and related entities outside of the United States for Supplies and Services according to the provisions of ORS 190.480 to 190.490.

(c) All Interstate and International Agreements, when required, are subject to review and approval by the Attorney General.

(4) Contracting Procedures. Each Authorized Agency may enter into Interstate and International Agreements for Supplies and Services through negotiation, direct award, direct appointment, or in any other manner or procedure reasonably calculated to result in such Agreements that satisfies the legal requirements and limitations that constrain the contracting entities that are parties to these Agreements.

(5) Application Date. This Rule applies on and after March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stat. Implemented: ORS 279B.085
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0294

Special Procurements: Tribal Agreements

(1) Application and Authority. This Rule applies to Agreements with American Indian Tribes and Agencies of American Indian Tribes. An Authorized Agency that has delegated authority under OAR 125-246-0170 may use this Class Special Procurement to enter into Written agreements for Supplies and Services with American Indian tribes and with agencies of American Indian tribes.

(2) Contracting Procedures. Each Authorized Agency may enter into written agreements for Supplies and Services with American Indian tribes and their agencies through negotiation, direct award, direct appointment, or in any other manner or procedure reasonably calculated to result in an agreement that satisfies the legal requirements and limitations that constrain the contracting entities that are parties to the agreement.

(3) Application Date. This Rule applies on and after March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.085
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0295

Special Procurements: General or Special Counsel Authorized by the Attorney General

(1) Authority and Application. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Class Special Procurement by Rule. Under ORS 180.235, the Oregon Attorney General may authorize a public officer or Agency to retain its own general or special counsel, including but not limited to conflict counsel, other than the Department of Justice. This Rule governs the process for obtaining such counsel.

(2) Definitions For purposes of this Rule only, these terms have the following meanings:

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

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

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

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

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

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

(3) Selection Criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Documentation of Selection

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

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

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

(C) Why the Scope of the Solicitation was reasonable and practical under the circumstances.

(b) As used in (5)(a) above, the public officer may include a member of the Authorized Agency's board or commission.

(c) The record of solicitation must be retained by the Authorized Agency within the Procurement File for the Firm.

(6) The Agency may procure Amendments to existing Contracts under this Rule. In lieu of complying with Sections (4) through (5) of this Rule, the Agency must document why amending the Contract is necessary and in the best interest of the State.

(7) Effective Date. This Rule applies on and after March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.075, 279B.085
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0296

Mandatory Use Contracts and Price Agreements

(1) Mandatory Use Contracts, for the purposes of this Rule and including Department Price Agreements, service agreements, and sales agreements, may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining Agency requirements for volume discounts, standardization among Agencies, and reducing lead time for ordering. A Mandatory Use Contract requires the Authorized Agency to purchase Supplies and Services for an anticipated need at a predetermined price, provided the Mandatory Use Contract is let by a competitive Procurement Process pursuant to the requirements of ORS 279ABC and these Rules.

(2) Authorized Agencies may purchase the Supplies and Services from a Contractor awarded a Mandatory Use Contract without first undertaking additional competitive Solicitation.

(3) Authorized Agencies must use Mandatory Use Contracts established by the Department unless otherwise specified in the Contract, allowed by law or these Rules, or specifically authorized by the State Procurement Office.

(4) Notwithstanding Section (3) above, Authorized Agencies are exempted from Mandatory Use Contracts for acquisition of the following, regardless of dollar amount:

(a) Supplies and Services from another Oregon Public Agency, provided that a formal, Written agreement is entered into between the parties;

(b) Personal property for resale through student stores operated by public educational Agencies; and

(c) Emergency purchases declared by an Authorized Agency pursuant to ORS 279B.

(5) Authorized Agencies may be exempted from a Mandatory Use Contract upon a request to and approval by the State Procurement Office.

(6) The term of the Contract, including renewals, must not exceed the maximum term stated in the original Solicitation.

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

Stats. Implemented: ORS 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

Procurement Process

125-247-0300

Applicability to Methods of Source Selection

(1) Generally. These Procurement Process Rules are intended to apply to more than one sourcing method pursuant to ORS 279B.050 through 279B.090 and to specify those methods.

(2) In the event of conflict or ambiguity arising from specific requirements of another Rule in division 247 and a general Rule under Procurement Process, the specific requirements of another Rule take precedence over the more general requirements of a Rule under Procurement Process.

(3) If a Rule under Procurement Process is silent regarding its specific application or an ambiguity arises regarding the application of any such Rule to any of the seven sourcing methods of ORS 279B.050 through 279B.090, that Rule applies only to Bidding and Proposals in accordance with ORS 279B.055, 279B.060, and OAR 125-247-0255 through 125-247-0261.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0305

Public Notice of Solicitation Documents

(1) Notice and Advertising of Solicitation Documents. An Authorized Agency must provide public notice and advertise every notice of every Solicitation Document on ORPIN in accordance with OAR 125-246-0500. The Authorized Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Authorized Agency's Procurements;

(b) Placing notice on the Authorized Agency's Internet World Wide Web site; or

(c) Publishing notice in a newspaper of general circulation as described in ORS 279B.055(4).

(2) Content of Advertisement. All advertisements for Offers must set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Supplies and Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document and the Closing must not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for an Request for Proposals, unless the Authorized Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event must the interval between the first date of notice of the Solicitation Document and Closing be less than seven (7) Days as set forth in ORS 279B.055(4)(f). The Authorized Agency must document the specific reasons for the shorter public notice period in the Procurement File in accordance with OAR 125-246-0355;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Supplies and Services is one for which Persons must be prequalified;

(e) The office where contract terms, conditions and Specifications may be reviewed if not electronically attached;

(f) The name, title and address of the individual authorized by the Authorized Agency to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the Authorized Agency deems to be appropriate.

(3) Availability of Written Advertisement for Offers. Upon the request of any member of the public, the Authorized Agency must provide a copy of each advertisement for Offers and all supporting documents, to be located in the Procurement File or an identified repository.

(4) Minority, Women, and Emerging Small Business. In accordance with ORS 200.035, an Authorized Agency must provide timely notice of all Procurements to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000.

(5) Fees. The Authorized Agency may charge a fee or require a deposit for the Solicitation Document, supporting documents and any combination thereof.

(6) Notice of Addenda. The Authorized Agency must provide notice to potential Offerors on ORPIN of any Addenda to a Solicitation Document in accordance with OAR 125-247-0430.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0310

Bids or Proposals are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer must be held open by the Offeror for the Authorized Agency's acceptance for the period specified in OAR 125-247-0480. The Authorized Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(2) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to OAR 125-247-0261, a Proposer must not make its Offer contingent upon the Authorized Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under OAR 125-247-0261, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for Negotiation upon and to the extent accepted by the Authorized Agency in Writing.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0320

Facsimile Bids and Proposals

(1) Authorized Agency Authorization. An Authorized Agency may authorize Offerors to submit facsimile Offers. If the Authorized Agency determines that Bid or Proposal security is or will be required, the Authorized Agency should not authorize facsimile Offers unless the Authorized Agency has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Authorized Agency must determine that the Authorized Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Authorized Agency must establish administrative procedures and controls:

(a) To receive, identify, record, and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) Provisions to be Included in Solicitation Document. In addition to all other requirements, if the Authorized Agency authorizes a facsimile Offer, the Authorized Agency will include in the Solicitation Document the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Authorized Agency via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Doc-

ument. The entire response must arrive at the place and by the time specified in this Solicitation Document”;

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: “The Authorized Agency reserves the right to award the Contract solely on the basis of a facsimile Offer. However, upon the Authorized Agency’s request the apparent successful Offeror must promptly submit its complete original Signed Offer;

(e) The data and compatibility characteristics of the Authorized Agency’s receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and

(f) A provision that provides that the Authorized Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0330

E-Procurement

(1) Electronic Procurement Authorized:

(a) An Authorized Agency may conduct all phases of a Procurement, including without limitation, the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Authorized Agency specifies in a Solicitation Document, a request for Quotes, or any other Writing that instructs Persons how to participate in the Procurement.

(b) The Authorized Agency must open an Electronic Offer in accordance with electronic security measures in effect at the Authorized Agency at the time of its receipt of the Electronic Offer. Unless the Authorized Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Authorized Agency’s use of electronic Signatures must be consistent with applicable statutes and rules. An Authorized Agency must authorize, and may limit the use of electronic methods of conducting a Procurement based on the best interests of the Authorized Agency, as determined by the Authorized Agency.

(d) If the Authorized Agency determines that Bid or Proposal security is or will be required, the Authorized Agency should not authorize Electronic Offers unless the Authorized Agency has another method for receipt of such security.

(2) Rules Governing Electronic Procurements. The Authorized Agency must conduct all portions of an electronic Procurement in accordance with these division 247 Rules, unless otherwise set forth in this Rule.

(3) Preliminary Matters. As a condition of participation in an electronic Procurement, the Authorized Agency may require potential Contractors to register with the Authorized Agency before the date and time on which the Authorized Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Authorized Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) Offer Process. An Authorized Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Authorized Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Authorized Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer

submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Authorized Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Authorized Agency will first receive Electronic Offers, the Authorized Agency must begin to accept real time Electronic Offers on ORPIN or other Electronic Procurement System approved by the State Procurement Office (for purposes of this Rule, collectively, ORPIN), and must continue to accept Electronic Offers in accordance with Subsection 5(b) of this Rule until the date and time specified by the Authorized Agency, after which the Authorized Agency will no longer accept Electronic Offers.

(5) Receipt of Electronic Offers:

(a) When an Authorized Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Authorized Agency must receive the Electronic Offers in accordance with these division 247 Rules.

(b) When the Authorized Agency specifies that Persons may submit multiple Offers during a period of time, the Authorized Agency must accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time the Authorized Agency first receives Electronic Offers, the Authorized Agency must post on ORPIN, and update on a real time basis:

(i) The prices of the other Bidders or the price of the most competitive Bidder;

(ii) The rank of each Bidder (e.g., (i) “winning” or “not winning” or (ii) “1st, 2nd, or higher”);

(iii) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(iv) Any combination of (i), (ii) and (iii) above. At any time before the date and time after which the Authorized Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(B) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Authorized Agency first accepts Electronic Offers.

(C) A Person may withdraw an Electronic Offer only in compliance with these division 247 Rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) Failure of the E-Procurement System. In the event of a failure of ORPIN that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Authorized Agency may cancel the Procurement in accordance with OAR 125-247-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the ORPIN becomes available.

(7) Reverse Auctions. If the Authorized Agency desires to conduct a Reverse Auction as defined in OAR 125-247-0288(11), the Authorized Agency must follow the policy of the Department and obtain the prior Written approval of the State Procurement Office before using a Reverse Auction process. The requirements of OAR 125-247-0288(11) apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of OAR 125-247-0288(11) take precedence over the more general requirements of this Rule.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Bid and Proposal Preparation

125-247-0400

Offer Preparation

(1) Instructions. Offerors must submit and Sign their Offers in accordance with the instructions set forth in the Solicitation Document. Offerors must initial and submit any corrections or erasures to their Offers prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) Forms. Offerors must submit their Offer on the form(s) provided in the Solicitation Document, unless Offerors are otherwise instructed in the Solicitation Document.

(3) Documents. Offerors must provide the Authorized Agency with all documents and Descriptive Literature required by the Solicitation Document.

(4) Electronic Submissions. If the Solicitation Document permitted Electronic Offers under OAR 125-247-0330, Offerors may submit their Offers electronically. The Authorized Agency must not consider Electronic Offers unless authorized by the Solicitation Document.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0410

Offer Submission

(1) Product Samples and Descriptive Literature. An Authorized Agency may require Product Samples or Descriptive Literature if the Authorized Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Authorized Agency will dispose of Product Samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) Identification of Offerors:

(a) To ensure proper identification and handling, Offers must be submitted in a sealed envelope appropriately marked or in the envelope provided by the Authorized Agency, whichever is applicable. If the Authorized Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 247 Rules and the instructions set forth in the Solicitation Document.

(b) The Authorized Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) Receipt of Offers. Offerors are responsible for ensuring the Authorized Agency receives their Offers at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0420

Pre-Offer Conferences

(1) Purpose. An Authorized Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the procurement requirements, obtain information, or to conduct site inspections.

(2) Required Attendance. The Authorized Agency may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) Scheduled Time. If an Authorized Agency holds a pre-Offer conference, it must be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) Statements Not Binding. Statements made by an Authorized Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Authorized Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) Authorized Agency Announcement. The Authorized Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with OAR 125-247-0255(2) or 125-247-0260(2).

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0430

Addenda to Solicitation Document

(1) Issuance; Receipt. The Authorized Agency may change a Solicitation Document only by Written Addenda. An Offeror must provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Authorized Agency otherwise specifies in the Addenda.

(2) Notice and Distribution. The Authorized Agency must notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The

Solicitation Document must specify how the Authorized Agency will provide notice of Addenda and how the Authorized Agency will make the Addenda available before Closing, and at each subsequent step or Phase of evaluation if the Authorized Agency will engage in a Multistep Competitive Sealed Bidding process in accordance with OAR 125-247-0256, or a Multi-tiered or Multistep Competitive Sealed Proposals process in accordance with OAR 125-247-0261.

(3) Timelines; Extensions:

(a) The Authorized Agency must issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Authorized Agency may extend the Closing if the Authorized Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by a countervailing public interest, the Authorized Agency must not issue Addenda less than 3 Business Days before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding Subsection (3)(a) of this Rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any step or Phase of competition under a Multistep Sealed Bidding or Multistep Sealed Proposals, issued in accordance with OAR 125-247-0256 or 125-247-0261, must be issued no fewer than five (5) Days before the beginning of that step or Phase of competition, unless the Authorized Agency determines that a shorter period is sufficient to allow the Offerors to prepare for that step or Phase of competition. The Authorized Agency must document the factors it considered in making that determination, which may include, without limitation, the Scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next step or Phase of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR 125-247-0730, by the close of the Authorized Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 125-247-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with OAR 125-247-0730, then the Authorized Agency may only consider an Offeror's request for change or protest to the Addendum, and the Authorized Agency must not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this Subsection (4) of this Rule, an Authorized Agency is not required to provide a protest period for Addenda issued after initial Closing during a or multistep Procurement Process conducted pursuant to ORS 279B.055 or 279B.060 and their respective rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0440

Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror must prepare and submit any modification to its Offer to the Authorized Agency in accordance with OAR 125-247-0400 and 125-247-0410, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror must mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals:

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Authorized Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Authorized Agency.

(b) The Authorized Agency may release an unopened Offer withdrawn under Subsection 2(a) of this Rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror must mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The Authorized Agency must include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement File in accordance with OAR 125-246-0355.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0450

Receipt, Opening, and Recording of Offers

(1) Receipt. An Authorized Agency must electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Authorized Agency must not open the Offer or modification, but must maintain it as confidential and secure until Opening. If the Authorized Agency inadvertently opens an Offer or a modification prior to the Opening, the Authorized Agency must return the Offer or modification to its secure and confidential state until Opening. The Authorized Agency must document the resealing for the Procurement File in accordance with OAR 125-246-0355 (e.g., "Authorized Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and Recording. An Authorized Agency must publicly open Offers including any modifications made to the Offer pursuant to OAR 125-247-0440(1). In the case of Invitations to Bid, to the extent practicable, the Authorized Agency must read aloud the name of each Bidder, and such other information as the Authorized Agency considers appropriate. However, the Authorized Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(5). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Authorized Agency will not read Offers aloud.

(3) Public Record Requests. See OAR 125-247-0630.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0460

Late Offers, Late Withdrawals, and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Authorized Agency must not consider late Offers, withdrawals or modifications except as permitted in OAR 125-247-0470 or 125-247-0261.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0470

Mistakes

(1) General. To protect the integrity of the competitive Procurement Process and to assure fair treatment of Offerors, an Authorized Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) Authorized Agency Treatment of Mistakes. An Authorized Agency must not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Authorized Agency discovers certain mistakes in an Offer after Opening, but before the Award of the Contract, the Authorized Agency may take the following action:

(a) An Authorized Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided: it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) An Authorized Agency may correct a clerical error if the error are evident on the face of the Offer, or other documents submitted with the Offer, and the Offeror confirms the Authorized Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example, a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices must prevail over extended prices.

(c) An Authorized Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this Subsection or an error in judgment;

(C) That the error cannot be corrected or waived under Subsection (b) of this Section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Authorized Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Authorized Agency's or the public's status has not changed so significantly that relief from the forfeiture will Work a substantial hardship on the Authorized Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Authorized Agency.

(d) The criteria in Subsection (2)(c) of this Rule must determine whether an Authorized Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also must apply to the question whether an Authorized Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or Proposal security), or without liability to the Authorized Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Authorized Agency, whether by Award to the next lowest Responsive and Responsible Bidder the most Advantageous Responsive and Responsible Proposer, or by resort to a new Solicitation.

(3) Rejection for Mistakes. The Authorized Agency must reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents accompanying the Offer.

(4) Identification of Mistakes After Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may only withdraw its Offer or rescind a Contract entered into pursuant to this division 247 to the extent permitted by applicable law.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0480

Time for Authorized Agency Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than thirty (30) Days following Closing unless otherwise specified in the Solicitation Document.

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

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0490**Extension of Time for Acceptance of Offer**

An Authorized Agency may request, orally or in Writing that Offerors extend, in Writing, the time during which the Authorized Agency may consider their Offer(s). If an Offeror agrees to such extension, the Offer must continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279B.050 - 279B.090
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Qualifications and Duties**125-247-0500****Responsibility of Offerors**

(1) Determination. Before awarding a Contract, the Authorized Agency must determine that the Offeror submitting the lowest Bid or Proposal or most Advantageous Offer is Responsible. The Authorized Agency must use the standards set forth in ORS 279B.110 and OAR 125-247-0640(1)(c)(F) to determine if an Offeror is Responsible. In the event an Authorized Agency determines an Offeror is not Responsible, it must prepare a Written determination of non-Responsibility as required by ORS 279B.110 and must reject the Offer.

(2) Independent Contractor Status, Tax Compliance, and Requirements to Transact Business in Oregon. For these responsibilities of Offerors, *see* OAR 125-246-0330.

(3) Life Cycle Costing. *See* OAR 125-247-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279B.050 - 279B.090
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0525**Qualified Products Lists**

An Authorized Agency may develop and maintain a qualified products list pursuant to ORS 279B.115.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279B.050 - 279B.090 & 279B.115
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0550**Prequalification of Prospective Offerors; Request for Qualifications (RFQ)**

(1) Prequalification of Prospective Offerors. An Authorized Agency may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125. Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), an Authorized Agency may determine that a prequalified Offeror is not Responsible prior to Contract Award.

(2) Request for Qualifications (RFQ). For purposes of this Section, an RFQ may be used without the RFQ constituting a Prequalification pursuant to Section (1) of this Rule, if the Authorized Agency establishes the RFQ to determine whether competition exists to perform the needed services or to establish a nonbinding, open list of qualified Contractors in addition to the general public and in order to expand the pool of qualified Contractors, prior to issuing a Request for Proposals (RFP). If an Authorized Agency establishes a closed, exclusive, or binding list of qualified Contractors, then the Authorized Agency must comply with Section (1) of this Rule. The Authorized Agency is not required to issue an RFQ and may elect to forego using an RFQ before issuing an RFP.

(a) At a minimum, the RFQ must describe the particular specialty desired, the qualifications the Contractor(s) must have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to: the Contractor's particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services the Contractor has completed, with references concerning past performance; and any other information deemed necessary by the Authorized Agency to evaluate Contractor qualifications.

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

(c) Unless the RFQ establishes that competition does not exist or unless the Solicitation process is canceled or all qualification state-

ments are rejected, all respondents who met the published qualifications must receive a notice, or other materials as appropriate, in addition to the general public, of any required services and have an opportunity to submit a proposal in response to an Authorized Agency's subsequent RFP.

(d) All RFQs must:

(A) Be in Writing;

(B) Be posted on ORPIN;

(C) Provide that the Authorized Agency may, at any time during the Solicitation process, reject any or all Proposals or cancel the Solicitation without liability if it is in the public interest to do so; and

(D) Provide that the Authorized Agency is not responsible for any costs of any proposers incurred while submitting Proposals, and that all Proposers who respond to Solicitations do so solely at their own expense, unless compensation is expressly provided for in the Solicitation Document.

(e) Pursuant to ORS 200.035, the Authorized Agency must notify, in Writing, the Advocate for Minority, Women and Emerging Small Businesses of each Solicitation and contracting opportunity exceeding \$5,000.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279B.050 - 279B.090, 279B.120 & 279B.125
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0575**Debarment of Prospective Offerors**

(1) Generally. An Authorized Agency may Debar prospective Offerors for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

(2) Responsibility. Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), an Authorized Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

(3) Imputed Knowledge. An Authorized Agency may attribute improper conduct of a Person or their affiliate or affiliates having a Contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) Limited Participation. An Authorized Agency may allow a Debarred Person to participate in Solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to an Authorized Agency. The determination must specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279B.050 - 279B.090 & 279B.130
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Offer Evaluation and Award**125-247-0600****Offer Evaluation and Award**

(1) Authorized Agency Evaluation. The Authorized Agency must evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Authorized Agency must not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids:

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Authorized Agency must apply the reciprocal preference set forth in ORS 279A.120(2)(b) and OAR 125-246-0310 for nonresident Bidders.

(B) Public Printing. The Authorized Agency must, for the purpose of evaluating Bids, apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Authorized Agency determines that one or more Bids are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(b) Evaluation of Proposals:

(A) Award When Proposals are Identical. If the Authorized Agency determines that one or more Proposals are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(B) Public Printing. The Authorized Agency must for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Authorized Agency must give preference for Recycled Materials as set forth in ORS 279A.125 and OAR 125-246-0322.

(2) Clarification of Bids. After the Bid Opening, an Authorized Agency may conduct Discussions with apparent Responsive Bidders for the purpose of clarification and to assure full understanding of the Bid. All Bids, at the Authorized Agency's sole discretion, needing clarification must be afforded such an opportunity. The Authorized Agency must document clarification of any Bidder's Bid in the Procurement File in accordance with OAR 125-246-0355.

(3) Negotiations Prohibited or Allowed:

(a) Prohibition in Competitive Sealed Bidding. Except as permitted by this Section 3(b) of this Rule, an Authorized Agency must not negotiate with any Bidder in a competitive sealed bidding pursuant to ORS 279B.060 and related Rule. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-246-0560. An Authorized Agency may conduct Discussions in accordance with OAR 125-247-0256.

(b) Allowance in Other Procurement Methods. An Authorized Agency may conduct Discussions or Negotiations with one or more Offerors in Competitive Sealed Proposals, Small Procurements, Intermediate Procurements, Emergency Procurements if applicable, and Special Procurements if applicable, in accordance with ORS 279B.060(6)(b), OAR 125-247-0260, 125-247-0261, 125-247-0270, 125-247-0287, and 125-247-0288. To the extent practical, an Authorized Agency must negotiate in Sole-Source Procurements in accordance with OAR 125-247-0275. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-246-0560.

(c) Other Procurements. This section (3) does not apply to Small Procurements, Emergency Procurements, or Special Procurements which do not use Solicitations.

(4) Award:

(a) General. If awarded, the Authorized Agency must award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Authorized Agency may award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with the Award based on individual line item, group total of certain items, a "market basket" of items representative of the Authorized Agency's expected purchases, or grand total of all items.

(c) Multiple Awards; Bids:

(A) Notwithstanding Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. A multiple Award may be made if the Award to two or more Bidders is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be awarded for any Invitation to Bid must not preclude the Authorized Agency from awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Authorized Agency must specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services.

(d) Multiple Awards; Proposals:

(A) Notwithstanding Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. A multiple Award may be made if the Award to two or more Proposers is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Proposers that multiple Contracts may be awarded for any Request for

Proposals must not preclude the Authorized Agency from awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Authorized Agency must specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services.

(e) Partial Awards. If after evaluation of Offers, the Authorized Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Authorized Agency may award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Authorized Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or None Offers. An Authorized Agency may award all or no Offers if the evaluation shows an all or no Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

(g) Life Cycle Costing. The Authorized Agency must follow OAR 125-247-0170.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0610

Notice of Intent to Award

(1) Notice of Intent to Award. The Authorized Agency must provide Written notice of its intent to award to all Offerors pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Authorized Agency determines that circumstances require prompt execution of the Contract, in which case the Authorized Agency may provide a shorter notice period. The Authorized Agency must document the specific reasons for the shorter notice period in the Procurement File in accordance with OAR 125-246-0355.

(2) Finality. The Authorized Agency's Award must not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to OAR 125-247-0740; or

(b) The Authorized Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

(3) The Authorized Agency may provide this notice through any reasonable means and, if functionality exists, through ORPIN in accordance with OAR 125-246-0500.

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

Stats. Implemented: ORS 279B.050 - 279B.090 & 279B.135

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0620

Documentation of Award

(1) Basis of Award. After Award, the Authorized Agency must make a record showing the basis for determining the successful Offeror as part of the Authorized Agency's Procurement File in accordance with OAR 125-246-0355.

(2) Contents of Award Record. The Authorized Agency's record must include:

(a) For Bids:

(A) Bids;

(B) Completed Bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals:

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher scoring Proposals; and

(D) If the Authorized Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and OAR 125-247-0261, Written documentation of the content of any Discussions, Negotiations, best and final Offers, or any other procedures the Authorized Agency used to select a Proposer to which the Authorized Agency Awarded a Contract.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0630

Availability of Award Decisions

(1) Contract Documents. To the extent required by the Solicitation Document, the Authorized Agency must deliver to the successful Offeror a Contract, a Signed Purchase Order, Price Agreement, or other Contract documents as applicable.

(2) Availability of Award Decisions. A Person may obtain tabulations of awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the Authorized Agency a Written request accompanied by payment. The requesting Person must provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the Authorized Agency may make available tabulations of Bids and Proposals through ORPIN or the Authorized Agency's website.

(3) Availability of Procurement Files. After the notice of intent to award, the Authorized Agency must make Procurement Files available in accordance with applicable law, except where applicable law requires the Authorized Agency to make information contained in the Procurement Files available prior to any notice of intent to award. See OAR 125-247-0720, 125-247-0730, and the Public Records Law.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0640

Rejection of an Offer

(1) Rejection:

(a) An Authorized Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offer:

(A) Is contingent upon the Authorized Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Supplies and Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public procurement procedures.

(c) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the Authorized Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to OAR 125-246-0210(4) (DBE Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before awarding a Contract, the Authorized Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Authorized Agency must determine pursuant to ORS 279B.110 that the Offeror:

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

(ii) Has a satisfactory record of contract performance. An Authorized 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 Authorized Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the con-

tract, or whether the Offeror took appropriate corrective action. The Authorized Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. Pursuant to ORS 279B.110(2)(b), the Authorized Agency must make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement File in accordance with OAR 125-246-0355;

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if an Authorized Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to an Authorized Agency. An Authorized Agency may find an Offeror non-Responsible based on the lack of integrity of any Person 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 Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. Pursuant to ORS 279B.110(2)(c), the Authorized Agency must make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement File in accordance with OAR 125-246-0355;

(iv) Is qualified legally to contract with the Authorized Agency; and

(v) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Authorized Agency concerning Responsibility, the Authorized Agency must base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) Form of Business Entity. For purposes of this Rule, the Authorized Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Rule or to apply the Debarment provisions of ORS 279B.130.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0650

Rejection of All Offers

(1) Rejection. An Authorized Agency may reject all Offers as set forth in ORS 279B.100. The Authorized Agency must notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) Criteria. The Authorized Agency may reject all Offers based upon the following criteria:

(a) The content of or an error in the Solicitation Document, or the Procurement Process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Authorized Agency cancels the Procurement or Solicitation in accordance with OAR 125-247-0660; or

(f) Any other circumstance indicating that awarding the Contract would not be in the public interest.

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

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0660

Cancellation of Procurement or Solicitation

(1) Cancellation in the Public Interest. An Authorized Agency may cancel a Procurement or Solicitation as set forth in ORS 279B.100.

(2) Notice of Cancellation before Opening. If the Authorized Agency cancels a Procurement or Solicitation prior to Opening, the Authorized Agency must provide Written notice of cancellation in the same manner that the Authorized Agency initially provided notice of the Solicitation. Such notice of cancellation must:

- (a) Identify the Solicitation Document;
- (b) Briefly explain the reason for cancellation; and
- (c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) Notice of Cancellation after Opening. If the Authorized Agency cancels a Procurement or Solicitation after Opening, the Authorized Agency must provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279B.050 - 279B.090
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0670

Disposition of Offers if Solicitation Cancelled

(1) Prior to Opening. If the Authorized Agency cancels a Procurement or Solicitation prior to Opening, the Authorized Agency must return all Offers it received to Offerors unopened, provided the Offerors submitted their Offers in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Authorized Agency must open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the Authorized Agency must delete the Offers from ORPIN or other approved Electronic Procurement System.

(2) After Opening. If the Authorized Agency cancels a Procurement or Solicitation after Opening, the Authorized Agency:

- (a) May return Proposals in accordance with ORS 279B.060(5)(c); and
- (b) Must keep Bids in the Procurement File in accordance with OAR 125-246-0355.

(3) Rejection of All Offers. If the Authorized Agency rejects all Offers, the Authorized Agency must keep all Proposals and Bids in the Procurement File.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279B.050 - 279B.090
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Specifications

125-247-0690

Policy

(1) As provided in ORS 279B.205 and consistent with ORS 279A.015, specifications must seek to promote optimal value and suitability for the purposes intended and to reasonably encourage competition in satisfying an Agency's needs. Subject to ORS 279B.405, the specification content must be determined in the sole discretion of the Agency.

(2) As provided in ORS 279B.210, it is the policy of the State of Oregon to encourage the development of clear, precise and accurate Specifications in Solicitations for Public Contracts. To that end, in developing Specifications, Agencies may consult, under contract or otherwise, with technical experts, suppliers, prospective contractors and representatives of the industries with which the Agencies contract. However, an Agency must take reasonable measures to ensure that no Person who prepares or assists in the preparation of Solicitation Documents, Specifications, plans or Scopes of Work, and no business with which the Person is associated, realizes a material competitive advantage in a Procurement that arises from the Agency's use of the Solicitation Documents, Specifications, plans or Scopes of Work. The policy against the realization of a material competitive advantage from the character of the Specifications developed in conjunction with Persons outside the Agency does not proscribe advantages that result incidentally from an Agency's specification of the characteristics of a product or Work to meet the Agency's needs.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
 Stats. Implemented: ORS 279B.205; 279B.210
 Hist.: DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0691

Brand Name or Equal Specification

(1) Applicability and Use. This Rule applies to Specifications for a Solicitation or class of Solicitations. For a Solicitation or class of

Solicitations under ORS 279B.060, 279B.065, 279B.070, 279B.085, or 279A.200 through 279A.225, as provided in 279B.215:

(a) A brand name or equal Specification may be used when the use of a brand name or equal Specification is advantageous to the Agency, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the Agency.

(b) The Agency is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.

(c) Nothing in this subsection may be construed as prohibiting an Agency from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the Agency.

(2) Determination. A brand name Specification may be prepared and used only if the Agency determines for a Solicitation or a class of Solicitations that only the identified brand name Specification will meet the needs of the Agency based on one or more of the following written determinations:

(a) That use of a brand name Specification is unlikely to encourage favoritism in the awarding of Public Contracts or substantially diminish competition for Public Contracts;

(b) That use of a brand name Specification would result in substantial cost savings to the Agency;

(c) That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or

(d) That efficient utilization of existing Goods requires the acquisition of compatible Goods or Services.

(3) An Agency's use of a brand name Specification may be subject to review only as provided in ORS 279B.400.

(4) Single Manufacturer, Multiple Sellers. An Authorized Agency may prepare and use a brand name or equal Specification for Supplies and Services available from only one manufacturer, but available through multiple sellers, if the Authorized Agency complies with Sections (1) and (2) of this Rule and the following requirements:

(a) If the total purchase is \$5,000 or more but does not exceed \$150,000 and comparable Supplies and Services are not available under an existing Mandatory Use Contract, the Authorized Agency must obtain informal, competitive Quotes, Bids, or Proposals and document this process in the Procurement File pursuant to ORS 279B.070 and OAR 125-247-0270;

(b) If the purchase exceeds \$150,000, and the comparable Supplies and Services are not available under an existing Mandatory Use Contract, an Authorized Agency must first request and obtain prior written authorization from the Chief Procurement Officer to proceed with the acquisition.

(5) Single Manufacturer, Multiple Purchases. If an Authorized Agency intends to make several purchases of brand name-specified Supplies and Services from a particular manufacturer or seller for a period not to exceed five (5) years, the Authorized Agency must so state this information in: the Procurement File; the Solicitation Document, if any; and a Public Notice on ORPIN. Such documentation and Public Notice constitute sufficient notice as to subsequent purchases. If the Authorized Agency estimates the total purchase amount to exceed \$150,000, this estimate must also be stated in the Public Notice.

(6) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency pursuant to ORS 291.047.

(7) All Authorized Agencies must comply with ORS 200.035 and related Department policy, notwithstanding this Rule.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
 Stats. Implemented: ORS 279B.215
 Hist.: DAS 5-2006, f. & cert. ef. 5-31-06

Legal Remedies

125-247-0700

Protests and Judicial Review of Approvals of Special Procurements

(1) Purpose. An Affected Person may protest the approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval a Special Procurement, an Affected Person must file a Written protest with the Chief Procurement Officer and exhaust all administrative remedies.

(2) Delivery. Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Chief Procurement Officer within seven Days after the first date of public notice of the approval of a Special Procurement by the Chief Procurement Officer, unless a different protest period is provided in the public notice of the approval of a Special Procurement:

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Chief Procurement Officer Response. The Chief Procurement Officer must not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this Rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Chief Procurement Officer must issue a Written disposition of the protest in a timely manner. If the Chief Procurement Officer upholds the protest, in whole or in part, the Chief Procurement Officer may with sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) Judicial Review. An Affected Person may seek judicial review of the Chief Procurement Officer's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

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

Stats. Implemented: ORS 279B.400

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0710

Protests and Judicial Review of Sole-Source Procurements

(1) Purpose. For Sole-Source Procurements requiring public notice under OAR 125-247-0275, an Affected Person may protest the determination of the Chief Procurement Officer, or delegatee, that the Supplies and Services or class of Supplies and Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Chief Procurement Officer or delegatee and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the public notice of the Sole-Source Procurement, an Affected Person must deliver Written protest to the Chief Procurement Officer or delegatee within seven (7) Days after the first date of public notice of the Sole-Source Procurement, unless a different protest period is provided in the public notice of a Sole-Source Procurement.

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Chief Procurement Officer Response. The Chief Procurement Officer or delegatee must not consider an Affected Person's Sole-Source Procurement protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the public notice of the Sole-Source Procurement. The Chief Procurement Officer or delegatee must issue a Written disposition of the protest in a timely manner. If the Chief Procurement Officer or delegatee upholds the protest, in whole or in part, the Authorized Agency must not enter into a sole-source Contract.

(5) Judicial Review. Judicial review of the Chief Procurement Officer's or delegatee's disposition of a Sole-Source Procurement protest must be in accordance with ORS 279B.420.

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

Stats. Implemented: ORS 279B.405

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0720

Protests and Judicial Review of Multiple-Tiered and Multistep Solicitations

(1) Purpose. An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a Solicitation

in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Authorized Agency and exhaust all administrative remedies.

(2) Basis for Protest. An Affected Offeror may only protest its exclusion from a tier or step of competition if the Offeror is Responsible and submitted a Responsive Offer and but for the Authorized Agency's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier, step or Phase of competition. For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the Authorized Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(3) Delivery. Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the Authorized Agency within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers, steps or Phases.

(4) Content of Protest. The Affected Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(5) Authorized Agency Response. The Authorized Agency must not consider an Affected Offeror's multi-tiered or multistep Solicitation protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The Authorized Agency must issue a Written disposition of the protest in a timely manner. If the Authorized Agency upholds the protest, in whole or in part, the Authorized Agency may in its sole discretion either issue an Addendum under OAR 125-247-0430 reflecting its disposition or cancel the Procurement or Solicitation under OAR 125-247-0660.

(6) Judicial Review. Judicial review of the Authorized Agency's decision relating to a multi-tiered or multistep Solicitation protest must be in accordance with ORS 279B.420.

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

Stats. Implemented: ORS 279B.405

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0730

Protests and Judicial Review of Solicitations

(1) Purpose. A prospective Offeror may protest the Procurement Process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2)(a). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Authorized Agency and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Authorized Agency not less than seven (7) Days prior to Closing.

(3) Content of Protest. In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest must include a statement of the desired changes to the Procurement Process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) Authorized Agency Response. The Authorized Agency may not consider a Prospective Offeror's Solicitation protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The Authorized Agency must consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Authorized Agency must issue a Written disposition of the protest no less than three (3) business days before Bids, Proposals or Offers are due, unless a Written determination is made by the Authorized Agency that circumstances exist that require a shorter time limit, in accordance with the timeline set forth in ORS 279B.405(6). If the Authorized Agency upholds the protest, in whole or in part, the Authorized Agency may in its sole discretion either issue an Adden-

dum reflecting its disposition under OAR 125-247-0430 or cancel the Procurement or Solicitation under OAR 125-247-0660.

(5) Extension of Closing. If the Authorized Agency receives a protest from a prospective Offeror in accordance with this Rule, the Authorized Agency may extend Closing if the Authorized Agency determines an extension is necessary to consider and respond to the protest.

(6) Clarification. Prior to the deadline for submitting a protest, a prospective Offeror may request that the Authorized Agency clarify any provision of the Solicitation Document. The Authorized Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Authorized Agency unless the Authorized Agency amends the Solicitation Document by Addendum.

(7) Judicial Review. Judicial review of the Authorized Agency's decision relating to a Solicitation protest must be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279B.115 & 279B.405
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0731

Protests and Judicial Review of Qualified Products List Decisions

(1) Purpose. A prospective Offeror may protest the Authorized Agency's decision to exclude the prospective Offeror's Goods from the Authorized Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Authorized Agency's qualified products list decision.

(2) Delivery. Unless otherwise stated in the Authorized Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Authorized Agency within seven (7) Days after issuance of the Authorized Agency's decision to exclude the prospective Offeror's Goods from the qualified products list.

(3) Content of Protest. The prospective Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(4) The Authorized Agency Response. The Authorized Agency may not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Authorized Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. The Authorized Agency must issue a Written disposition of the protest in a timely manner. If the Authorized Agency upholds the protest, it must include the successful protestor's Goods on the qualified products list.

(5) Judicial Review. Judicial review of the Authorized Agency's decision relating to a qualified products list protest must be in accordance with ORS 279B.425.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
 Stats. Implemented: ORS 279B.115
 Hist.: DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0740

Protests and Judicial Review of Contract Award

(1) Purpose. An Offeror may protest the Award of a Contract, or the Intent to Award a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Authorized Agency and exhaust all administrative remedies before seeking judicial review of the Authorized Agency's Contract Award decision.

(2) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Authorized Agency within seven (7) Days after the Award of the Contract or the issuance of the notice of intent to award the Contract, whichever occurs first.

(3) Content of Protest. An Offeror's Written protest must specify the grounds for the protest to be considered by the Authorized Agency pursuant to ORS 279B.410(2).

(4) Authorized Agency Response. The Authorized Agency must not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The Authorized Agency must issue a Written disposition of the

protest in a timely manner as set forth in ORS 279B.410(4). If the Authorized Agency upholds the protest, in whole or in part, the Authorized Agency may in its sole discretion either award the Contract to the successful protestor or cancel the Procurement or Solicitation.

(5) Judicial Review. Judicial review of the Authorized Agency's decision relating to a Contract Award protest must be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279B.410 & 270B.415
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-247-0750

Judicial Review of Other Violations

Any violation of ORS Chapter 279A or 279B by an Authorized Agency, for which no judicial remedy is otherwise provided in the Public Contracting Code, is subject to judicial review as set forth in ORS 279B.420.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279B.420
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0760

Review of Prequalification and Debarment Decisions

Review of the Authorized Agency's prequalification and Debarment decisions must be as set forth in ORS 279B.425.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279B.425
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0770

Dispute Resolution

Agencies are authorized to use dispute resolution pursuant to OAR 125-246-0580.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Contract Amendments

125-247-0800

Contract Amendments

Authorized Agencies must follow the sections of OAR 125-246-0560 related to Supplies and Services.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279B.065(5)(a) & 279A.070
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

DIVISION 248

CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING AND LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS

125-248-0100

Application; Effective Date

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this Division 248 apply to:

(a) The screening and selection of Architects, Engineers, Land Surveyors, and Providers of Related Services under Contracts, and set forth the procedures through which Authorized Agencies select Consultants to perform Architectural, Engineering and Land Surveying Services or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Land Surveyors and Providers of Related Services for certain Public Improvements owned and maintained by a Local Government.

(2) In the event of conflict or ambiguity, the more specific requirements of the Rules in this Division 248 take precedence over the more general requirements of the Rules in Division 246.

(3) The Rules as a whole implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this Division 248 of the Rules specifically addresses matters covered in ORS Chapter 279C.110 through 279C.125.

(4) Delegation of authority for these contracts must be pursuant to OAR 125-246-0170.

(5) The dollar Threshold amounts that are applicable to the Direct Appointment Procedure, OAR 125-248-0200, the Informal Selection Procedure, OAR 125-248-0210, and the Formal Selection Procedure,

OAR 125-248-220, are independent from and have no effect on the dollar Threshold amounts that trigger the legal sufficiency review requirement for Agencies under ORS 291.047.

(6) Effective Date. These Division 248 Rules apply only to the above-described Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

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

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-248-0110

Definitions

The definitions for this Division 248 are found in OAR 125-246-0110, except the following definitions apply only to this Division 248:

(1) "Consultant" for the purposes of these Division 248 Rules means an Architect, Engineer, Land Surveyor or Provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Land Surveyors or providers of Related Services, or any combination of the foregoing.

(2) "Estimated Fee" means an Authorized Agency's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract Solicitation method and is distinct from the total amount payable under the Contract. The Estimated Fee must not be used as a basis to resolve other Public Contracting issues, including without limitation, direct purchasing authority or Public Contract review and approval under ORS 291.047.

(3) "Project" means all components of an Authorized Agency's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering and Land Surveying Services, and Related Services under a Contract.

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

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-248-0120

List of Interested Consultants; Performance Record

(1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering and Land Surveying Services or Related Services may annually submit a statement describing their qualifications and related performance information to Authorized Agencies' office addresses. Authorized Agencies may use this information to create a list of prospective Consultants and which will be updated at least once every two years.

(2) Authorized Agencies may compile and maintain a record of each Consultant's performance under contracts with the particular Authorized Agency, including information obtained from Consultants during an exit interview. Upon request and in accordance with the Oregon Public Records Law (ORS 192.410 through 192.505) Authorized Agencies may make available copies of the records.

(3) Authorized Agencies must keep a record of all Contracts and must make these records available to the public consistent with the requirements of the Oregon Public Records Law (ORS 192.410 through 192.505). Authorized Agencies must include the following information in the record:

(a) Locations throughout the State where the Contracts are performed;

(b) Consultants' principal office address and all office addresses in the State of Oregon;

(c) Consultants' direct expenses on each Contract whether or not those direct expenses are reimbursed. "Direct expenses" include all amounts that are directly attributable to Consultants' services performed under each Contract, including personnel travel expenses, and that would not have been incurred but for the services being performed. The record must include all personnel travel expenses as a separate and identifiable expense on the Contract; and

(d) The total number of Contracts awarded to each Consultant over the immediately preceding 10-year period from the date of the record.

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

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-248-0130

Applicable Selection Procedures; Pricing Information

(1) When selecting the most qualified Consultants to perform Architectural, Engineering or Land Surveying Services, Authorized Agencies that are contracting with Consultants under the conditions listed in ORS 279C.110(2) must follow the applicable selection procedure under either OAR 125-248-0200 (Direct Appointment Procedure), 125-248-0210 (Informal Selection Procedure) or 125-248-0220 (Formal Selection Procedure). Authorized Agencies subject to this Section (1) must not solicit or use pricing policies and proposals or other pricing information to determine a Consultant's compensation until after the Authorized Agency has selected the most qualified Consultant in accordance with the applicable selection procedure.

(2) Authorized Agencies selecting Consultants to perform Related Services must follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Authorized Agencies must follow the applicable selection procedure under OAR 125-248-0200 (Direct Appointment Procedure) if the requirements of OAR 125-248-0200(1) apply, 125-248-0210 (Informal Selection Procedure) or 125-248-0220 (Formal Selection Procedure); and

(b) When selecting a Consultant on the basis of price competition alone, Authorized Agencies must follow either the provisions under OAR chapter 125, division 247 for obtaining and evaluating Bids, or OAR 125-248-0200 (Direct Appointment Procedure) if the requirements of OAR 125-248-0200(1) apply; and

(c) When selecting a Consultant on the basis of price and qualifications, Authorized Agencies must follow either the provisions under OAR chapter 125, division 247 for obtaining and evaluating Proposals, or OAR 125-248-0200 (Direct Appointment Procedure) if the requirements of OAR 125-248-0200(1) apply. Authorized Agencies subject to this Section (2) may request and consider a Proposer's pricing policies, proposals and other pricing information submitted with a Proposal as part of the evaluation.

(3) Authorized Agencies may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If an Authorized Agency uses electronic methods to screen and select a Consultant, the Authorized Agency must conduct the screening and selection procedure by electronic means, substantially in conformance with OAR 125-247-0330 (Electronic Procurement).

(4) In goal of promoting a sustainable economy in the rural areas of the State.

(5) All Agencies must provide timely notice to the Advocate for Minority, Women and Emergency Small Business, pursuant to ORS 200.035.

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

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

Selection Procedures

125-248-0200

Direct Appointment Procedure

(1) Authorized Agencies may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these Rules if:

(a) Emergency. The Authorized Agency finds that an Emergency exists; or

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed \$25,000; or

(c) Continuation of Project with Intermediate Estimated Fee. Where a Project is being continued, as more particularly described below, and where the Estimated Fee will not exceed \$150,000, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Estimated Fee to be made under the Contract does not exceed \$150,000; and

(C) The Authorized Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of selection, to select the Consultant for the earlier Contract; or

(d) Continuation of Project with Extensive Estimated Fee. Where a Project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed \$150,000, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Authorized Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of selection, to select the Consultant for the earlier Contract; and

(C) The Authorized Agency makes written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional Scope of services, will:

(i) Promote efficient use of public funds and resources and result in substantial cost savings to Authorized Agency;

(ii) Protect the integrity of the public contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(2) The Authorized Agencies may select Consultants for Contracts under this Rule from the following sources:

(a) The Authorized Agency's list of Consultants that is created under OAR 125-248-0120 (List of Interested Consultants; Performance Record);

(b) Another Authorized Agency's list of Consultants that the Authorized Agency has created under OAR 125-248-0120 (List of Interested Consultants; Performance Record), with Written consent of that Authorized Agency; or

(c) All Consultants offering the required Architectural, Engineering and Land Surveying Services or Related Services that Authorized Agencies reasonably can identify under the circumstances.

(3) The Authorized Agency must direct Negotiations with Consultants selected under this Rule toward obtaining Written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Authorized Agency as determined solely by the Authorized Agency, taking into account the value, Scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(c) Any other provisions the Authorized Agency believes to be in the Authorized Agency's best interest to negotiate.

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

Stats. Implemented: ORS 279C.110 & 279C.115

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-248-0210

Informal Selection Procedure

(1) Authorized Agencies may use the informal selection procedure described in this Rule to obtain a Contract if the Estimated Fee is expected to not exceed \$150,000.

(2) Authorized Agencies using the informal selection procedure must:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which Consultant's Architectural, Engineering and Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering and

Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) Anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) Date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which most qualified Consultant will be selected. Selection Criteria may include:

(i) Amount and type of resources and number of experienced staff Consultant has available to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected Workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering and Land Surveying Services or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals;

(iii) Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering and Land Surveying Services or Related Services, including but not limited to quality of Work, ability to meet schedules, cost control methods and Contract Administration practices;

(iv) Approach to Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) Proposer's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of Work, if any, previously awarded to Proposer, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and the Authorized Agency is not responsible for any Proposer expenses associated with the RFP;

(G) A statement directing Proposers to the protest procedures set forth in these Rules; and

(H) For Related Services only, pricing policies, proposals and other pricing information.

(b) Provide a Request for Proposals to a minimum of five (5) prospective Consultants drawn from:

(A) The Authorized Agency's list of Consultants that is created and maintained under OAR 125-248-0120 (List of Interested Consultants; Performance Record);

(B) Another Authorized Agency's list of Consultants that is created and maintained under OAR 125-248-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants the Authorized Agency can reasonably locate that offer the desired Architectural, Engineering and Land Surveying Services or Related Services, separately or in any combination thereof.

(c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and select the three highest ranked Proposers.

(3) If the Authorized Agency does not cancel the RFP after it reviews and ranks each Proposer, the Authorized Agency will begin negotiating a Contract with the highest ranked Proposer. The Authorized Agency must direct Negotiations toward obtaining Written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Authorized Agency as determined solely by the Authorized Agency, taking into account the value, Scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(c) Any other provisions the Authorized Agency believes to be in the Authorized Agency's best interest to negotiate.

(4) The Authorized Agency must, either orally or in Writing, formally terminate Negotiations with the highest ranked Proposer if the Authorized Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Authorized Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with Section (3) of this Rule, until Negotiations result in a Contract. If Negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, the Authorized Agency may end the particular informal Solicitation and thereafter may proceed with a new informal Solicitation under this Rule or proceed with a formal Solicitation under OAR 125-248-0220 (Formal Selection Procedure).

(5) The Authorized Agency must terminate the informal selection procedure and proceed with the formal selection procedure under OAR 125-248-0220 if the Scope of the anticipated Contract is revised during Negotiations so that the Estimated Fee will exceed \$150,000. Notwithstanding the foregoing, the Authorized Agency may continue Contract Negotiations with the Proposer selected under the informal selection procedure if the Authorized Agency makes Written findings that contracting with that Proposer will:

(a) Promote efficient use of the public funds, and resources and result in substantial cost savings to the Authorized Agency; and

(b) Protect the integrity of the Public Contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(6) The Authorized Agency must comply with applicable preferences for recycled materials, pursuant to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324.

(7) Minority, Women and Emerging Small Business. In accordance with ORS 200.035, an Authorized Agency must provide timely notice of all Procurements to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000.

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

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-248-0220

Formal Selection Procedure

(1) General. Subject to OAR 125-248-0130 (Applicable Selection Procedures; Pricing Information), Authorized Agencies must use the formal selection procedure described in this Rule to select Consultants if the Consultants cannot be selected under either OAR 125-248-0200 (Direct Appointment Procedure) or under 125-248-0210 (Informal Selection Procedure). The Formal Selection Procedure may otherwise be used at Authorized Agencies' discretion.

(2) Advertisement. Authorized Agencies using the formal selection procedure must obtain Contracts through public advertisement of Requests for Proposals or Requests for Qualifications followed by Requests for Proposals.

(a) The Authorized Agency must advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to: local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences. In addition, an Authorized Agency must use ORPIN pursuant to OAR 125-246-0500, provided the Authorized Agency follows a procedure for electronic advertisement approved by the State Procurement Office or its delegatee.

(A) The Authorized Agency must publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ but in any event no fewer than fourteen (14) calendar Days before the closing date set forth in the RFP or RFQ.

(B) The Authorized Agency must include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering and Land Surveying Services or Related Services the Authorized Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFP or RFQ; and

(iv) The deadline for submitting a Proposal or response to the RFQ.

(b) The Authorized Agency may also send notice of the RFP or RFQ directly to all Consultants on the Authorized Agency's list of Consultants that is created and maintained under OAR 125-248-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. Authorized Agencies may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Authorized Agency may issue an RFP for some or all of the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ.

(a) The Authorized Agency must include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Authorized Agency is seeking Consultants;

(B) A description of the Architectural, Engineering and Land Surveying Services or Related Services the Authorized Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering and Land Surveying Services or Related Services the Authorized Agency seeks;

(F) The RFQ evaluation criteria, including weights, points, or other classifications applicable to each criterion;

(G) A statement whether or not the Authorized Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Proposers responding to the RFQ do so solely at their expense, and the Authorized Agency is not responsible for any Proposer expenses associated with the RFQ.

(b) The Authorized Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultant's general qualifications and related performance information;

(B) A description of Consultant's specific qualifications to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ including Consultant's available resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering and Land Surveying Services or Related Services and references concerning past performance, and a copy of all records, if any, of Consultant's performance under Contracts with any other Authorized Agency;

(D) The number of Consultant's experienced staff available to perform the Architectural, Engineering and Land Surveying Services, and Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of their time that such personnel would spend on those services;

(E) Approach to Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(F) Proposer's geographic proximity to and familiarity with the physical location of the Project;

(G) Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(H) Any other information the Authorized Agency deems reasonable and necessary to evaluate Consultants' qualifications; and

(I) For Related Services only, pricing policies, proposals and other pricing information.

(c) RFQ Evaluation Committee. The Authorized Agency must establish an RFQ evaluation committee of at least two individuals to review, score, and rank the responding Consultants according to the Solicitation criteria. The Authorized Agency may appoint to the evaluation committee, Authorized Agency employees, or employees of other public Authorized Agencies, with experience in architecture, engineering and land surveying, Related Services, construction or Public Contracting. If an Authorized Agency procedure permits, the

Authorized Agency may include on the evaluation committee private practitioners of architecture, engineering and land surveying or related professions. The Authorized Agency must designate one member of the evaluation committee as the evaluation committee chairperson.

(d) The Authorized Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to the following:

(A) Requiring Consultants responding to an RFQ to achieve a Threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications; or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFP.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the Authorized Agency must establish a short list of at least three qualified Consultants, provided however, that if four or fewer Consultants responded to the RFQ, then:

(A) The Authorized Agency may establish a short list of fewer than three qualified Consultants; or

(B) The Authorized Agency may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on the Authorized Agency's short list established under Section (3) of this Rule if the Consultant or any of Consultant's principals, partners or associates is a member of the Authorized Agency's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, the Authorized Agency must provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Authorized Agencies must use the procedure described in Section (4) of this Rule when issuing an RFP for a Contract described in Section (1) of this Rule.

(a) RFP Required Contents. Authorized Agencies using the formal selection procedure must include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering and Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering and Land Surveying Services or Related Services sought will be performed.

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Authorized Agency does not indicate the applicable number of points, weights or other classifications then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposer's availability and capability to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposer's key staff persons in providing similar Architectural, Engineering and Land Surveying Services or Related Services on comparable Projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposer has available to perform the Architectural, Engineering and Land Surveying Service or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in this Section;

(v) The proportion of time Proposer estimates that the staff referenced in this Section, would spend on the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(vi) Proposer's demonstrated ability to successfully complete similar Architectural, Engineering and Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 125-248-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposer's performance history in meeting deadlines, submitting accurate estimates, producing high quality Work, and meeting financial obligations;

(ix) Status and quality of any required license or certification;

(x) Proposer's knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposer's approach to staffing and scheduling needs for the Architectural, Engineering and Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(xiii) Any other criteria that the Authorized Agency seems relevant to the Project and Architectural, Engineering and Land Surveying Services, and Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) Whether interviews are possible and if so, the weight, points, or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the Authorized Agency;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Authorized Agency;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and the Authorized Agency is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these Rules;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not the Authorized Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information the Authorized Agency deems reasonably necessary to permit the Authorized Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(N) A sample form of the Contract; and

(O) For Related Services only, pricing policies, proposals and other pricing information.

(b) RFP Evaluation Committee. The Authorized Agency must establish a committee of at least three individuals to review score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Authorized Agency may include the same members who served on the RFQ evaluation committee. The Authorized Agency may appoint to the evaluation committee, Authorized Agency employees, or employees of other public Authorized Agencies, with experience in architecture, engineering and land surveying, related services, construction or Public Contracting. At least one member of the evaluation committee must be an Authorized Agency employee. If the Authorized Agency procedure permits, the Authorized Agency may include on the evaluation committee private practitioners of architecture, engineering and land surveying or related professions. The Authorized Agency must designate one of its employ-

ees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if the Proposer or any of Proposer's principals, partners or associates is a member of the Authorized Agency's RFP evaluation committee for the Contract.

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it must award weights, points or other classifications indicated in the RFP for the anticipated interview.

(C) The evaluation committee must provide to the Authorized Agency the results of the scoring and ranking for each Proposer.

(c) Initial Negotiations. If the Authorized Agency does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the Authorized Agency will begin negotiating a Contract with the highest ranked Proposer. The Authorized Agency must direct Negotiations toward obtaining Written agreement on:

(A) Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Authorized Agency as determined solely by the Authorized Agency, taking into account the value, Scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(C) Any other provisions the Authorized Agency believes to be in the Authorized Agency's best interest to negotiate.

(d) Subsequent Negotiations. The Authorized Agency must, either orally or in Writing, formally terminate Negotiations with the highest ranked Proposer if the Authorized Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Authorized Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with Section 4(c) of this Rule, until Negotiations result in a Contract. If Negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Authorized Agency may end the particular formal Solicitation. Nothing in this Rule precludes the Authorized Agency from proceeding with a new formal Solicitation for the same Architectural, Engineering and Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

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

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-248-0230

Ties Among Proposers

(1) If an Authorized Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the Authorized Agency may select a candidate through any process that the Authorized Agency believes will result in the best value for the Authorized Agency, taking into account the Scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services. The process must instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Authorized Agency and Proposers and must protect the integrity of the Public Contracting process. Once a tie is broken, the Authorized Agency and the selected Proposer must proceed with Negotiations under OAR 125-248-0210(3) or 125-248-0220(4)(c), as applicable.

(2) If an Authorized Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are equal in terms of price or are equal in terms of price and qualifications, then the Authorized Agency must follow the procedure set forth in OAR 125-246-0300 (Preferences for Oregon Supplies and Services) to select the Consultant.

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

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-248-0240

Protest Procedures

(1) RFP Protest and Request for Change. Consultants may submit a Written protest of anything contained in an RFP and may request a

change to any provision, Specification or Contract term contained in an RFP, no later than seven (7) calendar Days prior to the date Proposals are due unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, Specifications or Contract terms. The Authorized Agency will not consider any protest or request for change that is submitted after the submission deadline.

(2) Protest of Consultant Selection.

(a) In the event of an Award to a single Proposer, the Authorized Agency must provide to all Proposers a copy of the selection notice that the Authorized Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a Written protest of the selection to the Authorized Agency no later than seven (7) calendar Days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP.

(b) Multiple Award. In the event of an Award to more than one Proposer, the Authorized Agency must provide to all Proposers copies of the selection notices that the Authorized Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a Written protest of the selection to the Authorized Agency no later than seven (7) calendar Days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked Proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers, otherwise are not qualified to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP.

(c) Effect of Protest Submission Deadline. The Authorized Agency may not consider any protest that is submitted after the submission deadline.

(3) Resolution of Protests. A duly authorized representative of the Authorized Agency must resolve all timely submitted protests within a reasonable time following the Authorized Agency's receipt of the protest and once resolved, must promptly issue a Written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Authorized Agency must revise the RFP accordingly and must re-advertise the RFP in accordance with these Rules.

(4) Judicial Review. Proposers may be able to obtain judicial review of the Authorized Agency's protest disposition pursuant to ORS 183.484.

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

Stats. Implemented: ORS 279A.065 & 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-248-0250

Solicitation Cancellation; Consultant Responsibility for Costs

An Authorized Agency may cancel a Direct Appointment or Solicitation, whether an informal or formal procedure, or reject all Proposals or responses to RFQs, or any combination of the foregoing, without liability to the Authorized Agency at anytime after issuing a solicitation or RFQ, if the Authorized Agency believes it is in the public interest to do so. Consultants responding to either solicitations or RFQs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFQs.

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

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-248-0260

Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

(1) Definition. For purposes of this Rule, "Local Contracting Agency" is defined in ORS 279A.010(1)(n) and means a local government or special government body authorized by law to conduct a Procurement. "Local Contracting Agency" includes any Person authorized by a Local Contracting Agency to conduct a Procurement on behalf of the Local Contracting Agency.

(2) Generally. If a Local Contracting Agency requires an Architect, Engineer, or Land Surveyor to provide Architectural, Engineering and Land Surveying Services, and Related Services for a Public Improvement owned and maintained by that Local Contracting Agency, and an Authorized Agency will serve as the lead Authorized Agency and will enter into Contracts with Consultants for Architectural, Engineering and Land Surveying Services, and Related Services for that Public Improvement, the Authorized Agency must utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers or Land Surveyors.

(3) Tier One. The Authorized Agency must, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP that was issued under the applicable selection procedures described in OAR 125-248-0210 (Informal Selection Procedure) and 125-248-0220 (Formal Selection Procedure), or from among Architects, Engineers or Land Surveyors identified under OAR 125-248-0200 (Direct Appointment Procedure), and must notify the Local Contracting Agency of the Architects, Engineers or Land Surveyors selected.

(4) Tier Two. In accordance with the qualifications based selection requirements of ORS 279C.110, the Local Contracting Agency must either:

(a) Select an Architect, Engineer or Land Surveyor from the State Authorized Agency's list of Proposers provided from the Authorized Agency to perform the Architectural, Engineering and Land Surveying Services, and Related Services for Local Contracting Agency's Public Improvement; or

(b) Select an Architect, Engineer or Land Surveyor to perform the Architectural, Engineering and Land Surveying Services, and Related Services for the Local Contracting Agency's Public Improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these Division 248 Rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the particular Local Contracting Agency, and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the Authorized Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the Local Contracting Agency's tier two selection must be the highest-ranked firm identified by the Authorized Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local Contracting Agency may provide written notice to the Authorized Agency that the Local Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that the Local Contracting Agency will utilize for the particular procurement. In order for a written direction from the Local Contracting Agency consistent with this Subsection to be effective for a particular Procurement, it must be received by the Authorized Agency with adequate time for the Authorized Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the Local Contracting Agency may apply to the highest ranked firms that are selected under the terms of the procurement document.

(B) An intergovernmental agreement between the Local Contracting Agency and the Authorized Agency outlining the alternative process that the Local Contracting Agency has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Contracting Agencies are involved in a two-tiered selection procedure, the Local Contracting Agencies may name one or more authorized representative(s) to act on behalf of all the Local Contracting Agencies, whether the Local Contracting Agencies are acting collectively or individually, to select the Architect, Engineer or Land Surveyor to perform the Architectural, Engineering and Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple Award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the procurement document, as part of the tier two selection process.

(5) The Authorized Agency must thereafter begin contract Negotiations with the selected Architect, Engineer or Land Surveyor in accordance with the negotiation provisions in OAR 125-248-0200 (Direct Appointment Procedure), 125-248-0210 (Informal Selection Procedure) or 125-248-0220 (Formal Selection Procedure) as applicable.

(6) Nothing in these Division 248 Rules may be construed to deny or limit a Local Contracting Agency's ability to contract directly with Architects, Engineers or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

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

Stats. Implemented: ORS 279C.110 & 279C.115

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

Post-Selection Considerations

125-248-0300

Contract Form; Prohibited Payment Methodology; Purchase Restrictions

(1) Contract Forms. The State Procurement Office or its delegatee must develop and maintain a standard Contract form and an Amendment form, which must be used by the Authorized Agencies in completing all Architectural, Engineering and Land Surveying and Related Services Contracts. These forms can be obtained from the State Procurement Office. Authorized Agencies must review the approved Contract form and Amendment form at least every two years. If upon review the Authorized Agency revises either form, the Authorized Agency must obtain State Procurement Office approval prior to using the revised Contract or Amendment form. In using the standard Contract form and standard Amendment form, Authorized Agencies must abide by the following Contract provisions:

(2) Except as otherwise allowed by law, the Authorized Agency must not enter into any Contract in which the compensation provisions expressly provide for payment of:

(a) Consultant's costs under the Contract plus a percentage of those costs; or

(b) A percentage of the Project construction costs or total Project costs.

(3) Except as otherwise allowed by law, an Authorized Agency must not enter into any Contract in which:

(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel Working on the Project and reimbursable expenses incurred during the performance of Work on the Project (sometimes referred to as a "time and materials" Contract); and

(b) The Contract does not include a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying, and Related Services required under the Contract.

(4) Except in cases of Emergency or in the particular instances noted in the Subsections below, the Authorized Agency must not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for the Authorized Agency from any Consultant under a Contract with an Authorized Agency to perform Architectural, Engineering and Land Surveying, and Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:

(a) Consultant is providing Architectural, Engineering and Land Surveying, or Related Services under a Contract with to perform Design-Build services as defined in OAR 125-249-0010(3) or Energy Savings Performance Contract services (see OAR 125-249-0670 and 125-249-0680); or

(b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to Consultant pursuant to applicable law governing the award of such Contracts.

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

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-248-0310

Expired or Terminated Contracts

(1) If an Authorized Agency enters into a Contract for Architectural, Engineering, and Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Authorized Agency may proceed as follows, subject to the requirements of Subsection (2) of this Rule:

(a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Authorized Agency or caused by any other occurrence outside the reasonable control of the Authorized Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Authorized Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the Amendment, the Authorized Agency and the Consultant must continue performance under the Contract as amended; or

(b) Terminated Contracts. If the Authorized Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Authorized Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering and Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.

(2) The Authorized Agency may proceed under either Subsection (1)(a) or (1)(b) of this Rule only after making Written findings that amending the existing Contract or entering into a new Contract with Consultant will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings;

(b) Protect the integrity of the Public Contracting process and the competitive nature of the procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and

(c) Result in a Contract that is still within the Scope of the final form of the original procurement document.

Stat. Auth.: ORS 279A.050, 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.070, 279C.110 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-248-0330

Special Contract Processes

(1) Consultants for Agreements-To-Agree must be selected, and the Authorized Agency must obtain Architectural, Engineering and Land Surveying and Related Services by selecting a Consultant or Consultants in the following manner:

(a) The Authorized Agency selects one or more Consultants under the applicable provisions of OAR 125-248-0200, 125-248-0210, or 125-248-0220.

(b) The Authorized Agency develops a document that includes the general provisions required under OAR 125-248-300 and a specific Statement of Work for each anticipated Contract under the Agreement-To-Agree document.

(c) When the Authorized Agency selects more than one Consultant under the Agreement-To-Agree Solicitation process, the Authorized Agency must identify a standard in the Solicitation Document and the Agreement-to-Agree to be used in assigning particular Architectural, Engineering and Land Surveying and or Related Services under the Agreements-To-Agree.

(2) Design-Build Contracts involve the provision of both design and construction services for Public Improvements under one Contract. Under most circumstances, Design-Build Contracts are Mixed Contracts with the predominate purpose of the Contract involving construction of the Public Improvement. If the predominate purpose of the Contract is to obtain Architectural, Engineering and Land Surveying and Related Services, selection may proceed under these Division 248 rules, so long as the requirements of OAR 125-248-0300 are not violated. Otherwise, the selection process will require an exemption from competitive bidding under OAR 125-249-0335, unless the Design-Build Contract is to be awarded to the Responsible Bidder submitting the lowest Responsive Bid.

Stat. Auth.: ORS 279A.050, 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.110 & 279C.115
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-248-0340

Contract Amendments

(1) An Authorized Agency may amend any Contract for Architectural, Engineering and Land Surveying and Related Services if the Authorized Agency, in its sole discretion, determines that the Amendment is within the Scope of the final form of the original procurement document the Request for Proposals and that the Amendment would not materially impact the field of competition for the Architectural, Engineering and Land Surveying Services or Related Services described in the final form of the original procurement document. In making this determination, the Authorized Agency must consider potential alternative methods of procuring the services contemplated under the proposed Amendment. An Amendment would not materially impact the field of competition for the services described in the final form of the original procurement document if the Authorized Agency reasonably believes that the number of Proposers would not significantly increase if the procurement document were re-issued to include the additional services.

(2) The Authorized Agency may amend any Contract if the additional services are required by reason of existing or new regulations or ordinances of federal, state or local agencies, and these existing or new regulations or ordinances affect performance of the Original Contract and were not cited in the original Request for Proposals or Contract or were enacted or amended after issuance of the original Request for Proposals or execution of the Original Contract.

(3) All Amendments to Contracts must be in Writing, must be signed by an authorized representative of the Consultant and the Authorized Agency and must receive all required approvals before the Amendments will be binding on the Authorized Agency.

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

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

DIVISION 249

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

125-249-0100

Application; Federal Override; Effective Date

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this Division 249 apply to Public Improvement Contracts as well as Public Contracts for Ordinary Construction Services that are not Public Improvements. Rules that apply specifically to Public Improvement Contracts are so identified. In the event of conflict or ambiguity, the more specific requirements of the Rules in this division 249 take precedence over the more general requirements of the Rules in division 246.

(2) The Rules as a whole implement the Oregon Public Contracting Code (Code), as defined in ORS 279A.010. This Division 249 of the Rules specifically addresses matters covered in ORS 279C.005, 279C.010, 279C.300 through 279C.870. Rules related to Architectural, Engineering, Land Surveying, and Related Services are found in Division 248.

(3) Pursuant to OAR 125-246-0100 and except as otherwise expressly provided in ORS 279C.800 through 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations require additional conditions or conflict with the Code or with these Rules.

(4) These Division 249 Rules apply only to the above-described Public Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

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

Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0110

Policies

In addition to the policies of the Code as set forth in ORS 279A.015, the policy on competition as provided in ORS 279C.300 applies to this division, except as provided in ORS 279C.335. The policy on least-cost for Public Improvements applies as described within ORS 279C.305.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.300 & 279C.305
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0120

Definitions

The definitions for this division 249 are found in OAR 125-246-0110, except the following Rule and definitions apply only to this division 249: Capitalized terms used in this division 249 of the Rules must have the meaning set forth below or within the Sections in which they appear (such as the Section on Alternative Contracting Methods beginning at OAR 125-249-0600, and if not defined there, then the meaning set forth in Division 246 of the Rules, and if not defined there, then the meaning set forth in the Code at ORS 279A.010 (general definitions) or 279C.330 (for the term Findings).

(1) "Competitive Range" means the number of Proposers with whom the Authorized Agency will conduct Discussions or Negotiations if the Authorized Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-249-0390. The size of the Competitive Range must be stated in the Solicitation Document, but will be decreased if the number of Proposers that submit Proposals is less than the specified number, or may be increased by the Authorized Agency in accordance with OAR 125-249-0390.

(2) "Conduct Disqualification" means a Disqualification pursuant to ORS 279C.440.

(3) "Disqualification" means the preclusion of a Person from contracting with an Authorized Agency for a period of time. Disqualification may be a Conduct Disqualification or DBE Disqualification. An Authorized Agency is authorized to disqualify a Person in accordance with OAR 125-249-0370.

(4) "Foreign Contractor" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See OAR 125-249-0490.

(5) "Notice" means any of the alternative forms of public announcement of Procurements, as described OAR 125-249-0210.

(6) "Responsible Offeror" (also, Responsible Bidder or Responsible Proposer, as applicable) means a Person that has submitted an Offer and meets the standards set forth in OAR 125-249-0390(2) and that has not been disqualified by the Authorized Agency under OAR 125-249-0370. When used alone, "Responsible" means meeting the aforementioned standards.

(7) "Responsive Offer" (also, Responsive Bid or Responsive Proposal, as applicable) means an Offer that substantially complies in all material respects with applicable Solicitation procedures and requirements and the Solicitation Document. When used alone, "Responsive" means having the characteristic of substantially complying in all material respects with applicable Solicitation procedure and requirements and the Solicitation Document.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0130

Competitive Bidding Requirement

An Authorized Agency must solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required pursuant to ORS 279C.335 on competitive bidding exceptions and exemptions, ORS 279A.030 on federal law overrides, or ORS 279A.100 on affirmative action. Also see OAR 125-249-0600 to 125-249-0690 regarding the use of Alternative Contracting Methods and the exemption process.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.335
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0140

Contracts for Construction Other Than Public Improvements

(1) Procurement Under ORS chapter 279B. Pursuant to ORS 279C.320, Public Contracts for construction Services that are not Public Improvement Contracts, other than Emergency Contracts regulated under ORS 279C.335(6) and OAR 125-249-0150, may be procured and amended as general Trade Services under the provisions of ORS chapter 279B rather than under the provisions of ORS chapter 279C and these division 249 Rules.

(2) Application of ORS chapter 279C. Non-procurement provisions of ORS chapter 279C and these division 249 Rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 510, 515, 520, 525, and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 555, 560 and 565); Subcontracts (ORS 279C.580 and 279C.585); Action on Payment Bonds (ORS 279C.600, 610, 615, 620 and 625); Termination (ORS 279C.650, 655, 660, 665 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.320
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0150

Emergency Contracts; Bidding and Bonding Exemptions

(1) Emergency Declaration. Pursuant to ORS 279C.335(6) and this Rule, an Authorized Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration must be made at an administrative level consistent with the Authorized Agency's internal policies, by a Written declaration that describes the circumstances creating the Emergency as that term is defined at ORS 279A.010(1)(f), and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration must exempt the Public Contract from the competitive bidding requirements of ORS 279C.335(1) and must thereafter be kept on file as a public record.

(2) Competition for Contracts. The Authorized Agency must ensure competition for an Emergency Contract as reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers, or direct appointment without competition in cases of extreme necessity, in whatever Solicitation time periods the Authorized Agency considers reasonable in responding to the Emergency.

(3) Contract Scope. Although no dollar limitation applies to Emergency Contracts, the Scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) Contract Modification. Emergency Contracts may be modified by change order or Amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

(5) Excusing Bonds. Pursuant to ORS 279C.380(4) and this Rule, the Emergency declaration may also state that the Authorized Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the Procurement.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.335(5) & 279C.380(4)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0160

Intermediate Procurements; Competitive Quotes and Amendments

(1) General. Public Improvement Contracts estimated by the Authorized Agency not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways, bridges and other transportation projects (Threshold), may be Awarded in accordance with intermediate level procurement procedures for Competitive Quotes established by this Rule.

(2) Selection Criteria. The selection criteria may be limited to price or some combination of price, experience, specific expertise,

availability, project understanding, Contractor capacity, responsibility and similar factors.

(3) Request for Quotes. Authorized Agencies must utilize Written requests for Quotes whenever reasonably practicable. Written request for Quotes must include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Authorized Agency must state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) Number of Quotes; Record Required. Authorized Agencies must seek at least three (3) competitive Quotes, and keep a Written record of the sources and amounts of the Quotes received. If three (3) Quotes are not reasonably available the Authorized Agency must make a Written record of the effort made to obtain those Quotes.

(5) Award. If awarded, the Authorized Agency must Award the Contract to the prospective Contractor whose quote will best serve the interests of the Authorized Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Authorized Agency must make a Written record of the basis for Award.

(6) Price Increases. Intermediate level Public Improvement Contracts obtained by Competitive Quotes may be increased above the original amount of Award by the Authorized Agency issuance of a Change to the Work or Amendment, pursuant to OAR 125-249-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the Original Contract amount, when an Authorized Agency's Designated Procurement Officer determines that a price increase is warranted for additional reasonably related Work;

(b) Up to an aggregate Contract Price increase of 50% over the Original Contract amount, when an Authorized Agency's Designated Procurement Officer determines that a price increase is warranted for additional reasonably related Work and the head of the Authorized Agency or supervisor of the Designated Procurement Officer approves the increase; and

(c) An unlimited increase over the Original Contract amount, when the aggregate amount of the Contract, including all Changes to the Work and Amendments, does not exceed the Threshold stated in Section (1).

(7) Amendments. Amendments of intermediate level Public Improvement Contracts that exceed the Threshold stated in Section (1) are specifically authorized by the Code, when made in accordance with this Rule and OAR 125-249-0910. Accordingly, such Amendments are not considered new Procurements and do not require an exemption from competitive bidding.

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

Stats. Implemented: Temporary provisions relating to competitive quotes were not codified but compiled as Legislative Counsel notes following ORS 279C.410

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06

Formal Procurement Rules

125-249-0200

Solicitation Documents; Required Provisions; Assignment or Transfer

(1) Solicitation Document. Pursuant to ORS 279C.365 and this Rule, the Solicitation Document must include the following:

(a) General Information:

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the Authorized Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by Facsimile or electronic means (See OAR 125-249-0300 regarding Facsimile Bids or Proposals and OAR 125-249-0310 regarding electronic Procurement);

(F) The time, date and place of Opening;

(G) The time and date of Closing after which an Authorized Agency will not accept Offers, which time must be not less than five (5) Days after the date of the last publication of the advertisement. Although a minimum of five (5) Days is proscribed, Authorized Agencies are encouraged to use at least a (fourteen) 14 Day Solicitation period when feasible. If the Authorized Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the Authorized Agency must designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and OAR 125-249-0360. For timing issues relating to Addenda, see OAR 125-249-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder", as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no Offer will be received or considered by the Authorized Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 276a";

(K) A statement that the Authorized Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in OAR 125-249-0230;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-249-0440(3));

(N) How the Authorized Agency will notify Offerors of Addenda and how the Authorized Agency will make Addenda available (See OAR 125-249-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in OAR 125-249-0360.

(b) Evaluation Process:

(A) A statement that the Authorized Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon the Authorized Agency's finding that it is in the public interest to do so;

(B) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the Authorized Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and OAR 125-249-0620), along with the process the Authorized Agency will use to determine acceptability of the Work;

(i) If the Solicitation Document is an Invitation to Bid, the Authorized Agency must set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors must be objective, reasonable estimates based upon information the Authorized Agency has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the Authorized Agency must refer to the additional requirements of OAR 125-249-0650.

(c) Contract Provisions. The Authorized Agency must include all contract terms and conditions, including warranties, insurance and bonding requirements, that the Authorized Agency considers appropriate for the Public Improvement project. The Authorized Agency must also include all applicable contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) Maximum hours, holidays and overtime (ORS 279C.540);

(L) Time limitation on claims for overtime (ORS 279C.545);

(M) Prevailing wage rates (ORS 279C.800 to 279C.870);

(i) Fee paid to BOLI (ORS 279C.830);

(ii) BOLI Public Works bond (ORS 279C.830(3));

(N) Retainage (ORS 279C.550 to 279C.570);

(i) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(O) Contractor's relations with subcontractors (ORS 279C.580);

(P) Notice of claim (ORS 279C.605);

(Q) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(R) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor must not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the Authorized Agency's prior Written consent. Unless otherwise agreed by the Authorized Agency in Writing, such consent must not relieve the Contractor of any obligations under the Contract. Any assignee or transferee must be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Authorized Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, must remain liable to the Authorized Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Authorized Agency otherwise agrees in Writing.

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

Stats. Implemented: ORS 279A.110(4), 279A.120, 279C.365, 279C.370, 279C.390, 279C.505 - 580, 279C.605, 305.385, 468A.720, 701.005 & 701.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0210

Notice and Advertising Requirements; Posting

(1) Notice and Distribution Fee. An Authorized Agency must furnish "Notice," as set forth below in Section (2), to a number of Persons sufficient for the purpose of fostering and promoting competition. The

Notice must indicate where, when, how, and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The Authorized Agency may charge a fee or require a deposit for the Solicitation Document.

(2) Advertising. Pursuant to ORS 279C.360 and this Rule, an Authorized Agency must advertise on ORPIN every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Chief Procurement Officer has exempted the Solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335.

(a) The Authorized Agency must furnish Notice using ORPIN and may use any additional method determined to foster and promote competition, including:

(A) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Authorized Agency's Procurements;

(B) Placing a Notice on the Authorized Agency's Internet World Wide Web site; or

(C) Publishing a Notice in a newspaper of general circulation as described in ORS 279C.360(1).

(b) Authorized Agencies must publish advertisements utilizing ORPIN as required under Sections (2)(a). Authorized Agencies may also publish advertisements utilizing other forms of Electronic Advertisement, such as Authorized Agency and general circulation web sites, as permitted under Section (2)(a). Authorized Agencies may also publish advertisements utilizing at least one (1) newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Authorized Agency determines to be necessary or desirable to foster and promote competition.

(c) An Authorized Agency may publish by Electronic Advertisement if the Authorized Agency posts in its business office a notice that the Authorized Agency will publish advertisements for Offers by Electronic Advertisement. The notice must include the World Wide Web location (i.e., Uniform Resource Locator or URL) where the Authorized Agency publishes Electronic Advertisements or alternatively, to the Web location where the Authorized Agency publishes information on accessing the Electronic Advertisement via Telnet; and

(d) In addition to the Authorized Agency's publication required under Subsection 2(a) or 2(b), the Authorized Agency must also publish advertisement for Offers in at least one (1) trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

(e) All advertisements for Offers must set forth:

(A) The Public Improvement project;

(B) The office where Contract terms, conditions and Specifications may be reviewed;

(C) The date that Persons must file applications for prequalification under ORS 279C.430, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;

(D) The scheduled Closing, that must not be less than five (5) Days after the date of the last publication of the advertisement;

(E) The name, title and address of the Authorized Agency Person authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276(a)).

(3) Availability of Written Advertisement for Offers. Upon the request of any member of the public, the Authorized Agency must provide a copy of each advertisement for Offers and all supporting documents, to be located in the Procurement File or an identified repository.

(4) Minority, Women Emerging Small Business. State Authorized Agencies must provide timely notice of all Solicitations to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000. See ORS 200.035.

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

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

Stats. Implemented: ORS 279C.360 & 200.035

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0220

Prequalification of Offerors

(1) Prequalification. Pursuant to ORS 279C.430 and this Rule, two types of prequalification are authorized:

(a) Mandatory Prequalification. An Authorized Agency may, by rule, resolution, ordinance or other regulation, require mandatory prequalification of Offerors on forms prescribed by the State Procurement Office. An Authorized Agency must indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when an Authorized Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Authorized Agency must not consider an Offer from a Person that is not prequalified if the Authorized Agency required prequalification.

(b) Permissive Prequalification. An Authorized Agency may prequalify a Person for the Authorized Agency's Solicitation list on forms prescribed by the State Procurement Office, but in permissive prequalification the Authorized Agency must not limit distribution of a Solicitation to that list.

(2) Prequalification Presumed. If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Department to perform Contracts, the Offeror must be rebuttably presumed qualified to perform similar Work for other Authorized Agencies.

(3) Standards for Prequalification. A Person may prequalify by demonstrating to the Authorized Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and Personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the Authorized Agency. (See OAR 125-249-0390(2) regarding standards of responsibility).

(4) Notice of Denial. If a Person fails to prequalify for a mandatory prequalification, the Authorized Agency must notify the Person and specify the reasons under Section (3) of this Rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

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

Stats. Implemented: ORS 279C.430 & 279C.435

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0230

Eligibility to Bid or Propose; Registration or License

(1) Construction Contracts. An Authorized Agency must not consider a Person's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.

(2) Landscape Contracts. An Authorized Agency must not consider a Person's Offer to do Work as a landscape Contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape Contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the Offer is made.

(3) Noncomplying Entities. The Authorized Agency must deem an Offer received from a Person that fails to comply with this rule non-responsive and must reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding Authorized Agencies.

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

Stats. Implemented: ORS 279C.365, 671.530 & 701.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0240

Pre-Offer Conferences

(1) Purpose. An Authorized Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the procurement requirements, obtain information, or to conduct site inspections.

(2) Required Attendance. The Authorized Agency may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a Person identifying themselves as a representative of an offering firm is present.

(3) Scheduled Time. If an Authorized Agency holds a pre-Offer conference, it must be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) Statements Not Binding. Statements made by an Authorized Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Authorized Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) Authorized Agency Announcement. The Authorized Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with OAR 125-249-0200(1)(a)(B).

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

Stats. Implemented: ORS 279C.365 & 279C.370

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0250

Addenda to Solicitation Documents

(1) Issuance; Receipt. The Authorized Agency may change a Solicitation Document only by Written Addenda. An Offeror must provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Authorized Agency otherwise specifies in the Addenda or in the Solicitation Document.

(2) Notice and Distribution. The Authorized Agency must notify prospective Offerors of Addenda consistent with the standards of Notice set forth in OAR 125-249-0210(1). The Solicitation Document must specify how the Authorized Agency will provide notice of Addenda and how the Authorized Agency will make the Addenda available (see, OAR 125-249-0200(1)(a)(N)). For example, "The Authorized Agency will not mail notice of Addenda, but will publish notice of any Addenda on the Authorized Agency's Web site. Addenda may be downloaded off the Authorized Agency's Web site. Offerors should frequently check the Authorized Agency's Web site until closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions. The Authorized Agency must issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Authorized Agency may extend the Closing if the Authorized Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the Authorized Agency must not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR 125-249-0260, by the close of the Authorized Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 125-249-0260, whichever date is later. The Authorized Agency must consider only an Offeror's request for change or protest to the Addendum; the Authorized Agency must not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the Authorized Agency's receipt of request for change or protests as set forth in OAR 125-249-0260(2) and (3).

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

Stats. Implemented: ORS 279A.065 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0260

Request for Clarification or Change; Solicitation Protests

(1) Clarification. Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Authorized Agency clarify any provision of the Solicitation Document. The Authorized Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Authorized Agency unless the Authorized Agency amends the Solicitation Document by Addendum.

(2) Request for Change:

(a) Delivery. An Offeror may request in Writing a change to the Specifications or contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Authorized Agency not less than ten (10) Days prior to Closing;

(b) Content of Request for Change:

(A) An Offeror's Written request for change must include a statement of the requested change(s) to the contract terms and conditions, including any Specifications, together with the reason for the requested change.

(B) An Offeror must mark its request for change as follows:

(i) "Contract Provision Request for Change"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) Protest.

(a) Delivery. An Offeror may protest Specifications or contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the Authorized Agency not less than ten (10) Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest must include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the contract terms and conditions, including any Specifications.

(B) An Offeror must mark its protest as follows:

(i) "Contract Provision Protest"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document)

(4) The Authorized Agency Response. The Authorized Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Authorized Agency must provide notice to the applicable Person if it entirely rejects a protest. If the Authorized Agency agrees with the Person's request or protest, in whole or in part, the Authorized Agency must either issue an Addendum reflecting its determination under OAR 125-249-0260 or cancel the Solicitation under 125-249-0270.

(5) Extension of Closing. If an Authorized Agency receives a Written request for change or protest from an Offeror in accordance with this Rule, the Authorized Agency may extend Closing if the Authorized Agency determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

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

Stats. Implemented: ORS 279C.345 & 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0270

Cancellation of Solicitation Document

(1) Cancellation in the Public Interest. An Authorized Agency may cancel a Solicitation for good cause if the Authorized Agency finds that cancellation is in the public interest. The Authorized Agency's reasons for cancellation must be made part of the Solicitation file.

(2) Notice of Cancellation. If the Authorized Agency cancels a Solicitation prior to Opening, the Authorized Agency must provide Notice of cancellation in accordance with OAR 125-249-0210(1). Such notice of cancellation must:

(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.

(3) Disposition of Offers:

(a) Prior to Offer Opening. If the Authorized Agency cancels a Solicitation prior to Offer Opening, the Authorized Agency will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Authorized Agency will open the Offer to determine the source and then return it to the Offeror.

(b) After Offer Opening. If the Authorized Agency rejects all Offers, the Authorized Agency will retain all such Offers as part of the Authorized Agency's Solicitation file.

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

Stats. Implemented: ORS 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0280

Offer Submissions

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive bidding, the Offer is always a "Firm Offer," i.e., the Offer must be held open by the Offeror for the Authorized Agency's acceptance for the period specified in OAR 125-249-0410. The Authorized Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) In competitive Proposals, the Solicitation Document must describe whether Offers are to be made and considered as "Firm Offers" that may be accepted without Negotiation, as in the case of competitive bidding, or whether Offers are subject to Discussion, Negotiation or otherwise are not to be considered as final Offers. See OAR 125-249-0650 on Requests for Proposals and OAR 125-249-0290 on Bid or Proposal Security.

(2) Responsive Offer. An Authorized Agency may award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to OAR 125-249-0650, an Offeror must not make an Offer contingent upon the Authorized Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges they have read and understand the terms and conditions contained in the Solicitation Document and that they accept and agree to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under OAR 125-249-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for Negotiation upon and to the extent accepted by the Authorized Agency in Writing.

(5) Instructions. Offerors must submit and Sign their Offers in accordance with the Solicitation Document. Offerors must initial and submit any corrections or erasures to their Offers prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

(6) Forms. Offerors must submit their Offers on the form(s) provided in the Solicitation Document, unless Offerors are otherwise instructed in the Solicitation Document.

(7) Documents. Offerors must provide the Authorized Agency with all documents and Descriptive Literature required under the Solicitation Document.

(8) Facsimile or Electronic Submissions. If the Authorized Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Authorized Agency must not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

(9) Product Samples and Descriptive Literature. An Authorized Agency may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Authorized Agency will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(10) Identification of Offers:

(a) To ensure proper identification and handling, Offers must be submitted in a sealed envelope appropriately marked or in the envelope provided by the Authorized Agency, whichever is applicable.

(b) The Authorized Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(11) Receipt of Offers. The Offerors are responsible for ensuring that the Authorized Agency receives their Offers at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

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

Stats. Implemented: ORS 279C.365 & 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0290

Bid or Proposal Security

(1) Security Amount. If an Authorized Agency requires Bid or Proposal security, it must be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. An Authorized Agency must not use Bid or Proposal security to discourage competition. The Authorized Agency must clearly state any Bid or Proposal security require-

ments in its Solicitation Document. The Offeror must forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required any required proof of insurance. See ORS 279C.365(4) and 279C.385.

(2) Requirement for Bid Security (Optional for Proposals). Unless an Authorized Agency has otherwise exempted a Solicitation or class of Solicitations from Bid security pursuant to ORS 279C.390, the Authorized Agency must require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Authorized Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.365(5). The Authorized Agency may require Bid security even if it has exempted a class of Solicitations from Bid security. Authorized Agencies may require Proposal security in RFPs when Award of a Public Improvement Contract may be made without Negotiation following receipt of a Firm Offer as described in OAR 125-249-0280(1)(b). See ORS 279C.400(5).

(3) Form of Bid or Proposal Security. An Authorized Agency may accept only the following forms of Bid or Proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

(4) Return of Security. An Authorized Agency must return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The Authorized Agency may return the Bid or Proposal security of unsuccessful Offerors prior to award if the return does not prejudice Contract Award and the security of at least the Bidders with the three (3) lowest Bids, or the Proposers with the three (3) highest scoring Proposals, is retained pending execution of a Contract.

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

Stats. Implemented: ORS 279C.365 & 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0300

Facsimile Bids and Proposals

(1) The Authorized Agency Authorization. An Authorized Agency may authorize Offerors to submit facsimile Offers. If the Authorized Agency determines that Bid or Proposal security is or will be required, the Authorized Agency must not authorize facsimile Offers unless the Authorized Agency has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Authorized Agency must determine that the Authorized Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Authorized Agency must establish administrative procedures and controls:

(a) To receive, identify, record and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) Provisions to be Included in Solicitation Document. In addition to all other requirements, if the Authorized Agency authorizes a facsimile Offer for Bids or Proposals, the Authorized Agency must include in the Solicitation Document (other than in a request for Quotes) the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer', as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Authorized Agency via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The Authorized Agency reserves the right to award the Contract solely on the basis of the facsimile Offer. However, upon the Authorized Agen-

cy's request the apparent successful Offeror must promptly submit its complete original Signed Offer";

(e) The data and compatibility characteristics of the Authorized Agency's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and

(f) A provision that the Authorized Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

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

Stats. Implemented: ORS 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0310

Electronic Procurement

(1) General. Authorized Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to award electronically as provided by ORS 279C.410(7).

(2) Alternative Procedures. In the event that an Authorized Agency desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract, by electronic means, as allowed under ORS 279C.365(1)(d), it must first promulgate supporting procedures substantially in conformance with OAR 125-247-0330 (Electronic Procurement under ORS chapter 279B), taking into account ORS chapter 279C requirements for Written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) Interpretation. Nothing in this Rule must be construed as prohibiting Authorized Agencies from making Procurement Documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy.

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

Stats. Implemented: ORS 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0320

Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror must prepare and submit any modification to its Offer to the Authorized Agency in accordance with OAR 125-249-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror must mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Authorized Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority;

(b) The Authorized Agency may release an unopened Offer withdrawn under Subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark;

(c) The Offeror must mark the Written request to withdraw an Offer as follows:

- (A) Bid (or Proposal) Withdrawal; and
- (B) Solicitation Number (or Other Identification as specified in the Solicitation Document).
- (3) Documentation. The Authorized Agency must include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279C.360(2), 279C.365, 279C.375 & 279C.395
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0330

Receipt, Opening and Recording of Offers; Confidentiality of Offers

(1) Receipt. An Authorized Agency must electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Authorized Agency must not open the Offer or modification upon receipt, but must maintain it as confidential and secure until Opening. If the Authorized Agency inadvertently opens an Offer or a modification prior to the Opening, the Authorized Agency must return the Offer or modification to its secure and confidential state until Opening. The Authorized Agency must document the resealing for the Procurement File in accordance with OAR 125-246-0355 (e.g. "The Authorized Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and Recording. An Authorized Agency must publicly open Offers including any modifications made to the Offer pursuant to OAR 125-249-0320. In the case of Invitations to Bid, to the extent practicable, the Authorized Agency must read aloud the name of each Bidder, the Bid price(s), and such other information as the Authorized Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Authorized Agency will not read Offers aloud.

(3) Availability. After Opening, the Authorized Agency must make Bids available for public inspection, but pursuant to ORS 279C.410 Proposals are not subject to disclosure until after notice of intent to award is issued. In any event Authorized Agencies may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); 646.461 to 646.475. To the extent the Authorized Agency determines such designation is not in accordance with applicable law, the Authorized Agency must make those portions available for public inspection. The Offeror must separate information designated as confidential from other non-confidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and must be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279C.365, 279C.375 & 279C.395
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0340

Late Bids, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Authorized Agency must not consider late Offers, withdrawals or modifications except as permitted in OAR 125-249-0350 or 125-249-0390.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279C.365, 279C.375 & 279C.395
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0350

Mistakes

(1) Generally. To protect the integrity of the competitive Procurement Process and to assure fair treatment of Offerors, an Authorized Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) The Authorized Agency Treatment of Mistakes. An Authorized Agency must not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Authorized Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Authorized Agency may take the following action:

(a) An Authorized Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an

insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) An Authorized Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Authorized Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices must prevail over extended prices.

(c) An Authorized Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this Subsection or an error in judgment;

(C) That the error cannot be corrected or waived under Subsection (b) of this Section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Authorized Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Authorized Agency's or the public's status has not changed so significantly that relief from the forfeiture will Work a substantial hardship on the Authorized Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Authorized Agency.

(d) The criteria in Subsection (2)(c) of this Rule must determine whether an Authorized Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also must apply to the question of whether an Authorized Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Authorized Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Authorized Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new Solicitation.

(3) Rejection for Mistakes. The Authorized Agency must reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) Identification of Mistakes after Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 249 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279C.375 & 279C.395
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0360**First-Tier Subcontractors; Disclosure and Substitution; ITB**

(1) Required Disclosure. Within two (2) Working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Authorized Agency to exceed \$100,000, all Bidders must submit to the Authorized Agency a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

(a) Five percent (5%) of the total Contract Price, but at least \$15,000; or
(b) \$350,000, regardless of the percentage of the total Contract Price.

(2) Bid Closing, Disclosure Deadline, and Bid Opening. For each ITB to which this rule applies, the Authorized Agency must:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two (2) hour disclosure deadline described by this Rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the Bid Closing; and

(c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Authorized Agency.

(3) Bidder Instructions and Disclosure Form. For the purposes of this Rule, an Authorized Agency in its Solicitation must:

(a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following: "Instructions for First-Tier Subcontractor Disclosure." Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two (2) hours after Bid Closing:

(A) The subcontractor's name,

(B) The category of Work that the subcontractor would be performing, and

(C) The dollar value of the subcontract. If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

"THE AUTHORIZED AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE."

(4) Submission. A Bidder must submit the disclosure form required by this Rule either in its Bid submission, or within two working hours after Bid Closing in the manner specified by the ITB.

(5) Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this Rule is a matter of Responsiveness. Bids which are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and must not be considered for Contract Award.

(6) Authorized Agency Role. Authorized Agencies must obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this Rule. Authorized Agencies must also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Authorized Agencies are not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) Substitution. Substitution of affected first-tier subcontractors must be made only in accordance with ORS 279C.585. Authorized Agencies must accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Authorized Agencies do not have a statutory role or duty to review, approve, or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

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

Stats. Implemented: ORS 279C.370, 279C.585, 279C.590 & 279C.835

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0370**Disqualification of Persons**

(1) Authority. An Authorized Agency may disqualify a Person from consideration of Award of the Authorized Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with Sections (2) and (4) of this Rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, an Authorized Agency may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a Contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Authorized Agency to be so serious as to justify Disqualification. A violation under this Subsection 2(d) may include but is not limited to material failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, an Authorized Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Authorized Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Authorized Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Authorized Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform Work under a Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract.

(iv) If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the affected Authorized Agency must not permit such Person to participate in that Authorized Agency's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, an Authorized Agency may disqualify a Person if the Authorized Agency finds that the Person discriminated against minority, women, or emerging small business enterprises in awarding a subcontract under a Contract with that Authorized Agency.

(2) Notice of Intent to Disqualify. The Authorized Agency must notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice must:

(a) State that the Authorized Agency intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

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

(d) Include a statement of the authority and jurisdiction under which the hearing will be held;

(e) Include a reference to the particular Sections of the statutes and rules involved;

(f) State the proposed Disqualification period; and

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

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

(4) Notice of Disqualification. The Authorized Agency will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice must contain:

(a) The effective date and period of Disqualification;

(b) The grounds for Disqualification; and

(c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the Disqualified Person must notify the Authorized Agency in Writing within three (3) business days after receipt of the Authorized Agency's notice of Disqualification if the Person intends to appeal the Authorized Agency's decision.

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

Stats. Implemented: ORS 200.065, 200.075, 279A.110, 279C.440, 279C.445 & 279C.450

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0380

Bid or Proposal Evaluation Criteria

(1) General. A Public Improvement Contract, if Awarded, must be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See OAR 125-249-0390, and Rules for Alternative Contracting Methods at OAR 125-249-0600 to 125-249-0690.

(2) Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers, or a combination of the two.

(a) Lump Sum. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Authorized Agency elects not to award additive or deductive alternates, Bids must be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price must be calculated by adding to or deducting from the base Bid those alternates selected by the Authorized Agency, for the purpose of comparing Bids.

(b) Unit Price. If the Bid includes unit pricing for estimated quantities, the total Bid price must be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Authorized Agency, for the purpose of comparing Bids. Authorized Agencies must specify within the Solicitation Document the estimated quantity of the Procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price must govern. See OAR 125-249-0350(2)(b).

(3) Proposal Evaluation Criteria. If the State Procurement Office has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the Authorized Agency to use an Alternative Contracting Method under ORS 279.335(4), the Authorized Agency must set forth the evaluation criteria in the Solicitation Documents. See OAR 125-249-0650, ORS 279C.335 and 279C.405.

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

Stats. Implemented: ORS 279C.335

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0390

Offer Evaluation and Award; Determination of Responsibility

(1) General. If awarded, the Authorized Agency must award the Contract to the Responsible Bidder submitting the lowest, Responsive

Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract (see ORS 279C.375(2)(a)) or is ineligible for award as a nonresident education service district (see Oregon Laws 2005, Chapter 413). The Authorized Agency may award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(2) Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before awarding a Contract, the Authorized Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(2)(b). To be a Responsible Offeror, the Authorized Agency must determine that the Offeror:

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

(b) Has a satisfactory record of contract performance. An Authorized 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 Authorized 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 Authorized Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Authorized Agency must make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if an Authorized Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to an Authorized Agency. An Authorized Agency may find an Offeror not Responsible based on the lack of integrity of any Person 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 Person). The standards for Conduct Disqualification under OAR 125-249-0370 may be used to determine an Offeror's integrity. The Authorized Agency must make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

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

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Authorized Agency concerning responsibility, the Authorized Agency must base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) Documenting Agency Determinations. Authorized Agencies must document their compliance with ORS 279C.375(2) and the above sections of this Rule on a Responsibility Determination Form substantially as set forth in ORS 279C.375(2)(c).

(4) Authorized Agency Evaluation. The Authorized Agency must evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Authorized Agency must not evaluate an Offer using any other requirement or criterion.

(5) Offeror Submissions:

(a) The Authorized Agency may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to award:

(A) Demonstration, inspection or testing of a product prior to award for characteristics such as compatibility, quality or Workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Authorized Agency must evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Authorized Agency must reject an Offer providing any product that does not meet the Solicitation Document requirements. An Authorized Agency's rejection

tion of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) Evaluation of Bids. The Authorized Agency must use only objective criteria to evaluate Bids as set forth in the ITB. The Authorized Agency must evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the Authorized Agency must add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) Clarifications. In evaluating Bids, an Authorized Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification must not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications must become part of the Bidder's Bid.

(c) Negotiation Prohibited. The Authorized Agency must not negotiate Scope of Work or other terms or conditions under an Invitation to Bid process prior to award.

(7) Evaluation of Proposals. See OAR 125-249-0650 regarding rules applicable to Requests for Proposals.

(8) Independent Contractor Status, Tax Compliance, and Requirements to Transact Business in Oregon. For these responsibilities of Offerors, see OAR 125-246-0330.

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

Stats. Implemented: ORS 279C.335, 279C.365, 279C.375 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0395

Notice of Intent to Award

(1) Notice. At least seven (7) days before the Award of a Public Improvement Contract, the Authorized Agency must issue to each Offeror, or post electronically or otherwise, a notice of the Authorized Agency's intent to Award the Contract. See ORS 279C.375(2). This requirement does not apply to an Award of a Public Improvement Contract with a value of less than \$5,000, certain Veterans' Affairs Contracts under ORS 279C.335(1)(d) and Contracts for Emergency Work under ORS 279C.335(6) and OAR 125-249-0150.

(2) Form and Manner of Posting. The form and manner of posting notice must conform to customary practices within the Authorized Agency's procurement system, and may be made electronically.

(3) Finalizing Award. The Authorized Agency's Award is not final until the later of the following:

(a) Seven (7) Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The Authorized Agency provides a Written response to all timely-filed protests that denies the protests and affirms the Award.

(4) Prior Notice Impractical. Posting of notice of intent to award is not required when the Authorized Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Procurement file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

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

Stats. Implemented: ORS 279C.335

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0400

Documentation of Award; Availability of Award Decisions

(1) Basis of Award. After Award, the Authorized Agency must make a record showing the basis for determining the successful Offeror or part of the Authorized Agency's Solicitation file.

(2) Contents of Award Record for Bids. The Authorized Agency's record must include:

(a) Bids.

(b) Completed Bid tabulation sheet; and

(c) Written justification for any rejection of lower Bids.

(3) Contents of Award Record for Proposals. Where the use of Requests for Proposals is authorized as set forth in OAR 125-249-0650, the Authorized Agency's record must include:

(a) Proposals;

(b) The completed evaluation of the Proposals;

(c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and

(d) If the Authorized Agency permitted Negotiations in accordance with OAR 125-249-0650, the Authorized Agency's completed evaluation of the initial Proposals and the Authorized Agency's completed evaluation of final Proposals.

(4) Contract Document. The Authorized Agency must deliver a fully executed copy of the final Contract to the successful Offeror.

(5) Bid Tabulations and Award Summaries. Upon request of any Person the Authorized Agency must provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. Authorized Agencies may also provide tabulations of Bids and Proposals Awarded on designated Web sites.

(6) Availability of Solicitation Files. The Authorized Agency must make completed Solicitation files available for public review at the Authorized Agency.

(7) Copies from Solicitation Files. Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

(8) Minority, Women, Emerging Small Business. Agencies must provide timely notice of Contract Award to the Advocate for Minority, Women, Emerging Small Business if the estimated Contract Price exceeds \$5,000. See ORS 200.035 and any applicable Department Policy.

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

Stats. Implemented: ORS 279A.065(5)(a) & 279A.070

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0410

Time for Authorized Agency Acceptance; Extension

(1) Time for Offer Acceptance. An Offeror's Bid, or Proposal submitted as a Firm Offer (see OAR 125-249-0280), is irrevocable, valid and binding on the Offeror for not less than thirty (30) Days from Closing unless otherwise specified in the Solicitation Document.

(2) Extension of Acceptance Time. An Authorized Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Authorized Agency may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer must continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

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

Stats. Implemented: ORS 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0420

Negotiation With Bidders Prohibited

(1) Bids. Except as permitted by ORS 279C.340 and OAR 125-249-0430 when all bids exceed the cost estimate, an Authorized Agency must not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract by change order or Amendment to the Contract in accordance with OAR 125-249-0860.

(2) Requests for Proposals. An Authorized Agency may only conduct Discussions or Negotiations with Proposers in accordance with the requirements of OAR 125-249-0650.

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

Stats. Implemented: ORS 279C.340 & 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0430

Negotiation When Bids Exceed Cost Estimate

(1) Generally. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Authorized Agency's Cost Estimate, prior to Contract Award the Authorized Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Authorized Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of OAR 125-249-0360 do not apply to Negotiations under this Rule.

(2) Definitions. The following definitions apply to this Rule:

(a) "Cost Estimate" means the Authorized Agency's most recent pre-Bid, good faith assessment of anticipated contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) "Other Options" means those items generally considered appropriate for Negotiation in the RFP process, relating to the details of contract performance as specified in OAR 125-249-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) "Project" means a Public Improvement.

(d) "Value Engineering" means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other contract requirements which may be made, consistent with industry practice, under the Original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(3) Rejection of Bids. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Authorized Agency, must be excluded from consideration.

(4) Scope of Negotiations. Authorized Agencies must not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Authorized Agency to participate in the Bidding process had the change been made during the Solicitation process rather than during Negotiation. This Rule must not be construed to prohibit Solicitation of trade subcontracts.

(5) Discontinuing Negotiations. The Authorized Agency may discontinue Negotiations at any time, and must do so if it appears to the Authorized Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to re-bid any portion of the project, or to obtain subcontractor pricing information upon request, must be considered a lack of good faith.

(6) Limitation. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

(7) Public Records. To the extent that a Bidder's records used in contract Negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the Negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.340
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0440

Rejection of Offers

(1) Rejection of an Offer.

(a) An Authorized Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement Process or that rejecting the Offer is in the public interest.

(b) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offer:

(A) Is contingent upon the Authorized Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document, or

(B) Takes exception to terms and conditions (including Specifications), or

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law; or

(D) Offers Work that fails to meet the Specifications of the Solicitation Document; or

(E) Is late; or

(F) Is not in substantial compliance with the Solicitation Documents; or

(G) Is not in substantial compliance with all prescribed public Solicitation procedures.

(c) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and the Authorized Agency required mandatory prequalification; or

(B) Has been Disqualified; or

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work; or

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement; or

(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document; or

(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document; or

(G) Has failed to provide the certification required under Section 3 of this Rule; or

(H) Is not Responsible. See OAR 125-249-0390(2) regarding Authorized Agency determination that the Offeror has met statutory standards of responsibility.

(2) Form of Business. For purposes of this Rule, the Authorized Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and OAR 125-249-0370.

(3) Certification of Non-Discrimination. The Offeror must certify and deliver to the Authorized Agency Written certification, as part of the Offer that the Offeror has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so must be grounds for disqualification.

(4) Rejection of all Offers. An Authorized Agency may reject all Offers for good cause upon the Authorized Agency's Written finding it is in the public interest to do so. The Authorized Agency must notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(5) Criteria for Rejection of All Offers. The Authorized Agency may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement Process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Authorized Agency cancels the Solicitation in accordance with OAR 125-249-0270; or

(f) Any other circumstance indicating that awarding the Contract would not be in the public interest.

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

Stats. Implemented: ORS 279A.105, 279A.110, 279C.375, 279C.380 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0450

Protest of Contractor Selection, Contract Award

(1) Purpose. An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Authorized Agency's Contractor selection or Contract Award decision.

(2) Notice of Competitive Range. Unless otherwise provided in the RFP, when the competitive proposal process is authorized under OAR 125-249-0650, the Authorized Agency must provide Written notice to all Proposers of the Authorized Agency's determination of the Proposers included in the Competitive Range. The Authorized Agency's notice of the Proposers included in the Competitive Range must not be final until the later of the following:

(a) Ten (10) Days after the date of the notice, unless otherwise provided therein; or

(b) Until the Authorized Agency provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) Notice of Intent to Award. The Authorized Agency must provide Written notice to all Offerors of the Authorized Agency's intent to award the Contract as provided by OAR 125-249-0395.

(4) Right to Protest Award.

(a) An adversely affected or aggrieved Offeror may submit to the Authorized Agency a Written protest of the Authorized Agency's intent to award within seven (7) Days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

(A) Because their Offers were non-responsive; or

(B) The Authorized Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Authorized Agency must not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest an Authorized Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(5) Right to Protest Competitive Range:

(a) An adversely affected or aggrieved Proposer may submit to the Authorized Agency a Written protest of the Authorized Agency's decision to exclude the Proposer from the Competitive Range within seven (7) Days after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at OAR 125-249-0650.)

(b) The Proposer's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The Authorized Agency committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The Authorized Agency must not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest an Authorized Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) Authority to Resolve Protests. The head of the Authorized Agency, or such Person's delegatee, may settle or resolve a Written protest submitted in accordance with the requirements of this Rule.

(7) Decision. If a protest is not settled, the head of the Authorized Agency, or such Person's delegatee, must promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) Award. The successful Offeror must promptly execute the Contract after the Award is final. The Authorized Agency must execute the Contract only after it has obtained all applicable required documents and approvals.

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

Stats. Implemented: ORS 279C.375, 279C.380, 279C.385 & 279C.460

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0460

Performance and Payment Security; Waiver

(1) Public Improvement Contracts. Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless the State Procurement Office exempts a Contract or classes of Contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor must execute and deliver to the Authorized Agency a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the Authorized Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.380(5). Under ORS 279C.390(3)(b) the Director of the Oregon Department of Transportation may reduce the performance bond amount for Contracts financed from the proceeds of bonds issued under ORS 367.620(3)(a). Also see OAR 125-249-0815 and BOLI rules in OAR chapter 839, division 25, regarding the separate requirement for Public Works bond.

(2) Other Construction Contracts. An Authorized Agency may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements must be expressly set forth in the Solicitation Document.

(3) Requirement for Surety Bond. The Authorized Agency must accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e. the Authorized Agency may accept a cashier's check or certified check in lieu of all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full Contract Price.

(4) Time for Submission. The apparent successful Offeror must promptly furnish the required performance security upon the Authorized Agency's request. If the Offeror fails to furnish the security as requested, the Authorized Agency may reject the Offer and award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the Authorized Agency's discretion, the Offeror must forfeit its Bid or Proposal security.

(5) Public Improvement Contracts Under \$100,000. An Authorized Agency having delegated purchasing authority pursuant to OAR 125-246-0170 may, in its discretion, waive the bid security requirements and performance and payment requirements if the amount of the Contract for the Public Improvement is less than \$100,000.

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

Stats. Implemented: ORS 279C.375, 279C.380 & 279C.390

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0470

Substitute Contractor

If the Contractor provided a performance bond, the Authorized Agency may afford the Contractor's surety the opportunity to provide a substitute Contractor to complete performance of the Contract. A substitute Contractor must perform all remaining contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and must not be subject to the competitive procurement provisions of ORS Chapter 279C.

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

Stats. Implemented: ORS 279C.365, 279C.370, 279C.375, 279C.380 & 279C.390

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0490

Foreign Contractor

If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor must promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report must be forwarded to the Authorized Agency. The Authorized Agency awarding the Contract must satisfy itself that the above requirements

have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279A.120
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Alternative Contracting Methods

125-249-0600

Purpose

These OAR 125-249-0600 to 125-249-0690 Oregon Administrative Rules are intended to provide guidance to Authorized Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by the State Procurement Office under ORS 279C.335. Those methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. As to ESPC contracting, these OAR 125-249-0600 to 125-249-0690 Rules implement the requirements of ORS 279C.335 pertaining to the adoption of Rules appropriate for use by all Authorized Agencies to govern the procedures for entering into ESPCs.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279A.065, 279C.335 & 351.086
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0610

Definitions for Alternative Contracting Methods

The following definitions must apply to these OAR 125-249-0600 to 125-249-0690 Rules, unless the context requires otherwise:

(1) "Alternative Contracting Methods" mean innovative procurement techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of Design-Bid-Build (with Award based solely on price, in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, which are specifically addressed in these OAR 125-249-0600 to 125-249-0690 Rules, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting, for which procedural requirements are identified under these OAR 125-249-0600 to 125-249-0690 Rules.

(2) "Construction Manager/General Contractor" (CM/GC) means a form of Procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; hold all subcontracts, self-perform portions of the Work as may be allowed by the Authorized Agency under the CM/GC Contract; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the Authorized Agency, architect/engineers and other Consultants. CM/GC also refers to a Contractor under this form of Contract, sometimes known as the "Construction Manager at Risk."

(3) "Design-Build" means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design Services, participates on the project team with the Authorized Agency, and manages both design and construction. In this form of Contract, a single Person provides the Authorized Agency with all of the Personal Services and Work necessary to both design and construct the project.

(4) "Energy Conservation Measures" (ECMs, also known as Energy Efficiency Measures) means, as used in ESPC Procurement, any equipment, fixture or furnishing to be added to or used in an existing building or structure, and any repair, alteration or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. For purposes of these OAR 125-249-0600 to 125-249-0690 Rules, use of either or both of the terms "building" or "structure" must be deemed to include existing energy, water and

waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the project, either as part of the project together with the building or structure, or when such system(s) are the focus of the project. Maintenance Services are not Energy Conservation Measures, for purposes of these OAR 125-249-0600 to 125-249-0690 Rules.

(5) "Energy Savings Guarantee" means the energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the Authorized Agency that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee must include, but must not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the Authorized Agency in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the Authorized Agency after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

(6) "Energy Savings Performance Contract" (ESPC) means a Public Improvement Contract between an Authorized Agency and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

(7) "Guaranteed Maximum Price" (GMP) means the total maximum price provided to the Authorized Agency by the Contractor, and accepted by the Authorized Agency, that includes all reimbursable costs of and fees for completion of the contract Work, as defined by the Public Improvement Contract, except for material changes in the Scope of Work. It may also include particularly identified contingency amounts.

(8) "Measurement and Verification" (M & V) means, as used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol (IPMVP), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

(9) "Project Development Plan" means a secondary phase of Personal Services and Work performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's Work during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work; The term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.

(10) "Qualified Energy Service Company" (ESCO) means, as used in ESPC Procurement, a company, firm or other legal Person with the following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the Authorized Agency; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.

(11) "Technical Energy Audit," as used in ESPC Procurement, means the initial phase of Personal Services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the Authorized Agency of the ESCO's Findings during this initial phase of the Work; the term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279A.065 & 279C.335
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0620

Use of Alternative Contracting Methods

(1) Competitive Bidding Exemptions. ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted, or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable Authorized Agency rules. Use of Alternative Contracting Methods may be directed by the State Procurement Office as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Public Contract law and these OAR 125-249-0600 to 125-249-0690 Rules. See OAR 125-249-0630 regarding required Findings and restrictions on class exemptions.

(2) Energy Savings Performance Contracts. Unlike other Alternative Contracting Methods covered by these OAR 125-249-0600 to 125-249-0690 Rules, ESPCs are exempt from the competitive bidding requirement process for Public Improvement Contracts pursuant to ORS 279C.335(1)(e), if the Authorized Agency complies with the procedures set forth in these OAR 125-249-0600 to 125-249-0690 Rules related to the Solicitation, Negotiation and contracting for ESPC Services. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within ORS 279C.335.

(3) Post-Project Evaluation. ORS 279C.355 requires that the Authorized Agency prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the Authorized Agency's best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Director of the Department as applicable within thirty (30) Days of the date the Authorized Agency "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. ORS 279C.355 describes the timing and content of this evaluation, with three (3) required elements:

- (a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;
- (b) A narrative description of successes and failures during design, engineering and construction; and
- (c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279A.065, 279C.335 & 351.086
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0630

Findings, Notice and Hearing

(1) General. This Rule provides guidance to the Agencies for making a request for an Exemption to the Chief Procurement Officer in accordance with ORS 279C.335 and OAR 125-246-0170(3)(c).

(2) Findings: Required Information. The statutory definition of "Findings" at ORS 279.330 means the justification for an Agency's conclusion that includes, "but is not limited to," information regarding eight identified areas.

(3) Findings Addressing Cost Savings. When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from competitive bidding requirements, the "substantial cost savings" criterion at ORS 279C.335(2)(b) allows consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and "such other factors as may be deemed appropriate." Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings" requirement may be addressed by a combination of:

- (a) Specified Findings that address the factors and other information specifically identified by statute, including an analysis or reasonable forecast of future cost savings as well as present cost savings; and
- (b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected ben-

efits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings must relate back to the specific characteristics of the project or projects at issue in the exemption request.

(4) Findings Regarding Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that it is "unlikely" that the exemption will "encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award made based upon identified selection criteria and an opportunity to protest that Award.

(5) Specificity of Findings.

(a) Method. Findings supporting a competitive bidding exemption must describe with specificity the Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (Request for Proposals) or two step (beginning with Requests for Qualifications) solicitation process will be utilized.

(b) Project(s). The Findings must clearly and generally identify the Project with respect to its defining characteristics. Those characteristics must include at least: Project descriptions, locations, anticipated time periods, anticipated contract values or the range of values, and other significant factors that distinguish the Project(s) from an Authorized Agency's overall construction program.

(c) Contract. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

(d) Basis for an Order. The Chief Procurement Officer relies upon the representations and accuracy of the Authorized Agency's Findings in subsections (a) and (b), which form the basis for and are incorporated by reference in any subsequent Exemption Order.

(6) Prior Review of Draft Findings. Agencies must submit draft Findings to the State Procurement Office for review and concurrence prior to advertising the public hearing required by ORS 279C.335(5). Agencies must also submit draft Findings to the Department of Justice for review and comment prior to advertising the public hearing.

(7) Class Exemptions. In making the findings supporting a class exemption the Authorized Agency must clearly identify the class with respect to its defining characteristics. Those characteristics must include some combination of Project descriptions or locations, time periods, contract values or method of Procurement or other factors that distinguish the limited and related class of Projects from an Authorized Agency's overall construction program. Classes must not be defined solely by funding sources, such as a particular bond fund, or by method of Procurement, but must be defined by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2).

(8) Public Hearing. Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, an Authorized Agency must give notice and hold a public hearing as required by ORS 279C.335(5). The hearing must be for the purpose of receiving public comment on the Authorized Agency's draft Findings.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
 Stats. Implemented: ORS 279A.065 & 279C.335
 Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0640

Competitive Proposals; Procedure

Authorized Agencies may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and contract Negotiation, only in accordance with ORS 279C.400 to 279C.410 and OAR 125-249-0600 to 125-249-690, unless other applicable statutes control an Authorized Agency's use of competitive Proposals for Public Improvement Contracts. Also see the Subdivision of Rules in this Division entitled Formal Procurement Rules, OAR 125-249-0200 to 125-249-0490, and RFP related Rules under the Alternative Contracting Methods Subdivision at OAR 125-249-0640 to 125-249-0660. For ESPCs, the following RFP process must be utilized if an Authorized Agency desires the Procurement Process to be exempt from the competitive bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods

identified in OAR 125-249-0600 to 125-249-0690 includes the following steps:

(1) Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. For ESPC Proposal evaluations, the Authorized Agency may provide in the RFP that qualifications-based evaluation factors will outweigh the Authorized Agency's consideration of price-related factors, due to the fact that prices for the major components of the Work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of Proposal evaluation. Proposal evaluation must be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors must:

(a) Be reasonable estimates based on information available to the Authorized Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Authorized Agency. See ORS 279C.305.

(2) Evaluation Factors:

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(d) In ESPC contracting, in addition to the factors set forth in Subsections (a), (b) and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline Consultant), past performance of the ESCO in meeting energy guarantee contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and Consultants to be assigned to the project, the ESCO's experience in the Energy Savings Performance contracting field, the ESCO's experience acting as the prime Contractor on previous ESPC projects (as opposed to a subcontractor or Consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V Consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the Authorized Agency and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

(3) Contract Negotiations. Contract terms may be negotiated to the extent allowed by the RFP and OAR 125-249-0600 to 125-249-0690, provided that the general Work Scope remains the same and that

the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See OAR 125-249-0650. Terms that may be negotiated consist of details of contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality. In ESPC contracting, terms that may be negotiated also include the Scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the Scope of services to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and Scope of Personal Services and Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of OAR 125-249-0680 below.

Stat. Auth.: ORS 279C.335 & 279A.065

Stats. Implemented: ORS 279A.065, 279C.335 & 351.086

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0645

Requests for Qualifications (RFQ)

As provided by ORS 279C.410(9), Authorized Agencies may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two (2) step solicitation process, in which distribution of the RFPs will be limited to the highest ranked firms submitting statements of qualification, Authorized Agencies must first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, include the RFP, specifically state that RFPs will be distributed only to the highest ranked firms in the RFQ process and also provide within the RFQ a protest provision substantially in form of OAR 125-249-0450(5) regarding protests of the competitive range. Thereafter, Authorizing Agencies may distribute RFPs to those highest ranked firms without further advertisement of the Solicitation.

Stat. Auth.: ORS 279C.410; 279A.065

Stats. Implemented: ORS 279C.410

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0650

Requests for Proposals (RFP)

(1) Generally. The use of competitive proposals must be specially authorized for a Public Improvement Contract under the competitive bidding requirement of ORS 279C.335(1), OAR 125-249-0130 and 125-249-0600 to 125-249-0690. Also see ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and OAR 125-249-0640 regarding competitive Proposal procedures.

(2) Solicitation Documents. In addition to the Solicitation Document requirements of OAR 125-249-0200, this Rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents must conform to the following standards:

(a) The Authorized Agency must set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See OAR 125-249-0640. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors must be reasonable estimates based on information available to the Authorized Agency;

(b) When the Authorized Agency is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following Discussions, the Authorized Agency must identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to Negotiation or Discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the Authorized Agency has identified as authorized for Negotiation. The Authorized Agency must describe the evaluation and Discussion or Negotiation process, including how the Authorized Agency will establish the Competitive Range;

(c) The anticipated size of the Competitive Range must be stated in the Solicitation Document, but may be decreased if the number of the Proposers that submit responsive Proposals is less than the specified

number, or may be increased as provided in OAR 125-249-0650(4)(a)(B);

(d) When the Authorized Agency intends to award Contracts to more than one Proposer, the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The Authorized Agency must also include the criteria it will use to determine how the Authorized Agency will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Supplies and Services from those Contractors Awarded Contracts.

(3) Evaluation of Proposals.

(a) Evaluation. The Authorized Agency must evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Authorized Agency must evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, an Authorized Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications must become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Authorized Agency did not permit Negotiation in its Request for Proposals, the Authorized Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work.

(iii) The process for Discussions or Negotiations that is outlined and explained in Subsections (5)(b) and (6) of this Rule does not apply to this limited Negotiation.

(b) Discussions; Negotiations. If the Authorized Agency permitted Discussions or Negotiations in the Request for Proposals, the Authorized Agency must evaluate Proposals and establish the Competitive Range, and may then conduct Discussions and Negotiations in accordance with this Rule.

(A) If the Solicitation Document provided that Discussions or Negotiations may occur at the Authorized Agency's discretion, the Authorized Agency may forego Discussions and Negotiations and evaluate all Proposals in accordance with this Rule.

(B) If the Authorized Agency proceeds with Discussions or Negotiations, the Authorized Agency must establish a Negotiation team tailored for the acquisition. The Authorized Agency's team may include legal, technical and negotiating personnel.

(c) Cancellation. Nothing in this Rule must restrict or prohibit the Authorized Agency from canceling the Solicitation at any time.

(4) Competitive Range, Protest, Award:

(a) Determining Competitive Range:

(A) If the Authorized Agency does not cancel the Solicitation, after the Opening the Authorized Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Authorized Agency will determine and rank the Proposers in the Competitive Range.

(B) The Authorized Agency may increase the number of Proposers in the Competitive Range if the Authorized Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Authorized Agency's evaluation of revised Proposals submitted in accordance with the process described in this Rule.

(b) Contesting Competitive Range. The Authorized Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the Authorized Agency's evaluation and determination of the Competitive Range in accordance with OAR 125-249-0450.

(c) Intent to Award; Discuss or Negotiate. After the protest period provided in accordance with these Rules expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the Authorized Agency's intent to award in accordance with OAR 125-249-0450.

(ii) After the protest period provided in accordance with OAR 125-249-0450 expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency must commence final contract Negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in Discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such Discussions and receipt and evaluation of revised Proposals, conduct Negotiations with the Proposers in the Competitive Range.

(5) Discussions; Revised Proposals. If the Authorized Agency chooses to enter into Discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Authorized Agency must proceed as follows:

(a) Initiating Discussions. The Authorized Agency must initiate oral or Written Discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Authorized Agency identified in the RFP as the subject of Discussions. The Authorized Agency may conduct Discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Authorized Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Authorized Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Authorized Agency may conduct Discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this Section, but need not conduct the same amount of Discussions with each Proposer. The Authorized Agency may terminate Discussions with any Proposer in the Competitive Range at any time. However, the Authorized Agency must offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with the Authorized Agency before the Authorized Agency notifies Proposers of the date and time pursuant to this Section that revised Proposals will be due.

(A) In conducting Discussions, the Authorized Agency:

(i) Must treat all Proposers fairly and must not favor any Proposer over another;

(ii) Must not discuss other Proposers' Proposals;

(iii) Must not suggest specific revisions that a Proposer should make to its Proposal, and must not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for Discussions, the Authorized Agency may:

(i) Continue Discussions with a particular Proposer;

(ii) Terminate Discussions with a particular Proposer and continue Discussions with other Proposers in the Competitive Range; or

(iii) Conclude Discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Authorized Agency does not cancel the Solicitation at the conclusion of the Authorized Agency's Discussions with all remaining Proposers in the Competitive Range, the Authorized Agency must give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Authorized Agency's termination of Discussions, and Proposers must submit revised Proposals by the date and time set forth in the Authorized Agency's notice.

(A) Upon receipt of the revised Proposals, the Authorized Agency must score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Authorized Agency's scoring.

(B) The Authorized Agency may conduct Discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. The Authorized Agency must provide Written notice to all Proposers in the Competitive Range of the Authorized Agency's intent to award the Contract. An unsuccessful Proposer may protest the Authorized Agency's intent to award in accordance with OAR 125-249-0450. After the protest period provided in accordance with that Rule expires, or after the Authorized Agency

has provided a final response to any protest, whichever date is later, the Authorized Agency must commence final contract Negotiations.

(6) Negotiations:

(a) Initiating Negotiations. The Authorized Agency may determine to commence Negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of Discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations and Scope. The Authorized Agency may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for Negotiation in the Request for Proposals. Accordingly, Proposers must not submit, and the Authorized Agency must not accept, for Negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for Negotiation in the Request for Proposals.

(c) Terminating Negotiations. At any time during Discussions or Negotiations that the Authorized Agency conducts in accordance with this Rule, the Authorized Agency may terminate Discussions or Negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Authorized Agency reasonably believes that:

(A) The Proposer is not discussing or negotiating in good faith; or

(B) Further Discussions or Negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(d) Continuing Negotiations. If the Authorized Agency terminates Discussions or Negotiations with a Proposer, the Authorized Agency may then commence Negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this Rule until the Authorized Agency has either:

(A) Determined to award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Completed one round of Discussions or Negotiations with all Proposers in the Competitive Range, unless the Authorized Agency provided for more than one round of Discussions or Negotiations in the Request for Proposals.

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

Stats. Implemented: ORS 279C.400 - 279C.410

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0660

RFP Pricing Mechanisms

(1) A Request for Proposals may result in a lump sum Contract Price, as in the case of competitive bidding. Alternatively, a cost reimbursement Contract may be negotiated.

(2) Economic incentives or disincentives may be included to reflect stated Authorized Agency purposes related to time of completion, safety or other Public Contracting objectives, including total least cost mechanisms such as Life Cycle Costing pursuant to OAR 125-247-0170.

(3) A Guaranteed Maximum Price (GMP) is used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the Authorized Agency in determining whether the project Scope is within the Authorized Agency's budget, and allowing for design changes during preliminary design rather than after final design Work has been completed.

(a) If this collaborative process is successful, the Contractor must propose a final GMP, which may be accepted by the Authorized Agency and included within the Contract.

(b) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the Authorized Agency must terminate the Contract. The public Authorized Agency may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

(4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Authorized Agency must provide

for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

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

Stats. Implemented: ORS 279C.335

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0670

Design-Build Contracts

(1) General. The Design-Build form of contracting, as defined at OAR 125-249-0610(3), has technical complexities that are not readily apparent. Authorized Agencies must use this contracting method only with the assistance of knowledgeable staff or Consultants who are experienced in its use. In order to use the Design-Build process, the Authorized Agency must be able to reasonably anticipate the following types of benefits:

(a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing contract claims;

(d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) Authority. Authorized Agencies must utilize the Design-Build form of contracting only in accordance with the requirements of these OARs 125-249-0600 to 125-249-0690 Rules. See particularly 125-249-0620 on "Use of Alternative Contracting Methods" and 125-249-0680 pertaining to ESPCs.

(3) Selection. Design-Build selection criteria may include those factors set forth above in OAR 125-249-0640(2)(a), (b), (c) and (d).

(4) QBS Inapplicable. Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for Authorized Agencies in obtaining certain Consultant services is not applicable.

(5) Licensing. If a Design-Build Contractor is not an Oregon licensed design professional, the Authorized Agency must require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(2)(g) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(6) Performance Security. ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) Contract Requirements. Authorized Agencies must conform their Design-Build contracting practices to the following requirements:

(a) Design Services. The level or type of design services required must be clearly defined within the Procurement Documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed must be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.

(b) Professional Liability. The Contract must clearly identify the liability of design professionals with respect to the Design-Build Contractor and the Authorized Agency, as well as requirements for professional liability insurance.

(c) Risk Allocation. The Contract must clearly identify the extent to which the Authorized Agency requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

(d) Warranties. The Contract must clearly identify any express warranties made to the Authorized Agency regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) Incentives. The Contract must clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the Authorized Agency is benefited from such deliverables.

Stat. Auth.: ORS 279C.335 & 279A.065

Stats. Implemented: ORS 279A.065, 279C.110, 279C.335 & 351.086

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0680

Energy Savings Performance Contracts (ESPC)

(1) Generally. These OAR 125-249-0600 to 125-249-0690 Rules include a limited, efficient method for Authorized Agencies to enter into ESPCs outside the competitive bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. If an Authorized Agency chooses not to utilize the ESPC Procurement method provided for by these OAR 125-249-0600 to 125-249-0690, the Authorized Agency may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the procurement requirements applicable to any Authorized Agency not subject to all the requirements of ORS 279C.335.

(2) ESPC Contracting Method. The ESPC form of contracting, as defined at OAR 125-249-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Authorized Agency, as well as the additional technical complexities associated with a Design-Build Contract. Authorized Agencies must only utilize the ESPC contracting method with the assistance of knowledgeable staff or Consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Authorized Agency must be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated services: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining, through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC services;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC services team;

(f) Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) Preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) Authority. Authorized Agencies desiring to pursue an exemption from the competitive bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086), must utilize the ESPC form of contracting only in accordance with the requirements of these OAR 125-249-0600 to 125-249-0690 Rules.

(4) No Findings Required. An Authorized Agency is only required to comply with the ESPC contracting procedures set forth in these OAR 125-249-0600 to 125-249-0690 Rules in order for the ESPC to be exempt from the competitive bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the Authorized Agency is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in these OAR 125-249-0600 to 125-249-0690 Rules.

(5) Selection. ESPC selection criteria may include those factors set forth above in OAR 125-249-0640(2)(a), (b), (c) and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) QBS Inapplicable. Because the value of construction services predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for Authorized Agencies in obtaining certain Consultant services is not applicable.

(7) Licensing. If the ESCO is not an Oregon licensed design professional, the Authorized Agency must require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(8) Performance Security. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction and design and related professional services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional services" include conventional design services, commissioning services, training services for the Authorized Agency's operations and maintenance staff, and any similar professional services provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any services associated with the ESCO's Energy Savings Guarantee are not included in these ORS 279C.380(1)(a) "design and related professional services." Nevertheless, an Authorized Agency may require that the ESCO provide performance security for M & V services and any services associated with the ESCO's Energy Savings Guarantee, if the Authorized Agency so provides in the RFP.

(9) Contracting Requirements. Authorized Agencies must conform their ESPC contracting practices to the following requirements:

(a) General ESPC Contracting Practices. An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifi-

cations required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related services to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent Consultant hired by the Authorized Agency, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Authorized Agency must conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in OAR 125-249-0670.

(c) Pricing Alternatives. The Authorized Agency may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the services to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the services to be performed, a cost reimbursement pricing mechanism for the construction services to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the Authorized Agency, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the Authorized Agency's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) Permitted ESPC Scope of Work. The Scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted Scope of Work for ESPCs resulting from a Solicitation under these OAR 125-249-0600 to 125-249-0690 Rules does not include maintenance services for the project facility.

Stat. Auth.: ORS 279C.335 & 279A.065

Stats. Implemented: ORS 279A.065, 279C.110, 279C.335 & 351.086

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0690

Construction Manager/General Contractor (CM/GC)

(1) General. The CM/GC form of contracting, as defined at OAR 125-249-0610(2), is a technically complex project delivery system. Authorized Agencies must use this contracting method only with the assistance of knowledgeable staff or Consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting and project management. Unlike the Design-Build form of contracting, the CM/GC form of contracting does not contemplate a "single point of responsibility" under which the Contractor is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined contract obligations, including responsibilities as part of the project team along with the Authorized Agency and design professional, although in CM/GC there is a separate contract between the Authorized Agency and design professional. In order to utilize the CM/GC method, the Authorized Agency must be able to reasonably anticipate the following types of benefits:

(a) Time Savings. The Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The Authorized Agency may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well

as less disruption to public facilities as a result of shortened construction periods;

(b) Cost Savings. Early Contractor input during the design process is expected to contribute to significant cost savings. The Authorized Agency may consider value engineering, building systems analysis, life cycle costing analysis and construction planning that lead to cost savings. The Authorized Agency must specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or

(c) Technical Complexity. The Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the Authorized Agency, design professionals and Contractor, in which the Contractor will assist in addressing specific project challenges through pre-construction services. The Authorized Agency may consider the need for Contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

(2) Authority. Authorized Agencies must use the CM/GC form of contracting only in accordance with the requirements of these Rules. See particularly OAR 125-249-0620 on "Use of Alternative Contracting Methods."

(3) Selection. CM/GC selection criteria may include those factors set forth above in OAR 125-249-0640(2)(b).

(4) Basis for Payment. The CM/GC process adds specified Construction Manager services to traditional General Contractor services, requiring full contract performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for Work and services rendered, which together must not exceed the GMP. See GMP definition at OAR 125-249-0610(7) and Pricing Mechanisms at OAR 125-249-0660.

(5) Contract Requirements. Authorized Agencies must conform their CM/GC contracting practices to the following requirements:

(a) Setting the GMP. The GMP must be set at an identified time consistent with industry practice, after supporting information reasonably considered necessary to its use has been developed, and the supporting information must define with particularity both what is included and excluded from the GMP. A set of drawings and Specifications must be produced establishing the GMP scope.

(b) Adjustments to the GMP. The Contract must clearly identify the standards or factors under which changes or additional Work will be considered outside of the Work scope that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP must not be increased without a concomitant increase to the scope defined at the establishment of the GMP or most recent GMP Amendment.

(c) Cost Savings. The Contract must clearly identify the disposition of any cost savings resulting from completion of the Work below the GMP; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to the Authorized Agency's benefit. (Note that unless there is a clearly articulated reason for sharing such cost savings, they should accrue to the Authorized Agency.)

(d) Cost Reimbursement. The Contract must clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, including any category of "General Conditions" (a general grouping of direct costs that are not separately invoiced, subcontracted or included within either overhead or fee), and may also incorporate a mutually-agreeable cost-reimbursement standard.

(e) Audit. Cost reimbursements must be made subject to final audit adjustment, and the Contract must establish an audit process to ensure that Contract costs are allowable, properly allocated and reasonable.

(f) Fee. Compensation for the CM/GC's services must be paid on the basis of a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee should be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, must be identified during and become an element of the selection process. It must subsequently be expressed as a fixed amount when the GMP is established.

(g) Incentives. The Contract must clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP).

(h) Controlled Insurance Programs. For projects anticipated to exceed \$75 Million, the Contract must clearly identify whether an Owner Controlled or Contractor Controlled Insurance Program is anticipated or allowable. If so, the Contract must clearly identify:

(A) Anticipated cost savings from reduced premiums, claims reductions and other factors;

(B) The allocation of cost savings; and

(C) safety responsibilities and incentives, separately or combined.

(i) Early Work. The RFP must clearly identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:

(A) Early Procurement of materials and supplies;

(B) Early release of Bid packages for such things as site development; and

(C) Other advance Work related to critical components of the Contract.

(j) Subcontractor Selection. The Contract must clearly describe the methods by which the CM/GC must publicly receive, open and record Bids or price quotations, and competitively select subcontractors to perform the Contract Work based upon price, as well as the mechanisms by which the Authorized Agency may waive those requirements. The documents must also describe completely the methods by which the CM/GC and its affiliated or subsidiary entities may compete to perform the Work, including, at a minimum, advance notice to the public of the CM/GC's intent to compete and a public Opening of Bids or quotations by an independent party.

(k) Subcontractor Approvals and Protests. The Contract must clearly establish whether the Authorized Agency must approve subcontract awards, and to what extent, if any, the Authorized Agency will resolve procurement protests of subcontractors and suppliers. The related procedures and reporting mechanisms must be established with certainty, including whether the CM/GC acts as the Authorized Agency's representative in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the Authorized Agency must retain the right to monitor the subcontracting process in order to protect the Authorized Agency's interests.

(l) CM/GC Self-Performance. Whenever feasible, the Contract must establish the elements of Work the CM/GC may self-perform without competition, including, for example, the Work of the job-site general conditions. In the alternative, the Contract must include a process for Authorized Agency approval of CM/GC self-performance.

(m) Socio-Economic Programs. The Contract must clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and the Authorized Agency.

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

Stats. Implemented: ORS 297C.335 & 279C.380(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

Contract Provisions

125-249-0800

Required Contract Clauses

Authorized Agencies must include in all formal Solicitations for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in OAR 125-249-0200(1)(c) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

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

Stats. Implemented: ORS 297C.505 - 279C.545 & 279C.800 - 279C.870

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0810

Waiver of Delay Damages Against Public Policy

Authorized Agencies must not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from an Authorized Agency's unreasonable delay in performing the Contract. However, Con-

tract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

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

Stats. Implemented: ORS 279C.315

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0815

BOLI Public Works Bond

Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract must contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements.

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

Stats. Implemented: ORS 279C.830

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0820

Retainage

(1) Withholding of Retainage. Except to the extent an Authorized Agency's enabling laws require otherwise, an Authorized Agency must not retain an amount in excess of five percent (5%) of the Contract Price for Work completed. If the Contractor has performed at least fifty percent (50%) of the contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Authorized Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Authorized Agency must respond in Writing to all such applications within a reasonable time. When the contract Work is ninety seven and one half percent (97-1/2%) completed, the Authorized Agency may, at its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100%) of the value of the remaining unperformed contract Work. An Authorized Agency may at any time reinstate retainage. Retainage must be included in the final payment of the Contract Price.

(2) Deposit in Interest-Bearing Accounts. Upon request of the Contractor, an Authorized Agency must deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Authorized Agency. Earnings on such account must accrue to the Contractor. State Authorized Agencies must establish the account through the State Treasurer.

(3) Alternatives to Cash Retainage. In lieu of cash retainage to be held by an Authorized Agency, the Contractor may substitute one of the following:

(a) Deposit of Securities:

(A) The Contractor may deposit bonds or securities with the Authorized Agency or in any bank or trust company to be held for the benefit of the Authorized Agency. In such event, the Authorized Agency must reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds and securities deposited or acquired in lieu of retainage must be of a character approved by the Department, including but not limited to:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or its Authorized Agencies.

(iii) Obligations of any corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) Upon the Authorized Agency's determination that all requirements for the protection of the Authorized Agency's interests have been fulfilled, it must release to the Contractor all bonds and securities deposited in lieu of retainage.

(C) Deposit of Surety Bond. An Authorized Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Authorized Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond must accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage must be reduced by an amount equal to the value of the bond, and the excess must be reimbursed.

(4) Recovery of Costs. An Authorized Agency may recover from the Contractor all costs incurred in the proper handling of cash retainage and securities, by reduction of the final payment.

(5) Additional Retainage When Certified Payroll Statements Not Filed. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Authorized Agency must retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Authorized Agency. The Authorized Agency must pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontracts to file certified statements with the Authorized Agency).

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.560, 279C.570 & 701.420
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0830

Contractor Progress Payments

(1) Request for Progress Payments. Each month the Contractor must submit to the Authorized Agency, their Written request for a progress payment based upon an estimated percentage of Contract completion. At the Authorized Agency's discretion, this request may also include the value of material to be incorporated in the completed Work, which has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the Authorized Agency will make a progress payment to the Contractor, which must be equal to:

- (a) The value of completed Work;
- (b) Less those amounts that have been previously paid;
- (c) Less other amounts that may be deductible or owing and due to the Authorized Agency for any cause; and
- (d) Less the appropriate amount of retainage.

(2) Progress Payments Do Not Mean Acceptance of Work. Progress payments must not be construed as an acceptance or approval of any part of the Work, and must not relieve the Contractor of responsibility for defective Workmanship or material.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.570
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0840

Interest

(1) Prompt Payment Policy. An Authorized Agency must pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

(2) Interest on Progress Payments. Late payment interest must begin to accrue on payments due and owing on the earlier of thirty (30) Days after receipt of invoice or fifteen (15) Days after Authorized Agency approval of payment (the "Progress Payment Due Date"). The interest rate must equal three times the discount rate on ninety (90)-Day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of thirty (30) percent.

(3) Interest on Final Payment. Final payment on the Contract Price, including retainage, must be due and owing no later than thirty (30) Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment must thereafter accrue at the rate of one and one-half percent per month until paid.

(4) Settlement or Judgment Interest. In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment must be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on ninety (90)-Day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, must accrue from the later of the Progress Payment Due Date, or thirty (30) Days after the Contractor submitted a claim for payment to the Authorized Agency in Writing or otherwise in accordance with the contract requirements.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.570
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0850

Final Inspection

(1) Notification of Completion; Inspection. The Contractor must notify the Authorized Agency in Writing when the Contractor considers the contract Work completed. Within fifteen (15) Days of receiving Contractor's notice, the Authorized Agency will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.

(2) Acknowledgment of Acceptance. When the Authorized Agency finds that all Work required under the Contract has been completed satisfactorily, the Authorized Agency must acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.570(8)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0860

Public Works Contracts

(1) Generally. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(5), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR chapter 839.

(2) Required Contract Conditions. As detailed in the above statutes and Rules, every Public Works Contract must contain the following provisions:

- (a) Authorized Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).
- (b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).
- (c) Employer notice to employees of hours and days that employees may be required to Work, as set forth in ORS 279C.520(2).
- (d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.
- (e) Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).
- (f) Requirement for payment of fee to BOLI, as set forth in ORS 279C.830(2) and administrative rule of the BOLI commissioner.

(3) Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

- (a) The prevailing rate of wage, as required by ORS 279C.830(1), physically contained within or attached to hard copies of procurement Specifications, and by a downloadable direct link to the specific wage rates that apply to the project (either on the Authorized Agency web site or the BOLI web site) when procurement Specifications are also made available in electronic format.
- (b) Reference to payment of fee to BOLI, as required by ORS 279C.830(2).

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.800 - 279C.870
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0870

Specifications; Brand Name Products

(1) Generally. The Authorized Agency's Solicitation Document must not expressly or implicitly require any product by brand name or mark, nor must it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) Equivalents. An Authorized Agency may identify products by brand names as long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Authorized Agency must determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.345
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0880

Records Maintenance; Right to Audit Records

(1) Records Maintenance; Access. Contractors and subcontractors must maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition,

Contractors and subcontractors must maintain all other records necessary to clearly document:

(a) Their performance; and

(b) Any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors must make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the Authorized Agency at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) Inspection and Audit. An Authorized Agency may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person must maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) Records Inspection; Contract Audit. The Authorized Agency, and its authorized representatives, must be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in Section 1 of this Rule. The Contractor and subcontractor must maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

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

Stats. Implemented: ORS 279A.030, 279C.375, 279C.380 & 279C.440

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0890

Authorized Agency Payment for Unpaid Labor or Supplies

(1) Contract Incomplete. If the Contract is still in force, the Authorized Agency may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If an Authorized Agency chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety must not be relieved from liability for unpaid claims.

(2) Contract Completed. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims must be referred to the Contractor's surety for resolution. The Authorized Agency must not make payments to subcontractors or suppliers for Work already paid for by the Authorized Agency.

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

Stats. Implemented: ORS 279C.515

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0900

Contract Suspension; Termination Procedures

(1) Suspension of Work. In the event an Authorized Agency suspends performance of Work for any reason considered by the Authorized Agency to be in the public interest other than a labor dispute, the Contractor must be entitled to a reasonable extension of contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) Termination of Contract by Mutual Agreement for Reasons Other Than Default.

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Authorized Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this Section (2), the Authorized Agency must pay the Contractor a reasonable amount of compensation for prepara-

tory Work completed, and for costs and expenses arising out of termination. The Authorized Agency must also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment must be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) Public Interest Termination by the Authorized Agency. An Authorized Agency may include in its Contracts terms detailing the circumstances under which the Contractor must be entitled to compensation as a matter of right in the event the Authorized Agency unilaterally terminates the Contract for any reason considered by the Authorized Agency to be in the public interest.

(4) Responsibility for Completed Work. Termination of the Contract or a divisible portion thereof pursuant to this Rule must not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) Remedies Cumulative. The Authorized Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these Rules, in the Contract, or available at law or in equity.

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

Stats. Implemented: ORS 279C.326, 279C.650, 279C.655, 279C.660, 279C.665 & 279C.670

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06

125-249-0910

Changes to the Work and Contract Amendments

(1) Definitions. As used in this Rule:

(a) "Amendment" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general Scope of the original Procurement that requires mutual agreement between the Agency and the Contractor.

(b) "Changes to the Work" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the Agency or its authorized representatives to the Contractor requiring a change in the Work within the general Scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed Work.

(2) Changes Provisions. Changes to the Work are anticipated in construction and, accordingly, Agencies must include changes provisions in all Public Improvement Contracts that detail the Scope of the changes clause, provide pricing mechanisms, authorize the Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Agencies.

(3) Change Order Authority. Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(4) Contract Amendments. Contract Amendments within the general Scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general Scope of the original Procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through competitive bidding, competitive proposals, Competitive Quotes, sole source or emergency contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(d) The Amendment is made consistent with this Rule and other applicable legal requirements.

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

Stats. Implemented: ORS 279A.065 & 279C.400(1)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06

Stats. Implemented: ORS 283.520 & 291.038
Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

DIVISION 400

PROVISIONS FOR EXTENDING TELECOMMUNICATIONS SERVICES TO QUALIFIED PUBLIC AND PRIVATE ENTITIES

125-400-0000

Purpose, Applicability, and Effective Date

(1) The Legislative Assembly has declared the following provisions to be part of the policy of the State of Oregon regarding information technology:

(a) Use information technology in education, health care, economic development and government services to improve economic opportunities and quality of life for all Oregonians regardless of location or income.

(b) Encourage collaboration between Communities of Interest by geographic area and economic sector.

(c) Encourage competition among technology and service providers.

(2) The Department of Administrative Services ("Department") for the State of Oregon is the agency responsible for a statewide mandate to coordinate the development of and access to or delivery of telecommunications services to all state agencies and public or private entities that primarily operate for the public benefit in the areas of education, economic development, health care, human services, public safety, library or other similar public services related to the improvement of economic opportunities and quality of life in Oregon.

(3) The Information Resources Management Division ("Division") is the division within the Department through which the Department exercises its authority and privileges and discharges its duties and obligations related to the statewide information technology policy.

(4) The provisions of ORS 283.510 and 283.520, subsection (1), permit the Department to establish a statewide advanced digital communication network, and authorize the Department to execute contracts for the telecommunications equipment and services needed to establish such network.

(5) The provisions of ORS 283.520, subsection (2), authorize the Department to exercise its discretion in deciding to extend the benefits of state telecommunications contracts for networks, equipment and services to nonprofit organizations designated as Communities of Interest under the provisions of ORS 291.038, subsection (7).

(6) The provisions of ORS 291.038, subsection (5)(a), authorize the Department to exercise its discretion in deciding to furnish or deliver Statewide Integrated Video Conferencing and Statewide On-line Access Service to public and private entities that primarily conduct their activities for the direct good or benefit of the public or community-at-large in providing educational, economic development, health care, human services, public safety, library or other public services.

(7) The purposes of these rules are to:

(a) Define essential terms.

(b) Describe the application, review and appeal process regarding Community of Interest designation.

(c) Describe the application, review and appeal process regarding the furnishing or delivery of Statewide Integrated Video Conferencing and Statewide On-line Access services.

(8) These rules apply after January 1, 2000, to:

(a) Public or private entities seeking one or both of the following:

(A) Community of Interest designation, redesignation or appeal of denial of designation.

(B) Approval, reapproval or appeal of denial of application for Statewide Integrated Video Conferencing or Statewide On-line Access services.

(b) Local Established Providers seeking inclusion in the Division's listing of Internet access service providers.

(c) The renewal provisions of 125-400-0050(3) do not apply to subscribers of Internet Access services provided by the Data and Video Services Unit who have active accounts as of the effective date of these rules and there is no break in service by the subscriber subsequent to the effective date of rules.

Stat. Auth.: ORS 283.500, 283.510, 283.520 & 291.038

125-400-0010

Definitions

As used in OAR 125, division 400, unless the context requires otherwise:

(1) "Advanced Digital Communication Network" means a network of equipment, facilities and services capable of distributing digital communications signals for the transmission of voice, data, image and video over distances.

(2) "Affiliation" means a current relationship formalized in writing between two or more entities conducting activities in Oregon.

(3) "Break in Service" means the subscriber elects to not renew an Internet Access service account within 30 days of expiration.

(4) "Community of Interest (COI)" means an organization or organizations designated to receive available benefits from state telecommunications contracts based upon its satisfaction of all statutory requirements under ORS 291.038, subsection (7) and regulatory requirements under these rules.

(5) "Data and Video Services Unit" is the organizational unit in the Division that is responsible for offering access to an integrated telecommunications network capable of transmitting video, voice and data communications to support the delivery of Statewide Integrated Video Conferencing and Statewide On-line Access services to any public or private entity qualified under the provisions of ORS 291.038, subsection (5)(a) and these rules.

(6) "Department" refers to the Department of Administrative Services for the State of Oregon.

(7) "Division" refers to the Information Resources Management Division that is the division within the Department that manages the state's telecommunications networks.

(8) "Entity" includes any natural person capable of being legally bound, a sole proprietorship, a limited liability company, a corporation, foreign corporation, nonprofit corporation, profit and nonprofit unincorporated association, business trust, partnership, two or more persons having a joint or common economic interest, or a government or governmental subdivision.

(9) "Incidental Beneficiary" means:

(a) Any entity that derives some incidental benefit from a contract to which it was not a donee, creditor or other party;

(b) Did not pay or otherwise contribute any value;

(c) Was not treated in any manner as an intended party; and

(d) Is not entitled to any action.

(10) "Internet Access Service" means the component of Statewide On-line Access that provides electronic connectivity to the Internet and its services.

(11) "IRMD Web Site" refers to the publicly accessed Internet site maintained by the Division.

(12) "Local Established Provider" means Internet access service providers who satisfy all of the following criteria:

(a) Registration with the state of Oregon to do business within the state and the subject Local Exchange Telecommunications Service Area.

(b) Registration with the Division as an Internet access service provider for the subject Local Exchange Telecommunications Service Area.

(c) Acquisition, establishment, maintenance and current commercial use of operational dial-up equipment physically located within the subject Local Exchange Telecommunications Service Area.

(13) "Local Exchange Telecommunications Company" means a private entity with the capacity to deliver hardware, software or services for transmitting voice, data, video or images over distance; currently engaged in the business of such delivery of hardware, software or services; and registered with the State of Oregon Business Registry to conduct business for such purposes within the Local Exchange Telecommunications Service Area.

(14) "Local Exchange Telecommunications Service Area" is the geographically and legally defined area in which a person may access telecommunications information through a Local Exchange Telecommunications Company, without imposition of long distance telephone charges.

(15) "Nonprofit Organization" means an organization that can establish current satisfaction of all requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986.

(16) "Statewide Integrated Video Conferencing" means the Division-operated statewide electronic system with the capacity to transmit video, voice and data communications.

(17) "Statewide On-line Access" means the Division-operated electronic connectivity to information resources such as computer conferencing, electronic mail, databases and Internet Access.

(18) "State Telecommunications Contracts" are contracts negotiated by the Department on behalf of state agencies, as authorized under ORS 283.520, subsection (1). These contracts are for basic telecommunications services as well as long distance telecommunications services.

(19) "Telecommunications" means the hardware, software and services for transmitting voice, data, video and images over a distance.

Stat. Auth.: ORS 283.520 & 291.038

Stats. Implemented: ORS 283.520 & 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0020

Benefits from State Telecommunications Contracts Extended to Communities of Interest

(1) The Department is responsible for establishing and maintaining a statewide advanced digital communications network; and has the authority to contract with telecommunications service providers and equipment manufacturers in constructing, maintaining and operating such network.

(2) In keeping with the statewide information technology policy, and to encourage collaboration between Communities of Interest by geographic area and economic sector, the Department has discretionary authority to act through the Division to extend benefits from state telecommunications contracts for networks, equipment and services to designated Communities of Interest.

(3) Designated Communities of Interest may contact the Division by mail at 155 Cottage Street N.E. in Salem, Oregon 97310-0315 or in person, at 955 Center Street N.E., Room 470, Salem, Oregon, for current information on available state telecommunications contract benefits.

(4) Designated Communities of Interest receiving benefits from these state telecommunications contracts for networks, equipment and services are not deemed parties to the subject contracts. Their enjoyment of any available state telecommunications contract benefits is merely incidental, is not guaranteed and is not intended to and does not confer any contract rights upon them. Communities of Interest are neither donee nor creditor third party beneficiaries, but merely Incidental Beneficiaries who are not entitled to any action on the contract. The particular state telecommunications contract benefits are personal to each Community of Interest recipient, and recipients shall not use these benefits for resale. Failure to adhere to these guidelines could result in cancellation of Community of Interest designation and forfeiture of contract benefits.

Stat. Auth.: ORS 283.520 & 291.038

Stats. Implemented: ORS 283.520 & 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0030

Designation of Communities of Interest; Application; Approval; Cancellation; Redesignation

(1) The Division may designate an organization or organizations as a Community of Interest upon the applicant's full and complete compliance with these rules and its full and complete satisfaction of all statutory criteria under the provisions of ORS 291.038, subsection (7).

(2) Applications for Community of Interest designation shall be made on forms provided by the Division. These forms are available online at IRMD Web Site or from the office of the Division's Data and Video Services Unit located at 155 Cottage Street N.E., Salem, Oregon 97310-0315 or in person, at 955 Center Street N.E., Room 470, in Salem, Oregon. Completed application forms shall be submitted to the Network Communications Section Manager or designee either by mail addressed to 155 Cottage Street N.E. in Salem, Oregon 97310-0315 or personal delivery either to the Division office at 955 Center Street, N.E., Room 470, in Salem, Oregon. Application forms are not complete and will not be considered unless and until they include all of the following items and required information:

(a) Applicant's name, home and office addresses and telephone numbers.

(b) Applicant's mailing address, if different from its listed home and office addresses.

(c) Evidence of applicant's nonprofit and tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (a copy of the Internal Revenue Service determination letter, or advance ruling, indicating that applicant is a section 501(c)(3) tax exempt organization shall meet this requirement).

(d) Evidence that applicant has complied with the relevant provisions of ORS 65.001 to 65.990, and is registered with the Oregon Secretary of State to do business in Oregon as a nonprofit corporation.

(e) Statement and supporting evidence that applicant's mission is primarily to conduct activities for the direct benefit or good to the public or community-at-large in Oregon in one or more of the following public service areas:

(A) Educational.

(B) Economic Development.

(C) Health Care.

(D) Human Services.

(E) Public Safety.

(F) Library.

(G) Other public services.

(f) Identification of the community-at-large served, if not readily apparent from the applicant's mission and activity statement and description.

(g) Evidence of applicant's current affiliation with a federal, state or local governmental unit within the State of Oregon.

(h) Identification of those particular state telecommunications contracts from which applicant seeks extension of benefits, if known.

(i) Signature of applicant or its authorized representative.

(3) The Network Communications Section Manager shall approve or deny a submitted application within twenty (20) working days from actual receipt of the application. Following the Division's approval of a submitted application, a written Community of Interest designation ("Designation") shall be issued to the successful applicant. Upon receipt of the Designation, and at the discretion of the Division, a Community of Interest may enter into a formal agreement with the Division to extend to the Community of Interest certain benefits of telecommunications contracts for networks, equipment and services negotiated and executed by the State of Oregon under the provisions of ORS 283.520.

(4)(a) A Community of Interest Designation is a privilege, not a right. Designation expires one (1) year from the date of issuance. However, the Division may cancel a Designation prior to its normal expiration for cause based upon clear and convincing evidence of either of the following:

(A) A finding that the designee is abusing, or has abused, its status as a Community of Interest.

(B) A finding that the designee can no longer satisfy the statutory criteria under the provisions of ORS 291.038(7) to continue qualifying as a Community of Interest.

(b) Abuse of Community of Interest status includes, but is not limited to, the designee's resale of extended state telecommunications contract benefits. Cancellations for cause are reviewable under the process described in OAR 125-400-0080 below.

(5) Organizations seeking Community of Interest redesignation must follow the same process and are subject to the same eligibility requirements as if applying for an initial designation. Organizations seeking redesignation must submit their completed applications thirty (30) working days prior to the annual expiration date for their current Designation. Timely submissions will operate to extend the current Designation to cover the period necessary to review and take action on the new application for redesignation.

Stat. Auth.: ORS 283.520 & 291.038

Stats. Implemented: ORS 283.520 & 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0040

Denial of Community of Interest Designation; Reconsideration; Appeal

(1) An unsuccessful applicant for Designation shall receive a written notice that articulates the basis for denial of Community of Interest Designation.

(2) A dissatisfied applicant may appeal denial of Designation as follows:

(a) Timely submit a written appeal through the Network Communications Section Manager to the Chief Information Officer within twenty (20) working days from the date of notice of denial of Designation. Appellants may submit appeal packets either by mail addressed to 155 Cottage Street N.E. in Salem, Oregon 97310-0315, or personal delivery at 955 Center Street N.E., Room 470, in Salem, Oregon.

(b) Appellant must include the following items with the appeal packet:

(A) A letter or memorandum in which appellant explains the basis of appeal, identifies the relief sought and discusses the rationale in support of the requested relief.

(B) Any documentation or other evidence in support of the appeal.

(C) A copy of the notice of denial of Designation.

(D) A copy of the subject application for Designation and any attachments thereto.

(E) Any other matter requested by the Network Communications Section Manager or Chief Information Officer.

(c) The Network Communications Section Manager shall have five (5) working days from actual receipt of the submission of appeal to either reconsider the denial decision and approve the underlying application for Designation, or forward the appeal to the Chief Information Officer for further review.

(d) The Chief Information Officer shall review and take action on the appeal within twenty (20) working days from actual receipt of the submission from the Network Communications Section Manager. Completed action on the appeal includes submission of a written response to appellant. Such response shall take the form of a grant or denial of appeal. Any notice of denial of appeal shall state the reasons therefore.

(e) An applicant who has first exhausted these administrative remedies and is still dissatisfied with the decision of the Chief Information Officer may pursue the matter through the Circuit Court of the State of Oregon for Marion County.

(f) Failure to meet the timelines in this section will forfeit an applicant's rights to appeal at any level.

Stat. Auth.: ORS 283.520 & 291.038

Stats. Implemented: ORS 283.520 & 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0050

Access to Statewide Integrated Video Conferencing and Statewide On-line Access Services

(1) In keeping with the statewide information technology policy the Department has discretionary authority to act through the Division to furnish and deliver available Statewide Integrated Video Conferencing ("Video") and Statewide On-line Access ("On-line Access") services to those qualified to purchase these services under the provisions of ORS 291.038, subsection (5)(a) and these rules.

(2) Current information regarding user fees and rates is available online at IRMD Web Site or from the office of the Division's Data and Video Services Unit located at 155 Cottage Street N.E., Salem, Oregon 97310-0315 or in person, 955 Center Street N.E., Room 470, Salem, Oregon.

(3) Internet Access Service is a component of Statewide On-line Access Service. In compliance with the provisions of ORS 291.038, subsection (5)(c), the Department and Division shall not furnish or deliver this component of Statewide On-line Access to private entities where furnishing or delivering such service would directly compete with two or more Local Established Providers of such service within the Local Exchange Telecommunications Service Area. In communities with fewer than two Local Established Providers of such service within the Local Exchange Telecommunications Service Area, the Department and Division may furnish or deliver this component of Statewide On-line Access Service to public or private entities. The Division may refer private entities who are denied Internet Access Service under this section to a list of Internet access service providers conducting business in the subject Local Exchange Telecommunications Service Area. Internet access service providers may seek inclusion on this list through the process described in OAR 125-400-0090 below.

Stat. Auth.: ORS 283.520 & 291.038

Stats. Implemented: ORS 283.520 & 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0060

Application Process for Video and On-line Access Services

(1) The Division may furnish and deliver available Video and On-line Access services to public and private entities qualified under ORS 291.038, subsection (5)(a).

(2) Current Community of Interest designees are automatically qualified to purchase Video and On-line Access services.

(3) All applications for Video and On-line Access services shall be made on forms provided by the Division. These forms shall request information pertinent to the Division's determination that the applicant primarily conducts its activities for the direct good or benefit of the public or community-at-large in providing education, economic development, health care, human services, public safety, library or other public services in satisfaction of the qualifying criteria listed under ORS 291.038, subsection (5)(a). The forms are available online at the IRMD Web Site or from the office of the Division's Data and Video Services Unit located at 800 N.E. Oregon Street, Portland, Oregon 97232. Completed application forms shall be submitted to the Data and Video Services Unit Manager, or designee, electronically, by mail or personal delivery.

(4) The Data and Video Services Unit Manager, or designee, shall approve or deny a submitted application for Video or On-line Access services within twenty (20) working days from actual receipt of the submission. Following approval, the applicant is deemed a qualified subscriber and may purchase the identified services at the designated levels of service.

(5) Use of Video and On-line Access services is a privilege, not a right. Services furnished and delivered to subscribers are personal to them, and subscribers shall not use them for resale. The Division may cancel a subscription prior to its normal expiration for cause based upon clear and convincing evidence of any of the following:

(a) A finding that the subscriber is abusing, or has abused, its privilege as a subscriber.

(b) A finding that the subscriber can no longer satisfy the statutory criteria under the provisions of ORS 291.038, subsection (5)(a) to continue qualifying as a subscriber.

(c) Violating the terms of the User Agreement Form.

(6) An entity seeking to renew its subscription must follow the same application process and be subject to the same eligibility requirements as if applying for an initial subscription. Entities seeking subscription renewal must submit their completed applications thirty (30) working days prior to the expiration date for their current subscription. Timely submissions will operate to extend the current subscription to cover the period necessary to review and take action on the new application for subscription renewal.

Stat. Auth.: ORS 283.520

Stats. Implemented: ORS 283.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0070

Denial of Application for Video or On-line Access Services; Reconsideration; Appeal

(1) An unsuccessful applicant for Video or On-line Access services shall receive a written notice from the Data and Video Services Unit Manager that articulates the basis for denial of application.

(2) A dissatisfied applicant may appeal this denial as follows:

(a) Timely submit a written appeal through the Data and Video Services Unit Manager to the Network Communications Section Manager within twenty (20) working days from the date of the notice of denial. Appellants may submit appeal packets either by mail addressed to 155 Cottage Street N.E., Salem, Oregon 97310-0315, or personal delivery at the Data and Video Services Unit office at 955 Center Street N.E., Room 470, Salem, Oregon.

(b) Appellant must include the following items with the appeal packet:

(A) A letter or memorandum in which appellant explains the basis of appeal, identifies the relief sought and discusses the rationale in support of the requested relief.

(B) Any documentation or other evidence in support of the appeal.

(C) A copy of the notice of denial.

(D) A copy of the subject application for Video or On-line Access services and any attachments thereto.

(E) Any other matters requested by the Data and Video Services Unit Manager or the Network Communications Section Manager.

(c) The Data and Video Services Unit Manager shall have five (5) working days from actual receipt of the submission of appeal to either reconsider the denial and approve the underlying application for Video or On-line Access services, or forward the appeal to the Network Communications Section Manager for further review.

(d) The Network Communications Section Manager shall review and take action on the appeal within twenty (20) working days from actual receipt of the submission from the Data and Video Services Unit Manager. Completed action on the appeal includes submission of a written response to appellant. Such response shall take the form of a grant or denial of appeal. Any notice of denial of appeal shall state the reasons therefore.

(e) An applicant who has first exhausted these administrative remedies and is still dissatisfied with the decision of the Network Communications Section Manager may pursue the matter through the Circuit Court of the State of Oregon for Marion County.

(f) Failure to meet the timelines in this section will forfeit an applicant's rights to appeal at any level.

(3) Private entities who are denied Internet Access Service under ORS 291.038, subsection (5)(c) and OAR 125-400-0050(3) may request review of such denial under the reconsideration and appeal process described in this section.

Stat. Auth.: ORS 283.520

Stats. Implemented: ORS 283.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0080

Cancellation of Community of Interest Designation and Approval for Video or On-line Access Services; Right to Contested Case; Collaborative Dispute Resolution

(1) The Division shall adhere to the dispute guidelines and procedural rules as established under OAR 125-001-0005.

(2) To the extent possible, the Division shall encourage the use of alternative and collaborative dispute resolution procedures.

Stat. Auth.: ORS 283.520 & 291.038

Stats. Implemented: ORS 283.520 & 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

125-400-0090

Listing of Internet Access Service Providers

(1) Under the authority of ORS 291.038, subsection (5)(c) and OAR 125-400-0050(3) above, the Division shall not provide Internet Access Service to private entities where furnishing or delivering such service would directly compete with two or more Local Established Providers of such service within the subject Local Exchange Telecommunications Service Area. The Division may refer these private entities to its central list of Local Established Providers who are currently conducting business and providing Internet access service in the subject Local Exchange Telecommunications Service Area.

(2) Internet access service providers may submit a written request for inclusion in this central list of Local Established Providers. They must submit such requests on forms provided by the Division. These request forms are available online at IRMD Web Site or from the office of the Division's Data and Video Services Unit located at 800 N.E. Oregon Street, Portland, Oregon 97232. Completed request forms shall be submitted either electronically or by mail addressed to the Data and Video Services Unit, or delivered in person. Request forms are not complete and will not be considered unless and until they include all of the following items and required information:

(a) Applicant's business name, address, mailing address, electronic mail address, and telephone and facsimile machine numbers.

(b) Names and addresses of all principal owners.

(c) Identification of principal contact.

(d) Proof that the applicant is registered with the Oregon Secretary of State to do business as an Internet access service provider in Oregon.

(e) Date of business establishment and current number of employees.

(f) A complete list of all Oregon cities and towns where applicant's Internet access service is available without imposition of long distance charges.

(g) Length of time applicant's business has been offering Internet access service in the subject Local Exchange Telecommunications Service Areas.

(h) Applicant's business support desk/help line telephone number.

(i) Type of services offered.

(3) The central list of Local Established Providers may be posted electronically on a web page maintained by the Division.

(4) The central list of Local Established Providers shall contain a disclaimer that reads:

"The State of Oregon maintains this listing as a courtesy and does not make recommendations on specific qualifications of listed companies. Consumers who choose to use the list as a reference to contact any listed companies agree that: (i) such use is purely voluntary on their part, (ii) they use the list at their own risk, (iii) they shall defend, save, hold harmless and indemnify the State of Oregon, Department and Division and their officers, employees and agents from and against any claims, suits, or actions of any nature whatsoever for losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to consumers' contacts and subsequent relationships with any listed companies, and (iv) the State of Oregon, Department and Division and their officers, employees and agents shall not be liable for any direct, indirect, incidental, consequential or special damages of any sort resulting from, arising out of, or relating to consumers' contacts and subsequent relationships with any listed companies. Consumers are encouraged to examine the proposed services of more than one company before subscribing to a single service. Listings posted here are voluntary and may not include all Internet access service providers doing business in Oregon."

(5) At least once every six months, the Division shall attempt to contact all Internet access service providers listed in the Division's central list of Local Established Providers to verify their eligibility for continued inclusion in the list. Such contact may be made electronically. If a listed provider fails to respond to such inquiry within thirty (30) days, the Division may remove it from the central list. In such circumstance, the state shall be held harmless and indemnified from any harm that is or could be caused to any provider who is removed from the list and who is in fact still operational.

(6) If Internet access service providers are ever dissatisfied either with the Division's decision not to include them in the central list of Local Established Providers, or with a Division decision to furnish and deliver Internet Access Service to private entities within a particular Local Exchange Telecommunications Service Area under ORS 291.038(5)(c) and OAR 125-400-0050(3) above, and the provider desires to complain about either Division action, then they shall first use the administrative appeal process described in OAR 125-400-0070 above.

Stat. Auth.: ORS 283.520 & 291.038

Stats. Implemented: ORS 283.520 & 291.038

Hist.: DAS 7-1999, f. 12-2-99, cert. ef. 12-3-99

DIVISION 500

NATURE OF THE STATE OF OREGON ENTERPRISE NETWORK

125-500-0000

Definitions

(1) The "State of Oregon Enterprise Network" ("SOEN") is the State's "Advanced Digital Communications ("ADC") Network" that provides for the transmission of voice, data, image and video over distance on a single network. SOEN is a backbone network consisting of high capacity switching devices and transmission facilities providing shared communication paths for clusters of dispersed users. SOEN is comprised of switched services procured from telecommunications providers and provisioned on devices and facilities that are generally available to the public and other customers.

(2) "Department of Administrative Services" ("DAS") means the state agency that is authorized to acquire ADC network services for the provision of SOEN pursuant to ORS 283.500 to 283.520 and 291.038.

(3) "Eligible Purchasers" include the entities eligible under:

(a) The Oregon Cooperative Purchasing Program ("ORCPP") which includes:

(A) Cities, Counties, School Districts, Special Districts, or Other Units of Local Government;

(B) U.S. Government Agencies;

(C) Indian Tribes or Agencies;

(D) Qualified Rehabilitation Facilities ("QRF");

(E) Residential Programs;

(F) Certain Qualified Public Benefit Corporations; and

(b) "Communities of Interest" approved in accordance with Oregon Administrative Rules 125-400-0000 through 125-400-0060.

(4) "E-Rate" means a program administered by the Universal Service Administrative Company to make discounted telecommunications and Internet services available to classrooms or other places of instruction at schools and libraries that meet the federal statutory definition of an eligible institution.

(5) "Telecommunications Systems" mean devices, components, facilities and applications that provide telecommunications services for the state and its agencies and enable the aggregation and transmission of voice, video or data between and among state agency users. Telecommunications Systems include gateway devices that enable clusters of users to access SOEN for the purpose of 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

DIVISION 600

IDENTITY AUTHENTICATION/ ELECTRONIC SIGNATURES

125-600-0005

Guidelines for Use of Electronic Signatures by State Agencies

(1) The purpose of this rule is to implement the electronic signature provisions of the Uniform Electronic Signatures Act (UETA). The rule is not intended to apply to the other provisions of the act.

(2) This rule applies prospectively to new software applications with electronic transactions requiring signatures that are implemented after the effective date of this rule.

(3) Agencies shall follow the Information Resources Management Division policy which adopts the federal E-authentication process. The IRMD policy requires that agencies using electronic signatures:

(a) Determine the level of assurance the agency needs that the party signing an electronic transaction is authentic.

(b) Use only those tools and software applications approved by NIST and the Department of Administrative Services, Information Resources Management Services Division to mitigate the risks identified and provide the level of authentication needed.

(4) Agencies may request an exemption from these rules from the Department of Administrative Services.

Stat. Auth.: ORS 184.305, 291.038, 84, 84.049, 84.052, 84.055 & 84.064

Stats. Implemented: Portions of 2001 HB 2112

Hist.: DAS 10-2005(Temp), f. 8-31-05, cert. ef. 9-21-05 thru 3-18-06; DAS 11-2005, f. & cert. ef. 10-21-05

DIVISION 700

INTERNAL AUDITING

125-700-0010**Purpose**

The Oregon Department of Administrative Services is responsible for adopting rules setting standards and policies for internal audit functions within state government according to 2005 Oregon Law, Chapter 373. The rules include, but are not limited to:

- (1) Standards for internal audits that are consistent with and incorporate commonly recognized industry standards and practices; and
- (2) Policies and procedures that ensure the integrity of the internal audit process.

Stat. Auth.: OL 2005, Ch. 373

Stats. Implemented:

Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

125-700-0012**Statewide Audit Advisory Committee**

(1) The Statewide Audit Advisory Committee is created to promote excellence and professional, standards-based internal auditing services in state government. The Statewide Audit Advisory Committee serves in an advisory capacity to the Director of the Oregon Department of Administrative Services.

(a) The Statewide Audit Advisory Committee shall be comprised of the Director of the Oregon Department of Administrative Services, who will serve as Chair; the Director of the Secretary of State Division of Audits, the Legislative Fiscal Officer or designee, the State Court Administrator or designee, at least one Chief Audit Executive from an agency other than the Department of Administrative Services, and not more than nine other persons appointed by the Director of the Oregon Department of Administrative Services representing state, local, non-profit and private sector internal auditing expertise. Members of the Statewide Audit Advisory Committee shall serve two-year terms, and may be reappointed at the discretion of the Director. The Statewide Audit Advisory Committee shall meet regularly to discuss statewide audit matters and issues of interest. The Statewide Audit Advisory Committee shall:

(b) Draft proposed rules for consideration for adoption by the Department of Administrative Services;

(2) Develop a model charter for use by agency internal audit organizations;

(3) Provide statewide guidance and support to promote the conduct of internal audit activity in accordance with professional auditing standards.

(4) Make recommendations to help assure that the independence and objectivity of the internal audit functions within state government.

(5) Review the following agency internal audit documents to determine statewide issues:

(a) Agencies' risk assessments of program and administrative risks;

(b) Agencies' annual internal audit plans;

(c) Summaries of agencies' internal audit reports, including follow-up status reports;

(d) Agencies' external peer review of internal audit functions; and

(e) Agencies' internal audit criteria for determining materiality.

(6) Where appropriate, make recommendations to improve statewide management in areas that involve recurring or material findings that impact multiple agencies.

(7) Make recommendations on areas of statewide risk-based concerns.

(8) Periodically, members of the Statewide Audit Advisory Committee may appear before legislative committees, including the annual reporting on statewide audit activity to the Joint Legislative Audit Committee or Legislative Emergency Board.

(9) The Statewide Audit Advisory Committee shall document its full mission, responsibilities and organization in a formal charter.

Stat. Auth.: OL 2005, Ch. 373

Stats. Implemented:

Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

125-700-0015**Definitions**

(1) Audit: The examination of documents, records, reports, systems of internal control, accounting and financial procedures, and other evidence for one or more of the following purposes:

(a) To ascertain whether the financial statements present fairly the financial position and the results of financial operations of the fund types and account groups in accordance with Generally Accepted Accounting Principles and federal and state rules and regulations;

(b) To determine compliance with applicable laws, rules, regulations and contract provisions;

(c) To review the efficiency and economy with which operations are carried out; and

(d) To review effectiveness in achieving results.

(2) Chief Audit Executive: An employee designated by the agency to manage the internal audit function.

(3) External Peer Review: A peer review conducted pursuant to industry standards by person(s) not currently employed as an Oregon state employee.

(4) Internal audit function: Staff employed or contractors hired to conduct audits and risk assessments in accordance with professional auditing standards within a state agency.

(5) Internal Auditing: Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management control, and governance processes.

(6) Professional Auditing Standards: Standards for internal audits that are consistent with and incorporate commonly recognized industry standards and practices.

(7) Risk: The possibility that an event will occur and adversely effect the achievement of objectives. Risk is measured in terms of impact (the effect) and probability (the likelihood the event will occur).

(8) Risk Assessment: A process of identifying, analyzing and prioritizing risks to activities of an agency.

(9) Risk Management: A process to identify, assess, manage, and control potential events or situations, to provide reasonable assurance regarding the achievement of the organization's objectives.

Stat. Auth.: OL 2005, Ch. 373

Stats. Implemented:

Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

125-700-0020**Internal Auditing Requirements**

(1) In every agency that meets one or more of the criteria below, the agency head shall establish, maintain, and fully support a full-time internal audit function. Exceptions may be requested in writing by agencies to the Director of the Department of Administrative Services to allow for a part-time staff or limited contractor should it be determined this level of staffing or services allow the requesting agency to maintain compliance with all applicable rules.

(2) For agencies that meet the criteria below, an internal audit function will be established within existing resources or the agency must develop contract alternatives. For agencies not meeting the criteria below, an internal audit function is encouraged.

(a) Total biennial expenditures exceed \$100 million.

(b) Number of full-time equivalent employees exceeds 400.

(c) Dollar value of cash items received and processed annually exceeds \$10 million.

(3) The agency's internal audit function's purpose, authority, and responsibilities shall be formally defined in the agency's Internal Audit Charter. The agency's charter should be modeled after the audit charter developed by the Statewide Audit Advisory Committee that is consistent with professional auditing standards. The agency's charter should be approved by the audit committee or board as well as accepted by senior management. The internal audit staff shall have unrestricted access to all systems, processes, operations, functions, and activities within an agency as needed to perform job responsibilities.

Stat. Auth.: OL 2005, Ch. 373

Stats. Implemented:

Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

125-700-0025

Internal Auditing Standards

(1) Standards applicable to internal audit functions and internal auditors may include:

(a) *Standards for the Professional Practice of Internal Auditing* promulgated by the Institute of Internal Auditors;

(b) *Generally Accepted Government Auditing Standards* (GAGAS) promulgated by the United States Government Accountability Office (GAO);

(c) *Information Technology Guidelines* (such as COBIT) promulgated by the Information Systems Audit and Control Association (ISACA);

(d) *Generally Accepted Auditing Standards* (GAAS) promulgated by the American Institute of Certified Public Accountants.

(2) Internal Auditor(s) shall follow professional auditing standards as appropriate for their agency or program. At a minimum, Internal Auditor(s) will follow the *Standards for the Professional Practice of Internal Auditing* promulgated by the Institute of Internal Auditors.

(3) In instances where full compliance with audit standards is not achieved and non-compliance impacts the overall scope or operation of the internal audit function, the agency's Chief Audit Executive will disclose to the Oregon Department of Administrative Services Director the nature of the variance.

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

Stat. Auth.: OL 2005, Ch. 373

Stats. Implemented:

Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

125-700-0030

Agency Internal Auditor Qualifications

(1) The agency's Chief Audit Executive should be a person qualified to manage the internal audit function in accordance with professional auditing standards. The Chief Audit Executive shall coordinate with the agency head, the audit committee, appropriate state or federal oversight boards or commissions (as applicable), and the Oregon Audits Division and serve as the agency representative on audit matters.

(2) At a minimum, the agency's Chief Audit Executive should have a bachelor's degree in business or public administration, finance, economics, computer science or accounting, or a field specific to the agency's mission. Prior auditing experience is preferred for placement in Internal Auditor positions except entry level. Credentials such as Certified Internal Auditor (CIA), Certified Public Accountant (CPA), or Certified Government Audit Professional (CGAP) may be preferred for higher levels. The state position classification system should be consulted for additional qualifications.

Stat. Auth.: OL 2005, Ch. 373

Stats. Implemented:

Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

125-700-0035

Internal Auditing Leadership

(1) Each agency having an internal audit function shall establish and maintain an audit committee. An audit committee provides oversight of auditing and internal control for the agency and helps ensure the independence of the internal audit function. The purpose of an audit committee is to assist agency management in carrying out its oversight responsibilities as they relate to:

- (a) Financial and other reporting practices;
- (b) Internal control;
- (c) Compliance with laws, regulations, and ethics; and
- (d) Economy and efficiency of operations.

(2) If the agency has a governing board or commission, the audit committee should include one or more board or commission members. If there is no board or commission, the committee should include senior management officials not directly responsible for the internal audit function.

(3) If possible, agencies are encouraged to include individuals from outside their agency on their audit committees, to enhance public accountability and transparency of the audit function for the agency. Any audit committee members from outside the agency should have qualifications that the agency determines will allow those individuals to effectively serve as an audit committee member.

(4) The role and function of the audit committee shall be stated in a formal, written charter or equivalent document that is approved by the full board or governing body or director of the agency, as appropriate.

The charter should describe the authority, responsibilities, and structure of the audit committee.

Stat. Auth.: OL 2005, Ch. 373

Stats. Implemented:

Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

125-700-0040

Agency Internal Audit Functions

(1) The internal audit function shall report to the agency head, agency management and the audit committee on activities and results of their work, including the following:

(a) Governance of agency's processes and organizational structures implemented by the governing board, commission, and management in order to inform, direct, manage, and monitor the activities of the agency toward the achievement of its objectives.

(b) Performance responsibilities for carrying out the activities of the agency.

(c) Information Technology processes, information criteria, and resource activities, including but not limited to planning and organization, acquisition and implementation, delivery and support, and monitoring. Information criteria should include effectiveness, efficiency, confidentiality, integrity, availability, compliance, and reliability.

(d) Internal controls and compliance with laws and regulations. The areas selected for review may include financial, compliance, economy and efficiency, privacy, information systems, or program based audits.

(e) Economy and efficiency audits to determine whether the entity makes efficient use of resources.

(f) Program audits to determine the effectiveness and measure the achievement of a program.

(g) Periodic risk analysis to gain an understanding of the organization-wide risks and key areas of vulnerability: Monitor and evaluate the effectiveness of the agency's risk management function.

(2) During audits, address risk consistent with the engagement objectives and be alert to the existence of other significant risks.

(3) Review agency externally reported performance measure outcomes as part of the risk assessment.

(4) Incorporate sustainability plan criteria into standards used for conducting agency internal audits, where appropriate.

(5) Establish a follow-up process to monitor agency management's implementation of recommendations and help ensure that management actions have been implemented, or that management has accepted the risk of not taking action.

(6) Provide the Oregon Department of Administrative Services Director with a copy of the annual risk assessment within 30 days of presentation to the agency's audit committee.

(7) Operation and program reviews to ascertain the extent to which results are consistent with established goals and objectives to determine whether operations and programs are being implemented or performed as intended.

Stat. Auth.: OL 2005, Ch. 373

Stats. Implemented:

Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

125-700-0045

Internal Audit Status in the Agency

(1) The agency's Chief Audit Executive reporting position must be at an administrative level that will maximize objectivity. In most cases, the Chief Audit Executive should report administratively to the agency head or designee, and functionally to the audit committee.

(2) The Chief Audit Executive should have unrestricted access to decision-makers and decision-making bodies and to the information needed to perform internal audit duties and responsibilities.

(3) The internal auditor(s) should be free of undue influence to limit the audit scope and audit assignment schedule. The Chief Audit Executive should be free to obtain advice and information from sources inside and outside the agency. These sources may include, but should not be limited to professional colleagues, the Audits Division, and the Oregon Department of Administrative Services.

(4) The internal audit staff should be free of any responsibilities that would impair their ability to make independent reviews of all aspects of the agency's operations.

(5) The agency's Chief Audit Executive should periodically assess whether the purpose, authority, and responsibility, as defined in their audit charter, and resources required to accomplish the work

continues to be adequate to enable the internal auditing staff to accomplish their objectives. The result of this periodic assessment should be communicated to the audit committee and, if applicable, senior management.

(6) A scope limitation placed upon internal auditing staff that precludes them from meeting objectives and executing plans should be communicated in writing to the audit committee and, if applicable, agency management, along with its potential effect. The agency's Chief Audit Executive should periodically inform the committee regarding scope limitations that were previously communicated and accepted.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

125-700-0050**Planning and Performance Responsibilities**

(1) Each agency's Chief Audit Executive shall prepare an annual audit plan. The plan should be risk-based to determine priorities of the internal audit activity that are consistent with the organization's goals. The plan should include significant risks and exposures within the organization. The audit plan and its updates are reviewed and approved by the agency head and audit committee, if applicable. A copy of the plan, along with any updates through the year, shall be submitted to the Oregon Department of Administrative Services for review by the Statewide Audit Advisory Committee. In addition, a copy of the plan, along with any updates through the year, may be submitted to the Secretary of State Audits Division and appropriate state or federal oversight authorities so that work of the internal audit function may be considered in their audit planning.

(2) The agency's Chief Audit Executive shall issue signed, written reports on a timely basis after audit work is completed. Internal audit reports should be presented to the appropriate managers in the agency and summarized for the agency head and audit committee. The Chief Audit Executive shall provide a summary of all internal audit reports in a format approved by the Department of Administrative Services, along with a summary of plans to mitigate identified risks to the Oregon Department of Administrative Services within 30 days of publication to the agency's audit committee. The Chief Audit Executive shall provide specific internal audit reports to the Oregon Department of Administrative Services upon request. The final version of internal audit reports may be distributed outside the agency at the discretion of the agency head or upon demand to the extent provided by public records law. The Oregon Department of Administrative Services will refer public records request for agency internal audit reports to the individual agencies for response.

(3) The responsible manager for each audit should prepare a written response to all internal audit reports. The response should state whether the manager agrees or disagrees with the findings and recommendations, what corrective action will be taken, when the corrective action will be completed, and who will be responsible for completing the corrective action. The response should be given to the agency's Chief Audit Executive within a reasonable time of the initial audit

report. The Chief Audit Executive is required to follow up on all internal audit reports to determine whether proper corrective action has been completed or that senior management has assumed the risk of not taking the recommended corrective action.

(4) The agency's Chief Audit Executive shall prepare an annual report in a format approved by the Department of Administrative Services summarizing audit activity, including follow-up on audit findings reported by the Internal Auditor, the Secretary of State Audits Division, as well as other state and federal oversight authorities, as of June 30th each year. The report should be submitted to the agency head and audit committee. A copy of the report shall be submitted to the Internal Audit unit of the Oregon Department of Administrative Services no later than October 31st of each year to assist in preparation of the overall annual report to the Legislature regarding statewide internal audit activities.

(5) The agency's Chief Audit Executive shall annually assess the agency's performance measurement system integrity and provide such report to the Director of the Oregon Department of Administrative Services, as part of the risk assessment. The Chief Audit Executive shall perform the assessment by interviewing agency management for assurance controls are in place that ensure accuracy of reporting.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

125-700-0055**External Peer Review**

(1) State internal audit functions should have an external peer review at least every five years to determine compliance with professional auditing standards in performing audit assurance and consulting engagements. The Oregon Department of Administrative Services shall provide a qualified vendors list of approved organizations to conduct such reviews upon request.

(2) A copy of the external peer review will be provided to the Director of the Oregon Department of Administrative Services when issued.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

125-700-0060**Audit Records and Retention**

(1) The agency's Chief Audit Executive and internal audit staff, if any, should maintain adequate files of work papers, reports, and related audit correspondence. These files should be kept until an external peer review has been performed. Refer to State Archive requirements and OAR 166-300-0025 for record retention schedules. Records should be kept so they can be retrieved, if necessary.

(2) The agency's Chief Audit Executive must monitor and control confidential internal audit files. Confidential documents are those designated as confidential by agency policy or covered by ORS 192.496 through 192.505.

Stat. Auth.:
Stats. Implemented: OL 2005, Ch. 373
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06