

DIVISION 63

CAPITAL CONSTRUCTION AND CONTRACTING

580-063-0000

Authority

These rules establish the procedures that will be followed by the Institutions to erect, improve, repair, maintain, equip, and furnish buildings and structures under the control of the Board.

Stat. Auth.: ORS 351.060

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0005

Authorization to Undertake Capital Construction Projects

Before an Institution contracts for Capital Construction on land owned or controlled by the Board, or prepares other than conceptual plans or preconstruction design, the Institution will obtain approval as set out in this rule, regardless of the source of funds or method by which the project is to be financed. To obtain approval, the Institution will describe the project, the financing plan for design and construction, and the operation and maintenance cost of the proposed project.

(1) If appropriate Systemwide limitation exists for a Capital Construction project that totals \$500,000 or more but less than \$5 million, inclusive of all fund sources, the Chancellor or designee may approve the allocation of the existing expenditure authority to the Institution.

(2) Any Capital Construction project that does not meet the criteria in subsection (1) of this section shall be approved by the Board and submitted to the Legislature.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0010

Definitions

All capitalized terms in chapter 580, division 63, have the meanings set forth in OAR 580-061-0010 unless set forth below, or unless the context requires otherwise or except as stated.

(1) "Construction-Related Services" means one or more related services, which includes, but is not limited to: finance, design, preconstruction, and construction services. The project delivery methods that use Construction-Related Services include, but are not limited to: conventional construction services, design-build, construction manager at risk, agency construction management, and performance contracting.

(2) "Professional Consultant" means architects, engineers, planners, land surveyors, appraisers, construction managers, and similar professional consultants.

(3) "Capital Construction" means any construction or facility improvement that costs \$500,000 or more and is not considered maintenance or repair.

Stat. Auth.: ORS 351

Stats. Implemented:

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580-063-0015

Procurement and Contracting Procedures

The procedures set out in OAR 580-061-0000 through 580-061-0160 will be used for the procurement of Construction-Related Services and Professional Consultants.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0020

Methods of Procurement

Institutions will use the following methods of procurement when procuring Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services.

(1) Direct Procurement. A process where the Institution negotiates directly with a single Entity to provide Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services.

(2) Informal Procurement. A competitive process where the Institution posts an advertisement of the opportunity on the OUS procurement website for a reasonable time necessary to obtain at least three Bids or Proposals. The Institution may also directly contact prospective Bidders or Proposers. If the notice has been posted for a reasonable time period and fewer than three Bids or Proposals have been submitted, the Institution may enter into a Contract with a Responsible Bidder or Proposer based on the Specifications contained in the Solicitation Document.

(3) Formal Procurement. A Competitive Process where the Institution:

(a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.

(b) Publishes a notice of the procurement on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, institutional website, or other medium for advertising. The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for a duration reasonable under the circumstances for the procurement.

(c) Conducts the procurement in accordance with Chapter 580, Division 61, section 0000 through 0160.

(4) Emergency Procurement. The Institution President, Chancellor, or designee may declare an Emergency when such a declaration is deemed appropriate. The reasons for the declaration will be documented and will include justifications for the procedure used to select the Contractor or Professional Consultant for a Contract or Public Improvement Contract within the scope of the Emergency declaration. After the Institution President, Chancellor, or designee has declared an Emergency, the Institution may negotiate a Contract or Public Improvement Contract with any qualified Entity or Professional Consultant for services included in the scope of the Emergency declaration. The

Institution will maintain appropriate records of negotiations carried out as part of the contracting process.

(5) OUS Retainer Contract Program

(a) The OUS Capital Construction and Planning Office will maintain Retainer Contracts for Professional Consultants, Construction-Related Services, and any other service that may from time to time benefit Institutions. The Retainer Contracts will be established in accordance with this subsection.

(A) Periodically, but no less often than every two years, the OUS Capital Construction and Planning Office will invite interested Contractors to submit business information that meets minimum qualifications as described in a Solicitation Document. Contractors that meet the minimum qualifications and have not been disbarred or disqualified by an agency of the State of Oregon as outlined in OAR 580-061-0160, may be offered a Retainer Contract to be listed on the respective retainer program to provide services in a non-exclusive and on an as-needed basis.

(B) Notice of the procurement will be published on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, Institution website, or other medium for advertisement.

(b) The OUS Capital Construction and Planning Office may enter into interagency agreements to permit other public agencies to utilize the services offered by Entities that have entered into Retainer Contracts if the public agency agrees to conditions, including but not limited to:

(A) Follow the procurement processes established in these rules.

(B) Use the contract templates associated with each retainer program.

(C) Any service procured will be the sole financial responsibility of the public agency.

(D) The public agency will be solely liable to resolve all disputes that may arise from breach of contract.

(E) The OUS Capital Construction, Planning, and Budget Office may impose a reasonable administrative fee on the public agency using the Retainer Contracts based on the compensation for services procured to recover administrative costs, legal review fees, and to improve or expand retainer programs.

(c) The OUS Capital Construction, Planning, and Budget Office will maintain an electronic roster of all Professional Consultants and Contractors who have entered into Retainer Contracts. Institutions that utilize retainer programs will follow the procedures established in these rules and will only execute contracts from templates that have been approved for each respective retainer program.

(6) Sole Source. A process where the Institution President, the Chancellor or designee has made a Written determination that due to special needs, experience, or qualifications, only a Single Seller is reasonably available to provide certain Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

(a) Authority. Institutions may authorize sole source procurements up to \$1,000,000 cumulative for all Institution projects throughout a fiscal year. The Chancellor or designee may authorize sole source procurements up to \$5,000,000 cumulative for

each Institution's projects throughout a fiscal year. The Board will approve all other sole source procurements.

(b) Each Institution will provide public notice of its determination that the Professional Consultant services, Construction-Related Services, or combination of Professional Consultant services and Construction-Related Services are only available from a Single Seller. Public notice may be provided on the OUS procurement website. The public notice will describe the Professional Consultant services, Construction-Related Services, or combination of Professional Consultant services and Construction-Related Services to be acquired from the Single Seller, identify the prospective Professional Consultant or Contractor, and include the date, time and place that protests are due. The Institution shall give Entities at least seven (7) Days from the date of notice publication to protest the sole source determination.

(c) On an annual basis, Institution Presidents, or their designees will submit a report to the Board summarizing approved sole source procurements for the Institution for the prior fiscal year. The report will be made available for public inspection.

(7) Special Procurement.

(a) A special procurement is an exemption from competitive procedures that the Board determines is appropriate because it:

(A) Is reasonably expected to result in substantial cost savings to the Institution or to the public; or

(B) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with others processes described in this rule.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0025

Contracts for Professional Consultants

Institutions will use one of the following two procedures when contracting for Professional Consultant services:

(1) OUS Capital Construction Retainer Program for Professional Consultants.

(a) For Professional Consultant service contracts where the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties is \$100,000 or less, the Institution may select a Professional Consultant that has entered into a Retainer Contract.

(b) For Professional Consultant service contracts where the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties is \$100,000.01 to \$250,000, the Institution must select at least three Professional Consultants who have entered into Retainer Contracts to provide proposals for the service. Selection of a Professional Consultant from submitted proposals will be based on the criteria set forth in the Solicitation Document. In the event that fewer than three Professional Consultants are on the retainer that can provide the required service, the Institution may proceed with fewer than three Bids or Proposals.

(c) For Professional Consultant service contracts where the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated

by the parties is \$250,000.01 to \$1,000,000, the Institution will post an advertisement of the opportunity on the OUS procurement website. All eligible Professional Consultants that have entered into Retainer Contracts will have an opportunity to submit a proposal in response to the opportunity. Selection of a Professional Consultant from submitted proposals will be based on the criteria set forth in the Solicitation Document.

(2) Standard Procurement. Except in cases of Emergency, Special Procurement, or when only a Single Seller is reasonably available, when procuring Professional Consultant services, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules.

(a) \$25,000 or less – Direct Procurement or other method of procurement that the Institution deems beneficial to the procurement.

(b) \$25,000.01 to \$100,000 – Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Procurement method, that the Institution deems beneficial to the procurement.

(c) Greater than \$100,000 – Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Institution deems beneficial to the procurement.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0030

Contracts for Construction-Related Services

Institutions will use one of the following procedures when procuring Construction-Related Services for a Contract or Public Improvement Contract:

(1) OUS Capital Construction Retainer Program for Construction-Related Services.

(a) For Construction-Related Services Contracts or Public Improvement Contracts where the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties is \$50,000 or less, the Institution may select a Contractor that has entered into a Retainer Contract.

(b) For Construction-Related Services Contracts or Public Improvement Contracts where the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties is \$50,000.01 to \$500,000, the Institution must select at least three Contractors that have entered into Retainer Contracts to provide Bids or Proposals for the service. Selection of a Contractor from submitted Bids or Proposals will be based on the criteria set forth in the Solicitation Document. In the event that fewer than three Contractors are on the retainer that can provide the required service, the Institution may proceed with fewer than three Bids or Proposals.

(c) For Construction-Related Services Contracts or Public Improvement Contracts where the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties is \$500,000.01 to \$1,000,000, the Institution will post an advertisement of the opportunity on the OUS procurement website. All eligible

Contractors that have entered into Retainer Contracts will have an opportunity to submit a Bid or Proposal in response to the opportunity. Selection of a Contractor from submitted Bids or Proposals will be based on the criteria set forth in the Solicitation Document.

(2) Standard Procurement. Except in cases of Emergency, Special Procurement, or when only a Single Seller is reasonably available, when procuring Construction-Related Services, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules.

(a) \$25,000 or less – Direct Procurement or other method of procurement that the Institution deems beneficial to the procurement.

(b) \$25,000.01 to \$100,000 – Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Procurement method, that the Institution deems beneficial to the procurement.

(c) Greater than \$100,000 – Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Institution deems beneficial to the procurement.

(3) In accordance with ORS 279C.800 et seq, projects having a total Contract Price more than \$50,000, or on a project where the combined Contract Price of all contracts awarded on the project is more than \$50,000, will be subject to the Bureau of Labor and Industries Prevailing Wage Laws. Projects may not be divided into more than one Contract to avoid the application of this subsection. Projects funded in part or wholly by federal funds will comply with the higher of the state or federal prevailing rate of wage.

(4) No Contract will be awarded to any construction firm that is not licensed to do business in the State of Oregon, not registered or licensed by the appropriate state licensing boards, or listed as ineligible to enter into Contracts or Public Improvement Contracts by the Bureau of Labor and Industries.

(5) Contractors will post and maintain performance and payment bonds as required in the Solicitation Document. For Public Improvement Contracts with a total Contract Price in excess of \$100,000, one hundred percent performance and payment bonds will be required.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0035

Oregon's Percent for Art

The "Percent for Art" legislation governed by ORS 276.073 through 276.090, guides the acquisition of Oregon's state art collection. For acquisition of art work in applicable state buildings, this program sets aside no less than 1 percent of the construction funds of buildings with a construction budget of \$100,000 or more. The Institution will be responsible to ensure compliance with the "Percent for Art" for applicable projects.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0040

Design Standards

All major facility projects will be planned, designed, constructed, and renovated to meet high performance building standards for energy efficiency and environmental sustainability as defined by the Department of Energy and the State of Oregon.

(1) State Energy Efficiency Design is the policy of the State of Oregon that facilities to be constructed or purchased by authorized state agencies be designed, constructed, renovated, and operated so as to minimize the use of nonrenewable energy resources and to serve as models of energy efficiency per ORS 276.900 through 276.915.

(2) Green building design and construction is an integral part of OUS Capital Construction. Institution projects should consider design standards that incorporate the 'Leadership in Energy & Environmental Design' (LEED) Silver standards or higher standards, which promote buildings that significantly reduce or eliminate the negative impact of buildings on the environment and occupants.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0045

Retainage Processing Charges

(1) The Institution may require a retainage for Construction-Related Services Contracts under \$1,000,000. For Construction-Related Services Contracts over \$1,000,000, the Institution will withhold a retainage.

(2) An Institution will not retain an amount in excess of five percent (5 percent) of the Contract Price for Work completed. If the Contractor has performed at least fifty percent (50 percent) of the Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's written approval, the Institution may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Institution will respond in Writing to all such applications within a reasonable time. When the Work is ninety-seven and a half percent (97.5 percent) completed, the Institution may, at its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100 percent) of the value of the remaining unperformed Work. An Institution may at any time reinstate retainage. Retainage will be included in the final payment of the Contract Price.

(3) For Construction-Related Services Contracts over \$1,000,000 the Contractor may request that the retainage be deposited in an interest-bearing account at a financial institution. Title to such funds will remain with the Board until the Work is complete and accepted by the Institution. Interest on deposited retainage accrues to the benefit of the Contractor and will remain in the retainage account until the Work is accepted. The Institution may deduct fees necessary to open and maintain an interest-bearing account.

(4) Alternatives to cash retainage. In lieu of cash retainage to be held by the Institution or financial institution, the Contractor may substitute one of the following:

(a) Deposit of securities:

(A) The Contractor may deposit bonds or securities with the Institution or in any bank or trust company to be held for the benefit of the Institution. In such event, the Institution will 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 will be of a character approved by the Controller's Office, including but not limited to:

(i) Bills, certificates, notes, or bonds of the United States.

(ii) Other obligations of the United States or its agencies.

(iii) Obligations of any corporation wholly owned by the federal government.

(iv) Indebtedness of the Federal National Mortgage Association.

(C) Upon the Institution determination that all requirements for the protection of the Institution's interests have been fulfilled, it will release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. An Institution, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Institution in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond will accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage will be reduced by an amount equal to the value of the bond and the excess will be reimbursed to the Contractor.

(5) An Institution will recover from the Contractor all costs incurred in the proper handling of cash retainage and securities, by reduction of the final Contract payment.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08