

The Oregon Administrative Rules contain OARs filed through July 15, 2002

OREGON STATE SYSTEM OF HIGHER EDUCATION

DIVISION 50

REAL PROPERTY, FACILITY, AND CAMPUS PLANNING

580-050-0000

Definitions

All capitalized terms in chapter 580, division 50 have the meanings set forth below, unless otherwise defined in the chapter 580, division 50 rules.

- (1) Addendum or Addenda: An addition or deletion to, a material change in, or general interest explanation of the Solicitation Document. Addenda will be labeled as such and distributed to all interested Entities.
- (2) Bid: A competitive offer, binding on the Bidder and submitted in response to an Invitation to Bid.
- (3) Bidder: An Entity that submits a Bid in response to an Invitation to Bid.
- (4) Board: Oregon State Board of Higher Education.
- (5) Closing: The date and time announced in the Solicitation Document as the deadline for submitting Offers.
- (6) Construction Trade Services: Construction services that are not personal services on projects that are not Public Improvements.
- (7) Consultants: Architects, engineers, planners, land surveyors, appraisers, managers and related professional consultants.
- (8) Contract: The Written agreement, resulting from the Solicitation Document that sets forth the rights and obligations of the parties.
- (9) Contract Price: The total of the awarded Bid or Proposal amount, including any approved alternates, and any fully executed change orders or amendments.
- (10) Contractor: The Entity awarded the Contract in response to the Solicitation Document.
- (11) Days: Calendar days unless otherwise specified by these rules.
- (12) Disqualification or Disqualify: The preclusion of an Entity from contracting with an Institution for a period of time. An Institution is authorized to disqualify an Entity in accordance with OAR "Disqualification of an Entity".
- (13) Electronic Offer: An Offer made by an Offeror in response to an Institution's or the Board's Solicitation Document posted on its procurement website. In order to accept Electronic Offers, Institutions and the Board must create a separate e-mail address and mailbox to which Electronic Offers may be made and this mailbox must send automatic replies to Offerors indicating when their Offer was received.

- (14) Emergency: Circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that require prompt execution of a Contract to remedy the condition.
- (15) Entity: A natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.
- (16) Facsimile: A document that has been transmitted to and received by the Institution in a format that is capable of being received via a device commonly known as a facsimile machine (e.g., a Facsimile Bid). A facsimile machine allows hard copy documents (written, typed or drawn material) to be sent over telephone lines and printed in another location.
- (17) Foreign Contractor: A Contractor that is not domiciled in or registered to do business in the State of Oregon.
- (18) Institution: One of the universities that is part of the Oregon University System, including the Board's Chancellor's Office.
- (19) Institution Facilities Planning Official: The Senior Vice Chancellor for Finance and Administration or his or her designee at an Institution with the authority to enter into Contracts. An Institution may further designate persons who may act as the Institution Facilities Planning Official.
- (20) Invitation to Bid or ITB: A Solicitation Document calling for Bids.
- (21) Offer: A Bid or Proposal as applicable.
- (22) Offeror: A Bidder or Proposer as applicable.
- (23) Opening: The date, time, and place announced in the Solicitation Document for the public opening of Written sealed Offers.
- (24) Project Contract: A Contract entered into with an Entity that has signed a retainer agreement under OAR 580-800-0032(4).
- (25) Proposal: A competitive offer submitted in response to a Request for Proposals or a request from an Institution Facilities Planning Official to respond to a proposed assignment under OAR 580-050-0020(3)(b) or (c).
- (26) Proposer: An Entity that submits a Proposal in response to a Request for Proposals.
- (27) Public Improvement: Projects for construction, reconstruction or major renovation on real property by or for an Institution where the Contract Price exceeds \$25,000, other than projects for which no funds of a public agency are directly or indirectly used except for participation that is incidental or related primarily to project design or inspection. "Public Improvement" does not include Emergency work, minor alteration, ordinary repair, or maintenance necessary in order to preserve a Public Improvement or projects where the total Contract Price is less than \$25,000.
- (28) Public Work: 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 an Institution or the Board to serve the public interest but does not include the reconstruction or renovation of privately owned property which is leased by the Board or an Institution.

- (29) Request for Proposals or RFP: A Solicitation Document calling for Proposals.
- (30) Responsible Offeror (also, Responsible Bidder or Responsible Proposer, as applicable): Is an Entity that has submitted an Offer and meets the standards set forth in OAR "Rejection of an Offer (1)(c)(G)" and that has not been disqualified by the Institution under OAR "Disqualification of an Entity".
- (31) Request for Qualifications or RFQ: A Written document that: (a) Provides a general description of a proposed project; (b) Indicates the type of Consultant services needed, including, if deemed necessary or appropriate, a description of the particular services needed for part or all of a proposed project or projects; and (c) Requests each prospective Consultant to provide a Written response setting forth the Consultant's specific experience and qualifications for performing the type of services required.
- (32) Responsive Offer (also, Responsive Bid or Responsive Proposal, as applicable): An Offer that substantially complies with applicable solicitation procedures and requirements and the Solicitation Document.
- (33) Signed or Signature: Any mark, word, or symbol executed or adopted by an Entity evidencing an intent to be bound.
- (34) Solicitation Document: An Invitation to Bid or Request for Proposals or Request for Qualifications including all documents incorporated by reference.
- (35) Specification: Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.
- (36) Work: The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and successful completion of all duties and obligations imposed by the Contract.
- (37) Written or Writing: Conventional paper documents, either manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or Facsimile documents when required by applicable law, or to the extent permitted by the Solicitation Document or Contract.
- Stat. Auth.: ORS 351.060, 351.070
Stats. Implemented: ORS 351.060, 351.070

580-050-0001

Comprehensive Plan Coordination

(1) Use of property owned by the Board will conform to this rule and the procedures in the Oregon University System Coordination Plan created pursuant to the Land Conservation and Development Commission OAR Chapter 660, Division 030, State Agency Coordination. In approving decisions concerning use of property owned by the Board, the Oregon University System, Institutions, and managers at activity locations will find that the project, plan, or action complies with the Statewide Planning Goals and is compatible with applicable acknowledged comprehensive plans.

(2) Compliance with Statewide Goals and compatibility with acknowledged Comprehensive Plans will be achieved by making decisions concerning property owned by the Board in conformance with local jurisdiction comprehensive land use plans and land use regulation as follows:

(a) For each of the Institutions, a long-range campus development plan will be formulated covering at least the area within the approved campus boundaries. Campus plans will be reviewed with officials of the local jurisdiction for conformance with the local acknowledged Comprehensive Plan. A campus plan may be formulated as a refinement plan or amendment to the local Comprehensive Plan and be implemented as a special zoning district or planning district within the local jurisdiction land use regulations;

(b) For other lands that support activities governed by the Board, the activity and the land use will conform to the local jurisdiction acknowledged Comprehensive Plan and associated land use regulations.

Stat. Auth.: [ORS 351.060](#)

Stats. Implemented: [ORS 351.060](#)

Hist.: HEB 4-1990, f. & cert. ef. 2-13-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 5-1996, f. & cert. ef. 12-18-96

580-050-0005

Conveyances

Authorized conveyances of all interests in real property will be approved by the Assistant Attorney General serving as chief counsel to the Department, or a designee, and executed by the Board President and Board Secretary pursuant to [ORS 351.150](#).

Stat. Auth.: [ORS 351.150](#)

Stats. Implemented: ORS 351.150

Hist.: HEB 3-1978, f. & ef. 6-5-78

580-050-0010

Easements

The Board President and the Board Secretary are authorized, without Board approval, to execute easements affecting real property owned by the State of Oregon for the benefit of the Board in accordance with the following:

(1) The easement will be recommended by the Senior Vice Chancellor for Finance and Administration, or designee, and will be in a form approved by the Assistant Attorney General serving as chief counsel to the Board, or designee.

(2) If the property affected is within approved projected campus boundaries, the easement will relate only to utilities, traffic control devices, sidewalks, surface transportation, and other similar items, with appropriate access.

(3) If the property affected is not within approved projected campus boundaries, the easement will relate either to utilities or to rights of way for access to adjacent properties.

(4) Easements granting rights in real property other than those set forth in sections (2) and (3) of this rule will be approved by the Board prior to their execution by the Board President and Board Secretary.

Stat. Auth.: [ORS 351.070](#); 351.150

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92)

580-050-0015

Purchases and Leases of Real Property

The Senior Vice Chancellor for Finance and Administration or designee has authority to purchase real properties or enter into leases, with appropriate report to be made to the Board, subject to the following conditions:

(1) Location. Properties will be located within the Board-established projected campus boundaries of an Institution. Property exchanges are subject to specific Board authorization.

(2) Sources of Funds. Properties to be purchased principally as sites for educational and general construction or improvements, or principally for current educational and general use, will be financed from funds available for these purposes, usually a state appropriation or proceeds from the sale of bonds issued under the provisions of Article XI-G of the Oregon Constitution. Properties to be purchased principally as sites for auxiliary enterprises construction or improvements, or principally for current auxiliary enterprises use, will be financed from funds available for these purposes, such as proceeds from the sale of bonds issued under provisions of Article XI-F(1) of the Oregon Constitution or appropriate restricted funds.

(3) Purchase Price. Purchases will be made at prices based on current market values, determined by averaging two or more independent appraisals. Limit on each purchase will be \$500,000. All purchases will conform to the procedures set out in OAR _____.

(4) Value of Lease. The total cost of the lease over its term, including any options to extend the lease, will not exceed \$500,000. All leases will conform to the requirements set out in OAR _____.

(5) Priority of Property Acquisitions. To the extent practical, purchases will be made in the following priority order:

(a) Site for building construction or other improvement projects for which funds are available;

(b) Unimproved property;

(c) Property with improvements having value materially less than the land;

(d) Sites intended for building or other improvement projects for which construction authorization is expected to be sought from the Legislature at its next session, with a high priority assigned to the project;

(e) Property for which the owner plans costly improvements or other action that would materially increase the market value and cost to the Board if acquired later;

(f) Property offered for sale by owner.

(6) Condemnation. Authorization to acquire real property by condemnation is subject to specific Board action.

Stat. Auth.: [ORS 351.060](#)

Stats. Implemented: [ORS 351.060](#)

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 5-1996, f. & cert. ef. 12-18-96

Capital Construction

580-050-0020

Appointment of Professional Consultants

The Institution Facilities Planning Official is authorized to select and enter into contracts with Consultants for the design, evaluation, and management of construction projects or real property. Services performed by Consultants may include but are not limited to: energy management, construction management, facilities planning, materials testing, hazardous materials evaluation and abatement, engineering, cost estimating, land surveying, appraisal, commissioning, special inspections and related services in accordance with the following standards and procedures:

(1) General Standards; Selection Factors. The purposes of this rule are to assure that Consultants are evaluated fairly for Contracts; that those selected will be highly qualified; and to encourage excellence and cost consciousness on the part of Consultants in performing professional services for the Institutions. The following factors, which are based on the qualifications of the Consultants, will be considered in evaluating and selecting Consultants:

(a) Experience, design talent, required licensure, professional certification(s) and technical competence, including an indication of the design, evaluation, planning, management, or other processes expected to be used in the Consultant's performance of services under any resulting Contract;

(b) Capacity and capability to perform the services within the time limitations set for the completion of the project;

(c) Past record of performance on contracts with governmental agencies and private owners with respect to such factors as cost control, quality of work, ability to meet schedules, coordination and supervision of sub-consultants, timely payment of sub-consultants and suppliers, and contract administration;

(d) Availability to and familiarity with the area in which the project is located, including knowledge of design and construction techniques peculiar to the area;

(e) Proposed cost management techniques to be employed; and

(f) Ability to communicate effectively.

(2) Procurement of Consultant Services Under Retainer Agreements.

(a) At least biennially, in a trade periodical or an Oregon newspaper of general circulation, or on the Oregon University System's procurement website, and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses, the Senior Vice Chancellor for Finance and Administration or designee will publish a notice advertising the Board's Request for Proposals for Consultant services for future services and inviting Consultants to submit a Proposal to perform the services described in the RFP at such time that the services are requested by the Institution. The Senior Vice Chancellor for Finance and Administration or designee will also provide a

copy of the above notice to the Office of Minority, Women, and Emerging Small Business.

(b) Following the procedures set out in section (2)(a) of this rule, the Senior Vice Chancellor for Finance and Administration or designee will prepare a list of potential Consultants that have met the minimum criteria for selection set out in the retainer agreement RFP. An Institution that wishes to use the services of Consultants that have entered into retainer agreements may appoint a person to serve on the evaluation committee. Such committee will review the list prepared by the Senior Vice Chancellor for Finance and Administration or designee of any of the Consultants who have met the minimum criteria for selection set out in the RFP and will select Consultants who appear to have the qualifications for and interest in performing professional services for the Institutions. The committee will recommend to the Senior Vice Chancellor for Finance and Administration or designee the selected Consultants.

(c) Each selected Consultant will be invited to enter into a retainer agreement for a two-year period with the option to extend for an additional two-year term. Services of the selected Consultants will be available to all Institutions that the Consultants have indicated they are willing to work at. The Senior Vice Chancellor for Finance and Administration or designee may enter into interagency agreements to permit other public agencies to utilize the services of Consultants selected for retainer agreements pursuant to this subsection, under the terms of those retainer agreements.

(d) The Office of Finance and Administration will maintain a current roster of all Consultants who have signed retainer agreements with the Board and copies of the retainer agreements.

(3) General Procurement of Consultant Services: The procedures to be followed when contracting for professional consulting services will depend upon a combination of factors including the total anticipated Contract Price and whether or not the Consultant has entered into a retainer agreement pursuant to section (2) of this rule.

(a) For contracts where the anticipated Contract Price, including Consultant fees and reimbursable expenses and all amendments contemplated by the parties, is \$25,000 or less, the Institution Facilities Planning Official may contract for such professional services with any Consultant who has entered into a retainer agreement or such other Consultant as the Institution Facilities Planning Official may choose who appears to have the qualifications for and interest in the proposed assignment.

(b) For contracts involving an anticipated Contract Price, including Consultant fees and reimbursable expenses and including amendments contemplated by the parties, between \$25,001 and \$200,000, or in an Emergency situation, the Institution Facilities Planning Official may select a Consultant to perform the needed services using the following procedure:

(i) Select a Consultant:

(A) From those who have signed a retainer agreement who appear to have the qualifications for and interest in the assignment; or

(B) Select at least three Consultants not on a retainer agreement who appear to have the qualifications for and interest in the proposed assignment and notify each Consultant selected in reasonable detail of the proposed assignment and invite each Consultant to submit a Written Proposal which includes their qualifications;

(ii) The Institution Facilities Planning official will negotiate the payment terms and specific statement of work of a Contract with the selected Consultant using a form of contract deemed legally sufficient by the Department of Justice (for all Consultant Contracts requiring Department of Justice approval). If a mutually satisfactory contract cannot be agreed to, the Institution Facilities Planning Official may select another Consultant on retainer or who submitted a Proposal and enter into contract negotiations.

(c) For professional service contracts with an anticipated Contract Price, including Consultant fees and reimbursable expenses, over \$200,001, except in Emergency situations, the Institution Facilities Planning Official will select for consideration no fewer than three Consultants using the following procedure:

(i) Announcement: The Institution Facilities Planning Official will give notice of intent to contract for professional services in a trade periodical, or newspaper of general circulation, or on the Institution's procurement website and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses. The notice will invite qualified prospective Consultants to respond to the Solicitation Document. The notice will specify where the Solicitation Document may be obtained and the Closing. The Institution Facilities Planning Official will also provide a copy of the notice of intent to the Office of Minority, Women and Emerging Small Business.

(ii) Consultant's Response: The Consultant's Proposal must include a statement that describes the prospective Consultant's credentials, performance data and other information sufficient to establish the Consultant's qualification for the project, as well as any other information required by the Solicitation Document.

(iii) Initial Screening: The Institution Facilities Planning Official will appoint a Consultant screening committee consisting of no fewer than two individuals to review, score, and rank the Consultants according to the criteria set out in the Solicitation Document. The Consultant screening committee will evaluate the qualifications of all Proposers and select no fewer than three prospective Consultants whose Proposals demonstrate that the selected Consultants can best fulfill the provisions of section (1) of this rule. In the event that fewer than three Consultants reply to the Solicitation Document, the Institution Facilities Planning Official may still proceed with the final selection of a Consultant if the Institution Facilities Planning Official makes a Written finding that the purpose set out in section (1) of this rule will still be met by continuing with the selection process.

(iv) The Final Selection Procedure:

(A) Interviews: Following screening and evaluation, the Institution Facilities Planning Official and Consultant screening committee may invite to interview, in person, a minimum of three finalists selected from the initial screening or such lesser number as have been determined to be Responsible and Responsive Proposers.

(B) Award of Contracts: The Institution Facilities Planning Official will make the final selection based on the factors set out in the Solicitation Document; recommend the Consultant to the president or designee if the Institution Facilities Planning Official does not have contracting authority and notify the selected Consultant of such selection.

(C) The Institution Facilities Planning Official will then negotiate the payment terms and the statement of work of a Contract with the selected Consultant using a form of

Contract deemed legally sufficient by the Department of Justice. In the event a mutually satisfactory Contract cannot be agreed to, the Consultant screening committee may select for consideration and contract negotiations another Consultant from the remaining recommended Consultants.

(4) Any Consultant who has submitted a Proposal as outlined in subsections (2)(b), (3)(b) or (3)(c) of this rule and claims to have been adversely affected or aggrieved by the selection of a competing Consultant, and unless a different deadline is specified in the Solicitation Document, will:

(a) Have seven (7) calendar days after receiving notice of selection to submit a Written protest of the selection to the Institution Facilities Planning Official. The Institution Facilities Planning Official will not consider a selection protest submitted after the time period provided in this subsection, unless a different deadline is provided in the notice of selection.

(b) The Institution Facilities Planning Official will have the authority to accept, reject, settle or resolve a written protest submitted in accordance with this rule.

(c) Judicial review of the disposition of a written protest submitted in accordance with subsection (4)(a) of this rule may be available pursuant to the provisions of [ORS 183.484](#).

(5) Notwithstanding anything in this rule to the contrary, the Institution Facilities Planning Official may enter into a Contract with a Consultant without following the processes herein in the following situations:

(a) the Consultant previously performed Work on a project, the Institution terminated the Work or decided not to complete the Work or decided not to proceed with all phases of the project and the Institution now wants to continue the project and wants to use the same Consultant in order to continue professional liability insurance coverage or because the Institution Facilities Planning Official reasonably believes no other Consultant would want to do the Work or the cost would be greater to have a different Consultant complete the work;

(b) the new Work constitutes a latter phase of a multi-phased project; or

(c) the new Work constitutes an addition to or remodel of a building which the Consultant previously worked on and the Institution Facilities Planning Official reasonably believes that there will be cost savings in using a Consultant who is familiar with the previous Work; or

(d) the Institution Facilities Planning Official reasonably believes that the Consultant has special skills uniquely required for the adequate performance of the Work.

Stat. Auth.: [ORS 351.070](#)

Stats. Implemented: [ORS 351.070](#)

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 6-1994, f. & cert. ef. 4-28-94; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96

580-050-0025 Naming Buildings

No building or structure of the Oregon University System will be named after a living person. However, the Board may make exceptions to this rule if a donor contributes a substantial share of the cost of construction or if other unusually meritorious reasons exist. Subject to the limitations in this rule, Presidents are authorized to name buildings or structures.

Stat. Auth.: [ORS 351.070](#)

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92)

580-050-0032

Contracts for Repairs and Public Improvements

(1) The Institution Facilities Planning Official will be the contracting officer. All Contracts for Construction Trade Services or for Public Improvements will be awarded and executed by the Institution Facilities Planning Official.

(2) The Senior Vice Chancellor for Finance and Administration, or designee, may delegate, through the Institution president, to a specific person or persons at each Institution the authority to execute Contracts for Public Improvements and Construction Trade Services, provided that all applicable statutory and rule requirements are fulfilled. The Institution president may, by written agreement with the president of another Institution, subject to this rule, transfer such delegation to a person at such other Institution. A copy of each Contract must be filed with the Institution Facilities Planning Official who may audit the project and the contracting process.

(3) The Institution Facilities Planning Official will award Contracts valued at \$25,000 or more for Public Improvements and Construction Trade Services to the lowest Bidder or best Proposer pursuant to appropriate competitive processes, utilizing ITBs or Requests for Proposals, including negotiated procurements for design-build or construction manager/general contractor services. Criteria for award will include price and any other factors as the Institution Facilities Planning Official deems appropriate, including, but not limited to, past performance of the Contractor, experience of the Contractor and the Contractor's management team on projects of similar size and scope, the Contractor's reputation for quality and timely completion of projects, the Contractor's business and project management practices, the Contractor's demonstrated commitment to affirmative action, the Contractor's willingness to agree to the Contract terms proposed by the Institution Facilities Planning Official and the Contractor's ability to post required bonds. The Institution Facilities Planning Official will maintain appropriate records of the competitive process utilized for each Contract. The appropriate planning official of each Institution will determine the procedures to be used for the award of Contracts valued at less than \$25,000 for Construction Trade Services.

(4) The Senior Vice Chancellor for Finance and Administration or designee may enter into retainer agreements, including price agreements, with Contractors using appropriate competitive procedures that take into account, at a minimum, the qualifications and reputation of Offerors, price structure, ability and willingness to respond to requests from one or more Institutions, location and such other factors as the Senior Vice Chancellor for Finance and Administration or designee will deem

appropriate. At least biennially, in a trade periodical or an Oregon newspaper of general circulation or on the Oregon University System procurement website, and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses, the Senior Vice Chancellor for Finance and Administration or designee will publish a notice advertising the Board's Request for Proposals for Public Improvement and Construction Trade Services for future services and inviting construction firms to submit a Proposal to perform the services described in the Request for Proposals at such time that the services are requested by the Institution. The Senior Vice Chancellor for Finance and Administration or designee will also provide a copy of the above notice to the Office of Minority, Women and Emerging Small Business. The Institution Facilities Planning Official may utilize the services of Contractors under retainer agreement for projects whose total Contract Price is less than \$500,000.

(a) Project Contracts to the retainer agreement, describing the scope of the specific work and the price for which it will be performed, must be executed prior to the commencement of any Work by a Contractor. If the Project Contract requires review for legal sufficiency by the Department of Justice, that review must be received prior to any Work being performed by the Contractor or payment being made by the Institution, except as set out in relevant sections of OAR Chapter 137, Division 45.

(b) Project Contracts having a total Contract Price of \$25,000 or less on a project where the combined price of all contracts awarded on the project is less than \$25,000 will not be subject to the provisions of section (7) of this rule. However, projects may not be divided into more than one Project Contract to avoid the application of section (7);

(c) The Institution Facilities Planning Official will maintain appropriate records of the competitive process used to select a specific Contractor from the list of Contractors with current retainer agreements in force at the time the selection is made and the Project Contract is issued;

(d) The Institution Facilities Planning Official will solicit prices from at least two Contractors under retainer agreements, or document in the contracting file the reason for not doing so.

(5) The Institution president may declare an Emergency. The reasons for the declaration will include justification for the use of any sole source or negotiated procurements for Public Improvements or Construction Trade Services within the scope of the Emergency declaration. After the president has declared an Emergency, the Institution Facilities Planning Official may negotiate a Contract with any qualified construction firm for Public Improvements or Construction Trade Services included in the scope of the Emergency declaration. The Institution Facilities Planning Official will maintain appropriate records of negotiations carried out as part of the contracting process.

(6) The Institution Facilities Planning Official may enter into a Contract for a Public Improvement or Construction Trade Services with a construction firm without following the procedures set out in this rule if the services are reasonably available only from one firm, if the firm has special skills uniquely required for the adequate performance of the Public Improvements or Construction Trade Services, if the work must be done by a particular firm so as not to void a warranty, or if the firm is the only one authorized by a supplier to install particular items, and if a sole source exemption is not likely to

encourage favoritism or substantially diminish competition for public contracts. The Institution must maintain documentation to support its determination that the Work can only be performed by that one firm.

(7) All Public Work Contracts will require Contractors to pay, and Contractors will pay, at least the rate of wage for labor determined by the Bureau of Labor and Industries (BOLI) to be the rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed for work performed under the Contract. All Public Work Contracts will require Contractors to pay to BOLI the fee required by ORS 279.375(1).

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

(9) The Institution Facilities Planning Official will require Offerors and Contractors to post and maintain such bonds as the Institution Facilities Planning Official decides is appropriate. Requirements related to the posting, form, maintenance, and return of bonds will be included in Solicitation Documents. One hundred percent performance and payment bonds will be required on Public Improvement Contracts with a total Contract Price in excess of \$100,000.

(10) All Contractors will provide and maintain insurance as may be required by the Institution Facilities Planning Official. Such insurance will remain in force throughout the term of the Contract, including any extensions.

(11) The Institution Facilities Planning Official may require that retainage of not more than five percent of the Contract Price is withheld from payments to any Contractor. This requirement is not applicable to Project Contracts. Retainage will be withheld, applied, and adjusted as set out in OAR "Retainage."

(12) The Institution Facilities Planning Official may execute change orders or amendments to Contracts in accordance with OAR 580-050-0033.

(13) The Board of Higher Education and/or the Director of the Internal Audit Division may audit or investigate any Contract or retainer agreement executed under authority of this rule.

(14) The procedures set out in OAR _____ through _____ will be used in soliciting, evaluating, and rejecting or accepting Bids or Proposals for Contracts for Public Improvements or Construction Trade Services.

(15) Notwithstanding anything in this rule to the contrary, Institutions are not required to use a competitive process to select a Contractor to perform contracts for Public Improvements or Construction Trade Services if:

(a) the Contract is with another public agency or the federal government;

(b) it is an Emergency; or

(c) the Institution Facilities Planning Official grants an exemption from the competitive process after finding that the exemption:

(i) is unlikely to encourage favoritism in the award of public contracts;

(ii) is unlikely to substantially diminish competition for public contracts; and

(iii) will likely result in substantial cost savings to the Institution.

(d) In making these findings the Institution Facilities Planning Official may consider the type, cost and amount of the Contract, the number of Entities available to make Offers and such other factors as the Institution Facilities Planning Official deems appropriate.

Stat. Auth.: [ORS 351.060](#)

Stats. Implemented: [ORS 351.060](#)

Hist.: HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 1-1993, f. & cert. ef. 2-5-93; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96

580-050-0033

Change Orders and Amendments

The Senior Vice Chancellor for Finance and Administration or designee may delegate to each Institution the authority to execute change orders or amendments to Contracts for Public Improvements and Construction Trade Services and Consultant Contracts under OAR 580-050-0020 in accordance with the following conditions:

- (1) No change order or amendment substantially changes the identity or overall scope of the Work encompassed within the original Contract and Solicitation Document;
- (2) Sufficient funds are available within the project budget for the Work contemplated by a change order or amendment;
- (3) Approval of a change order or amendment will not result in a project exceeding the appropriation or limitation approved by the Legislative Assembly or Emergency Board and, if required, released for construction purposes.
- (4) The Senior Vice Chancellor for Finance and Administration may revoke delegated authority upon written notice to the president of the Institution for which revocation is sought.

Stat. Auth.: [ORS 351.060](#)

Stats. Implemented: [ORS 351.060](#)

Hist.: HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 5-1996, f. & cert. ef. 12-18-96

580-050-0040

General Purpose

- (1) The successful Offeror for a Public Improvement project approved by the Board of Higher Education will have made good faith efforts to subcontract or establish joint ventures with or obtain materials to be used in performing the Contract from minority, women and emerging small business enterprises.
- (2) For purposes of this rule and OAR 580-050-0041 and 580-050-0042, minority, women and emerging small business enterprises are those certified as such by the Office of Minority, Women and Emerging Small Business at the Bid or Proposal Closing.

Stat. Auth.: [ORS 351.070](#)

Stats. Implemented: [ORS 351.070](#)

Hist.: HEB 14-1990, f. & cert. ef. 10-3-90; HEB 5-1992, f. & cert. ef. 4-10-92; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96

580-050-0041

Emerging Small Businesses

(1) The successful Offeror for a Public Improvement project approved by the Board of Higher Education will meet the project's goal, if any, for subcontracting with or obtaining materials to be used in performing the Contract from emerging small businesses. The goal will be set out in the Specifications that accompany the project's Solicitation Document.

(2) The goal for each project will be based upon the nature of the project, its size and location, and the availability of emerging small businesses.

(3) Should an Offeror fail to meet the requirements of section (1) of this rule, the Offer will be disqualified unless the Offeror notifies the Institution Facilities Planning Official of the Offeror's good faith efforts by submitting in Writing within 24 hours of the Closing:

(a) The identity of each emerging small business enterprise requested to submit Bids, Proposals and/or quotations;

(b) The amounts of any such Bids, Proposals and/or quotations;

(c) The identity of each emerging small business enterprise to be engaged as a subcontractor;

(d) The reason for rejection of an emerging small business enterprise whose Bid, Proposal, or quotation is equal to or lower than that of the subcontractor engaged or projected for that work;

(e) All other evidence of good faith efforts through performance of all of the actions described in section (4) of this rule.

(4) Proof of performance of the following actions will create a rebuttable presumption that the Offeror has made good faith efforts; conversely, failure of proof of such performance will create a rebuttable presumption of lack of good faith efforts:

(a) The Offeror attended any presolicitation or prebid meetings that were scheduled by the Institution to inform emerging small business enterprises of contracting and subcontracting, or material supply or other opportunities available on the project;

(b) The Offeror identified and selected economically feasible units of the project that could be subcontracted to emerging small business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The Offeror advertised once in at least two of the following publications: general circulation, trade association, and trade-oriented, minority and women-focused publications, if any, concerning the subcontracting, material supply or other opportunities;

(d) The Offeror solicited and provided written notice to a reasonable number of emerging small business enterprises identified from current certified lists of such business enterprises provided or maintained by the Office of Minority, Women and Emerging Small Business, for the selected subcontractor or material supply or other work in sufficient time to allow the enterprises to participate effectively;

(e) The Offeror followed up initial solicitations by contacting the emerging small business enterprises identified in subsection (d) to determine with certainty whether the enterprises were interested in such subcontracting, material supply or other opportunities;

(f) The Offeror provided interested emerging small business enterprises with adequate information about the plans, Specifications and requirements for the selected subcontracting or material supply or other work;

(g) Where applicable, the Offeror advised and made efforts to assist emerging small business enterprises in obtaining bonding, lines of credit, or insurance required by the Institution;

(h) The Offeror used the services of community organizations, contractor groups, state, and federal business assistance offices and other organizations identified by the Office of Minority, Women and Emerging Small Business that provide assistance in the recruitment, and placement of emerging small business enterprises; and

(i) The Offeror negotiated in good faith with emerging small business enterprises submitting Bids, Proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any Bids, Proposals or quotations prepared by any emerging small business enterprise. "Good faith" negotiating means engaging in good faith discussions with emerging small business enterprises about the nature of the Work, scheduling, requirements for special equipment, opportunities for dividing work among the Offerors and various subcontractors and the Offers of the emerging small business enterprises, including sharing with them any cost estimates from the Solicitation Documents, if available.

(5) Should the Offeror not make the good faith effort required in section (4) of this rule, proof of the following facts will rebut the presumption that good faith efforts as required by OAR 580-050-0040(1) were not made by the Offeror:

(a) The Offeror qualifies as a certified emerging small business enterprise; or

(b) The Offeror has engaged one or more certified emerging small business enterprises as subcontractors which meets or exceeds the goal of the Work and discloses in Writing with its Offer the identity of those firms so engaged and the amount(s) of the contract to be subcontracted to such entities.

(6) The Institution Facilities Planning Official will decide, if necessary, whether good faith efforts have been made, pursuant to the criteria of section (4) of this rule.

(7) Any Offeror whose Offer has been rejected for noncompliance with the requirements of this rule may, within three days of the rejection of the Offer, request the Institution Facilities Planning Official to reconsider the rejection, citing the error or misinterpretation of the documents that the Offeror believes led to the incorrect rejection of its Offer and providing all necessary documentation. Information received after the three-day period will not be accepted. The Institution Facilities Planning Official reserves the right to require the Offeror to divulge its records when a dispute occurs, regardless of whether they have been awarded the Contract or whether a court action has been filed.

(8) The requirements of the prior sections do not apply if the Offeror certifies that, if awarded the Contract, it will not subcontract. As used in this rule, "work" does not mean providing materials or supplies.

(9) The Institution Facilities Planning Official may audit or otherwise inspect the records of Contractors to determine compliance by those Contractors with commitments made in satisfaction of the requirements of this rule. Any Contractor determined to have failed to fulfill such requirements may be subject to penalty, including termination of any Contract or Disqualification from bidding, proposing or performing work on any Contract for the Oregon State Board of Higher Education for a period of up to three years. Before the Board imposes any such sanction, a Contractor is entitled to a hearing as provided for in [ORS 183.413](#), et seq.

(10) In the event a Request for Proposals, Request for Qualifications or process other than an ITB is used to contract for Public Improvements, the Institution Facilities Planning Official will require in the Solicitation Document or will attempt to negotiate affirmative efforts on behalf of emerging small businesses similar to those outlined in sections (1) or (4) of this rule.

Stat. Auth.: [ORS 351.070](#)

Stats. Implemented: [ORS 351.070](#)

Hist.: HEB 14-1990, f. & cert ef. 10-3-90; HEB 5-1992, f. & cert. ef. 4-10-92; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96

580-050-0042

Minority Business Enterprises and Women Business Enterprises

(1) The successful Offeror for a Public Improvement project approved by the Board of Higher Education or its designee will make a good faith effort to subcontract with or obtain materials to be used in performing the Contract from minority and women business enterprises.

(2) Proof of performance of the following actions will create a rebuttable presumption that the Offeror has made good faith efforts; conversely, failure of proof of such performance will create a rebuttable presumption of lack of good faith efforts:

(a) The Offeror attended any presolicitation or prebid meetings that were scheduled by the Institution to inform minority and women business enterprises of contracting and subcontracting, material supply or other opportunities available on the project;

(b) The Offeror identified and selected economically feasible units of the project that could be subcontracted to minority and women business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The Offeror advertised in general circulation, trade association, and trade-oriented, minority and women-focused publications, if any, concerning the subcontracting, material supply or other opportunities;

(d) The Offeror solicited and provided written notice to a reasonable number of minority and women business enterprises identified from current certified lists of such business enterprises provided or maintained by the state Office of Minority, Women and Emerging Small Business, for the selected subcontracting or material supply, or other work in sufficient time to allow the enterprises to participate effectively;

(e) The Offeror followed up initial solicitations by contacting the enterprises to determine with certainty whether the enterprises were interested in such subcontracting, material supply or other opportunities;

(f) The Offeror provided interested minority and women business enterprises with adequate information about the plans, Specifications and requirements for the selected subcontracting or material supply, or other work;

(g) Where applicable, the Offeror advised and made efforts to assist minority and women business enterprises in obtaining bonding, lines of credit or insurance required by the Institution;

(h) The Offeror used the services of community organizations, contractor groups, state and federal business assistance offices and other organizations identified by the Office

of Minority, Women and Emerging Small Business that provide assistance in the recruitment and placement of minority and women business enterprises; and

(i) The Offeror negotiated in good faith with minority and women business enterprises submitting Bids, Proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any Bids, Proposals or quotations prepared by any minority or women business. "Good faith" negotiating means engaging in good faith discussions with minority or women businesses about the nature of the Work, scheduling, requirements for special equipment, opportunities for dividing of work among the Offerors, and various subcontractors and the Offers of the minority or women businesses, including sharing with them any cost estimates from the Solicitation Documents, if available.

(3) Should an Offeror fail to meet the requirements of section (2) of this rule, the Offer will be Disqualified unless the Offeror notifies the Institution Facilities Planning Official of the Offeror's good faith efforts by submitting in Writing within 24 hours of the Closing:

(a) The identity of each minority and women business enterprise requested to submit Bids, Proposals, and/or quotations;

(b) The amounts of any such Bids, Proposals and/or quotations;

(c) The identity of each minority and women business enterprise to be engaged as a subcontractor;

(d) The reason for rejection of a minority and women business enterprise whose Bid, Proposal, or quotation is equal to or lower than that of the subcontractor engaged or projected for that work;

(e) All other evidence of good faith efforts through performance of all of the actions described in section (2) of this rule.

(4) Should the Offeror not make the good faith effort required in section (2) of this rule, proof of the following facts will rebut the presumption that good faith efforts as required by OAR 580-050-0040(1) were not made by the Offeror:

(a) The Offeror qualifies as a certified minority or women business enterprise or is an approved joint venture, including but not limited to a mentor-protégé relationship, which includes a minority or women enterprise as a partner in the joint venture; or

(b) The Offeror has engaged one or more certified minority or women business enterprises as subcontractors that meet or exceed the recommended portion of the Work and discloses in Writing with its Offer the identity of those firms so engaged and the amount(s) of the contract to be subcontracted to such entities: The recommended portion for each project will be based upon the nature of the project, its size and location, and the availability of minority and women business enterprises.

(5) The Institution Facilities Planning Official will decide, if necessary, whether good faith efforts have been made pursuant to the criteria of this rule.

(6) Any Offeror whose Offer has been rejected for noncompliance with the requirements of this rule may, within three days of the rejection of the Offer, request the Institution Facilities Planning Official to reconsider the rejection, citing the error or misinterpretation of the documents that the Offeror believes led to the incorrect rejection of its Offer and providing all necessary documentation. Information received after the three-day period will not be accepted. The Institution Facilities Planning Official reserves the right to require the Offerors to divulge their records when a dispute occurs, regardless of whether they have been awarded a contract or whether a court action has been filed.

(7) The requirements of the prior sections do not apply if the Offeror certifies that, if awarded the Contract, it will not subcontract. As used in this rule, "work" does not mean providing materials or supplies.

(8) The Institution Facilities Planning Official may audit or otherwise inspect the records of Contractors to determine compliance by those Contractors with commitments made in satisfaction of the requirements of this rule. Any Contractor determined to have failed to fulfill such requirements may be subject to penalty, including termination of any Contract or Disqualification from bidding, proposing or performing work on any Contract for the Oregon State Board of Higher Education for a period of up to three years. Before the Board imposes any such sanction, a Contractor is entitled to a hearing as provided for in [ORS 183.413](#), et seq.

(9) In the event a Request for Proposals, Request for Qualifications or process other than an ITB is used to contract for Public Improvements, the Institution Facilities Planning Official will require affirmative efforts in its Solicitation Documents or will attempt to negotiate affirmative efforts on behalf of minority and women business enterprises similar to those outlined in this rule.

Stat. Auth.: [ORS 351.070](#)

Stats. Implemented: [ORS 351.070](#)

Hist.: HEB 14-1990, f. & cert. ef. 10-3-90; HEB 5-1992, f. & cert. ef. 4-10-92; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96

580-050-0100

Board of Higher Education-Provided Housing

(1) Consistent with [ORS 182.415](#), for the purpose of OAR 580-050-0100, the terms:

(a) "Housing" includes single- and multiple-family dwellings, apartments and manufactured dwellings and manufactured dwelling pads, available on a monthly tenancy, but does not include Dormitory facilities at any Institution.

(b) "Dormitory" includes any facility that houses students.

(c) "Furnishings" includes furniture used in connection with the occupancy of Housing and will not be provided as part of any Housing. Furnishings do not include rugs, draperies, range, refrigerator, washer, dryer or any item of Furnishings received as a gift, nor does it include any furniture purchased prior to September 9, 1971, for the state-owned residence required in relation to the official duties of an Institution President or the Chancellor.

(2) As required under [ORS 182.425](#), the Institutions will collect a rental for Housing provided to officers and employees based on the fair rental value as determined by a qualified appraiser certified under [ORS 308.010](#) or licensed or certified under [ORS 674.310](#), subject to any reductions therefrom authorized under [ORS 182.435](#) as described in Section 7.170 of the Board's Internal Management Directives. Rental fees collected will be credited to the appropriate account.

(3) Determination of fair rental value will be reexamined periodically but not less frequently than once every five years, and the rental will be adjusted annually by the change in real estate values for the affected community as determined by the Oregon University System.

(4) When an Institution provides Housing to an officer or employee, it will notify the Office of Finance and Administration, on the form supplied by the Office, of these arrangements, including the basis for rental charge and such rental rate reductions as may be applicable. The reason for and amount of each specific reduction will be detailed in such notification.

(5) The Office of Finance and Administration will prepare a report indicating the fair rental value of each Housing unit, the date of the most recent appraisal, and the amount of any reductions from the fair rental value and the reasons for the reductions. This report will be available for public inspection.

Stat. Auth.: [ORS 182.415](#), [ORS 182.425](#) & [ORS 351.070](#)

Stats. Implemented: [ORS 351.070](#)

Hist.: HEB 9-1994, f. & cert. ef. 10-12-94; HEB 5-1996, f. & cert. ef. 12-18-96

580-050-0105

Properties Subject to Flood Hazards

(1) Flood hazards will be evaluated in the administration of any construction program of buildings, structures, roads, or other facilities to minimize the exposure to potential flood damage and preclude the uneconomic, hazardous, or unnecessary use of flood plains.

(a) National Flood Insurance Regulations and criteria will apply to any plans for construction or development in a flood plain.

(b) Flood-proofing measures to existing facilities will be made where budgets permit, to reduce flood damage potential.

(2) Flood hazards will be evaluated in connection with lands or public properties proposed for disposal to other public instrumentalities or private interest to minimize future state expenditures for flood protection and flood disaster relief.

(a) Appropriate restrictions will be imposed with respect to uses of the lands or properties for disposal.

(b) Appropriate allowance will be made for any estimated loss in sales price resulting from the incorporation of use restrictions outlined in the disposal document.

Stat. Auth.: [ORS 351](#)

Stats. Implemented: [ORS 351.070](#)

Hist.: HEB 8-1980(Temp), f. & ef. 6-18-80; HEB 10-1980, f. & ef. 8-20-80; HEB 5-1996, f. & cert. ef. 12-18-96

580-050-0110

Retainage

(1) An Institution will not retain an amount in excess of 5 percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract 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 Contract Work is 97½ percent completed, the Institution may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of

the remaining unperformed Contract Work. An Institution may at any time reinstate retainage. Retainage will be included in the final payment of the Contract Price.

(2) Upon request of the Contractor, an Institution will deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Institution. Earnings on such account will accrue to the Contractor. Institutions will establish the account through the Controller's Office.

(3) In lieu of cash retainage to be held by an 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 Facilities Planning Official's 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.

(4) An Institution will recover from the Contractor all costs incurred in the proper handling of cash retainage and securities, in accordance with OAR 580-040-0007 or by reduction of the final payment.

(5) Notwithstanding subsection (1) of this rule, an Institution, at its discretion, does not need to withhold retainage on Contracts where the Contract Price does not exceed \$500,000. In addition, if the Work is to be performed in phases the Institution, at its discretion, may release up to 100% of the retainage of a completed phase, depending upon requirements applicable to all phases.

Stat. Auth.: ORS 351.060

Stats. Implemented: ORS 351.060

580-050-0120

Negotiation When Offers Exceed Cost Estimate

(1) If all Responsive Offers from Responsible Offerors on a competitively bid Project, including Offers received under OAR 580-050-0032(3) and (4), exceed the Institution's Cost Estimate, prior to Contract award the Institution may negotiate Value Engineering and Other Options with the Responsible Offeror submitting the lowest, Responsive Bid

or the best, Responsive Proposal in an attempt to bring the Project within the Institution's Cost Estimate.

(2) The following definitions apply to this administrative rule:

(a) Cost Estimate: The Institution's most recent pre-Offer, 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: Those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance, but excluding any material requirements previously announced in the Solicitation Document that would likely affect the field of competition.

(c) Project: A Public Improvement or Construction Trade Services.

(d) Value Engineering: Those 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 or Construction Trade Services. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(3) In determining whether all Responsive Offers from Responsible Offerors exceed the Cost Estimate, only those Offers that have been formally rejected, or Offers from Offerors who have been formally Disqualified by the Institution, will be excluded from consideration.

(4) Institutions will not proceed with Contract award if the scope of the Project is significantly changed from the original Offer. 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 Offerors would have been expected by the Institution to participate in the solicitation process had the change been made during the solicitation process rather than during negotiation. This rule will not be construed to prohibit resolicitation of trade subcontracts.

(5) The Institution may discontinue negotiations at any time, and will do so if it appears to the Institution that the apparent low Offeror is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the Project, or to obtain subcontractor pricing information upon request, will be considered a lack of good faith.

(6) Negotiations will be initially undertaken with the lowest Responsive, Responsible Bidder or the best Responsive, Responsible Proposer. If the lowest Responsive, Responsible Bidder or the best Responsive, Responsible Proposer is not negotiating in good faith, the Institution may, at its sole discretion, negotiate Value Engineering and Other Options with the second lowest Responsive, Responsible Bidder or second best Responsive, Responsible Proposer. If that Offeror is not negotiating in good faith, the Institution may, at its sole discretion, negotiate Value Engineering and Other Options with the next lowest Responsive, Responsible Bidders (each in order of their Bid) or the next best Responsive, Responsible Proposers (each in order of their Proposal).

Records of an Offeror used in Contract negotiations do not become public records unless they are also submitted to the Institution.

Stat. Auth.: ORS 351.060

Stats. Implemented: ORS 351.060

580-050-0130

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 will be held open by the Offeror for the Institution's acceptance for the period specified in OAR "Time for Institution Acceptance". The Institution's award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(2) Responsive Offer. An Institution may award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions in the Solicitation Document, a Proposer will not make its Offer contingent upon the Institution'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 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 Solicitation Document permits proposal of alternative terms, 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 Institution in Writing.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

580-050-0140

Facsimile and Electronic Offers

(1) Institution Authorization. An Institution may authorize Offerors to submit Facsimile or Electronic Offers. If the Institution determines that Bid or Proposal security is or will be required, the Institution should not authorize Facsimile or Electronic Offers unless the Institution has another method for receipt of such security. Prior to permitting Facsimile or Electronic Offers the Institution must determine whether the Institution's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time and establish administrative procedures and controls:

(a) For receiving, identifying, recording, and safeguarding Facsimile and Electronic Offers, and

(b) To ensure timely delivery of Offers to the location of Opening and to preserve the "sealed" requirement of competitive procurement.

(2) Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the Institution authorizes a Facsimile or Electronic Offer, the Institution will include in the Solicitation Document provisions substantially similar to the following:

- (a) A Facsimile or Electronic Offer, as used in this solicitation, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Institution via a Facsimile machine or the worldwide web.
 - (b) Offerors may submit Facsimile or Electronic Offers in response to this solicitation. The entire response must arrive at the place and by the time specified in this Solicitation Document.
 - (c) Offerors must Sign their Facsimile or Electronic Offers.
 - (d) The Institution reserves the right to award the Contract solely on the Facsimile or Electronic Offer. However, upon the Institution's request the apparently successful Offeror will promptly submit its complete original Signed Offer.
 - (e) The data and compatibility characteristics of the Institution's receiving Facsimile machine as follows:
 - (A) Telephone number;
 - (B) Compatibility characteristics, e.g., make and model number, receiving speed, and communications protocol.
 - (f) The e-mail address of the Institution to be used to receive Electronic Offers.
 - (g) The Institution is not responsible for any failure attributable to the transmission or receipt of the Facsimile or Electronic Offer including, but not limited to the following:
 - (A) Receipt of garbled or incomplete documents.
 - (B) Availability or condition of the receiving Facsimile machine, computer or computer system.
 - (C) Incompatibility between the sending and receiving Facsimile machine or between the sending and receiving computers.
 - (D) Delay in transmission or receipt of documents.
 - (E) Failure of the Offeror to properly identify the Offer documents.
 - (F) Illegibility of Offer documents.
 - (G) Security and confidentiality of data.
- Stat. Auth.: ORS 351.060, 351.070
 Stats. Implemented: ORS 351.060, 351.070

580-050-0150

Offeror Submissions

- (1) Identification of Offers.
 - (a) To ensure proper identification and handling, Offers will be submitted in a sealed envelope appropriately marked or in the envelope provided by the Institution, whichever is applicable. If the Institution permits Facsimile or Electronic Offers in the Solicitation Document, the Offeror may submit and identify Facsimile or Electronic Offers in accordance with the Solicitation Document.
 - (b) The Institution is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- (2) Receipt of Offers. The Offeror is responsible for ensuring the Institution receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 351.060, 351.070
Stats. Implemented: ORS 351.060, 351.070

580-050-0160

Pre-Offer Conferences

(1) Purpose. An Institution 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 Institution may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) Statements Not Binding. Statements made by an Institution's representative at the pre-Offer conference do not change the Solicitation Document unless the Institution confirms such statements with a Written Addendum to the Solicitation Document.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

580-050-0170

Solicitation Protest; Request for Change; Request for Clarification

(1) 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 to the Institution not less than 10 Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest will 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 Specifications.

(B) An Offeror will mark its protest as follows:

(i) Solicitation Specification or Contract Provision Protest; and

(ii) Solicitation Document Number (or Other Identification as specified in the Solicitation Document)

(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 Institution not less than 10 Days prior to Closing;

(b) Content of Request for Change.

(A) An Offeror's Written request for change will include a statement of the requested changes to the Contract terms and conditions, including Specifications together with the reason for the requested change.

(B) An Offeror will mark its request for change as follows:

(i) Solicitation Specification or Contract Provision Request for Change; and

(ii) Solicitation Document Number (or Other Identification as specified in the Solicitation Document)

(3) Institution Response. The Institution will not consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Institution will provide notice to the applicable Entity if it entirely rejects a protest. If the Institution agrees with the Entity's request or protest, in whole or in part, the Institution will either issue an Addendum reflecting its determination under OAR "Addenda to a Solicitation Document" or cancel the solicitation under OAR "Cancellation of Solicitation."

(4) Extension of Closing. If an Institution receives a Written request for change or protest from an Offeror in accordance with this rule, the Institution may extend Closing if the Institution determines an extension is necessary to consider the request or protest and to issue an Addendum, if any, to the Solicitation Document.

(5) Clarification. Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Institution clarify any provision of the Solicitation Document. The Institution's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Institution unless the Institution amends the Solicitation Document by Addendum.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

580-050-0180

Addenda to a Solicitation Document

(1) Issuance; Receipt. The Institution may change a Solicitation Document only by Written Addenda. An Offeror will provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Institution otherwise specifies in the Addenda or Solicitation Document.

(2) Notice and Distribution. The Solicitation Document will specify how the Institution will provide notice of Addenda and how the Institution will make the Addenda available. For example, "Institution will not mail notice of Addenda, but will publish notice of any Addenda on Institution's Web site. Addenda may be downloaded off the Institution's Web site. Offerors should frequently check the Institution'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 Institution will issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Institution should extend the Closing if the Institution determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest or when changes do not materially affect pricing, the Institution will 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 "Solicitation Protest," by the close of the Institution'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 "Solicitation Protest," whichever date is later. The Institution will consider only an Offeror's request for change or protest to the

Addendum; the Institution will not consider a request for change or protest to matters not added or modified by the Addendum.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

580-050-0190

Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror will prepare and submit any modification to its Offer to the Institution in accordance with OAR "Offeror Submissions", 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 will 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 Institution 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 Institution 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 will 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 Institution will include all documents relating to the modification or withdrawal of Offers in the appropriate solicitation file.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: 351.060, 351.070

580-050-0200

Receipt, Opening, and Recording of Offers

(1) Receipt. An Institution will electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Institution will not open the Offer or modification, but will store it in a secure place until Opening. If the Institution inadvertently opens an Offer or a modification prior to the Opening, the Institution will reseal and store the opened Offer or modification for Opening. The Institution will document the resealing for the solicitation file (e.g., "Institution inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and recording. An Institution will publicly open Offers including any modifications made to the Offer pursuant to OAR "Pre-Closing Modification". In the case of Invitations to Bid, to the extent practicable, the Institution will read aloud the name of

each Bidder, the Bid price(s), and such other information as the Institution considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Institution will not read Offers aloud.

(3) Availability. After Opening, the Institution will make the Offers available for public inspection except for 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); ORS 646.461 to 646.475. To the extent the Institution determines such designation is not in accordance with applicable law, the Institution will make those portions available for public inspection. The Offeror will separate information designated as confidential from other nonconfidential 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 will be publicly available regardless of an Offeror's designation to the contrary.

(4) Notwithstanding subsection (3) of this rule, if the Solicitation Document includes a process for interviewing Offerors, the Offers will not be made available for public inspection until after the Institution has announced the apparent successful Offeror.

Stat. Auth.: ORS 351.060 and 351.070

Stats. Implemented: ORS 351.060 and 351.070

580-050-0210

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 Institution will not consider late Offers. Nor will an Institution accept late withdrawals or modifications except as permitted in OAR "Mistakes."

Stat. Auth.: ORS 351.060 and 351.070

Stats. Implemented: ORS 351.060 and 351.070

580-050-0220

Mistakes

(1) General. To protect the integrity of the competitive solicitation process and to assure fair treatment of Offerors, an Institution should carefully consider whether to permit waiver, correction, or withdrawal for certain mistakes.

(2) Institution Treatment of Mistakes. An Institution will not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Institution discovers certain mistakes in an Offer after Opening, but before award of the Contract, the Institution may take the following action:

(a) An Institution 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; and the Addendum involved did not affect price, quantity or delivery.

(b) An Institution may correct a clerical error if the intended Offer and the error are evident on the face of the Offer, or other documents submitted with the Offer, and the Offeror confirms the Institution'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 will prevail over extended prices.

(c) An Institution 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 subparagraph (b) of this subsection;

(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 Institution does not grant it permission to withdraw the Offer;

(G) That the Institution's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Institution or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Institution.

(d) The criteria in subsection (2)(c) of this rule will determine whether an Institution will permit an Offeror to withdraw its Offer after Closing. These criteria also will apply to the question whether an Institution will permit an Offeror to withdraw its Offer without forfeiture of its bid bond (or other bid security), or without liability to the Institution based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Institution, 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 Institution will 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, i.e., documents submitted with the Offer.

Stat. Auth.: ORS 351.060 and 351.070
Stats. Implemented: ORS 351.060 and 351.070

580-050-0230

Time for Institution Acceptance

An Offeror's Offer is a firm Offer, irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 351.060 and 351.070
Stats. Implemented: ORS 351.060 and 351.070

580-050-0240

Extension of Time for Acceptance of Offer

An Institution may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Institution may consider their Offer(s). If an Offeror agrees to such extension, the Offer will continue as a firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 351.060 and 351.070
Stats. Implemented: ORS 351.060 and 351.070

580-050-0250

Low Tie Offers

(1) Definition. Low Tie Offers are low tie Responsive Bids from Responsible Bidders or high tie Responsive Proposals from Responsible Proposers that are identical in price, fitness, availability, and quality.

(2) Award. If awarded, the Institution will award the Contract based on the following order of precedence:

(a) The Institution will prefer goods or services that have been manufactured or produced in Oregon.

(b) The Institution will then prefer the Offer or the Offeror whose principal offices or headquarters are located in Oregon.

(c) If a Tie Offer remains after the Institution applies subsections (2)(a) and (b), the Institution will award the Contract by drawing lots among any tied Oregon Offerors. Such Offerors will be given notice and an opportunity to be present when the lots are drawn;

(d) If a Tie Offer remains after the Institution applies subsection (2)(a) and none of the tied Offerors are located in Oregon, the Institution will award the Contract by drawing lots among any tied Offerors. Such Offerors will be given notice and an opportunity to be present when the lots are drawn.

Stat. Auth.: ORS 351.060 and 351.070
Stats. Implemented: ORS 351.060 and 351.070

580-050-0260

Rejection of an Offer

(1) Rejection of an Offer.

- (a) An Institution 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 Institution will reject an Offer upon the Institution's finding that the Offer:
 - (A) Is contingent upon the Institution'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 the Solicitation Document or in contravention of applicable law; or
 - (D) Offers Work or goods that fail 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 Institution will reject an Offer upon the Institution's finding that the Offeror:
 - (A) Has not been prequalified under ORS 279.039 and the Institution required mandatory prequalification; or
 - (B) Has been disqualified under OAR "Disqualification of an Entity"; or
 - (C) Has been declared ineligible under ORS 279.361 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 submitted properly executed Bid or Proposal security as required by the Solicitation Document; or
 - (F) Has failed to provide the certification required under section 3 of this rule; or
 - (G) Is nonresponsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before awarding a Contract, the Institution must have information that indicates that the Offeror meets the applicable standards of responsibility. To be a Responsible Offeror, the Institution must determine 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 demonstrate the capability of the Offeror to meet all contractual responsibilities;
 - (ii) Has a satisfactory record of contract performance. An Institution 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 Institution should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Institution may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Institution will make its basis for determining an Offeror nonresponsible under this paragraph part of the solicitation file;
 - (iii) Has a satisfactory record of integrity. An Offeror may lack integrity if an Institution determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to an agency. An Institution may find an

Offeror nonresponsible based on the lack of integrity of any Entity having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Entity). The standards for Conduct Disqualification under OAR "Disqualification of an Entity" may be used to determine an Offeror's integrity. The Institution will make its basis for determining that an Offeror is nonresponsible under this paragraph part of the solicitation file;

(iv) Is qualified legally to contract with the Institution; 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 Institution concerning responsibility, the Institution will base the determination of responsibility upon any available information, or may find the Offeror nonresponsible.

(2) Form of Business Entity. For purposes of this rule, the Institution may investigate any Entity submitting an Offer. The investigation may include that Entity's officers, directors, owners, affiliates, or any other Entity acquiring ownership of the Entity to determine application of this rule or to apply the disqualification provisions of OAR "Disqualification of an Entity".

(3) Certification of Non-Discrimination. The Offeror will certify and deliver to the Institution 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.

Stat. Auth.: ORS 351.060 and 351.070

Stats. Implemented: ORS 351.060 and 351.070

580-050-0270

Rejection of All Offers

(1) Rejection. An Institution may reject all Offers for good cause upon the Institution's Written finding it is in the public interest to do so. The Institution will notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(2) Criteria. The Institution 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 Institution cancels the solicitation in accordance with OAR "Cancellation of Solicitation"; or

(f) Any other circumstance indicating that awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 351.060 and 351.070
Stats. Implemented: ORS 351.060 and 351.070

580-050-0280

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 Institution's Contractor selection or Contract award decision.
- (2) Notice of Intent to Award. Unless otherwise provided in the Solicitation Document, the Institution will provide Written notice to all Offerors of the Institution's intent to award the Contract. The Institution's award will not be final until the later of the following:
 - (a) 14 Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or
 - (b) The Institution provides a Written response to all timely-filed protests that denies the protest and affirms the award.
- (3) Right to Protest Award.
 - (a) An adversely affected or aggrieved Offeror may submit to the Institution a Written protest of the Institution's intent to award within 14 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 will 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 nonresponsive; or
 - (B) The Institution 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 Institution will 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.
- (4) Authority to Resolve Protests. The Institution Facilities Planning Official has the authority to settle or resolve a Written protest submitted in accordance with the requirements of this rule.
- (5) Decision. If a protest is not settled, the Institution Facilities Planning Official will promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.
- (6) Award. The successful Offeror will promptly execute the Contract after the award is final.

Stat. Auth.: ORS 351.060 and 351.070
Stats. Implemented: ORS 351.060 and 351.070

580-050-0290

Disqualification of an Entity

(1) Authority. An Institution may disqualify an Entity from consideration of award of the Institution's Contracts or to be used as a subcontractor to other Entities that are awarded Institution's Contracts after providing the Entity with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. An Institution may disqualify an Entity 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 Entity's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Institution to be so serious as to justify Disqualification. A violation under this subsection 1(a)(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, an Entity's failure to perform or unsatisfactory performance caused by acts beyond the Entity's control is not a basis for Disqualification.

(E) Having been Disqualified by the Bureau of Labor and Industries, another Institution, another state agency or another public entity.

(b) Standards for DBE Disqualification. As provided in ORS 200.065 or 200.075, an Institution may disqualify an Entity'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 Institution may disqualify an Entity upon finding that:

(i) The Entity 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 Entity 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 Entity has been disqualified by another agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Institution may disqualify an Entity upon finding that:

(i) The Entity 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 Entity 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 Entity uses a Certified Enterprise to perform services under a contract or to provide supplies under a Public Improvement 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 an Entity is Disqualified for a DBE Disqualification under ORS 200.075, the affected Institution will not permit such Entity to participate in that Institution's Contracts.
- (2) Notice of Intent to Disqualify. The Institution will notify the Entity in writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice will:
- (a) State that the Institution intends to disqualify the Entity;
 - (b) Set forth the reasons for the Disqualification;
 - (c) Include a statement of the Entity's right to a hearing if requested in Writing within the time stated in the notice and that if the Institution does not receive the Entity's Written request for a hearing within the time stated, the Entity will 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 Entity may be represented by legal counsel.
- (3) Hearing. The Institution will schedule a hearing upon the Institution's receipt of the Entity's timely request. The Institution will notify the Entity 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 Institution will notify the Entity in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice will contain:
- (a) The effective date and period of Disqualification;
 - (b) The grounds for Disqualification; and
 - (c) A statement of the Entity's appeal rights and applicable appeal deadlines.
- Stat. Auth.: ORS 351.060 and 351.070
 Stats. Implemented: ORS 351.060 and 351.070

580-050-0300

Cancellation of Solicitation

- (1) Cancellation in the Public Interest. An Institution may cancel a solicitation for good cause if the Institution finds that cancellation is in the public interest. The Institution's reasons for cancellation will be made part of the solicitation file.
- (2) Notice of Cancellation. If the Institution cancels a solicitation prior to Opening, the Institution will provide notice of cancellation. Such notice of cancellation will:
 - (a) Identify the solicitation;
 - (b) Briefly explain the reason for cancellation; and

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

Stat. Auth.: ORS 351.060 and 351.070

Stats. Implemented: ORS 351.060 and 351.070

580-050-0310

Disposition of Offers if Solicitation Canceled

(1) Prior to Offer Opening. If the Institution cancels a solicitation prior to Offer Opening, the Institution 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 Institution will open the Offer to determine the source and then return it to the Offeror. If the Offeror submitted a Facsimile or Electronic Offer, the Institution will destroy all copies of the Facsimile or Electronic Offer in its possession.

(2) After Offer Opening. If the Institution rejects all Offers, the Institution will retain all such Offers as part of the Institution's solicitation file.

Stat. Auth.: ORS 351.060 and 351.070

Stats. Implemented: ORS 351.060 and 351.070

580-050-0320

Foreign Contractor

If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor will 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 will be forwarded to the Institution. The Institution awarding the Contract will satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 351.060 and 351.070

Stats. Implemented: ORS 351.060 and 351.070

580-050-0330

Contract Suspension; Termination Procedures

(1) Suspension of Work. In the event an Institution suspends performance of Work for any reason considered by the Institution to be in the public interest other than a labor dispute, the Contractor will 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 Institution 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 subsection (2), the Institution will pay the Contractor a reasonable amount of compensation for preparatory work completed, and for costs and expenses arising out of termination. The Institution will 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 will be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) Public interest termination by Institution. An Institution may include in its Contracts terms detailing the circumstances under which the Contractor will be entitled to compensation as a matter of right in the event the Institution unilaterally terminates the Contract for any reason considered by the Institution to be in the public interest.

(4) Responsibility for completed Work. Termination of the Contract or a divisible portion thereof pursuant to this rule will not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) Remedies cumulative. The Institution 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 351.060 and 351.070

Stats. Implemented: ORS 351.060 and 351.070

580-050-0340

Institution Payment for Unpaid Labor or Supplies

(1) Contract incomplete. If the Contract is still in force, the Institution may pay a valid claim to the Entity furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If an Institution chooses to make such a payment, the Contractor and the Contractor's surety will 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 will be referred to the Contractor's surety for resolution. The Institution will not make payments to subcontractors or suppliers for Work already paid for by the Institution.

Stat. Auth.: ORS 351.060 and 351.070

Stats. Implemented: ORS 351.060 and 351.070