

DEPARTMENT OF JUSTICE
INTEROFFICE MEMO

DATE: April 19, 2004

TO: DOJ Attorneys

FROM: Wendy A. Robinson, Attorney-in-Charge
Education Section

SUBJECT: OUS OAR 580-050

The Board of Higher Education is scheduled to temporarily adopt the revisions to OAR Chapter 580, Division 50 at its May 7 meeting. Along with significantly amending the rules, OUS is repealing that rule that adopted by reference certain 1995 AG Model Rules and is, instead, adopting its own rules.

This memo sets out the differences between the 2002 AG Model Rules and the OUS rules. The OUS rules have not yet been assigned numbers, so they are identified by their titles. The parenthetical reference is to the equivalent AG Model Rule.

1. Retainage (137-040-0025)
 - Subsection (2): Retainage accounts are arranged through the OUS Controller, rather than the Treasurer.
 - Subsection (3)(a)(B): The character of approved securities is determined by the Controller instead of DAS.
 - Subsection (4): Costs of cash and securities as retainage shall be recovered.
 - Subsection (5): This is a completely new subsection which provides that retainage is not required, though it is permitted, if the Contract Price is less than \$500,000. Retainage on phased work can also be released for each completed phase.

2. Negotiation When Bids Exceed Cost Estimates (137-040-0590)
 - This rule was expanded to include Offers, not just Bids.
 - Subsection (1): Includes Offers under Retainer Agreements. Omitted reference to subcontractor disclosure.
 - Subsection (2): Added Construction Trade Services (a defined term).
 - Subsection (6): Permits negotiation with more than the lowest Bidder or the best Proposer.

3. Definitions (137-030-0000)
 - Subsection (6): New definition of Construction Trade Services.

Subsection (7): New definition of Consultants.

Subsection (13): New definition of Electronic Offer.

Subsection (14): New definition of Emergency (though it tracks the definition in statute).

Subsection (18): New definition of Institution (which includes the Board).

Subsection (19): New definition of Institution Facilities Planning Official.

Subsection (24): New definition of Project Contract (which is issued under a Retainer Agreement).

Subsection (25): The definition of Proposal includes requests by the Institution Facilities Planning Official for quotes on projects to be performed under a Retainer Agreement.

Subsection (27): The definition of Public Improvement incorporates requirements from the BOLI statutes and rules.

Subsection (31): New definition of Request for Qualifications.

Subsection (34): Definition of Solicitation Document includes RFQ.

Bids or Proposals Are Offers (137-030-0012): No changes.

Facsimile and Electronic Offers (137-030-0013)

Adds Electronic Offers (i.e. offers made via the web).

Subsection (2): Adds references to submitting offers via the web and requirements for a separate e-mail address for Electronic Offers.

Offeror Submissions (137-030-0030): Only adopted Subsections 2 and 3 without changes.

Pre-Offer Conferences (137-030-0040): Only adopted Subsections 1, 2 and 4 without changes.

Solicitation Protest; Request for Change; Request for Clarification (137-030-0050): No changes.

Addenda to Solicitation Document (137-030-0055)

Subsection (1): Added Solicitation Document as a place where the Institution can state whether an Offeror has to specify receipt of Addenda.

Subsection (2): Omitted the first sentence.

Subsection (3): Added "or when changes do not materially affect pricing" to the last sentence.

Pre-Closing Modification or Withdrawal of Offers (137-030-0060): No changes.

Receipt, Opening and Recording of Offers (137-030-0065)

Subsection (4): New subsection that prohibits inspection of Offers prior to interviews of Offerors.

Late Offers, Late Withdrawals and Late Modifications (137-030-0070): No substantive changes, though last sentence is slightly rewritten.

Mistakes (137-030-0075): No changes.

Time for Institution Acceptance (137-030-0080): No changes.

Extension of Time for Acceptance of Offer (137-030-0085): No changes.

Low Tie Offers (137-030-0095): No changes.

Rejection of an Offer (137-030-0100)
Subsection (1)(c): Omits (E) and (F).

Rejection of All Offers (137-030-0102): No changes.

Protest of Contractor Selection, Contract Award (137-030-0104): Only adopted Subsections 1, 3, 4, 6, 7 and 8 (without last sentence) without changes.

Disqualification of an Entity (137-030-0110)
Subsection (1): Added a disqualification to be used as a subcontractor on an OUS project. In subsection (a) added a new subsection (E) for disqualification by BOLI, another university, another state agency or another public entity.
Omits (1)(b)(C) and last sentence of (4)(c).

Cancellation of Solicitation (137-030-0115)
Subsection (2): Means of notifying Entities is not specified because OUS chose not to adopt 137-030-0015(1).

Disposition of Offers if Solicitation Canceled (137-030-0120)
Subsection (1): Added a sentence about what Institutions will do with Facsimile and Electronic Offers.

Foreign Contract (137-030-0130): No change.

Contract Suspension; Termination Procedures (137-040-0020): No change.

Institution Payment for Unpaid Labor or Supplies (137-040-0045): No substantive changes.

GENI8243